Before the Panel of Hearing Commissioners for the Queenstown Lakes Proposed District Plan

In the matter of	the Resource Management Act 1991 (**RMA**)
And	
In the matter of	Proposed District Plan: Stage 2 Hearing Stream 15 - Visitor Accommodation

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Case book for legal submissions of counsel for Bookabach Ltd (S2302) and Bachcare (S2620)

DLA PIPER

205 Queen Street, Auckland 1010
PO Box 160, Auckland 1140
DX CP24027 Auckland
Tel +64 9 303 2019
Fax +64 9 303 2311

Solicitor on the record	Diana Hartley	diana.hartley@dlapiper.com	Tel +64 9 300 3826
Contact solicitor	**Anne Buchanan**	**anne.buchanan@dlapiper.com**	**Tel +64 9 300 3807**

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CASE BOOK FOR LEGAL SUBMISSIONS OF COUNSEL FOR BOOKABACH LTD (S2303) AND BACHCARE (S2620)

Tab	Case
1	*Royal Forest and Bird Protection Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51.
2	*Horticulture New Zealand Ltd v Far North District Council* [2017] NZEnvC 47.

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC051

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14 of Schedule 1 to the Act
BETWEEN	ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED
	(ENV-2016-AKL-000014)
	Appellant
AND	WHAKATĀNE DISTRICT COUNCIL
	Respondent

Court:	Environment Judge DA Kirkpatrick Environment Commissioner RM Dunlop Environment Commissioner WR Howie
Hearing:	At Whakatāne on 9 March 2017 Respondent's submissions in reply filed on 24 March 2017
Appearances:	S Gepp for Royal Forest & Bird Protection Society Inc D Riley for Whakatāne District Council
Date of Decision:	6 April 2017
Date of Issue:	6 April 2017

DECISION OF THE ENVIRONMENT COURT

A: The appeal is refused.

B: The provisions of the proposed Whakatāne District Plan are amended in the terms set out in **Attachments A and B** to this decision.

C: There is no order as to costs.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

REASONS

Introduction

[1] The review of the Whakatāne District Plan, notified on 28 June 2013, has now progressed to the point where the only remaining issue to be resolved is the status or classification of the activity of harvesting of mānuka and kānuka in Significant Indigenous Biodiversity Sites (**SIBS**) listed in the schedules to Chapter 15 – Indigenous Biodiversity.

[2] The relevant decisions of the Whakatāne District Council (**the Council**) on submissions were that such harvesting should be a restricted discretionary activity in SIBS listed in Rule 15.7.1 Schedule A (Coastal and Wetland Sites) and a permitted activity in SIBS listed in Rule 15.7.3 Schedule C (Te Urewera-Whirinaki Sites).

[3] The appellant, Royal Forest & Bird Protection Society Inc (**the Society**) seeks in its appeal that such harvesting be a non-complying activity in SIBS in Schedule A and a restricted discretionary activity in SIBS in Schedule C.

[4] The parties agree that such harvesting should be a restricted discretionary activity in SIBS listed in Rule 15.7.2 Schedule B (Foothills).

Background

[5] As notified, the proposed Whakatāne District Plan included Rule 15.2.1.1(9) stating the activity status for the following activity:

	Activity Status	Schedule A	Schedule B	Schedule C
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal Zone, for commercial use provided that; a. an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate; b. that no more that 10% of the **Significant Indigenous Biodiversity Site** is harvested in any one year; and c. that a sustainable management plan verifying the above is submitted to **Council**.	RD	C	P

[6] The Society, in its submissions on the proposed District Plan in relation to this

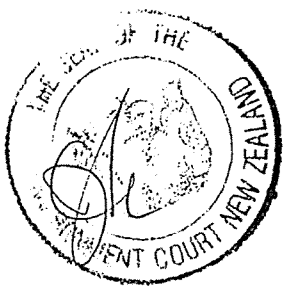
activity, submitted that there should be no permitted or controlled harvesting of mānuka and kānuka within scheduled SIBS, that the replanting conditions were not enforceable and that the ten per cent per year threshold was unsustainable. It sought to change the activity status or classifications in this part of the activity table to non-complying for SIBS in Schedule A and to discretionary for SIBS in Schedules B and C.

