

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I MUA TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

ENV-2026-AKL

UNDER	the Resource Management Act 1991 ("the Act")
IN THE MATTER	of an appeal under cl 14 of Sch 1 to the Act against the decision of the Far North District Council on the Far North Proposed District Plan (" PDP ")
BETWEEN	ROSEMORN INDUSTRIES LIMITED Appellant
AND	FAR NORTH DISTRICT COUNCIL Respondent

NOTICE OF APPEAL BY ROSEMORN INDUSTRIES LIMITED

12 AUGUST 2026

NOTICE OF APPEAL BY ROSEMORN INDUSTRIES LIMITED

To: The Registrar

Environment Court

Auckland

1. **ROSEMORN INDUSTRIES LIMITED** (“**the Appellant**”) appeals against part of a decision of Far North District Council (“**the Respondent**”) on the Far North Proposed District Plan (“**PDP**”).
2. The Appellant has the right to appeal the Respondent’s decision on the PDP under clause 14 of Schedule 1 to the Resource Management Act 1991 (“**RMA**”) because it made submissions and further submissions on the PDP in respect of the matters subject to this appeal.
3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
4. Notice of the decision being appealed, being the decision on the PDP (“**Decision**”) was received by the Appellant on 30 June 2026.
5. The Decision subject to the appeal was made by the Respondent.
6. The provisions and parts of the Decision that are being appealed are:
 - 6.1 Zoning - The zoning of the Rosemorn Industries Limited site, being a 2.3224 hectare property at the corner of Cottle Hill Drive and State Highway 10, Kerikeri, legally described as Lot 2 DP 556235 and held in record of title 970800 (Site), as Rural Production Zone (RPROZ) with a Horticulture Precinct.
 - 6.2 Part 1 – Introduction and General Provisions as it relates to:
 - (a) Definitions Chapter and definitions throughout the PDP and all rules that refer or relate to the relevant activity definitions.
 - 6.3 Part 3 – Area Specific Matters as it relates to the RPROZ and Horticulture Precinct:
 - (a) Horticulture Precinct Overview which limits the extent of RPROZ objectives and policies which apply to the Horticulture Precinct.

Including the exclusion of provisions RPROZ-O2 and RPROZ-P2 which provide enabling policy direction for the continuation and extension of lawfully established commercial and industrial activities within the RPROZ.

7. The reasons for the appeal are as follows:

7.1 Unless and until the aspects of the PDP referred to above are amended in accordance with the relief sought below, the PDP will not:

- (a) Promote the sustainable management of natural and physical resources;
- (b) Amount to and promote the efficient use and development of resources;
- (c) Otherwise, be consistent with the purpose and principles set out in Part 2 of the RMA;
- (d) Be appropriate in terms of section 32 of the RMA; and
- (e) Assist the Council in achieving its functions under section 31 of the RMA.

8. In addition, but without derogating from the generality of the above:

Part 1 – Introduction and General Provisions – Interpretation - Definitions¹

8.1 The Decision rejected submissions seeking the introduction of nesting tables. While recognising the interpretation benefits of nesting tables, the Decision declined to include them on the basis they are not a statutory requirement and including them could alter the original intent of the provisions.

8.2 This aspect of the Decision:

¹ S340.007

- (a) Places undue weight on the absence of a statutory requirement for nesting tables, despite acknowledging their interpretive benefits;
- (b) Incorrectly assumes that the inclusion of nesting tables would alter the intent of the provisions, when they can be implemented in a manner that does not do this;
- (c) Creates unnecessary ambiguity and reduces the usability and workability of the PDP for plan users; and
- (d) Fails to recognise that nesting tables improve certainty and transparency by clearly identifying the activities captured within broader activity definitions.

8.3 The relief sought by the Appellant to incorporate nesting tables for key activity definitions, including, but not limited to: “commercial activity”, “industrial activity” along with consequential amendments is preferable because it will improve clarity, certainty and workability, assists interpretation and administration of the plan and avoids ambiguity.

Part 3 – Area Specific Matters

Zones – Rural Production and Horticulture Precinct²

8.4 The Decision applies the Horticulture Precinct to the Appellants site located at Cottle Hill Drive and State Highway 10, Kerikeri, legally described as Lot 2 DP 556235 and held in record of title 970800.

8.5 The detailed submission before the Hearings Commissioners sought to remove the Horticulture Zone from the site as it fails to acknowledge that there are a range of commercial and industrial activities that have established on both sides of State Highway 10 (SH10) to the north and south of the subject site. These activities include, but are not limited to, Northland Scaffolding Ltd, Mt Pokaka Timber Products Ltd, Campbell Copters, Gas Works and Plumbing Limited, Diamond House Thai Massage and Spa, Totalspan, Living Nature, Henwood Construction, Daisy Downs

² S340.001

for Dogs, Wagon Wheel Holiday Park, Craig Buckland Transport Limited, Northland CCTV, Tyre Save Direct, and Keri Party Hire. Cottle Hill Nurseries have also recently established on the adjoining site to the north (Lot 3 DP 556235).

8.6 The Decision has retained the Horticulture Precinct over the Site. This aspect of the Decision:

- (a) fails to appropriately recognise the site's location and context, including that it is located centrally within a cluster of existing commercial and industrial activities which compromise the future use of land for productive purposes;
- (b) fails to appropriately recognise and implement the NPS-HPL, given the site context, constraints and lack of productive capacity; and
- (c) imposes onerous and unnecessary development controls and associated costs that are not justified by the site's characteristics or function.

Zones – Rural zones – Rural Production Zone and Horticulture Precinct Cross-Referencing/Interpretation

8.7 The Decision has introduced wording in the Horticulture Precinct Overview, which creates cross-referencing between the RPROZ and Horticulture Precinct and directs interpretation between the two chapters.

“The only Rural Production zone objectives and policies that apply to the Horticulture precinct are RPROZ-O4, RPROZ-P4 and RPROZ-P7.”

8.8 Resulting in RPROZ-O2 and RPROZ-P2 not applying to the Horticulture Precinct. The Decision has amended RPROZ-O2 and RPROZ-P2 to explicitly provide for “lawfully established existing activities”. However, the Horticulture Precinct Overview wording creates a policy void in which there is no policy direction for lawfully established existing activities within the Horticulture Precinct.

- 8.9 The Appellant's relief sought to include a discretionary activity status for the extension of existing commercial and industrial activities within the Horticulture Zone and to provide clear policy direction on when, or under what circumstances it is appropriate for existing commercial and industrial activities to be extended within the RPROZ and Horticulture Precinct. This relief is:
- (a) Is necessary and desirable to ensure existing activities including commercial and or industrial in the Horticulture Precinct can be maintained, upgraded or expanded.
 - (b) better reflects the policy framework of the RPROZ, which seeks to enable the use of the zone for existing lawfully established activities.
 - (c) removes unnecessary consenting requirements and associated costs; and
 - (d) results in a more efficient and effective planning framework by relying on PDP provisions to manage adverse effects arising from existing lawfully established activities.

RELIEF

9. The Appellant seeks the following relief:
- 9.1 That clear nesting tables for key activity definitions are incorporated into the PDP, and an introduction and explanation of nesting tables is incorporated into the Definitions Chapter.
 - 9.2 Amend the planning maps to remove Lot 2 DP 556235 and held in record of title 970800, Cottle Hill Drive and State Highway 10, Kerikeri from the Horticulture Precinct.
 - 9.3 If the Horticulture Precinct is to remain as applicable to the subject site, then amend the Horticulture Precinct Overview as follows (additions underlined and deletions ~~struck through~~):

The objectives, policies, rules and standards of the underlying Rural Production zone apply in addition to any relevant provisions of the Horticulture precinct, except that:

- The only Rural Production zone objectives and policies that apply to the Horticulture precinct are RPROZ-O2 and RPROZ-O4, RPROZ-P4 and RPROS-P2 and RPROZ-P7.
- All Horticulture precinct rules with the same activity description prevail over the equivalent Rural Production zone rules.
- All Rural Production zone standards apply to the Horticulture precinct, with the exception of PREC1-S1: Building or structure coverage, which prevails over RPROZ-S5.

The underlying Rural Production zone rules and standards shall apply when the Horticulture precinct chapter does not state a precinct rule or standard for the same activity.

- 9.4 In the alternative to the relief set out in paragraphs 8.1 to 8.3, some other form of relief which gives effect to the intent of the amendments set out above and issues raised in the appeal.
- 9.5 Such further orders, relief, consequential amendments, or other amendments to the PDP as are considered appropriate and necessary to address the concerns set out this appeal.
- 9.6 Costs of and incidental to this appeal.
10. The following documents are attached to this notice:
- 10.1 **Attachment 1:** A copy of the Submission.
- 10.2 **Attachment 2:** Relevant extracts from the Decision.
- 10.3 **Attachment 3:** A list of persons to be served with a copy of this notice.

DATED this 12th day of August 2026

ROSEMORN INDUSTRIES LIMITED by its duly authorised agents



David Badham / Melissa McGrath

ADDRESS FOR SERVICE: The offices of Barker and Associates, Level 1, 136 Bank Street, Whangārei 0112, PO Box 1986, Shortland Street, Auckland 1140, **Attention:** David Badham / Melissa McGrath, 021 203 1034/027 231 9533, davidb@barker.co.nz/melissam@barker.co.nz.

Advice to recipients of Notice of Appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under [section 281](#) of the Act for a waiver of the above timing or service requirements (see [form 38](#)).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Attachment 1: A copy of the Submission.

IN THE MATTER

of the Resource Management Act
1991 (“**the Act**”)

AND

IN THE MATTER

of a submission pursuant to Clause
6 of Schedule 1, of the Act in
respect of the **Proposed Far North
District Plan**

SUBMISSION ON THE PROPOSED FAR NORTH DISTRICT PLAN

To: Proposed District Plan
Strategic Planning and Policy, Far North District Council
Far North District Council
Private Bag 752
KAIKOHE 0400
Email: pdp@fndc.govt.nz

1. Details of persons making submission

Rosemorn Industries Limited (RIL)
Ref: 16633
C/- Reyburn and Bryant
Attention: Thomas Keogh
PO Box 191
WHANGAREI

2. General statement

- 2.1 RIL cannot gain an advantage in trade competition through this submission. They are directly affected by the plan changes. The effects are not related to trade competition.

3. Background and context

Site description

- 3.1 RIL own a property located on the corner of Cottle Hill Drive and State Highway 10, Kerikeri. The site is held in a single title referenced RT 970800 (Lot 2 DP 556235). The site has a total area of 2.3224ha. A plan showing the site is provided in Figure 1 below.



Figure 1: The site.

Operative and Proposed District Plan zoning

- 3.2 The site is located in the 'Rural Production Zone' under the operative Far North District Plan (OFNDP).
- 3.3 The site is located in the 'Horticulture Zone' under the proposed Far North District Plan (PFNDP). See Figure 2 below.

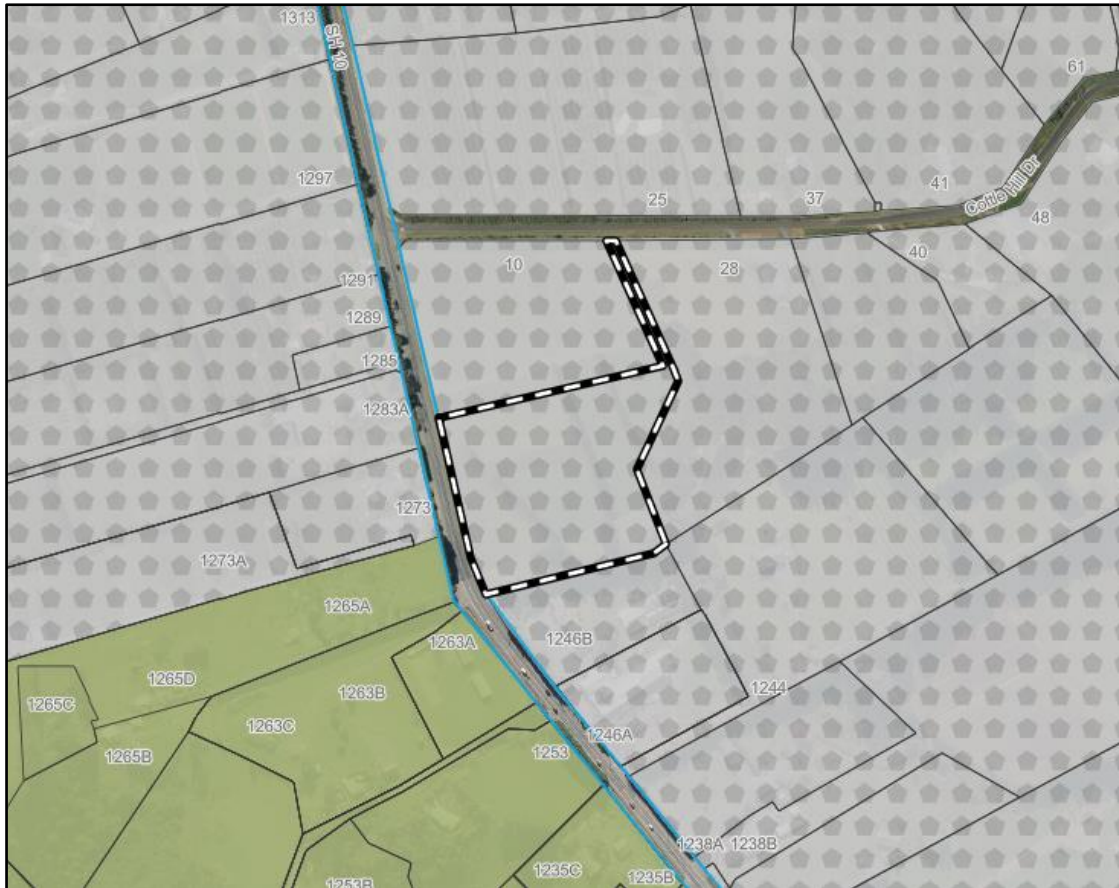


Figure 2: PFNDP zoning.

Resource consents – Far North District Council (FNDC) and Northland Regional Council (NRC)

- 3.4 RIL purchased the site with the intention of establishing a self-storage facility. Pre-application discussions were held with the FNDC, and a resource consent application was subsequently lodged with the FNDC and NRC in January 2022.
- 3.5 The FNDC application is currently being processed (reference 2220509-RMALUC). The application seeks consent for a self-storage facility with a total Ground Floor Area of 3,610m². The application requires resource consent as a discretionary activity under the OFNDP. A section 92 response was submitted on 19 October 2022 and a decision is expected shortly. RIL intend to proceed with construction as soon as the consent is approved.
- 3.6 The NRC application was approved on 25 February 2022 (reference AUT.043429.01.01 – AUT.043429.3.01). The consent approves approximately 30,133m³ of earthworks across 22,569m² of the site and the associated diversion and discharge of stormwater. The application required resource consent as a controlled activity under the Proposed Regional Plan for

Northland (Appeals Version) (PRP). RIL intend to proceed with the earthworks as soon as the FNDC consent is approved.