[7] The Council's decisions on submissions and further submissions on the plan in relation to Chapter 15 – Indigenous Biodiversity said this at paragraph 13.2.9 in relation to activity 9 in Rule 15.2.1:

> The committee heard evidence from several submitters including Mr Brosnahan about the status and threshold level for sustainable harvesting of mānuka and kānuka. Forest & Bird and P Fergusson asked for a more restrictive status for commercial harvesting of kānuka and mānuka within SIBS, while DoC requested clarification that the reference to ten per cent in the Rule applied to mānuka and kānuka rather than all indigenous vegetation. Federated Farmers and John Fairbrother for Nikau Farms sought provisions that allow the harvesting in a sustainable way as either a permitted or controlled activity in all SIBS.
>
> The committee notes that the rule is intended to provide for sustainable harvesting of mānuka and kānuka, recognising that in some SIB regenerating mānuka and kānuka can be managed sustainably to enable the economic benefits to be gained from the activity. However, the committee takes particular note that the rule does not apply to vulnerable coastal mānuka and kānuka in the Rural Coastal zone.
>
> The committee notes that commercial extraction of mānuka and kānuka have been managed sustainably for many years as mānuka and kānuka grows relatively fast and can be sustainably harvested while retaining significant values.
>
> The committee agrees with the submission by DoC that clearance of ten per cent of the total area of a SIB could amount to a large amount of clearance in any one year, particularly in the SIB extended over multiple titles and included other vegetation types. To address this issue the amended wording is accepted to clarify that the clearance relates to ten per cent of the total area of mānuka and kānuka as follows:
>
> > *"Harvesting of mānuka and kānuka excluding any kānuka in the rural coastal zone, for commercial use provided that:*
> >
> > *(a) an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate;*
> >
> > *(b) that no more than ten per cent of the total area of kānuka and mānuka in a scheduled feature ~~Significant Indigenous Biodiversity Site~~ on any site is harvested in any one year; and*
> >
> > *(c) that a sustainable management plan verifying the above is submitted to Council."*

[8] The decision made no change to the activity status in any of the Schedules.

[9] The Society's appeal against this decision is on the grounds that allowing commercial harvesting of mānuka and kānuka on a concessionary basis does not protect the habitat values of this vegetation type which may contain threatened species, and does not recognise the successional aspect of forest ecology, and that the



conditions are unenforceable. The relief sought in the appeal on this matter was the same as the submission, namely that the activity should be non-complying in Schedule A sites and discretionary in Schedules B and C sites.

[10] The Council and the Society, with other interested parties, participated in mediation of this and many other matters in the Indigenous Biodiversity chapter. The relevant outcomes for the purposes of this appeal were that the description of Activity 9 in (now) Rule 15.2.1.2 (including its requirements, conditions, and permissions) was reworded but the activity status for areas listed in Schedules A and C was not agreed, as follows:

	Activity Status	Schedule A <u>Coastal and Wetlands</u>	Schedule B <u>Foothills</u>	Schedule C <u>Te Urewera - Whirinaki</u>
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted in the same year in the same or similar indigenous species or allowed to naturally regenerate; <u>b.</u> <u>the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration</u>; and <s>b</s><u>c.</u> no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; <s>and</s> <u>d.</u> <u>kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover</u>; <u>and</u> <s>c. a sustainable management plan verifying the above is submitted to **Council.**</s>	<s>RD</s> D <u>or</u> NC	<s>C</s> RD	P <u>or</u> RD

[11] The deletion of condition (c) (as notified) was addressed through mediation by the insertion of a new rule 15.2.6 – *Harvesting of kānuka and mānuka (Rule 15.2.1.2(9))*, which provides:

> *An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements (in (c) and (d) of 15.2.1.2(9) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.*

[12] Also agreed through this mediation process was that the activity status for classification of such harvesting in SIBS listed in Schedule B should be restricted

discretionary.

[13] The remaining issues for the Society and the focus of the hearing of this appeal are the appropriate activity statuses or classifications for such harvesting as described in Activity 9 in SIBS listed in Schedules A and C.