Range of commercial and industrial activities in the surrounding environment

3.7 Notwithstanding the Rural Production zoning applicable in the surrounding environment under the OFNDP, there are a range of commercial and industrial activities that have established on both sides of State Highway 10 (SH10) to the north and south of the subject site. These activities include, but are not limited to, Northland Scaffolding Ltd, Mt Pokaka Timber Products Ltd, Campbell Copters, Gas Works and Plumbing Limited, Diamond House Thai Massage and Spa, Totalspan, Living Nature, Henwood Construction, Daisy Downs for Dogs, Wagon Wheel Holiday Park, Craig Buckland Transport Limited, Northland CCTV, Tyre Save Direct, and Keri Party Hire. Cottle Hill Nurseries have also recently established on the adjoining site to the north (Lot 3 DP 556235).

4. The specific provisions of the Plan Change that this submission relates to are:

4.1 The submitter opposes the plan change in part and seeks changes to the following PFNDP provisions:

- a) The Horticulture Zone (in general); and
- b) The provisions of the Rural Production Zone; and
- c) The provisions of the Horticulture Zone; and
- d) The definitions.

5. The submitter seeks the following amendments/relief:

The Horticulture Zone (in general)

5.1 That the Horticulture Zone is abandoned in favour of the Rural Production Zone.

S340.001

The provisions of the Rural Production Zone

5.2 That the objectives and policies of the Rural Production Zone include more specific direction on when it is appropriate to extend existing commercial and/or industrial activities.

S340.002
S340.003

The provisions of the Horticulture Zone

5.3 As an alternative to the relief sought under 5.1 above, that:

- a. The provisions of the Horticulture Zone are amended so that the extension of existing commercial or industrial activities are specifically provided for as a discretionary activity; and
- b. That objectives and policies are included in the Horticulture Zone to provide clear direction on when it is appropriate to extend existing commercial and/or industrial activities.

S340.004

S340.005
S340.006

The definitions

5.4 That nesting tables are included to better delineate how definitions relate to one another.

S340.007

Other relief sought

5.5 RIL also seek any other changes to the provisions in the PFNDP where those provisions are inconsistent with the outcomes sought for the land subject to this submission.

6. The reasons for making the submission on the plan changes are as follows:

The Horticulture Zone (in general)

6.1 The Horticulture Zone should be abandoned in favour of the Rural Production Zone.

6.2 The Rural Production Zone chapter in the PFNDP includes specific policy direction (including avoidance policies) regarding the use of highly productive land (see RPROZ-O1, O2, O3 and P1, P2, P4, P5, P6 and P7). These provisions provide adequate protection for highly productive land against the encroachment of development, and/or inappropriate land use. The Horticulture Zone, as a consequence, is not necessary to give effect to the National Policy Statement for Highly Productive Land.

The provisions of the Rural Production Zone

6.3 There are rules in the Rural Production Zone chapter that provide for the extension of existing commercial and industrial activities (RPROZ-R27 and R28), which is important given the range of existing commercial and industrial activities that have legally established in the surrounding area (as detailed in section 3.7 of this submission).

6.4 However, the objectives and policies in the Rural Production Zone chapter do not provide any clear direction on when, or under what circumstances it is appropriate for existing commercial and industrial activities to be extended. Clear direction is required given the level of investment associated with purchasing properties and establishing the existing activities, and the implications that the PFNDP could have with respect to any future plans for those sites and activities.

The provisions of the Horticulture Zone

6.5 As an alternative to the relief sought under section 5.1 of this submission, that the provisions of the Horticulture Zone should be amended so that the extension of existing commercial and industrial activities are specifically provided for as a discretionary activity.

6.6 As identified in section 3.7 of this submission, there are a range of industrial and commercial activities that have established within the surrounding environment under the provisions of the OFNDP. With respect to RIL, they have invested significantly in purchasing the site and lodging resource consent applications with the FNDC and NRC to facilitate the establishment of a self-storage facility. The provisions of the Horticulture Zone do not acknowledge the range of existing activities that have legally established, or provide for the extension of those activities.

6.7 In accordance with the approach adopted under RPROZ-R27 and 28, the provisions of the Horticulture Zone should be amended so that the extension of existing commercial and industrial activities are specifically provided for as a discretionary activity.

6.8 In addition to the rules sought in section 6.7 of this submission, the objectives and policies of the Horticulture Zone should be updated to provide clear direction on when, or under what circumstances it is appropriate for existing commercial and industrial activities to be extended. Clear direction is required given the level of investment associated with purchasing properties and establishing the existing activities, and the implications that the PFNDP could have with respect to any future plans for those sites and activities.

The definitions

6.9 There are no nesting tables included in the definitions section of the PFNDP. This makes it difficult to determine how definitions relate to one another.

6.10 Using 'storage facilities' as an example, this is specifically defined in the PFNDP. However, there are no rules in any of the zones that relate specifically to storage facilities. It is therefore not clear whether storage facilities are intended to be captured by the rules in each of the zones that provide for activities not listed as discretionary activities (i.e. HZ-R16 and RPROZ-R31), or whether they are meant to be considered as either commercial or industrial activities. The insertion of nesting tables will provide clarity in this regard.

6.11 Both the Auckland Unitary Plan and Whangarei District Plan include nesting tables, which is consistent with the approach promoted under section 14(5) of the National Planning Standards.

Conclusions

6.12 The proposed approaches represent the most effective and efficient use of the land, particularly given the resource consent granted by the NRC and being processed by the FNDC.

6.13 The proposed approaches best achieve sustainable management under Part 2 of the Act.

7. The submitter wishes the Far North District Council's decision to address the above issues by:

7.1 Abandoning the Horticulture Zone in favour of the Rural Production Zone; and

7.2 Amending the objectives and policies of the Rural Production Zone to provide more specific direction on when it is appropriate to extend existing commercial and/or industrial activities; or

7.3 As an alternative to the above, amending the provisions of the Horticulture Zone so that the extension of existing commercial or industrial activities are specifically provided for as a discretionary activity, and including objectives and policies that provide clear direction on when it is appropriate to extend existing commercial and/or industrial activities.

7.4 Including nesting tables that better delineate how definitions relate to each other.

7.5 Alternative relief with similar effect.

8. The submitter wishes to be heard in support of their submission at a hearing.



Thomas Keogh

Planning Consultant

On behalf of Rosemorn Industries Limited

Dated this 21st of October 2022

Attachment 2: Relevant extracts from the Decision.

- b) The current minimum lots sizes in the ODP while enabling a short-term financial benefit to assist in rural production activity have resulted in the fragmentation of the rural land resource and the long-term rural production potential of that land.
- c) The PDP provides for sufficient opportunities for residents to live in the rural environment, at a range of densities in the Rural Residential zone, Rural Lifestyle zone and the Rural Settlement zone.
- d) Limited opportunities still exist for rural residential subdivision and development via the environmental benefit subdivision rule (Rule SUB-R6) and the management plan subdivision rule (Rule SUB-R7).

3.6 Key Issue 3 - Giving Effect to the NPS-HPL

3.6.1 Matters Raised in Submissions and Evidence

Overview

We received evidence that related to the NPS-HPL and how much this national policy statement should be given effect to in the PDP. We acknowledge that this has had to be a retrospective approach as the NPS-HPL was not in force at the time the PDP was notified and it was only gazetted part of the way through the PDP submission period on 19 September 2022. The NPS-HPL came into force on 17 October 2022 noting that submissions on the PDP closed on 21 October 2022. The hearing report states that the provisions of the six rural zones as notified were intended to align with what was known about the anticipated NPS-HPL at the time, while also giving effect to the relevant provisions relating to protection of “versatile soils” in the RPS.

Prior to the hearing for the rural chapters’ topic (held in November 2024) the most recent version was gazetted on 16 August 2024 and took effect on 14 September 2024. This version includes the recent amendments with respect to enabling specified infrastructure, intensive indoor primary production and greenhouses on highly productive land.

As with the NPS-IB, the change of government in 2023 also signalled changes to a number of national policy instruments and during the course of these hearings the Government has signalled significant changes to the NPS-HPL. Perhaps most notable is the proposed removal of Land Use Classification (**LUC**) Class 3 soils from the definition of “highly productive land”.

These changes came into effect on 16 January 2026 and involved the following:

- exemptions for urban development and urban rezoning on Land Use Capability (LUC) 3 land from NPS-HPL restrictions.
- improvements to the New Zealand Land Resource Inventory undertaken after 2022 to be used to assess what land the NPS-HPL.
- suspension of the requirement to map highly productive land in regional policy statements until 31 December 2027, aligning with the “Plan Stop” timeframe.
- amendments to quarrying and mining provisions to align definitions and consenting processes.

The hearing report responded to the submissions seeking better alignment between the NPS-HPL and the rural chapters of the PDP at a strategic level, including submissions on NPS-HPL related definitions. Specific amendments to provisions to give effect to the NPS-HPL have focussed on NPS-HPL definitions. Changes to other provisions to give effect to the NPS-HPL have been addressed both in the hearing report with respect to RPROZ provisions and in the other five rural zone hearing reports. However, it is noted that the NPS-HPL provisions are particularly relevant to the two rural production zones being the RPROZ and the new Horticulture Precinct (**PREC1**).

Matters Raised in Submissions and Evidence

The Northland Regional Council (S359) submissions requesting that areas containing highly productive land be zoned for rural production and that other less productive rural land/poorer soils be mainly used for rural lifestyle uses. We heard evidence from NRC (Ms Ingrid Kuindersma) generally supporting the approach taken by the reporting officer in the hearing report.

The evidence of Northland Federated Farmers (S421.006) (Jo-Anne Cook-Munro) sought the recognition of the NPS-HPL in the PDP definitions and also recognition of private property rights and sought amendments to the RPROZ Policies to achieve this.

Kapiro Residents Association (S427.011), Carbon Neutral NZ Trust (S529.019, S529.151), Vision Kerikeri (S522.011) and Kapiro Conservation Trust (S449.020) consider that the PDP should have 'firm' policies to protect productive land indefinitely. The submitters request that relevant PDP policies and rules are amended to prevent fragmentation and loss of productive land, especially LUC 1-3 land and productive soils suitable for horticulture. Carbon Neutral NZ Trust does not consider it necessary to wait for the NRC to implement the NPS-HPL before amending the PDP to give effect to this higher order direction. These submitters also expressed general support for the PDP in relation to the protection of highly productive land. We note that we did not receive any evidence relating to highly productive land, further to their submissions, from these submitters (also noting that these submitters have presented evidence at a number of hearings which we have taken into account in all our considerations) and we have assumed that the recommendations made in the hearing report regarding highly productive land are not in contention.

Ms McGrath presented planning evidence on behalf of Audrey Campbell-Frear (S209.001) recommending a number of further changes to the objectives, policies and rules of the RPROZ to better align with the NPS-HP. Ms McGrath does not support any reference to LUC 4 as being highly productive land, at least in advance of the NRC completing their mapping for the NPS-HPL.

3.6.2 Hearings Panel Evaluation

The hearing report discusses the submissions received and has recommended some changes to the RPROZ objectives and policies to make them more directive. These are set out in the hearing report and in the right of reply report. We note that where these changes were not contested in evidence before us, we have no further amendments.

Regarding the NRC's request to have highly productive land (LUC 1-3) restricted to the RPROZ and Horticulture zone with other soil classes allocated to rural lifestyle zones, we

agree with the approach as a general principle but note that this approach also needs to be cognisant that there are already existing urban areas and other non-productive zones (e.g. open space) that cover LUC 1-3 land. The hearing report states:

For example, approximately 14.17 % of LUC 1-3 land (9217.11 ha) are located outside of a rural zone and have already been used or set aside for urban development or open space/conservation purposes, which makes it impractical to ensure all LUC 1-3 soils are located in a productive rural zone.¹¹

With regard to existing rural lifestyle/rural residential development on LUC 1, 2 and 3 land there is approximately 33% of all land notified as Rural Residential zone as LUC 2 or 3 land, most of which has already been subdivided into rural residential scale lot sizes. That said, the hearing report confirms that the Rural Lifestyle zone has largely been directed away from LUC 1-3 land, as only 9% of the zone consists of land classified as LUC 2 or 3 (and no LUC-1 land).¹²

The hearing report confirms that the highest portion of productive LUC 2 and 3 land in the Far North district is in the Horticulture zone /Precinct, as 65% of the zone is LUC 2 or 3 land. The hearing report adds that across the entire Far North District, 77.48% of all LUC 1-3 land (50,413.98 ha) is located in either the Rural Production zone, Horticulture zone/precinct or Horticulture Processing zone. We agree that this demonstrates that the majority of LUC 1-3 land that is available for productive use and that has not already been developed for an urban or rural lifestyle/rural residential purpose is located in either the RPROZ, Horticulture zone /Precinct or Horticulture Processing zone . We therefore find that this approach is broadly consistent with the relief sought by NRC to ensure LUC 1-3 land is located in productive rural zones.

Regarding the inclusion of LUC 4 in the definition of highly productive land, the hearing report recommends that all references in the RPROZ chapter to LUC 4 are deleted and that the definition of “highly productive land” in the PDP be replaced with the definition from the NPS-HPL. The rationale for this is set out the Council right of reply which states:

With respect to the RPROZ, I accept the arguments put forward by submitters and associated planning and soil experts that there is no clear rationale for all LUC 4 land to be protected in the same way as the RPROZ protects LUC 1-3 land. Although I maintain that some LUC 4 land has the potential to be highly productive, I appreciate that the sub-classification of LUC 4 land heavily influences whether there are options for improving its productive potential. As the current central government signals that the NPS-HPL is likely to become more permissive in the future as opposed to more restrictive (plus no certainty as to whether regional councils will retain their discretion to map LUC 4 land as HPL), I consider that the argument for specifically referring to LUC 4 land in the RPROZ provisions has weakened since I prepared my section 42A report. As such, I

¹¹ Paragraph 107 of the Hearing Report

¹² Paragraph 108 of the RPROZ Rural Hearing Report

*recommend that all references in the RPROZ chapter to LUC 4 are deleted.*¹³

3.6.3 Hearings Panel Recommendations

For the reasons set out above, we agree with the hearing report and recommend that the definition of “highly productive land” in the notified PDP is deleted and replaced with the following wording:

Highly productive land – means:

- a. If there are no highly productive land maps included in the operative Northland Regional Policy Statement, land that is treated as highly productive land under clause 3.5(7) of the National Policy Statement for Highly Productive Land; or*
- b. If highly productive land maps have been included in the operative Northland Regional Policy Statement, land shown as highly productive land on those maps, or any consistent maps in this plan, excluding land that has ceased to be highly productive land under clause 3.5(6) of the National Policy Statement for Highly Productive Land.*

We recommend deletion of the “versatile soils” definition and its replacement with the term “highly productive land” where it is used across the rural chapters in the PDP.

We recommend that all references to LUC 4 in the RPROZ chapter and the redrafted Horticulture zone/precinct chapter are deleted.

The recommended changes to the RPROZ chapter are set out in **Appendix 2.1** and the recommended changes to the definitions chapter are set out in **Appendix 2.1 of Recommendation Report 17**.

We recommend that all submissions on this topic are accepted, accepted in part or rejected as set out in **Appendix 3.1**

3.7 Key Issue 4 – RPROZ Objectives and Policies

3.7.1 Matters Raised in Submissions and Evidence

While there were numerous submissions concerning the RPROZ objectives and policies and equally numerous recommended amendments in the RPROZ hearing report, the evidence presented at the hearing demonstrated that many of these issues had largely been resolved.

We received evidence from Northland Federated Farmers (S421.215) supporting the objectives and policies in principle but seeking specific reference and acknowledgement of private property rights.