Relevant planning provisions

[14] It was common ground between the Society and the Council that the following provisions of the operative Bay of Plenty Regional Policy Statement (**RPS**) concerning matters of national importance are relevant to this appeal:

> **Policy MN 1B: Recognise and provide for matters of national importance**
>
> *(a) Identify which natural and physical resources warrant recognition and provision for as matters of national importance under section 6 of the Act using criteria consistent with those contained in Appendix F of this Statement;*
>
> *...*
>
> *(c) Recognise and provide for the protection of areas of significant indigenous vegetation and habitats of indigenous fauna identified in accordance with (a); ...*
>
> **Policy MN 2B: Giving particular consideration to protecting significant indigenous habitats and ecosystems**
>
> *Based on the identification of significant indigenous habitats and ecosystems in accordance with Policy MN 1B:*
>
> *(a) Recognise and promote awareness of the life-supporting capacity and the intrinsic values of ecosystems and the importance of protecting significant indigenous biodiversity;*
>
> *(b) Ensure that intrinsic values of ecosystems are given particular regards to in resource management decisions and operations;*
>
> *(c) Protect the diversity of the region's significant indigenous ecosystems, habitats and species including both representative and unique elements;*
>
> *(d) Manage resources in a manner that will ensure recognition of, and provision for, significant indigenous habitats and ecosystems; and*
>
> *(e) Recognise indigenous marine, lowland forest, freshwater, wetland and geothermal habitats and ecosystems, in particular, as being underrepresented in the reserves network of the Bay of Plenty.*
>
> **Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act**
>
> *Include in any assessment required under Policy MN 1B, an assessment of: ...*
>
> *(c) Whether areas of indigenous vegetation and habitats of indigenous fauna are significant, in relation to section 6(c) of the Act, on the extent to which criteria consistent with those in Appendix F set 3: Indigenous vegetation and habitats of indigenous fauna are met;*
>
> **Policy MN 7B: Using criteria to assist in assessing inappropriate development**
>
> *Assess, whether subdivision, use and development is inappropriate using criteria consistent with those in Appendix G, for areas considered to warrant protection under section 6 of the Act due to:*
>
> *(a) Natural character;*

(b) Outstanding natural features and landscapes;

(c) Significant indigenous vegetation and habitats of indigenous fauna;

(d) Public access;

(e) Māori culture and traditions; and

(f) Historic heritage.

Appendix G – Criteria applicable to Policy MN 7B

Policy MN 7B

Methods 1, 2, 3 and 11

1 Character and degree of modification, damage, loss or destruction;

2 Duration and frequency of effect (for example long-term or recurring effects);

3 Magnitude or scale of effect (for example number of sites affected, spatial distribution, landscape context);

4 Irreversibility of effect (for example loss of unique or rare features, limited opportunity for remediation, the costs and technical feasibility of remediation or mitigation);

5 Resilience of heritage value or place to change (for example ability of feature to assimilate change, vulnerability of feature to external effects);

6 Opportunities to remedy or mitigate pre-existing or potential adverse effects (for example restoration, enhancement), where avoidance is not practicable;

7 Probability of effect (for example likelihood of unforeseen effects, ability to take precautionary approach);

8 Cumulative effects (for example loss of multiple locally significant features).

Policy MN 8B: Managing effects of subdivision, use and development

Avoid and, where avoidance is not practicable, remedy or mitigate any adverse effects of subdivision, use and development on matters of national importance assessed in accordance with Policy MN 1B as warranting protection under section 6 of the Act.

[15] The proposed District Plan, as amended by decisions on submissions, is now past the point where any of its provisions (other than those which are the subject of this appeal) can be changed. We therefore treat the proposed provisions as having greater weight than any provisions in the operative District Plan.

[16] The following strategic provisions of the proposed District Plan were agreed to be relevant:

Strategic objective 7 (Our special places – Māori and iwi):

Subdivision, use and development are managed so that tāngata whenua, including kaitiaki maintain and enhance their culture, traditions, economy and society.

Strategic objective 8 (Our special places):

The natural, cultural and heritage resources that contribute to the character of the district are identified, retained and protected from inappropriate subdivision, use and development.

Policy 2 *To recognise the contribution that natural character, landscapes, biodiversity and heritage resources make to the social, cultural and economic wellbeing of people; and to provide for the* ***maintenance***

and enhancement of those resources in resource management decisions.

[17] The following objectives and policies of chapter 15 of the proposed District Plan on Indigenous Biodiversity[1] were agreed to be relevant:

Objective IB1: *Maintenance of the full range of the district's indigenous habitats and ecosystems, including through restoration and enhancement.*

Policy 2 *To recognise sustainable land management practices and cooperative industry arrangements that reflect the principles of stewardship and kaitiākitanga, and to take into account the range of alternative methods in the maintenance and protection of indigenous biodiversity, including Tasman Forest Accord, NZFOA Forest Accord, Iwi Management Plans, Bay of Plenty Regional Council biodiversity management plans and protective covenants with the QEII Trust and Nga Whenua Rāhui.*

Objective IB2: *Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.*

Policy 1(b): *To ensure that subdivision, use and development, is undertaken in a manner that protects scheduled* ***significant indigenous biodiversity sites*** *by: …*

(b) outside the coastal environment, avoiding and where avoidance is not practicable, remedying or mitigating adverse effects including the loss, fragmentation or degradation of those sites and the cumulative effects on ecosystems.

Policy 5: *To provide for the sustainable use of indigenous vegetation including scheduled significant indigenous biodiversity sites where the adverse effects of this use are minor.*

[18] Section 15.4 of the proposed District Plan sets out the assessment criteria for restricted discretionary activities and Rule 15.4.4 provides:

15.4.4 ***Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))***

15.4.4.1 *Council shall restrict its discretion to:*

a. *Timing to enhance the regeneration or establishment of mānuka and kānuka;*
b. *Stock type;*
c. *Grazing intensity;*
d. *Stock containment methods; and*
e. *Potential adverse effects on water bodies within the property.*

[19] In relation to activities which are classified as discretionary or non-complying, the relevant assessment criteria are set out in section 3.7 in Chapter 3 of the proposed District Plan. The introductory paragraph of this section states that the criteria are a guide to the matters that the Council can have regard to when assessing an application, but that they do not restrict the Council's discretionary powers under s 104(1)(a) of the Act to consider any actual or potential effects on the environment of allowing the

[1] As amended by a consent order dated 5 October 2016 in this proceeding and other related appeals.

activity.

[20] Section 3.7.13 sets out the criteria in respect of indigenous biodiversity effects as follows:

3.7.13.1 ***Council*** *shall have regard to;*

a. *any adverse effect on* ***ecosystems*** *including;*

   i. *coastal* ***ecosystems****;*

   ii. *estuarine margins;*

   iii. *rivers and streams, wetlands and their margins;*

   iv. *habitats of* ***indigenous fauna*** *or flora;*

   v. *the cumulative effects of the activity on habitat of* ***indigenous vegetation*** *and fauna;*

   vi. *the degree to which the activity will result in the fragmentation of indigenous habitat and adversely impact on the sustainability of remaining vegetation;*

   vii. *the impact on ecological linkages and connectivity between significant natural areas;*

   viii. *the degree to which the effects are reversible and the resilience of the feature to change;*

   ix. *the long-term sustainability of an affected coastal* ***ecosystem****, waterway, estuarine margin, wetlands and their margins, indigenous vegetation or habitat;*

   x. *the indigenous vegetation to be retained and the degree to which the proposal will protect, restore or enhance indigenous vegetation and the net ecological gain as a consequence of the activity; and*

   xi. *the means to protect fish habitats by maintaining riparian vegetation;*

b. *the effect on Significant Biodiversity areas identified in Appendix 15.7.1, 15.7.2 and 15.7.3, or other sites considered significant according to criteria in the Bay of Plenty Regional Policy Statement;*

c. *the location of* ***buildings****, structures and services (such as* ***accessways****) in relation to how that may adversely affect ecological features;*

d. *specifically, the management of existing kānuka stands in the Rural Coastal Zone, and means of restoring or rehabilitating this regionally significant feature;*

e. *whether there is a reasonable alternative siting for the proposed activity or any alternative subdivision layout that will avoid, remedy or mitigate a significant adverse effect on the environment;*

f. *location of the activity relative to any indigenous area and its vulnerability to the pest species; method of containing the pest plant or animal; other barriers to the spread of the plant or animal pest; method of identifying animals (for example, branding); method of dealing with escapes;*

g. *plant and animal pest management;*

h. *the means to manage the adverse effects of pets, for example, cats, dogs, ferrets and rabbits on wildlife and vegetation;*

i. *whether there will be adverse effects on* ***ecosystems****, including effects that;*

i. may deplete the abundance, diversity or distribution of native species; or

ii. disrupt natural successional processes; or

iii. disrupt the long term ecological sustainability of Significant Biodiversity sites, including through increased fragmentation and vulnerability to pests; or

iv. obstruct the recovery of native species and the reversal of extinction trends, or the restoration of representative native biodiversity within an ecological district, ecological region, or nationally, or

v. reduce representative biological values within an ecological district, ecological region, or nationally, or

vi. reduce the area, or degrade the habitat value of an area set aside by statute or covenant for the protection and preservation of native species and their habitat, or

vii. degrade landscape values provided by native vegetation, or

viii. degrade soil or water values protected by native vegetation, or

ix. degrade a freshwater fishery, or

x. degrade aquatic ***ecosystems****.*

j. the degree of clearance in relation to the area retained or protected property.