Mr Hall, on behalf of Bentzen Farm Limited and others Bentzen Farm Limited (S167) presented evidence that RPROZ-O2 and RPROZ-P5 should not impose a “functional

¹³ Rural Zones hearing report paragraph 34

need” test on non-productive activities seeking to locate in the RPROZ. His reasons included that:

- a) “Functional need” is the wrong test for activities that either support productive activities or are at least compatible with them. It was not a suitable test for rural environments.
- b) A number of activities enabled in the RPROZ would not meet the “functional need” test (including rural lifestyle subdivision with environmental benefits) and not providing for these activities would have adverse social costs on the rural environment.

Mr Hall’s recommended amendments to address this issue were to delete references to the functional need test from both RPROZ-O2 and RPROZ-P4.

Mr Hall also provided evidence concerning the use of the terms “amenity” and “rural character” in RPROZ-O4 and how it relates to RPROZ-P4. Mr Hall opined that in terms of RPROZ-O4: *“it is amenity associated with a rural working environment that is maintained (ie there cannot be a higher expectation of amenity), with rural character in general otherwise maintained, and not being limited to a rural working environment.”* He recommended changes that in his view would recognise that *“there are a diverse range of rural environments, rural character and amenity values throughout the district, albeit with a predominance of primary production activities.”*

His recommended amendments are:

RPROZ-O4 ~~The~~ Rural character and ~~the~~ amenity associated with a rural working environment is maintained.

Mr Vance Hodgson on behalf of both Horticulture NZ and NZ Pork does not agree that referring to visitor accommodation and small-scale educational facilities in a list of ‘compatible activities that support primary production activities’ is appropriate in RPROZ-P2(b).

We received evidence from Mr Hall on RPROZ policies 6 and 7 opposing any reference to LUC 4 land including its ability to be upgraded to LUC 3 (via irrigation). Mr Hall also suggested some drafting amendments to achieve his stated relief.

Ms Newport submitted that the RPROZ chapter should not contain any policies relating to subdivision and that the appropriate location for subdivision policies is the subdivision chapter to avoid unnecessary duplication and repetition.

3.7.2 Hearings Panel Evaluation

Functional Need (RPROZ P2)

The questions of functional need as an RMA test is a contentious matter. The Panel is aware that the term originated as a test for the appropriateness of activities within the coastal marine area (**CMA**) and has since been adopted as an appropriateness test for infrastructure and activities within freshwater environments. We are aware that this principle was adopted in the New Zealand Coastal Policy Statement (2010) (**NZCPS**), and it has since been used in national policy direction on freshwater and biodiversity.

Regional and district councils have also picked up the concepts in their planning documents.

We also note that “functional need” is defined in the National Planning Standards and that this definition has been adopted in the PDP and:

means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

In this regard the functionality test has been employed as an RMA test in areas where the qualities of that environment require protection from a range of activities that desire to be located there and could undermine those qualities if permitted to do so. In this case the qualities in question are the maintenance of the rural environment within the RPROZ for rural production activities.

In his evidence, Mr Hall sets out a number of non-productive activities that might fail a functional need test being: Residential Activity, Visitor Accommodation, Home Business, Educational facility, Recreational activity, Catteries and dog boarding kennels, Cemeteries / Urupā (all permitted), Papakāinga Housing (RDA), and Community facilities (DA).¹⁴ Mr Hall opined that the application of a functional need test to the rural environment would be problematic as the evaluation of functional need would become a “case-by-case” process. He cited the hypothetical example of rural lifestyle subdivision with environmental benefit as is provided for in the Rural Production zone in the subdivision chapter, and opined that this clearly enabled activity may fail a functional need test as it does not need to be in a rural environment when there is land in the Rural Lifestyle zone and the Rural Residential zone.

In his view, a better test would be whether an activity would be “complementary” to the function, character and amenity values of the surrounding environment. Mr Hall stated that the functional need tests should be removed so that the activities listed above can be established as necessary and complementary activities in the rural environment. He stated:

*Not providing for these activities would come at significant cost to rural communities (travel time to towns, costs to community life without social infrastructure in rural areas, income through the provision of visitor accommodation) and would potentially forgo the benefits of environmental enhancements were rural lifestyle subdivisions with environmental benefits not provided for in the rural environment because they did not have a functional need.*¹⁵

In response to this, Ms Pearson (in the hearing report and the right of reply report) maintains her view that a functional need test is appropriate for the rural environment. In her view, the activities cited by Mr Hall would all pass a functional need evaluation as they would be assessed as ancillary activities (in the case of residential activity), functional (in the case of rural based accommodation), support based (in the case of childcare, education, home business), or otherwise appropriate within a rural zone (in the case of

¹⁴ Peter Hall evidence paragraph 9.6

¹⁵ Peter Hall evidence paragraph 9.17

catteries and dog boarding, recreational activities, papakainga and other community or social based infrastructure.

As set out in the hearing report, the case for a functional need test in the RPROZ provisions is based on the risk that if there is no functional need test for non-productive activities (just a ‘compatibility’ test), meaning then that conceivably any non-productive rural activity could establish in the RPROZ, provided it could internalise effects, be serviced and meet relevant standards. In Ms Pearson’s opinion, it is important that activities that are better suited to urban zones are directed away from the RPROZ. In her view, this is essential for the future viability of the RPROZ as a suitable location for primary production activities and a core strategy for achieving RPROZ-O1, i.e. the long-term protection of the productive land resource.¹⁶

We have carefully evaluated these matters and acknowledge that both expert planning opinions have been well formulated, reasoned and articulated. We recognise that there are genuine concerns with implementing a functional need test or evaluation in the real world and that this poses a challenge to planners interpreting and implementing this approach at the resource consent/plan implementation level. We have also had regard to how a “compatibility” test/evaluation might be implemented and the potential challenges that it would face at the resource consent/plan implementation phase.

In our view, there needs to be some form of test or evaluation to ensure that the purpose of the zone is maintained and that primary production activities are the focus and that a proliferation of non-rural activities outside of urban zones is avoided.

Having considered both approaches we prefer the Council’s position to retain references to “functional need” in RPROZ-O2 and RPROZ-P5(b). Given the importance of maintaining the productive potential for rural production activities enshrined in the purpose of the zone and supported by the section 32 analysis (referred to above in Key Issue 3) we find that a functional need test or evaluation should be retained. We also find that while there are some challenges with the implementation this of a functional need approach, an evaluation based on “compatibility” is more problematic and could pose more risk to undermining the purpose of the RPROZ and its focus on primary production.

We have also had regard to Ms Newport’s suggestions that RPROZ-O2 include the word “primarily” to read “*The Rural Production zone is primarily used for...*”. We do not agree with this approach as it would weaken the focus of the zone and introduce an unacceptable level of subjectivity that would make implementation more difficult.

Accommodation and Educational Facilities (RPROZ P2)

The evidence of Horticulture NZ (S159.099) NZ Pork (S55.027) delivered by Mr Hodgson contended that visitor accommodation and educational facilities are not compatible with, and do not support, primary production activities. We note that the provisions, as notified, provide for these activities with scale limits (10 guests per visitor accommodation activity and 4 students per educational facility) and require that they be accommodated within a residential unit, accessory building or minor residential unit. In his evidence Mr Hodgson opined that:

¹⁶ RROZ hearing report paragraph 405

*The control applying a maximum guest occupancy is a useful method but still brings a gathering of people into an area that might be adjacent an existing farm and create new or compound existing conflict and complaints.*¹⁷

Mr Hodgson recommended the removal of references to visitor accommodation and small-scale educational facilities in RPROZ-P2(b). Having considered this evidence, we prefer the retention of activities in the policy on the basis that these activities are provided for at an appropriate small scale and are also required to be accommodated within a residential unit, accessory building or minor residential unit. We are also cognisant that these small-scale activities also allow farmers the opportunity for supplementary sources of income and in that regard, we find these activities (at the scale enabled) both compatible with primary production activities and also a potential supporting activity. Accordingly, we find that the reference to visitor accommodation and small-scale educational facilities in RPROZ-P2(b) be retained .

Rural character and amenity (RPROZ O4 and RPROZ-P4)

The evidence of Mr Hall for Bentzen Farm Limited and Others raised issues with regard to use of the terms “rural character and amenity” as far as it relates to a working rural environment. The notified wording of RPROZ-O4 and RPROZ-P4 is:

RPROZ-O4 The rural character and amenity associated with a rural working environment is maintained.

AND

*RPROZ-P4 Land use and subdivision activities are undertaken in a manner that maintains or enhances the **rural character and amenity** of the Rural Production zone, which includes:*

- a. a predominance of primary production activities;*
- b. low density development with generally low site coverage of buildings or structures;*
- c. typical adverse effects such as odour, noise and dust associated with a rural working environment; and*
- d. a diverse range of rural environments, rural character and amenity values throughout the district ...*

Mr Hall opined that this policy, and in conjunction with RPROZ-O4, is that “amenity” associated with rural working environment is maintained (i.e. there cannot be a higher expectation of amenity), with rural character in general otherwise maintained, and not being limited to a rural working environment. His suggested wording is to make an amendment to RPROZ-O4 as follows:

RPROZ-O4 ~~The r~~Rural character and the amenity associated with a rural working environment is maintained ...

¹⁷ Evidence of Vance Hodgson for NZ Pork Paragraph 31

The Panel has considered this approach and we take a slightly different viewpoint. We are of the view that rural character and amenity are two different components of the rural environment. In our view, “rural character” embraces all elements that make up rural character and in productive rural environments that would include a range of elements including pleasant elements (e.g. open space, grassed areas, a lack of built form) as well as some negative elements associated with rural production (e.g. noise, dust, odours, large utilitarian structures and use of agri-chemicals etc). With regard to amenity, we consider this term to be all those characteristics that make a particular rural environment a pleasant place, this being linked to the definition of amenity values in the RMA which is:

means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

In that regard, we favour the objective and policy recognising both elements of rural character and its amenity values. We note that the reporting officer agrees with this approach in the right of reply and we recommend that both the objective and policy be amended by referring to “amenity values” in both as follows:

RPROZ-O4 The rural character and amenity values associated with a rural working environment are ~~is~~ maintained.

RPROZ-P4 Land use and subdivision activities are undertaken in a manner that maintains or enhances the rural character and amenity values of the Rural Production zone ...

LUC 4 land

Numerous submitters sought the deletion of any reference to LUC 4 to be protected in the same way as LUC 1-3 (being highly productive land under the NPS-HPL). In the hearing report it was recognised that the notified version of the PDP (being prior to the gazetting of the NPS-HPL) sought recognition of LUC 4 land as having the potential to become highly productive subject to being connected to a reliable source of irrigation.

In the context of the RPROZ, LUC 4 land is referred to in RPROZ-P6(c)(ii) and RPROZ-P7(e)(iii).

As we have discussed above, the Government has excluded LUC 3 from consideration when rezoning land to an urban zoning but it otherwise is retained in the definition of “highly productive land” in the NPS-HPL. That said, it is our view that the case for including LUC Class 4 land is dubious, at best. Accordingly, we agree with the reporting officer to remove these references and recommend the amendments as set out in **Appendix 2.1**.

3.7.3 Hearings Panel Recommendations

We recommend that the RPROZ objectives and policies be amended as set out in **Appendix 2.1**. As set out in our reasoning above, having considered the detailed evidence we have received on these provisions, we are in agreement with the amendments as set out in the reporting officer’s right of reply, which in many aspects has adopted a number of recommended amendments from the evidence presented by and for submitters, and in response to our questions.

Having considered all the relevant submissions, the hearing report, evidence presented and the Council right of reply, we are satisfied that the final RPROZ objectives and policies set out in **Appendix 2.1** are appropriate and the best way to achieve the purpose of the RMA.

We recommend that all submissions on this topic are accepted, accepted in part or rejected as set out in **Appendix 3.1**.

3.8 Key Issue 5 – RPROZ Rules

3.8.1 Matters Raised in Submissions and Evidence

We note that there was a significant degree of support for the rules and standards in the RPROZ as amended in the hearing report. We acknowledge this support and consider these matters raised in submissions to be no longer in contention. A number of matters still remain in contention and were presented to us in evidence.

A number of these submissions referred to RPROZ-R3 – being the provisions that sets the minimum lot sizes for controlled and discretionary activity subdivision. We heard evidence from Ms King, Mr Hall (Bentzen Farms Limited and Others) and Ms Newport on these matters, all seeking a reduction in the minimum lot size thresholds.

As we have discussed, in Key Issue 2 we have found that the minimum lot sizes should remain as set out in the hearing report.

Mr Hodgson on behalf of both Horticulture NZ and NZ Pork considers that the visitor accommodation rule in the RPROZ needs to be more stringent to ensure reverse sensitivity effects are managed. His recommended approach is a “sensitive activity” setback to the RPROZ-R4 visitor accommodation rule (as opposed to within the RPROZ setback standard) so that any visitor accommodation activity is required to be set back at least 20m from a site under separate ownership.

RPROZ-R19 Minor residential unit

There were numerous submissions seeking that the activity status for a minor residential unit be changed from a controlled activity to a permitted activity and that relief was recommended in the hearing report and not contested in evidence.

We heard evidence from Mr Hall regarding the requirement for a minor residential unit to have a separation from the primary residential unit of no more than 15m (PER 4). Ms Newport shared the same concern and requested the separation distance to be increased to 30m whereas Mr Hall sought the 15m separation rule to be deleted in its entirety.

Ms Newport also gave evidence concerning PER-2 which requires a minimum site area for a minor residential unit to be at least 1ha and sought this to be reduced to 5,000m².

Mr Nathan (S36.001) issued a late statement (following the hearing of evidence) seeking the minimum floor area for a minor household unit (minor residential unit) be increased to 75m² (and garage areas to be increased from 18m² to 24m² to provide for people with mobility issues (i.e. wheelchairs).

The matter of provision for retirement lots was also raised in submissions and we provide our recommendation on the matter as part of our discussion below regarding minor household units.

RPROZ-R22 – Rural Tourism Activity

We heard planning evidence from Ms Ashley Jacobs on behalf of Waitangi Limited (S503.033) on the matter of rural tourism in the context of RPROZ R22 – Rural Tourism Activity. Ms Jacobs advised us that the scope of what constitutes a “rural tourism activity” as described in RPROZ-R22 is too narrow and excludes activities that may not relate to the rural setting of a site but are required to locate on a site in the rural environment because of some other feature such as natural or historic site features. In the Waitangi Estate context, Ms Jacobs was concerned that activities related to the historic features of the site or eco-tourism type activities would not be included as they do not have a focus on, or a link to, the rural environment. She advised if those activities were not captured by RPROZ-R22 the activity status would change from being a restricted discretionary activity to a discretionary activity.