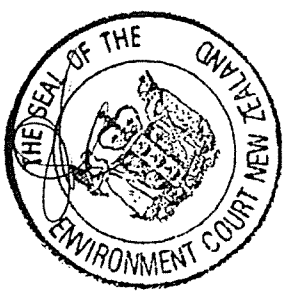
The evidence

[21] Mr Shaw, an expert ecologist called by the Council, has extensive knowledge of the natural environment in the district. He gave essentially unchallenged evidence of primary facts about the circumstances in which mānuka and kānuka are present in the district as follows:

(a) The three types of scheduled SIBS in Chapter 15 of the proposed Plan and the table in Rule 15.2.1.2 have been identified based on Land Environment New Zealand Classifications.

(b) There are six sites listed in Schedule A containing kānuka forest (that is, where more than 80 per cent of the cover consists of kānuka) and one further site of mixed kānuka-kamahi forest that could potentially contain more than 80 per cent cover in kānuka. They are located in the Te Teko, Taneātua and Ōtānewainuku Ecological Districts. They are smaller in size than the sites in Schedules B and C and are located in much modified environments.

(c) The sites listed in Schedule C are much larger and fall largely within the Whirinaki, Ikawhenua and Waimana Ecological Districts with some also present in the Taneātua and Waioeka Ecological Districts. Large



proportions of these districts, other than Taneātua, have a cover of indigenous vegetation: from Waimana at 98 per cent to Whirinaki at 78 per cent. Most of these districts also have very high levels of formal protection as reserves under the Reserves Act or by way of covenants, of the order of 76-89 per cent.

(d) Commercial harvesting of kānuka for firewood is a longstanding (over many decades) activity in various parts of Whakatāne district. Typically, trees are harvested and the areas are left to regenerate naturally, often in the presence of grazing. Currently, most of this activity occurs on sites listed in Schedule B, with little or none presently occurring on sites listed in Schedules A and C.

(e) The areas in Schedule C with significant extensive kānuka dominant forest which are unprotected either as reserves or by way of covenants are all physically inaccessible and therefore are not subject to harvesting.

(f) The value of mānuka as firewood appears to be diminishing, with much higher values being placed on it for the harvesting of foliage for use in skin and hair care products and as a resource for bee keeping and honey production.

[22] Against this factual background, Mr Shaw expressed the following principal opinions:

(a) The small size and limited number of the sites listed in Schedule A means that assessment of the effects of harvesting in these areas can be done effectively.

(b) An activity status of discretionary is sufficient in the Schedule A areas, given the clear requirements in the objectives, policies and assessment criteria for promoting sustainable management in terms of the conditions on the activity for regeneration and the scope of the general discretion to decline consent.

(c) While the sites listed in Schedule C are substantially larger, other methods of protection and limited accessibility means that including rules in the plan to require resource consents to be obtained for harvesting in these areas would be of little benefit.

[23] The Council also called Mr McGhie, its principal planner, to outline the Council's planning approach. Mr McGhie relied on the evidence of Mr Shaw as the basis for his planning assessment. Mr McGhie also outlined the views that had been expressed to the Council by Māori, who own much of the land in the areas where the Schedule C sites are located, during consultation and the submission process.

[24] Mr McGhie characterized the issue before the Court as one of balancing the protection of indigenous biodiversity with management responses that would be appropriate to each type of SIBS. In that regard, he observed that the Council had originally proposed only two types of SIBS, but had created Schedule C for two main reasons:

(i) Māori had objected to large tracts of land being controlled in ways that would unnecessarily restrict their development opportunities; and

(ii) the list in Schedule B would otherwise have consisted of sites varying significantly in size.

[25] Mr McGhie set out in his statement of evidence numerous amendments that had been made to Rule 15.2.1.2(9) and in other plan provisions through the process of mediation as summarised above. As well as the Rules referred to earlier in this decision, he also explained that a new definition of "naturally regenerate" had been inserted in chapter 21 of the proposed Plan and that the definition of "indigenous vegetation" had been amended to ensure that regenerated kānuka or mānuka was not covered by the exclusion for vegetation established for commercial purposes. These amendments were not in issue before us.