RPROZ-R23 and RPROZ-SX – Intensive indoor and outdoor primary production

Mr Hodgson (for Horticulture NZ and NZ Pork) presented planning evidence regarding these rules stating that there is a disconnect in activity status for infringing setbacks designed to manage reverse sensitivity effects under RPROZ-R23 (intensive indoor and outdoor primary production) and the new reciprocal standard recommended in the hearing report for sensitive activities (RPROZ-SX). As set out in the hearing report a new rule was proposed for setbacks for sensitive activities from intensive indoor and outdoor primary production activities:

<i>RPROZ-SX</i>	<i>Sensitive activities setback from intensive indoor and outdoor primary production activities¹⁸</i>	
<i>Rural Production zone</i>	<i>All buildings and structures used for new sensitive activities will be setback 300m from any hardstand areas, treatment systems, buildings housing animals and any other structures associated with an intensive indoor or outdoor primary production activity located on an adjoining site under separate ownership.</i>	<i>Where the standard is not met, matters of discretion are restricted to:</i> <i>Potential reverse sensitivity effects and measures taken to mitigate these effects, such as landscaping or screening</i> <i>Whether there are alternative options for the location of the sensitive activity</i>

Mr Hodgson’s concern was that it would be a non-complying activity under RPROZ-R23 for an intensive indoor and outdoor primary production to be located within 300m of a sensitive activity. However, a sensitive activity failing to comply with the same 300m setback under RPROZ-SX would be a restricted discretionary activity. Mr Hodgson opined that both activities’ status should be the same.

RPROZ-RX– Artificial crop protection structures and crop support structures

¹⁸ NZ Pork (S55.031)

A new rule RPROZ-RX - Artificial crop protection structures and crop support structures was recommended in the hearing report to provide for these structures to better provide for horticultural activities, while also placing some limits of the scale and intensity of those structures in the interests of maintaining an acceptable level of rural amenity.

At the hearing Mr Hodgson presented evidence requesting further amendments to be more enabling of artificial crop protection structures and crop support structures, particularly in terms of being exempt from any height in relation to boundary (**HIRB**) standards and creating a more targeted approach to managing potential conflicts with adjacent residential dwellings on properties in a different ownership. He opined that while RPROZ-RX is a drafting improvement on the PDP, it would still result in unnecessary and inefficient sterilisation of productive rural land in favour of the amenity expectations of residential activities as opposed to maintaining the productive rural character of the rural environment.

Mr Hodgson suggested that the recently agreed Waikato District Council PDP model is an appropriate starting point for an amended RPROZ-RX, which includes an increased setback where there is an existing residential unit within 12m of an internal boundary.

We also heard from Vision Keriikeri and others who sought a more restrictive approach in order to maintain the rural visual amenity values within the rural environment. They sought restrictions on the colour of shade cloth (stating it must be black or a very dark colour, not white or green) and a non-complying activity status if this was not achieved. Vision Keriikeri and others also sought restrictions on the height of structures within 30m of a road (reduced from 6m to 5m) and a requirement for tall hedging or other vegetation to be planted between the structures and the road boundary.

We heard evidence from Mr Hodgson on this matter. He opined that varying colours of shade cloth (including white cloth) were required for different horticultural plants, conditions and location and that this was appropriate for a rural environment that focussed on rural production.

RPROZ-RY – Seasonal worker accommodation

Mr Hodgson presented evidence regarding proposed new rule RPROZ-RY relating to seasonal worker accommodation. The proposed rule establishes a permitted activity for seasonal worker accommodation provided it meets the following conditions:

1. The accommodation is associated with a farming or forestry activity and is located on the same land used for that operation;
2. The accommodation comprises of a combination of communal kitchen and eating areas and sleeping and ablution facilities; and
3. The accommodation provides for no more than 10 workers.; and
4. The accommodation is not located on highly productive land.

Mr Hodgson stated that Condition 1 should refer to “landholding” rather than “land” so that it is clear that the rule refers to an entire farming operation that could entail numerous parcels of land. He also objected to Condition 4 stating that the NPS-HPL allowed a pathway for seasonal worker accommodation on highly productive land under clause 3.9(a).

Request for a new setback standard – Waipapa Pine

Mr Andrew McPhee presented tabled planning evidence on behalf of Waipapa Pine Ltd (FS374) relating to a request for a new 100m setback for sensitive activities from the boundary of a Heavy Industrial zone. Mr McPhee confirmed that Waipapa Pine Ltd only seeks this relief in relation to the RPROZ (as opposed to the full suite of rural zones).

Mr McPhee's recommended relief is for the insertion of a new standard into the RPROZ chapter, drafted in a similar manner to RPROZ-S7, and that the new standard be referenced in RPROZ-R1 in the same way as other equivalent setback standards.

RPROZ-R2 and HZ-R2 Impermeable surface coverage

Messrs John Papesch for Haigh Workman (215.054 and 215.055) and Michael Winch (67.010 and 67.012) presented evidence in which they supported submissions seeking a reduction in the existing permitted impermeable surfaces rule, it being 15% in the rural zones. Mr Papesch pointed out that the thresholds should be set at a level that allows for reasonable use while avoiding or minimising off-site effects. The 15% permitted impermeable surfaces threshold in the Rural Production and Horticultural zones may result in significant adverse effects on a cumulative basis if there is no provision for low impact design/water sensitive design. Mr Winch had similar views stating the 15% was too permissive, will result in significant adverse effects and does not provide for any mitigation of increased stormwater up to the permitted threshold.

3.8.2 Hearings Panel Evaluation

Visitor accommodation

As discussed above Mr Hodgson on behalf of Horticulture NZ and NZ Pork recommended a 20m setback to apply within a site containing visitor activity as a reverse sensitivity measure against the adverse permitted or enabled effects of rural production. This relief was subsequently modified to apply only to visitor accommodation activity. He stated:

The expectations of those undertaking or enjoying residential visitor accommodation that might have looked to leverage from a perception of rural character and amenity, might be quite different from the reality of the RPROZ, which has a purpose set out in the chapter overview that aligns with the zone name and description prescribed in the Zone Framework Standards of the National Planning Standards.¹⁹

Mr Hodgson referred to a number of similar rules that have been included in other district plans.

In response to these submissions the hearing report recommended reciprocal setback for primary production activities that involve intensive outdoor primary production or buildings to hold stock (i.e. milk sheds) but not for horticulture, which we noted may include the use of agri-chemical sprays.

¹⁹ Evidence of Vance Hodgson for NZ Pork paragraph 28

In the right of reply, Ms Pearson concedes that there is a “gap” in the provisions and requiring a visitor accommodation activity to be setback 20m from a site under separate ownership will provide additional protection for all types of primary production, not just those involving intensive farming of animals. We consider this to be an appropriate and targeted approach that focuses on the activity of concern (visitor accommodation) and is more appropriate than the original relief requesting an increase in all boundary setbacks from 10m to 20m. We therefore support the Council officer’s recommendation to include a new PER-4 as follows:

PER-4

The visitor accommodation is set back 20m from the boundary of a site under different ownership.

Activity status where compliance not achieved with PER-1, PER-2, or PER-3 or PER-4:

Discretionary

Minor Residential Unit

With regard to the 15m separation distance, Mr Hall submitted that having any maximum separation distance requirement would run contrary to the benefit created by the rule and the provisions for minor residential units should be flexible to allow the wide variety of reasons why these dwellings are created which, in his view providing for family or retired family members or for homestay/farm stay reasons, where separation and privacy may be justifiable. He also opined that locating these units closer to the entranceway has benefits in this regard as well.

The Council right of reply conceded that a 30m separation distance would still achieve the purpose of the rule while allowing for greater flexibility but disagreed with Mr Hall that there be no minimum separation distance.

As we understand it, the primary reasons for having a minimum separation distance are to make it more difficult to subdivide from the principal unit and to have the two forms of residential accommodation clustered in the same location within the site, leaving the remainder for rural production activity. We agree with these reasons and consider that having a minimum separation distance is important to achieving the overall purpose and function of the RPROZ and its primary production focus. In the right of reply report Ms Pearson maintained that a minimum 15m distance should be applied as a method to ensure that subdivision around a minor residential unit is not enabled. Ms Pearson added that she could support an increase to 30m if provisions relating to the subdivision around a minor residential unit discouraged or prevented this to occur.

We agree with Ms Newport that a 30m distance is a more appropriate separation distance while still maintaining the purpose of the rule. We are also able to signal that we are not minded to enable subdivision around minor dwellings on the basis that this would undermine the purpose of the RPROZ and would likely lead to further unwarranted fragmentation of rural land holdings. However, in order to further discourage separation distances being sought we consider that any non-compliance with PER-4 should be elevated from a discretionary activity to a non-complying activity.

We therefore recommend that the minimum distance be increased from 15m to 30m on the basis that we do not consider that this would lead to an increase in subdivisions around principal residential units. We therefore recommend that Rule RPROZ-R19 PER-4 be amended thus:

~~CONPER-4~~

The separation distance between the minor residential unit and the principal residential unit does not exceed ~~15-30m~~.

We also recommend that the Activity Status for RPROZ-R19 be amended thus:

Activity status where compliance not achieved with ~~CONPER-3 or PER-4~~:

Discretionary

Activity status where compliance not achieved with ~~CONPER-1, CONPER-2, CONPER-4 or CONPER-5~~:

Non complying

Turning to Ms Newport's request to have the minimum lot size for a minor residential unit to be established be decreased from 1ha to 5,000m², we agree with Ms Pearson's initial assessment in the hearing report that a principal residential unit and a minor residential unit on a 5,000m² section would result in an over-domestication of a rural site and result in a reduction in the rural character expected in the RPROZ. On this basis we recommend that this submission relief be rejected.

We have considered the evidence of Mr Nathan. As set out in the Council's right of reply, we see some merit in what Mr Nathan seeks and we, in no way, want to set a minor residential unit standard which ends up being discriminatory. That said, the obvious concern with his approach is that any person can seek a larger dwelling for the purpose of housing a person with accessibility or mobility issues and the unit not being used for this purpose. This could also set up difficult and impractical enforcement processes. Ultimately, we are concerned that allowing for this exception to the maximum floor area rule could end up being a default new standard.

We acknowledge that the Council has researched this issue in the right of reply report and confirmed that 65m² has been tested as being fit for purpose for accessibility and mobility users and that there is still a pathway for a larger minor residential unit (albeit subject to resource consent) should a genuine exception be justified. Accordingly, while acknowledging the need for minor residential units to be accessible, we are satisfied that the maximum floor area of 65m² (or the associated garage area) does not need to be increased to accommodate this.

We find that retirement lots can be accommodated through the minor residential unit provision, or as a second dwelling or an extension to existing dwellings without the need for a specific provision. We find that specific provision would add to land being fragmented in a manner that is not consistent with maintaining rural zoned land for rural purposes.

RPROZ-R22 Rural tourism activity

Ms Jacobs' evidence was that the rural tourism activity provisions needed amendment so that they do not exclude activities that may not relate to the rural setting of a site but are required to locate on a site in the rural environment. She drafted amendment to RPROZ- R22(b) and a new rule (m) to address this.

We note that Ms Pearson acknowledged the issue at the hearing and in the right of reply report she suggested a resolution of the issue by further amending the definition "rural tourism activity" as follows:

Rural tourism activity means the use of land or buildings for tourism activities that enable for people to visit and experience ~~tourism activities~~ within the rural environment.

We agree that the approach taken by Ms Pearson goes some way to clarifying the definition of Rural tourism activity but in the specific context of the Waitangi Estate it is unlikely to resolve their concerns. Ms Jacobs stated in evidence that the problem for tourist activities at Waitangi *"is the fact that the existing activities and potential future activities are located on the site because of its historic features, rather than its rural setting"*. That is to say, the tourism activities at Waitangi are not of a rural nature and are likely to then be considered as discretionary activities, as opposed to being restricted discretionary activities.

We find we cannot entirely address the submitter's specific concerns with amendments to a definition that applies district-wide. Ms Pearson's approach does assist but otherwise, the submitter has proposed their own Special zone for the Waitangi Estate that has been addressed in Hearing 15B and that may well be where their site-specific concerns are better addressed.

RPROZ-R23 and RPROZ-SX – Intensive indoor and outdoor primary production

In the right of reply report Ms Pearson agreed with Mr Hodgson that there was a disconnect in activity status for infringing setbacks designed to manage reverse sensitivity effects under RPROZ-R23 (intensive indoor and outdoor primary production) and the reciprocal standard recommended in the hearing report for sensitive activities (RPROZ-SX). She advised us that the setbacks in RPROZ-R23 and RPROZ-SX were intended to be reciprocal, therefore the activity status of infringing these provisions should be the same. Ms Pearson recommended a discretionary activity status is appropriate and we agree.

RPROZ-RX – Artificial crop protection structures and crop support structures

On this matter we heard two differing points of view with regard to managing the rural environment. The views of Mr Hodgson for Horticulture NZ and NZ Pork were geared toward maintaining the productive capacity of the rural environment and allowing a wide range of crop protection structures to achieve this outcome. The other point of view expressed by Vision Keriikeri and others was more focussed on maintaining the positive visual amenity values of the rural environment.

Both are valid views as rural environments need to efficiently provide for rural production activities (being an element of rural character) while also maintaining the amenity values associated with rural environments. However, in this context we have already found that the focus of the RPROZ must be on enabling and supporting primary production activities

and that for this zone at least, this outcome should outweigh any adverse visual amenity and shading effects resulting from the erection of these types of structures, particularly where they adjoin boundaries where they can be viewed by the public or from residential properties.

While the right of reply report has agreed with the suggested relief of Vision Kerikeri and others of requiring shade cloth within 30m of a road boundary to be dark green or black coloured, we are of the view that this goes too far within a zone where rural production is the focus. We prefer the evidence of Mr Hodgson that a variety of shade cloth colour should be enabled as a permitted activity. To verify this the Panel undertook a site visit of various horticultural sites in and around Kerikeri and observed the full range of shade cloth colours (black, dark green, light green and white) and were of the view that all were appropriate in a productive rural environment and that any adverse visual effects were acceptable and at least minor. Accordingly, we accept the recommended drafting by the Council officer but with the deletion of Condition (3) in PER-1 of RPROZ-RX as follows:

Activity Status: Permitted

Where:

PER-1

The establishment of a new, or expansion of an existing, artificial crop protection structure or crop support structure, where:

1. The height of the structure does not exceed 6m above ground level;
2. The structure is set back at least 3m from all site boundaries;
3. ~~Dark green or black material is used on any vertical faces within 30m of a site boundary or a boundary with a site under different ownership except that a different colour may be used if written approval of the owner(s) of the immediately adjoining property or the road controlling authority (in the case of a road) is obtained and provided to the Council.~~

RPROZ-RY – Seasonal worker accommodation

We have considered the evidence of Mr Hodgson and consider that the suggestions he has made are reasonable and would make the new rule more workable. We note that the Council officer also supported Mr Hodgson's suggested amendments in the right of reply report and we recommend the amendments for RPROZ-RY as set out in Appendix 2.1.

Request for a new setback standard – Waipapa Pine

While Mr McPhee did not attend the hearing, we asked the Council officer to advise on the merits of the relief sought as we considered it to have merit.

Ms Pearson advised that further investigation into those parts of the District where the RPROZ adjoining the Heavy Industry zone (**HIZ**) revealed that a total of 14 properties involving a land area of approximately 28ha would be affected by the proposed setback rule.

We agree with Mr McPhee that the potential for reverse sensitivity effects resulting from activities establishing in the RPROZ to impact existing activities in the HIZ is similar to the potential for issues at the interface between the RPROZ and the Mineral Extraction zone . We also agree that the scale of this interface (and therefore the number of impacted properties) is relatively limited when considered in the context of the area of land zoned RPROZ across the Far North district. Ms Pearson also acknowledged this in her right of reply and accordingly has proposed a new rule RPROZ – SZ - Sensitive activities set back from the boundaries of the Heavy Industrial zone as follows:

<u>RPROZ-SZ</u>	<u>Sensitive activities set back from the boundaries of the Heavy Industrial zone</u>	
<u>Rural Production zone</u>	<u>Sensitive activities (excluding non habitable accessory buildings) must be setback at least 100m from the boundary of a Heavy Industrial zone .</u>	<u>Where the standard is not met, matters of discretion are restricted to:</u> <u>a. Potential reverse sensitivity effects and measures taken to mitigate these effects, such as landscaping or screening</u> <u>b. Whether there are alternative options for the location of the sensitive activity</u>

RPROZ-R2 and HZ-R2 - Impermeable surface coverage

The reporting officer recommended no change to the permitted threshold and whilst we agree it may be unlikely that a typical farming activity would ever breach the 15% threshold and there is the ability for RPROZ and HZ sites to naturally absorb stormwater runoff, we acknowledge the evidence of the submitters regarding the potential for adverse effects based on the current threshold and without the consideration of suitable mitigation measures. We acknowledge in this respect, the expertise and experience of the two witnesses.

We note that a 15% impermeable surface rule could amount to a significant impermeable area on a rural landholding. For example, a 10ha site could allow 15,000m² (or 1.5ha) of impermeable surface as a permitted activity. We find from the evidence that the permitted impermeable surface area on a site should be reduced to better provide for consideration of potential effects. We find a reduction to 10% to be an appropriate response to the submissions and to the advice from our reporting officer.

3.8.3 Hearings Panel Recommendations

The Panel are satisfied that the right of reply version of RPROZ provisions on these submissions address all concerns raised in evidence and in response to our questions at the hearing. Accordingly, we recommend these submissions are accepted, accepted in

part or rejected as set out in our recommended decisions in **Appendix 3.1** with the recommended amendment to the RPROZ provisions set out in **Appendix 2.1**.

3.9 Key Issue 6 – Panel Questions

We asked a number of questions of the Council officer during the hearing and, in most part, these have been addressed either directly at the hearing or in the responses in the right of reply report. There is one specific question that warrants specific consideration as part of this key issue.

Need for a Height in Relation to Boundary rule

In Mr Hodgson's evidence he stated that imposing a height in relation to boundary (**HIRB**) control in addition to maximum height and setback controls to RPROZ-RX - Artificial crop protection structures and crop support structures, is overly onerous and is likely to result in the sterilisation of land along boundaries that could otherwise be used productively. The Council right of reply report agreed with Mr Hodgson and has recommended removed this requirement from the proposed rule. We also agree.

We asked the Council to also respond to the justification for a HIRB standard in rural zones at all, in a similar vein to our concerns with an impermeable surface rule.

Again, we have been advised that there is general support (or at least no opposition) to a HIRB rule in either the RPROZ or Horticulture zone /Precinct. For the same reasons as above however, we accept (albeit reluctantly) that there is no scope for us to remove the HIRB rule in the RPROZ or any other rural zone.

3.9.1 Hearings Panel Recommendations

We are generally supportive of the final version of the RPROZ provisions recommended to us by the reporting officer in the right of reply. We acknowledge that in getting to this point the Council officers have diligently considered all relevant submissions and responded to them in the hearing report and recommended significant changes in response to the relief sought in those submissions.

At the hearing we heard evidence that supported the Council assessment and some sought further changes to the RPROZ provisions. In addition, we asked a number of questions to the witnesses and the Council officers and these were all evaluated in the Council right of reply report where a number of further changes were recommended.

We have adopted the further recommended changes in the right of reply report version of the RPROZ provisions with the additional changes set out below:

1. Recommended amendments to RPROZ – O4

RPROZ-O4

The rural character and amenity values associated with a rural working environment are ~~is~~ maintained.

RPROZ-P4

Land use and subdivision activities are undertaken in a manner that maintains or enhances the rural character and amenity values of the Rural Production zone ...

2. Recommended amendments to RPROZ – R19 PER-4

~~CONPER-4~~

The separation distance between the minor residential unit and the principal residential unit does not exceed ~~15~~ 30m.

3. Recommended amendments to RPROZ – R19

Activity status where compliance not achieved with ~~CONPER-3~~ or ~~PER-4~~:

Discretionary

Activity status where compliance not achieved with ~~CONPER-1~~, ~~CONPER-2~~, ~~CONPER-4~~ or ~~CONPER-5~~:

Non complying

4. Recommended amendments to RPROZ-RX PER-1 Condition (3)

Activity Status: Permitted

Where:

PER-1

The establishment of a new, or expansion of an existing, artificial crop protection structure or crop support structure, where:

1. The height of the structure does not exceed 6m above ground level;

2. The structure is set back at least 3m from all site boundaries;

3. ~~Dark green or black material is used on any vertical faces within 30m of a site boundary or a boundary with a site under different ownership except that a different colour may be used if written approval of the owner(s) of the immediately adjoining property or the road controlling authority (in the case of a road) is obtained and provided to the Council.~~

3.10 Key Issue 7 – Definitions

3.10.1 Matters Raised in Submissions and Evidence

There were 62 original submissions and 176 further submissions on definitions that have been allocated to the rural zones noting that that submissions on the definitions of ‘highly productive land’, ‘versatile soils’ and ‘land-based primary production’ have been evaluated above in in Key Issue 3.

The submissions seeking changes to definitions are discussed in detail under Key Issue 5 of the hearing report for the Rural Production chapter (noting that this evaluation was

covered all rural zones). The hearing report recommended a number of new definitions including the following activities:

- “crop support structure”
- “greenhouses”
- “intensive outdoor primary production”
- “rural airstrip”
- “seasonal worker accommodation”

The hearing report also recommended amendments to the following definitions:

- “rural tourism activity”
- “rural produce retail”
- “farming”
- “farm quarry” and
- “artificial crop protection”.

We acknowledge that most of the recommended new and amended definitions were supported or not challenged at the hearing. However, we did receive some evidence on a number of definitions as summarised below:

Ms Sarah Cameron on behalf of Horticulture NZ requests that the National Planning Standards definition of ‘primary production’ be used in place of the term ‘farming’ in the PDP (as farming is not defined in the National Planning Standards).

Ms Ritchie on behalf of NZ Pork requests further amendment to the definition of ‘intensive outdoor primary production’ to remove the reference to ‘permanent vegetation’ cover, replace that reference with ‘ground’ cover and insert a reference to that ground cover being maintained ‘in accordance with any relevant industry code of practice’.

3.10.2 Hearings Panel Evaluation

Farming v primary production

We heard evidence from Ms Sarah Cameron who is a Senior Policy Advisor for Horticulture NZ. As stated above, Ms Cameron’s concern is that “farming” is not defined in the National Planning Standards, Horticulture NZ sought the “Primary Production” definition in the National Planning Standards be used for the definition of Farming activity. In her view, this definition provides for processing as an ancillary activity whereas the definition proposed in the hearing report specifically excludes processing.

We asked Ms Pearson to provide further comment on this matter in the Council right of reply report. In response Ms Pearson stated that the PDP intentionally makes a distinction between producing a commodity from the land (i.e. the ‘farming’ component) and initial processing (which would be covered by the broader term ‘primary production’). Ms Pearson states:

*The PDP rural chapters have been drafted to recognise that, while farming might be an appropriate activity in a wide range of locations across the Far North district, the initial processing of products may not be appropriate in the same locations. This is particularly important for zones such as the RLZ where farming is still anticipated but the presence of a greater number of dwellings compared to the RPROZ means that initial processing of goods is less appropriate.*²⁰

In Ms Pearson's view the term 'farming' has a narrower application than 'primary production' and is intended to be used in situations where only the 'farming' components of the 'primary production' definition are enabled or controlled.

Having considered this matter, we recognise the desire to follow the definitions in the NZ Standards as a general principle but accept the approach recommended by the reporting officer that some flexibility needs to be applied in this situation so that a definition of farming as an activity can be applied across all rural zones. We also note that the existing definition of farming includes *"the use of land for the purpose of agricultural, pastoral, horticultural or apiculture activities, including accessory buildings ..."*. On that basis we are confident that this definition includes the matters of concern to Horticulture NZ and we find that no further changes need to be made to the definition of "farming" or that this definition needs to be amended to the definition of "primary production" as in the National Planning Standards.

Intensive outdoor primary production

We received evidence from Hannah Ritchie who is the Environment and Planning Manager at NZ Pork. As discussed above her concern was with the use of the term *"permanent vegetation cover"* in the definition of *"intensive outdoor primary production"*. In her view the ability to maintain permanent groundcover, as currently written in the proposed definition, is unrealistic in many instances on any working farm and, depending on how this clause is interpreted, may mean that no farm can meet this definition. Ms Ritchie referred to the NZ Pork Good Management Practices for Outdoor Pigs and advised that it defines levels of groundcover that are appropriate for different types of outdoor pig farming operations to minimise environmental effects.

To resolve this Ms Ritchie sought amendment to part (e) of the definition as follows:

means primary production activities involving the keeping or rearing of livestock, or commercial aquaculture, where the regular feed source for the production of goods is substantially provided other than from the site concerned. The activity may be undertaken entirely outdoors or in a combination of indoors and outdoors, including within an outdoor enclosure. It includes free-range poultry or game bird farming and aquaculture. It excludes the following:

a. woolsheds;

²⁰ Hearing 9 Right of reply report paragraph 71

- b. *dairy sheds;*
- c. *calf pens or wintering accommodation for stock;*
- d. *pig production for domestic use which involves no more than 25 weaned pigs or six sows; and*
- e. *extensive pig farming where ~~permanent~~ vegetation cover is maintained in accordance with any relevant industry code of practice.*

Ms Ritchie helpfully provided us with a copy of the Good Management Practices for Outdoor Pigs which included the following definition of “ground cover”

Groundcover

Ground cover is maintained in accordance with the following guidelines:

For all dedicated outdoor pig units, or those in a pastoral rotation, the minimum ground

cover is:

- *For dry sows and free-range growers: 40% cover on 75% of land (< 40 % cover permissible of 25% land).*
- *Each paddock to have on average >10% cover*
- *At least 70% cover for farrowing sows.*

For all outdoor pig units that form part of an arable operation, the minimum ground cover is:

- *For dry sows and free-range growers: 25% cover on average (a gradual decline from 100% to 0% is permissible over the length of the pig phase)*
- *At least 70% for farrowing sows.*

We have considered this matter and it is our view that, as a general principle, definitions should not refer to any industry code of practice as these codes change over time and are not subject to the same rigour as a plan change process. That said we have sympathy with the need for some flexibility with regard to how ground or vegetation cover is reflected in the definition of Intensive outdoor primary production. We note that Ms Pearson has reached a similar conclusion and has recommended that word “permanent” be removed from clause (e) of the definition such that it reads as follows:

- e. *extensive pig farming where ~~permanent~~ vegetation cover is maintained in accordance with any relevant industry code of practice.*

We agree with this approach and recommend that the definition be amended as per Ms Pearson’s wording and to accept the submission in part.

3.10.3 Hearings Panel Recommendations

We recommend that the new and amended definitions be accepted as set out in Appendix 1.2 of the hearing report and further modified and set out in Appendix 6 to the right of reply report. These recommended changes are included in **Appendix 2.1**, Definitions to **Recommendation Report 17**.

4. Topic 2 – Horticulture Zone

4.1 Relevant Provisions

The relevant provisions we address in the Recommendation Report for this topic relate to:

- Overview
- Objectives HZ O1–O4
- Policies HZ P1-P7
- Rules HZ R1 – R26
- Standards HZ S1-S6.

4.2 Key Issues

The key issues identified in the hearing report and in evidence are set out below:

- Key Issue 1: Whether a Horticulture zone/precinct is consistent with the National Planning Standards?
- Key Issue 2: If a special zone is not appropriate, how should horticulture be provided for in the Rural chapters?
- Key Issue 3: Minimum lots sizes within the Horticulture Precinct
- Key Issue 4: Horticulture Precinct Objectives
- Key issue 5: Horticulture Precinct Policies
- Key Issue 6: Horticulture Precinct Rules and Standards

4.3 Discussion

This section constitutes the main body of this report for this Topic and considers and provides recommendations on the decisions requested in submissions. Due to the large number of submissions received and the repetition of issues, as noted above, it is not efficient to respond to each individual submission point raised in the submissions. Instead, this part of the report groups similar submission points together under key issues. This thematic response assists in providing a concise response to, and recommended decision on, submission points.

Key Issues 1 and 2 address the PDP zoning framework for the Horticulture chapter. These issues discuss the appropriateness of the Horticulture zone being a form of a Special zone under the National Planning Standards framework and other options for horticulture

provisions that are more consistent with that framework. As is revealed in our discussions and findings below, we have agreed with submitters that a Horticulture Special zone is not consistent with the National Planning Standards framework. We have considered a number of options put forward by submitters and Council officers and we have agreed with the officers that the overall essence of the horticulture special zone provisions could be reconstituted as a Horticulture Precinct. In order to give submitters certainty for future hearings we took the step of issuing interim guidance (Minute 23) stating that we consider there is merit for the Horticulture zone to be amended to a precinct within the rural chapters sections of the PDP, given that the special purpose zone fails to meet the criteria in Section 8.3 of the National Planning Standards.²¹

While we had issued this interim guidance in Minute 23 we set out the reasons for making this determination in this recommendation report as well as discussion of the other zoning options identified and presented to us.

Key Issue 3 picks up on the findings on minimum lots sizes for the RPROZ in Topic 1 above and specifically addresses those submissions that sought different (usually smaller) lot sizes within the Horticulture Precinct.

Key Issues 4 – 6 follow our findings for the other provisions in the new Horticulture Precinct while also picking up on similar themes that were relevant to the notified provisions.

4.4 Key Issue 1 – Horticulture Zone

4.4.1 Matters Raised in Submissions and Evidence

The legal submissions for Audrey Campbell-Frear (S209) presented by Sarah Shaw address two primary issues: that highly productive land “must and should” be protected and that creation of the proposed Horticulture zone (as a special zone) is not an appropriate planning mechanism to protect highly productive land – whereas the Rural Production zone is.

Ms Shaw specifically directed us to the National Planning Standards and the criteria within it relating the use of special zones as a zone for activities that are predominantly for primary production activities. Ms Shaw quoted the Standards and submitted:

The Standards direct that a special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:

- a. are significant to the district, region or country;*
- b. are impractical to be managed through another zone;*
- c. are impractical to be managed through a combination of spatial layers.²²*

²¹ https://www.fndc.govt.nz/_data/assets/pdf_file/0013/40414/Minute-23-Interim-Guidance-of-the-Independent-Hearings-Panel-Horticulture-Zone.pdf

²² Legal submissions of Sarah Shaw – paragraph 1.18

Ms Shaw also referred to the NPS-HPL and the “interim” definition of highly productive land which refers to land zoned General Rural or Rural Production and LUC, 1, 2 and 3. In her submission, any zone based on primary productions must be zoned either “general rural” or “rural production”. She submitted that:

Arguably, if LUC 1, 2 or 3 land is not in the Rural Production Zone, it will be ineligible to be treated as highly productive land under the interim definition and ineligible to be mapped by NRC as highly productive land in regional mapping. The NPS HPL is the highly directive national instrument specifically cast to protect highly productive land for land-based primary production – including horticulture – and it does not anticipate a special purpose zone for horticulture.²³

Her legal submissions also asserted that the proposed Horticulture zone provisions were inefficient and ineffective as they:

- *duplicate the RPROZ provisions;*
- *restrict the zone to the Kerikeri / Waipapa area by a policy, which does not implement the objectives (even of the proposed zone);*
- *apply a Horticulture Zone to a spatial area where 90% of uses are not horticulture;*
- *apply a zone purporting to manage land fragmentation to an area where 93-94% of lots are already of a size below what the s32 and s42A reports say is required to enable horticulture.*

In support of her legal submissions Ms Shaw called three expert witnesses:

Derek Foy – Economics. This evidence opined that the Horticulture zone, from a rural economics perspective, was not materially different from the RPROZ and was unlikely to achieve greater promotion or enhancement of horticulture activity in the than the notified RPROZ.