[26] Mr McGhie also set out his analysis of the activity rule in terms of s 32 of the Act and in the context of the relevant objectives and policies of the Regional Policy Statement and the proposed District Plan. In his opinion, a non-complying activity status for harvesting in Schedule A sites would be out of proportion with those objectives and policies given the degree of protection that the rule has been drafted to provide and the extent to which the process of considering an application for resource consent should include an assessment of sustainable practice to address the relevant assessment criteria in section 3.7.13 of the proposed District Plan. Given those considerations, he opined that a discretionary status was more appropriate.

[27] In relation to a permitted activity status for the Schedule C sites, he also expressed the opinion that this would be consistent with the relevant objectives and

policies and would better address landowner concerns, subject to a restricted discretionary activity status applying where grazing is proposed during the natural regeneration phase.

[28] The Society called Ms Myers as an expert ecologist. In her evidence, Ms Myers set out the ecological context for the harvesting of mānuka and kānuka. She noted the extent of ongoing loss of indigenous biodiversity nationally and emphasised the ecological values of kānuka and mānuka forest in Whakatāne District and, especially, the national importance of Te Urewera for its range of ecological diversity. She stressed the successional role of kānuka and mānuka and the benefits that these species provide in the form of buffers for other forest species and corridor functions between stands of bush and forest. She noted that there was a lack of specific survey information to enable the extent of harvesting and regeneration to be quantified.

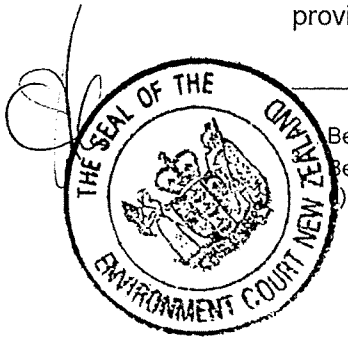
[29] In her opinion, rules for vegetation clearance should be based on the ecological values of that vegetation, as the degree of threat to an ecosystem may be unknown or can change over time. On that basis, she expressed the opinion that harvesting in areas listed in Schedule A should be non-complying because those areas are small and vulnerable and that resource consent as a restricted discretionary activity should be required for harvesting in sites in Schedule C in order to provide a basis for understanding the extent of that activity and its effects.

[30] Ms Myers agreed with the changes to these plan provisions that had been achieved through mediation.

Relevant considerations for a district plan

[31] Under s 290 of the Act, the Court has the same power, duty, and discretion in respect of a decision appealed against as the person against whose decision the appeal is brought. We must accordingly proceed to consider the issues on appeal on the same statutory basis as they were considered by the Council.

[32] The Council was required to prepare its the proposed District Plan in accordance with ss 74 and 75 of the Act,[2] and the Court must now consider the provisions still in issue in this appeal under those sections.[3] Those sections now



[2] Being s 74 in the form it was when the proposed District Plan was notified on 28 June 2013.
[3] Being s 74 in the form inserted by s 78 Resource Management Amendment Act 2013, given:
(a) the commencement of those sections under s 2(2)(b) of the Amendment Act on 3 December 2013; and

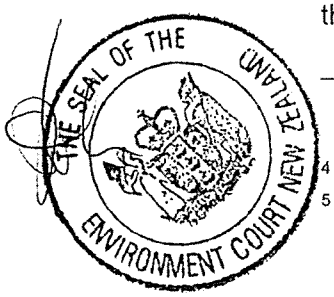
relantly provide:

> ***74 Matters to be considered by territorial authority***
>
> *(1) A territorial authority must prepare and change its district plan in accordance with—*
>
> *(a) its functions under section 31; and*
>
> *(b) the provisions of Part 2; and ...*
>
> *(d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and*
>
> *(e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; ...*
>
> *(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to— ...*
>
> *(b) any—*
>
> *(i) management plans and strategies prepared under other Acts; ...*
>
> *(2A)A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. ...*
>
> ***75 Contents of district plans***
>
> *(3) A district plan must give effect to— ...*
>
> *(c) any regional policy statement.*

[33] The Council plainly has a function of the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity under s 31(1)(b)(iii).

[34] In relation to the consideration of Part 2 of the Act, counsel for the Council referred us to the Court's decision in *Appealing Wanaka Inc v Queenstown-Lakes District Council*[4] and submitted that because the relevant objectives and policies of the proposed Plan for indigenous biodiversity are beyond challenge, there is no need to look past them to Part 2 of the Act.

[35] That decision is based on the reasoning of the Supreme Court in *Environmental Defence Society v NZ King Salmon*.[5] The Supreme Court held that there is a hierarchy of statutory planning instruments under the Act in order to achieve the purpose of the Act. The purpose of these instruments is to give substance to the principles in Part 2 of the Act. Where an instrument has been prepared to give effect to a higher instrument,



(ii) there appears to be no transitional provision in the Amendment Act which would require the application of s 74 of the Act as it stood when the proposed District Plan was notified.

4 *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139.

5 *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

there is no need to refer back to that higher instrument, or to Part 2 of the Act, to interpret and apply the lower instrument unless there was a challenge based on invalidity, incompleteness or uncertainty in relation to the lower instrument.[6]

[36] In the present case, there is no issue before us of invalidity, incompleteness or uncertainty in the relevant objectives and policies of the proposed District Plan. Accordingly, our consideration of the most appropriate activity status for the harvesting or mānuka and kānuka in SIBS listed in Schedules A and C to the District Plan should be in terms of those relevant objectives and policies.

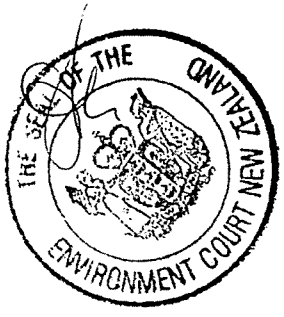
[37] We address matters concerning the obligation to prepare and have particular regard to an evaluation report in accordance with s 32 of the Act under a separate heading below.

[38] In relation to management plans and strategies prepared under other Acts, Counsel for the Council referred us to Te Urewera Act 2014. The purpose of that Act is:[7]

> *... to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to—*
>
> *(a) strengthen and maintain the connection between Tūhoe and Te Urewera; and*
>
> *(b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and*
>
> *(c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.*

[39] The principles for achieving that purpose are:[8]

> *(1) In achieving the purpose of this Act, all persons performing functions and exercising powers under this Act must act so that, as far as possible,—*
>
> *(a) Te Urewera is preserved in its natural state:*
>
> *(b) the indigenous ecological systems and biodiversity of Te Urewera are preserved, and introduced plants and animals are exterminated:*
>
> *(c) Tūhoetanga, which gives expression to Te Urewera, is valued and respected:*
>
> *(d) the relationship of other iwi and hapū with parts of Te Urewera is recognised, valued, and respected:*
>
> *(e) the historical and cultural heritage of Te Urewera is preserved:*
>
> *(f) the value of Te Urewera for soil, water, and forest conservation is*



6 Ibid at [85] and [88].
7 Te Urewera Act 2014, s 4.
8 Te Urewera Act 2014, s 5.

maintained:

(g) the contribution that Te Urewera can make to conservation nationally is recognised.

(2) In achieving the purpose of this Act, all persons performing functions and exercising powers under this Act must act so that the public has freedom of entry and access to Te Urewera, subject to any conditions and restrictions that may be necessary to achieve the purpose of this Act or for public safety.

[40] This Act declares Te Urewera to be a legal entity and establishes a board for its governance and management. That board is under an obligation to prepare a management plan to identify how the purpose of the Act is to be achieved and to set objectives and policies for Te Urewera, but we understand that such a plan has not yet been prepared.

[41] We were also referred to an integrated planning protocol between Tuhoe Te Uru Taumatua, the Council and other local authorities in which Te Urewera is situated, but that is not a statutory document and did not appear to contain any objectives or policies.

[42] We have set out above the policies of the RPS of most relevance to this appeal.

Evaluation under section 32 of the Act

[43] The necessary evaluation of a proposed rule under s 32 of the Act[9] involves an examination, to a level of detail that corresponds to the scale and significance of any anticipated effects, of whether the rule is the most appropriate way to achieve the objectives of the Plan by:

(a) identifying other reasonably practicable options for achieving those objectives;

(b) assessing the efficiency and effectiveness of the rule in achieving those objectives, including:

i) identifying, assessing and, if practicable, quantifying the benefits and

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[9] Being s 32 in the form inserted by s 70 Resource Management Amendment Act 2013, given:
(i) the commencement of those sections under s 2(2)(b) of the Amendment Act on 3 December 2013;
(ii) the transitional provision in cl 2 of Schedule 2 to the Amendment Act (inserting a new Schedule 12 in the principal Act) which requires the further evaluation under s 32 to be undertaken as if s 70 of the Amendment Act had not come into force only if it came into force on or after the last day for making further submissions on the proposed District Plan; and
(iii) the last day for making further submissions on the proposed District Plan being 19 December 2013.

costs of all the effects that are anticipated to be provided or reduced from the implementation of the rule; and

ii) assessing the risk of acting or not acting if there is uncertain or insufficient information; and

(c) summarising the reasons for deciding on that rule.