Ian Hanmore – Soils. This evidence focussed on the potential for LUC 4 land to become highly productive land (LUC 1, 2, or 3) through irrigation. In Mr Hanmore’s view, adding irrigation to the majority of the LUC 4 around Kerikeri - Waipapa would not overcome existing major limitations with that soil type and in many instances would further exacerbate them.

Melissa McGrath – Planning. This evidence focussed on the planning arguments for the provisions for the Horticulture zone to be incorporated within the RPROZ on the basis that it would avoid unnecessary duplication. Ms McGrath also produced supplementary evidence setting out how the Horticulture zone provisions could be incorporated into the RPROZ and achieve the same or similar outcome.

4.4.2 Hearings Panel Evaluation

We spent some time at the hearing and in deliberations considering Ms Shaw’s legal submissions and the expert evidence presented. In particular, we were concerned

²³ Legal submissions of Sarah Shaw – paragraph 1.23

whether the proposed Horticulture zone as a special zone would meet the criteria in the National Planning Standards as set out by Ms Shaw and supported in planning evidence and other witnesses.

We note that the Council has already conceded (via its written right of reply report) that land classified LUC 4 should not be included within any land identified for productive horticultural use as it falls outside the definition of highly productive land in the NPS-HPL.

At the hearing we were taken through the National Planning Standards as it relates to special zones and under section 8 – zone Framework Standard, we were advised that the National Planning Standards set out eight types of special purpose zone, none of which identified horticulture or primary production as being in that list. We were directed to Clause 3 of Section 8 that set out the criteria for additional special zones (other than those listed) and it states:

3. *An additional special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:*
 - a. *are significant to the district, region or country*
 - b. *are impractical to be managed through another zone*
 - c. *are impractical to be managed through a combination of spatial layers.*

We accepted that these criteria were mandatory and narrow and that all must be met in order to justify the use of a special zone outside of the identified list of Special zones. On that basis we agree with Ms Shaw that the case for the Horticulture zone as a special zone appears to not meet the strict criteria in Clause 3.

We asked both Ms Shaw and Ms McGrath whether incorporation of the horticulture provisions within the RPROZ was the only alternative or whether there were other options including the conversion of the Horticulture zone to a precinct under the National Planning Standards.

We record that the National Planning Standards provides for Precincts as a Spatial Layer for district plans as follows:

Precincts - *A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s).*²⁴

As we understand this standard, a precinct providing for specific-place-based provisions for horticulture within the RPROZ is, in principle, consistent with the National Planning Standards. We put this question directly to Ms McGrath and she responded that it was also an option to consider in addition to her suggested amendments to incorporate the Horticulture provisions within the RPROZ.

²⁴ National Planning Standards 2019 – Table 18

We asked Ms Pearson to consider this issue in the right of reply report and in particular the following matters:

1. Is the notified Horticulture zone consistent with the National Planning Standards as a Special Purpose zone ?
2. Is a Horticulture Precinct within the RPROZ an appropriate alternative or is its deletion and incorporation within RPROZ the most appropriate method?
3. Is there scope within the submissions of Ms Campbell-Frear to redraft the Horticulture zone as a precinct?

We received that response in paragraph's 25-32 of the right of reply report (dated 3 March 2025). We also note that the Council sought legal advice on these matters which was summarised in the right of reply:

1. As notified, the Horticulture zone would likely not meet the Special Purpose zone tests;
2. There is scope within the submission of Audrey Campbell-Frear to redraft the Horticulture zone as a precinct or similar spatial layer, with the RPROZ as the underlying zone; and
3. It is uncertain whether the notified Horticulture zone is excluded from the transitional definition of HPL under clause 3.5(7) of the NPS-HPL and that, as the Horticulture zone was notified prior to the NPS-HPL being gazetted, the NPS-HPL does not apply to the Horticulture zone .

Ms Pearson set out three options for us to consider, and her recommendation having considered the evidence, our questions to the submitter, and the legal advice received. Ms Pearson advised that:

Option 1: Retain the Horticulture zone with some amendments to provisions to address specific issues with provisions that were raised in evidence.

Response - Given the legal issues raised with meeting the tests for a SPZ and the potential for a spatial layer to achieve a similar outcome, she no longer supported Option 1.

Option 2: Redraft the HZ provisions so that, instead of this area being protected by a special purpose zone, it is managed by a precinct (or some other type of spatial layer).

Response: She agreed with the option identified by the Panel that one of the spatial layers in Table 18 of the National Planning Standards is a possible alternative to the Horticulture zone.

Option 3: Delete the Horticulture zone and instead rezone the land RPROZ, with some amendments to provisions to strengthen the protection for land defined as Highly Productive Land under clause 3.5(7) of the NPS-HPL.

Response: Ms Pearson remained of the opinion that, rezoning the Horticulture zone to RPROZ and strengthening the RPROZ provisions relating to HPL will not achieve the same level of protection for the horticultural industry as a specific spatial layer with bespoke provisions for managing land use and subdivision in that location.

In support of this conclusion, Ms Pearson offered three reasons why a Horticulture Precinct was her preferred option as follows:

- i. Zoning the HZ land to RPROZ does not resolve the timing issue of the land being zoned a special purpose zone at the time the NPS-HPL was gazetted. As such, simply relying on HPL provisions in the RPROZ to protect land in the HZ is not sufficient, particularly if the HPL status of land in the HZ is being continually challenged through the resource consent process.*
- ii. The spatial extent of the HZ is not entirely LUC 1-3 land (refer to Figure 1 of the Rural Wide Issues and RPROZ section 42A report that confirms around 35% of the HZ is either LUC 4 land or above). As such, relying on provisions in the RPROZ that protect HPL do not achieve the same spatial protection of land as the HZ.*
- iii. The intention behind introducing the HZ was not just to protect soils, it was also to protect the significant investment in horticultural infrastructure in the Kerikeri/Waipapa area. The NPS-HPL provisions in the RPROZ do not recognise or protect this infrastructure investment.*

We agree with Ms Pearson that a precinct (within the RPROZ) is the preferred alternative for the reasons set out above. We also find that this approach, in our view would also resolve the conflict between the National Planning Standards and its strict criteria for a bespoke special zone and the need to recognise highly productive land in the context of a primary rural zone. In that regard, we find that a horticulture precinct would spatially identify areas within a wider RPROZ primary production zone, where additional place-based provisions are necessary to recognise a different (but not contrary) response is appropriate. This alternative approach would allow for many of the RPROZ provisions to still apply (where relevant and to avoid unnecessary duplication) but with specific provisions related to horticulture activity and its specific needs within identified areas around Kerikeri and Waipapa.

In making this finding we are also acknowledging the evidence of Horticulture NZ where it was stated that the Far North and Kerikeri/Waipapa enjoyed a competitive advantage in horticulture over the rest of New Zealand on the basis that a combination of good soils and a warmer climate, horticulture in these areas is able to:

- Provide the market with new seasonal produce (at a time when the best prices were achieved) earlier than most other horticultural areas;
- Provide a broad base of horticultural products to the market during the production season; and
- Provide products to the market for longer seasonal periods of time.

We agree with Horticulture NZ that this is a significant competitive advantage and worthy of being maintained and further enhanced through provisions that supported horticulture production. In our view, this outcome further supports our conclusion that a horticulture

precinct is the most appropriate way to provide for horticultural production at Kerikeri/Waipapa and achieve the purpose of the RMA.

4.4.3 Hearings Panel Recommendations

We recommend that the submissions from Audrey Campbell-Frear are accepted in part and that the Horticulture Chapter (notified as a special purpose zone) be deleted as it fails to meet the criteria for additional (non-listed) special purpose zones as set out in Part 8 Clause 3 of the National Planning Standards 2019.

We recommend that the most appropriate option to recognise and provide for horticultural activities in the Kerikeri/Waipapa area is for the notified Horticulture zone chapter to be redrafted as a precinct to provide specific place-based provisions for the horticulture industry as a primary production activity within the context of the RPROZ as the underlying zone.

It is recommended those submissions that sought the removal of the Horticulture zone on the basis that it fails to give effect to the National Planning Standards or is not supported by a section 32 analysis are accepted in part as set out in **Appendix 3.6**. Those submissions that sought that the Horticulture zone provisions be incorporated into the RPROZ are also accepted in part as we have recommended that the Horticulture zone be redrafted as a precinct to provide specific place-based provisions for the horticulture industry in the context of the RPROZ as an underlying zone.

The specific wording of the proposed Horticulture precinct is discussed in Key Issue 2 below.

We also note that the boundaries for the new Horticulture precinct are discussed in **Recommendation Report 15C**.

4.5 Key Issue 2 – Proposed Horticulture Precinct

4.5.1 Matters Raised in Submissions and Evidence

As discussed above in Key Issue 1, there were a number of submissions that sought the deletion of the Horticulture zone (as a SPZ) and sought all relevant horticulture provisions be incorporated into the RPRPZ.

Following the Council right of reply report dated 3 March 2025 we received a supplementary right of reply report dated 11 March 2025, also written by Ms Pearson. The purpose of this supplementary report was to provide a commentary on the drafting approach for converting the Horticulture zone (**HZ**) chapter into a Horticulture Precinct (**HP**) chapter.

We note that until this point there were no other precincts in the PDP and the Council has advised that the approach taken has been cognisant that other precincts may be recommended through other hearings and we acknowledge that some further refinement may be needed should other precincts be developed in response to submissions.

In that regard we acknowledge that several new precincts have been recommended as part of the re-zoning hearings for Hearing 15A – 15D.

4.5.2 Hearings Panel Evaluation

In drafting the proposed new Horticulture precinct chapter, Ms Pearson has followed the Format Standard in the National Planning Standards with precincts 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 and this being the first precinct in the PDP, the HP is referenced in full as '**PREC1 – Horticulture precinct**' and all provisions in the HP begin with '**PREC1**'. As per our reasoning in Key Issue 1, the HP only applies to land zoned RPROZ.

Given that the RPROZ chapter applies to the largest area of land in the Far North District and will be used predominantly by landowners that are not located in the HP, Ms Pearson considers it appropriate 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 easier for plan users to find. In her view, incorporating the HP provisions into the RPROZ chapter (as per Ms McGrath's evidence) would make it too complex and more difficult to navigate for plan users with land outside the HP. While we initially agreed with this approach, we have subsequently added a further six precincts to the PDP with most of these having an underlying zoning of RPROZ. On that basis we recommend that all precinct)including the HP be included a separate section of Part 3 of the PDP.

The proposed HP chapter prepared by the Council and endorsed by us is annexed as **Appendix 2.2**.

As with the findings and recommendations in the RPROZ topic, references to highly productive land and/or LUC 4 land in objectives and policies have been removed and instead the policy refocuses on protecting all land within the HP, regardless of its LUC status. The drafted provisions have also endeavoured to remove unnecessary duplication and provide clearer directions for reverse sensitivity effects.

The rationale for the key changes between a horticulture zone and a horticulture precinct is set out in section 6 to the Council supplementary right of reply report and we note and endorse the following:

- a) Most changes 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.
- b) The 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 as part of Hearing 15C when the spatial extent of the HP was considered.
- c) The recommended drafting changes to convert the HZ rules and standards into HP rules and standards are more or less straightforward. All rules and standards that are identical to those in the RPROZ have been 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).

4.5.3 Hearings Panel Recommendations

In our view, the proposed provisions have been carefully prepared and are consistent with the formatting standards and drafting directions in the National Planning Standards.

For the reasons set out above and in Key Issue 1 we recommend that the new HP chapter be incorporated into the PDP as PREC1 and as set out in **Appendix 2.2** to this recommendation report.

Furthermore, we recommend that all submissions on this issue be accepted, accepted in part or rejected as set out in **Appendix 3.6**.

4.6 Key Issue 3 - Minimum Lot Sizes within the Horticulture Zone/Precinct

4.6.1 Matters Raised in Submissions and Evidence

There were several submissions in support of the minimum lot size within the Horticulture zone/precinct and several submissions seeking it be more permissive. As notified, the PDP in SUB-S1 provided for a minimum lot size of 10ha as a controlled activity and 4ha as a discretionary activity.

NRC (S359) made two submissions on SUB-S1 as it relates to the HZ. The first (S359.015) requests that SUB-S1 is amended to increase minimum lot sizes and further restrict development in the Horticulture zone/precinct and the second (S359.018) specifically requests amendments to the discretionary activity pathway for subdivision down to 4ha lots. NRC consider that the close proximity of the Horticulture zone/precinct to Kerikeri and Waipapa and the strong demand for rural lifestyle sized lots in these areas means that a 4ha discretionary minimum lot size is potentially not strong enough to discourage rural lifestyle subdivision.

The hearing report, having considered the NPS-HPL came to the conclusion that a controlled activity pathway is no longer appropriate for subdivision in the Horticulture zone and, in recognition of that national direction, recommended that a discretionary activity status for subdivision of land 8ha or greater is the most appropriate way to give effect to the direction in the NPS-HPL.

We heard evidence from Vision Kerikeri and others²⁵ from Two M Investments (S317) who were in support of the hearing report recommendations to increase the minimum lots size from 4ha to 8ha. The evidence presented mirrored the reasoning set out in the hearing report that the increased minimum lot size will better protect against further land fragmentation and loss of productive land that needs to be retained for future generations.

The legal submissions and planning evidence of Audrey Campbell-Frear (S209) were opposed to the increased minimum lot sizes on the basis that the land is already severely fragmented and utilised for a range of land uses that are not land-based primary production. Ms McGrath was of the view that further restriction of subdivision in the HZ will not avoid fragmentation or afford protection from reverse sensitivity effects, both of which are already present in the proposed zone.

²⁵ Vision Kerikeri (S521), Carbon Neutral Trust (S529), and Kapiro Conservation Trust (S442), collectively referred to as "Vision Kerikeri and others"

4.6.2 Hearings Panel Evaluation

We have covered the issues relating to minimum lot size in detail in Key Issue 2 for the RPROZ topic above and much of that analysis relating to the need to protect the productive capacity of rural land applies to the Horticulture zone/precinct. With regard to highly productive land located within the Horticulture zone/precinct we are of the view that this land is a finite resource and an important element of the rural economy of the Far North (and the economy generally). We are of the view that any reduction in the availability of the land for primary/horticulture production by non-rural activities will limit food production opportunities for future generations, who may rely more on this land due to changes in climate and loss of highly productive land in other locations such as Auckland which are under intense pressure to develop housing.

In coming to this conclusion, we have had regard to the section 32 Rural Environment Report which states:

The Horticulture zone is a special zone that has been created to address specific issues affecting the Kerikeri and Waipapa area. The purpose of this zone is to protect and support the existing significant horticulture sector located in this area and to provide for its expansion. A special zone has been used for this area because:

- *The ODP enabled fragmentation of this highly productive land, which supports a significant horticulture industry for the district. To ensure this highly productive land remains in productive use, it needs to be more specifically protected from sterilisation compared to the Rural Production Zone.*
- *Horticultural activities are more susceptible to reverse sensitivity issues given the small size of the lots and the use of chemicals, which means the range of activities (particularly the level of residential activity in the zone) needs to be more limited than in other parts of the rural environment.*
- *This area is unique to the district due to the irrigation infrastructure investment, established horticulture sector and ancillary horticulture activities such as the large-scale horticulture processing facilities.*
- *This area is also being affected by high growth, with a demand for rural residential, rural lifestyle development and commercial / industrial development in the locations where the highly productive land is located.²⁶*

As discussed above, we heard evidence at the hearing from Horticulture NZ (S159) that highly productive land, especially at Kerikeri-Waipapa, allowed primary producers a competitive advantage over other horticultural areas in New Zealand in terms of the ability to:

²⁶ Section 32 Rural Environment Report Page 4

- Provide the market with new seasonal produce (when the best prices were achieved) earlier than other horticulture growing areas ;
- Provide a broad base of horticultural products to the market during the production season; and
- Provide products to the market for longer seasonal periods of time.

With regard to the extent of fragmentation already in the Horticulture zone/precinct we acknowledge that this has occurred and that it has had an impact on the quantum of land available for horticultural production. However, given the direction of the NPS-HPL and importance of the horticulture industry at Kerikeri-Waipapa to the Far North rural and wider economy we have concluded that these positive benefits far outweigh the negative effects of fragmentation.

For the reasons set out above, our finding is that the minimum lots sizes under SUB-01 within the Horticulture zone/precinct should be increased as recommended in the hearing report as follows:

SUB-S1 Minimum allotment sizes

<i>Zone</i>	<i>Controlled Activity</i>	<i>Discretionary Activity</i>
<i>Horticulture</i>	10ha <u>NA</u>	4ha <u>8ha</u>

4.6.3 Hearings Panel Recommendations

In line with our evaluation and findings for the minimum lots sizes for the RPROZ we recommend that the minimum lot size for the Horticulture zone/precinct be increased in recognition of the national direction to avoid the loss of highly productive land under the NPS-HPL and the importance of horticulture land in this location to the Far North economy. As set out above we recommend that SUB-01 be amended as follows:

SUB-S1 Minimum allotment sizes

<i>Zone</i>	<i>Controlled Activity</i>	<i>Discretionary Activity</i>
<i>Horticulture</i>	10ha <u>NA</u>	4ha <u>8ha</u>

Accordingly, we recommend that submissions on this issue are accepted, accepted in part or rejected as set out in **Appendix 3.6**.

4.7 Key Issue 4 – Horticulture Zone/Precinct Objectives and Policies

4.7.1 Matters Raised in Submissions and Evidence

We heard extensive evidence from Ms McGrath for Audrey Campbell-Frear (S209) and she addressed the objectives for the Horticulture zone/precinct. She stated that objectives (especially HZ-O1 and O3) were too focussed on horticulture as opposed to other rural production activities. She also opined that the zone objectives were not aligned with the Strategic Direction objectives in relation to the rural environment. Ms McGrath, in support of her position that the Horticulture zone (as notified) was not enabled as a special zone under the National Planning Standards, set out a number of

instances where she considered there to be unnecessary duplication of objectives and policies between the Horticulture zone and the RPROZ.

4.7.2 Hearings Panel Evaluation

As discussed in Key Issue 3 we have recommended that the Horticulture zone provisions be redrafted as a precinct (PREC1). We have evaluated the revised Horticulture Precinct provisions drafted by the Council and we are of the view that the drafted precinct provisions, being a placed-based chapter within the RPROZ have reduced the duplication of objectives and policies and are overall better integrated with the RPROZ.

Having regard to the evidence received we are satisfied that the redrafted provisions address the concerns with objectives and policies presented in evidence to us.

4.7.3 Hearings Panel Recommendations

For the reasons set out above we recommend that those submissions seeking changes to the objectives and policies of the Horticulture zone (as notified) be accepted in part on the basis that they have been addressed through the redrafting of the zone to a horticulture precinct as set out in **Appendix 3.6**. The recommended objectives and policies for the Horticulture precinct are set out in **Appendix 2.2**.

4.8 Key Issue 5 - Horticulture Zone/Precinct Rules

4.8.1 Matters Raised in Submissions and Evidence

Artificial crop protection structures and crop support structures

As discussed in Key Issue 5 for the RPROZ topic, Mr Hodgson on behalf of Horticulture NZ recommends the same amendments to the Horticulture zone/precinct Artificial crop protection structures and crop support structures (drafted in the hearing report as HZ-RX) as for RPROZ-RX. The only difference Mr Hodgson recommends in the proposed wording is that the setback from all site boundaries in PER-1(2) is reduced from 3m to 1m to reflect the primacy that should be given to horticultural activities over amenity expectations of residents in the Horticulture zone/precinct.

4.8.2 Hearings Panel Evaluation

Artificial crop protection structure

As per our findings relating to artificial cloth colour in the RPROZ-RX (i.e. no limitations on shade cloth colour) we are also of the view that in order to maximise the potential of highly productive land that the structure only needs to be set back 1m from all site boundaries. We therefore agree with Mr Hodgson's evidence for Horticulture NZ.

Extension of existing commercial and industrial activities

The evidence of Ms McGrath raised the concern regarding the discretionary activity status for existing commercial and industrial activities. Her view was that the Horticulture zone/precinct is comprised of a range of existing land uses that are primary production or horticultural activities and these proposed rules further restrict future development, increasing consenting and development cost.

We understand Ms McGrath’s concern regarding the activity status of these activities. However, as expressed throughout the assessment and evaluation of the RPROZ and this chapter we have found that the priority of these zones is to maintain the productive potential of rural land for primary productive activities. For the Horticulture zone/precinct we are of the view that the national direction to avoid the loss of highly productive land under the NPS-HPL supports enabling the extension of existing commercial and industrial activities as a discretionary activity. We note that these provisions have been drafted into the Council recommended rules in the RPROZ such that these provisions do not need to be repeated in the new Horticulture Precinct as the default RPROZ rules would apply.

4.8.3 Hearings Panel Recommendations

- a) We recommend submissions from Horticulture NZ be accepted in part and the following amendments (redrafted as precinct rule PREC1-R5):

PER-1

The establishment of a new, or expansion of an existing, artificial crop protection structure or crop support structure, where:

- a. The height of the structure does not exceed 6m above ground level;*
 - b. The structure is set back at least 13m from all site boundaries;*
 - c. ~~Dark green or black material is used on any vertical faces within 30m of a road site boundary except that a different colour may be used if written approval of the owner(s) of the immediately adjoining property or the road controlling authority (in the case of a road) is obtained and provided to the Council.~~*
- b) For these reasons set out above, we do not recommend any changes to the activity status for the extension of existing commercial and industrial activities in the new Horticulture Precinct and that this submission point from Audrey Campbell-Frear is rejected.

5. Topic 3 – Rural Lifestyle Zone

5.1 Relevant Provisions

The relevant provisions we address in the Recommendation Report for this topic relate to:

- Overview
- RLZ-O1-04 Objectives
- RLZ-P1-P4 Policies
- RLZ-R1 – R28 Rules
- RLZ-S1 – S6 Standards

had been completed), we have determined (following legal advice) that the Council can only give effect to those documents through a Schedule 1 variation or plan change process. See also Minutes 40-42 which address this matter.

Following Minute 41 we received a legal memorandum from Lucklaw Farms Limited referring to the Water Services (Wastewater Environmental Performance Standards) Regulations 2025, which also came into force on 19 December 2025. We acknowledge this additional national planning instrument and have had regard to this in our recommendation reports and especially the Lucklaw Farms rezoning request. In this instance we consider that these regulations are more relevant to a regional consent process for wastewater discharge than to a rezoning request, albeit with a wastewater component included.

3. Topic 1: Rural Rezoning Requests

3.1 Relevant Provisions

As set out in the hearing report a total of 147 original submissions and 628 further submissions were received on the Hearing 15C: Rural Rezoning topic, either requesting a new zone or supporting the notified zoning of land as one of the rural zones.

Several rezoning requests were received from submitters requesting that their notified zoning of Horticulture zone be amended to an alternative rural zone. As we have set out in **Recommendation Report 9**, we have recommended that the Horticulture zone (a special purpose zone) be replaced with a Horticulture Precinct and confirmed this in our Interim Guidance in Minute 23¹. In the interests of consistency all references to the notified Horticulture zone in this recommendation report have been replaced with Horticulture Precinct.

Where submissions sought an urban zoning within the notified Horticulture zone these have been considered under Topic 2: Urban Rezoning Requests.

3.2 Scope of Hearings Panel Recommendations

As set out in paragraph 25 of the hearing report this topic concerns rezoning requests seeking a change from one type of rural zone to another (i.e. where the requested zone is either Rural Production, Horticulture, Rural Lifestyle, Rural Residential or Settlement) and does not address urban or special purpose zones (other than the notified Horticulture zone).

The exception to this is the rezoning requests from Lucklaw Farm Ltd, Trustees of Taranaki Trust and Grace Sturgess, which include a component of General Residential and Mixed Use zoning as part of their rezoning requests. As the requests for these zones need to be considered in conjunction with the larger scale request for Rural Lifestyle zone, the entire submission has been considered in this topic, as opposed to being split across the rural and urban components of Hearing 15C.

¹ Refer to Minute 23 – www.fndc.govt.nz/_data/assets/pdf_file/0013/40414/Minute-23-Interim-Guidance-of-the-Independent-Hearings-Panel-Horticulture-Zone.pdf

3.3 Key Issues

The key issues identified in the hearing report and in evidence are set out below:

- Key Issue 1: Rezoning Requests in the related to the Horticulture Precinct
- Key Issue 2: McCaughan Road submitters
- Key Issue 3: Robert Sintes
- Key Issue 4: Douglas Percy and Theodora Symes and Jeff and Robby Kemp
- Key Issue 5: Neil Construction Limited (Tubbs Farm Limited)
- Key Issue 6: Meridian Farm
- Key Issue 7: Gray Gilrairie Holdings Limited Farm)
- Key Issue 8: Ian Diarmid Palmer and Zeija Hu and RHL & LM Ferguson Family Trust
- Key Issue 9: Nigel Ross Surveyor Ltd
- Key Issue 10: Musson Family Trust
- Key Issue 11: Kingheim Limited
- Key Issue 12: Ian Ray (Joe) Carr
- Key Issue 13: Lucklaw Farm Ltd

We have followed this logical structure in our assessment, evaluation and recommendations.

3.4 Key Issue 1 – Rezoning Requests in the Related to the Horticulture Precinct

3.4.1 Scope of Recommendations on the Horticulture Precinct

As set out in our recommendation report for **Hearing 9** and our interim guidance in Minute 23, we have recommended that the Horticulture zone be replaced with a Horticulture Precinct with an underlying zoning of Rural Production Zone (**RPROZ**).

The hearing report identified two key matters for the Panel to consider with respect to submission points requesting an alternative zone to the Horticulture zone as notified:

- a) Based on the criteria set out in PREC1-P1 (the first policy drafted in the Horticulture Precinct chapter), how much land should be included in the Horticulture Precinct?
- b) For land that is not recommended to be included in the Horticulture Precinct, what is the most appropriate zone for that land?²

The reporting officer (Ms Melissa Pearson) has undertaken an extensive analysis of the spatial extent of the new Horticulture Precinct and has recommended that the notified

² Hearing report 15C – Rural – Paragraph 92

I agree with the submission that this area has been subdivided to an extent where reversion to horticultural use is extremely unlikely. However, this area forms a buffer between the horticultural activities to the north and the Waipapa Stream to the south. The Waipapa Stream, in my view, serves as a clear, defensible boundary between the Rural Residential zone to the south of the stream and the Horticulture Precinct to the north of the stream.⁶

The reporting officer does not support the rezoning of the McCaughan Road to Rural Residential for the following reasons:

- a) The Minute 14 criteria have not been considered.
- b) Not all land parcels need to be used for horticulture activities to align with the zone intent. The inclusion of small lots between or adjacent to more productive parts of the precinct manages reverse sensitivity effects and fragmentation on the edges to reduce growth pressure on productive horticultural land.
- c) There is no consideration of other relevant criteria such as transport infrastructure and consultation or adjoining landowners.
- d) The rezoning would shift the boundary between the RRZ and the Horticulture Precinct away from a clear geographic boundary (the Waipapa Stream) to a cadastral boundary (inconsistent with Criterion A).
- e) Reverse sensitivity issues - The rezoning would allow for intensification of the McCaughan Road properties, as the 1-1.8ha lots could be subdivided into between 2-4 lots as a controlled activity.
- f) There has been no economic assessment demonstrating demand for more rural residential zoned land.



Figure 3: Properties on McCaughan Road requesting rezoning to Rural Residential (red)

⁶ Hearing report 15C – Rural – Paragraph 121

Horticulture zone be broadly retained and be re-configured as a Horticulture Precinct with an underlying RPROZ zone.

In evaluating the spatial extent of the Horticulture Precinct, the Council has undertaken an in-depth analysis of the soil quality, land use and related data and has engaged Dr Reece Hill (Landsystems Ltd) to lead this assessment. As set out in Minute 22 the Panel directed that submitters proposing to provide evidence on soils as part of their requests to remove land from the Horticulture Precinct engage in expert conferencing. We were advised that no submitters nominated a soil expert to engage in expert conferencing. As such, Dr Hill has conducted his assessment independently, although any site specific soils assessments provided by submitters with their submissions or as part of Hearing 9 evidence were considered.

The analysis resulted in a spatial mapping of a proposed Horticulture Precinct while also labelling that land investigated as being:

- a. Dark green – Include in the precinct
- b. Light green – Possibly Include in the precinct
- c. Light red – Possibly Exclude from the precinct
- d. Dark red – Exclude from the precinct³

Essentially, the light green and light red colours indicate land that, based on soils alone, requires more detailed consideration as to whether it should be included or excluded i.e. there is a particular factor that may reduce its potential to be used for horticultural activities, such as soil drainage or slope. The distinction between light red and light green is intended to add more nuance to the data (as opposed to a generic 'orange' colour to indicate more marginal land).

The final spatial map recommended by Dr Hill is set out below (see Figure 1). It recommends that the precinct comprise two areas with a number of areas notified to be considered for exclusion.

³ Dr Reece Hill - Revised soil and Land Use Capability criteria to inform the delineation of a Horticulture Precinct (HP) in the Far North District Plan. Figure 3

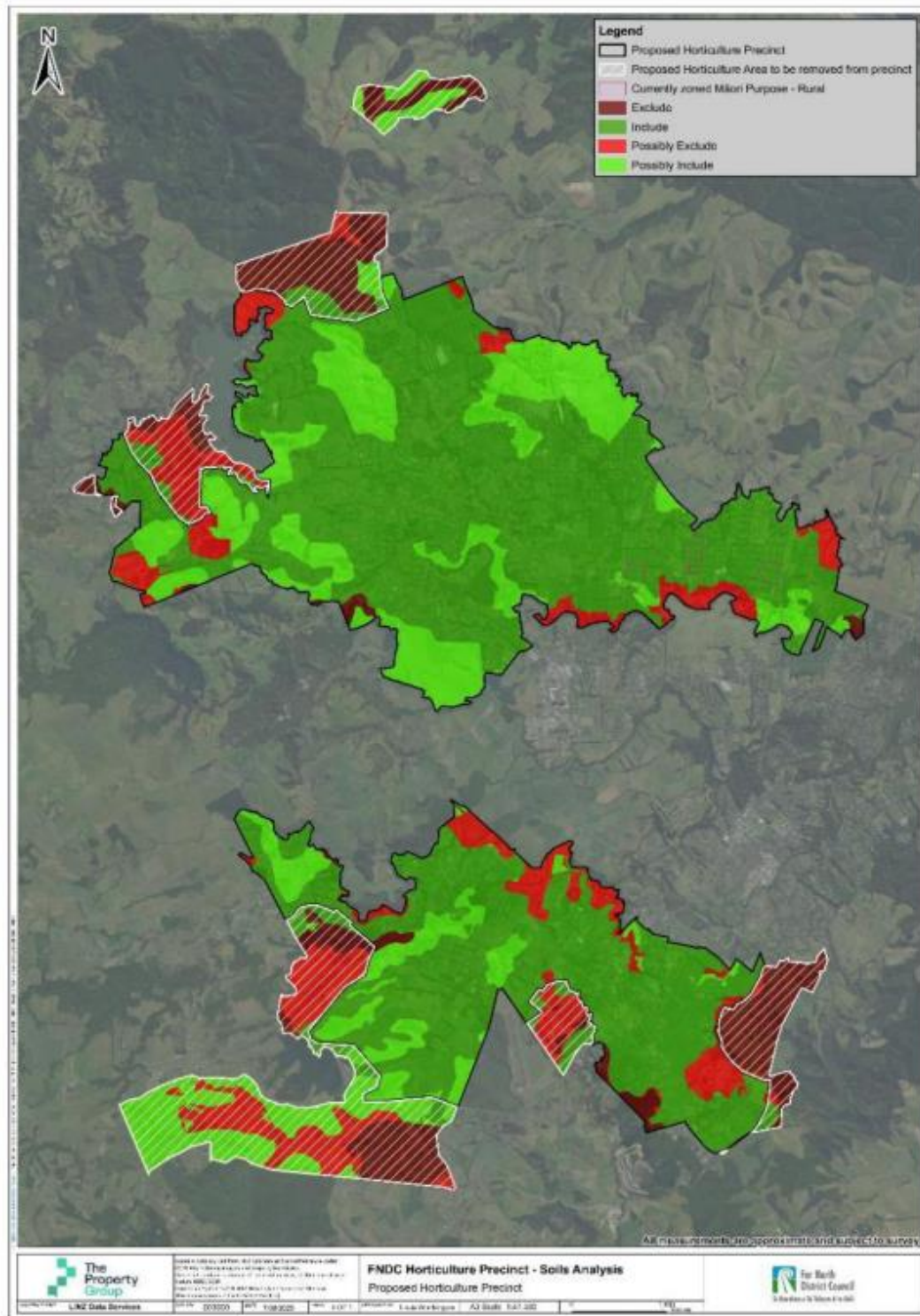


Figure 1: Proposed spatial extent of Horticulture Precinct

While an analysis of soils is critical to the spatial extent of a horticulture precinct, there are other related matters that must also be considered and these are set out in the hearing report (see paragraphs 102-110). The reporting officer has taken the final mapping recommended by Dr Hill and considered the following:

- a) Inclusion of land that may have poor soils or unfavourable slope but is surrounded by productive soils (to avoid creating holes or gaps in the spatial extent of the precinct).

- b) Amending the spatial extent of the Horticulture Precinct to create defensible boundaries where possible – ideally a road or geographic feature (such as a river) in the first instance, otherwise a cadastral boundary as a secondary option. No sites should be partially within the Horticulture Precinct.

Another relevant matter to consider is that of reverse sensitivity. The reporting officer has identified two reverse sensitivity options:

Option A:

Ensure that the Horticulture Precinct includes a fringe area of land within the Precinct as a buffer to ensure sensitive activities do not establish in close proximity to horticultural activities; or

Option B:

Only apply the Horticulture Precinct to land identified by Dr Hill (as adjusted for defensible boundaries, a spatially cohesive area and land fragmentation/land use change) but introduce a setback that applies to the Rural Production zone to manage sensitive activities, as measured from the boundary of the Horticulture Precinct.

The reporting officer recommends a mixture of both options to manage reverse sensitivity effects. She states:

The locations where I think Option A is the most appropriate (i.e. including areas within the Horticulture Precinct that may already be fragmented and contain a range of non-productive activities) are along the boundaries between the urban and Rural Residential areas of Kerikeri and Waipapa. These are the interfaces under the most pressure from urban expansion and/or demand for Rural Residential scale development.

I acknowledge the common theme from a range of submitters that much land around Kerikeri and Waipapa is already fragmented, is predominantly used for residential activities and/or commercial activities and is unlikely (either due to lot size and/or current land use) to ever be used for horticultural activities. These arguments have been put forward predominantly from submitters located in either the area bound by Access Way, Kerikeri Road and State Highway 10 near Kerikeri, or in the area around Koropewa Road, Pungaere Road and Riverstream Drive near Waipapa. I agree that, despite this land being identified as largely containing good soils by Dr Hill, the existing land uses and fragmentation of parcels in and around existing horticulture activities is a limitation on what productive activities that land can, or is likely to, be used for in the future.

However, in my view, excluding these areas from the Horticulture Precinct increases the likelihood that further fragmentation and/or establishment of sensitive activities will occur and continue to spread out towards the land currently in horticultural production, i.e. a continuation of the status quo. This is also an outcome that is

inconsistent with the strategic direction in the KKWSP to achieve a compact urban form. The key reasons for retaining these areas within the Horticulture Precinct are to manage reverse sensitivity effects (including for the pockets of horticulture activities that are still operating in these fragmented areas) and to send a clear signal that further sprawl of rural residential and/or commercial development on the edges of Kerikeri and Waipapa is not an outcome supported by the PDP.⁴

For the balance of the proposed Horticulture Precinct, the reporting officer recommends the Option B approach being: a setback from the boundary of the Horticulture Precinct rather than to include more land parcels as it allows for the remainder of the sites outside of that setback to be used for sensitive activities. The reporting officer advises that, to be consistent with the recommendations for the Rural Zones topic (Hearing 9), an additional setback of 20m for sensitive activities be applied to properties zoned Rural Production that adjoin the Horticulture Precinct.

At the hearing we were advised that the final Horticulture Precinct was 22% smaller (approximately 1,500ha) than the original Horticulture zone, as notified. We were also advised that the majority of the land to be removed from the new precinct is recommended to be rezoned RPROZ.

Our evaluation of the spatial extent of the Horticulture Precinct relies on and adopts the methodology and assessment of Dr Hill and the reporting officer in principle but considers the merits of each specific request to rezone land within recommended Horticulture Precinct on their own merits.

The final layout of the Horticulture Precinct recommended by the reporting officer is set out in Appendix 6 to the hearing and report, reproduced in Figure 2 below and contained in **Appendix 3.1**.

3.4.2 Highly Productive Land

As set out in section 3.2 and 3.3 of the **Preamble Report** the NPS-HPL as amended in December 2025 has removed consideration of Clauses 3.6(1), 3.6(2), 3.6(3) and 3.6(4) when considering urban rezoning of LUC Class 3 land. As the reconfiguration of the Horticulture zone into a Horticulture Precinct only involves rural zoned land, the recent amendments to the NPS-HPL do not apply.

We understand that the approach taken by Dr Hill and Ms Pearson has recommended retaining of the LUC Class 3 land within the precinct in order to protect those horticulture industries that have been established and to link smaller areas of LUC Class 2 and 3 into more effective and manageable horticultural farming areas. In that regard we agree that the retention of LUC Class 3 soil within the Horticulture Precinct is very important to land productivity in the Far North. As set out in our reasoning for a Horticulture Precinct in Hearing 9, we have found that the horticulture industry (especially in Kerikeri) is a vitally important economic component of the Far North economy and should be maintained and protected.

⁴ Hearing Report 15C – Urban paragraphs 104-106

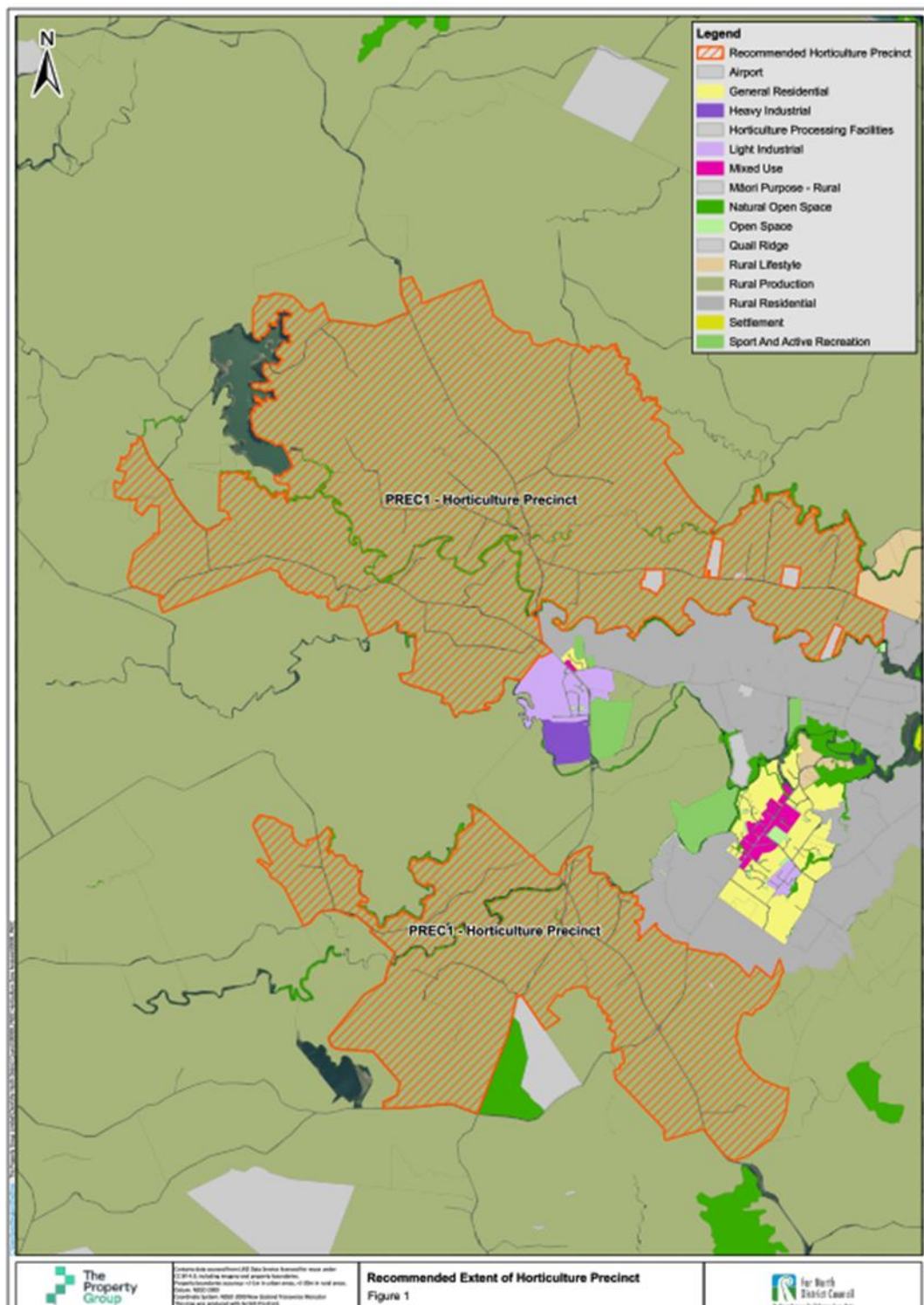


Figure 2: Recommended extent of Horticulture Precinct

3.4.3 Hearings Panel Evaluation

We generally support the spatial extent of the proposed Horticulture Precinct based on the methodology and assessment undertaken by Dr Hill and the reporting officer. We note that while we heard evidence from several submitters seeking their land be removed from the Horticulture Precinct (and rezoned) we did not hear any evidence that challenged the methodology adopted by Dr Hill and the reporting officer, in principle. Added to that is our acknowledgement that while we directed the Council and submitter soil experts to

conference on the spatial extent of the Horticulture Precinct, no submitter made their soil expert available. On that basis we accept the methodology adopted by Dr Hill and further planning analysis of the reporting officer with regard to the spatial extent of the Horticulture Precinct, in principle.

Except for those areas which we recommend be rezoned and/or excluded from the Horticulture Precinct (as set out in the sections that follow) we recommend that a Horticulture Precinct be applied to the land as set out in **Appendix 3.1** to this recommendation report.

3.4.4 Recommendations and Reasons

For the reasons set out in section 3.4.3 above we recommend the following:

- a) That the Horticulture zone, a special purpose zone, be re-configured as a Horticulture Precinct;
- b) That the spatial extent of the Horticulture Precinct be generally as set out in Appendix 6 of the Council Right of Reply report except for where we recommend additional changes as set out in the mapping recommended by us and contained in **Appendix 3.1** to this recommendation report.

3.5 Key Issue 2 – McCaughan Road Submitters

Michael Francis Toft, Robert George Vellenoweth, Campbell Family Trustee Limited and others (S266.001) request that seven properties on McCaughan Road, Kerikeri are rezoned from Horticulture zone to RRZ⁵ (referred to in this report as the **McCaughan Road submitters**).

The McCaughan road submitters consider Rural Residential zoning aligns better with the existing environment and note that there are no existing horticultural activities at any of the properties. The McCaughan Road submitters consider that the land has already been subdivided to an extent that reversion to horticultural land use is unlikely. The McCaughan Road submitters are “opt in” submitters in accordance with Minute 14 but no evidence was provided by them prior to this report being completed.

The assessment in the hearing report acknowledged that the soils between McCaughan Road and Waipapa Stream (to the south) were generally poor quality. However, the land further to the north along McCaughan Road contains good quality soils that warrant, in Dr Hill's view, inclusion in the Horticulture Precinct. It is also noted (and confirmed when we visited the area) that many of the land parcels between McCaughan Road and Kapiro Road to the north are currently being used for horticulture, which confirms, in Ms Pearson's view, that there are a combination of factors that make this area suitable for commercial horticulture.

In the hearing report, the reporting officer concedes that the McCaughan Road land parcels that are the subject of this submission are too small to be used for horticulture (approximately 1-1.8ha in area) and are currently being used as rural lifestyle properties but adds:

⁵ Legal descriptions are: NA127A/757 57, NA123A/757 63, NA123A/748 79, NA123A/749 93, NA123A/454 49E, NA110C/920 41, NA124C/708 37F.

Attachment 3: A list of persons to be served with a copy of this notice.

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Isles Casey Trustee Services Limited, WWC Trustee Company Limited - - PO Box 1346, Rotorua
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Jayesh Govind and Others - - 22 Niagara Crescent, Lynfield, Auckland 1042
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