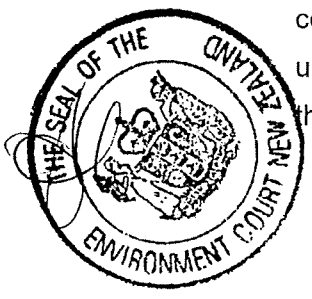
[44] Section 32 of the Act has been through several amendments since the Act first came into force. It is not necessary to rehearse the whole evolution of the section for the purposes of this case, but in light of the focus of this appeal and the wording of the relevant objectives and policies of the proposed District Plan it is appropriate to address one particular aspect of s 32 which has recently been inserted.

[45] The requirement to identify other means or options for achieving the purpose of the Act and the objectives of the plan which is being evaluated has been a central element of s 32 of the Act in all its versions. The current version appears to be the first time that the options have been qualified by the words *reasonably practicable*. The potential importance of this qualification is emphasised in this case given the centrality of Policy MN 8B in the RPS and Policy IB2(1)(b) in the proposed District Plan in argument before us and their wording which calls for consideration of whether avoiding adverse effects on significant indigenous vegetation and SIBS is or is not "practicable."

[46] Neither the word "practicable" nor the phrase "reasonably practicable" is defined in the Act. There is a definition of "best practicable option" in s 2 where it is defined to mean, unless the context otherwise requires:

> *in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—*
>
> *(a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and*
>
> *(b) the financial implications, and the effects on the environment, of that option when compared with other options; and*
>
> *(c) the current state of technical knowledge and the likelihood that the option can be successfully applied.*

[47] While acknowledging that this case is not concerned with the discharge of a contaminant or the emission of noise, we consider that this definition is helpful in understanding what the word "practicable" may mean in the context of the Act and how the practicability of an option should be analysed.



[48] The word "reasonably" is often used to qualify other words both in legislation and in case law. It has been held in relation to the predecessor provision to s 6(a) of the Act that it may be an implied qualification of the word "necessary."[10] Similarly in relation to s 341(2)(a) of the Act, the same qualification has been implied on the basis that it is unlikely that the legislature envisaged the unreasonable.[11] In the context of an earlier version of s 171(1)(c) of the Act, it has been held to allow some tolerance to the meaning of "necessary" as falling between expedient or desirable on the one hand and essential on the other.[12] There does not appear to be any reason why it should be interpreted differently when used (whether expressly or by implication) in the phrase "reasonably practicable."

[49] Examining other legislation which may be of assistance in this context, we also note that there is a definition of "reasonably practicable" in the Health and Safety at Work Act 2015, as follows:

> *In this Act, unless the context otherwise requires,* reasonably practicable, *in relation to a duty of a PCBU set out in subpart 2 of Part 2, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—*
>
> *(a) the likelihood of the hazard or the risk concerned occurring; and*
>
> *(b) the degree of harm that might result from the hazard or risk; and*
>
> *(c) what the person concerned knows, or ought reasonably to know, about—*
>
> *(i) the hazard or risk; and*
>
> *(ii) ways of eliminating or minimising the risk; and*
>
> *(d) the availability and suitability of ways to eliminate or minimise the risk; and*
>
> *(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.*

[50] Similar definitions are to be found in other legislation concerned with matters of health and safety and the protection of property, including in s 2 Electricity Act 1992, s 2 Gas Act 1992, s 69H Health Act 1956 and s 5 Railways Act 2005. The phrase is also used in many statutes without definition.

[51] These legislative examples are, perhaps unsurprisingly, consistent with well-established case law interpreting the meaning of "reasonably practicable." It has been

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[10] *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 at 260; (1989) 13 NZTPA 197 at 203 (CA) per Cooke P in relation to s 3(c) of the Town and Country Planning Act 1977, citing *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423, 430; and *Commissioner of Stamp Duties v International Packers Ltd and Delsintco Ltd* [1954] NZLR 25, 54.

[11] *Rugle v Cowie* [1998] 1 NZLR 104 at 109-110; [1997] NZRMA 395 at 400-401; (1997) 3 ELRNZ 261 at 268 (HC).

[12] *Bungalo Holdings Ltd v North Shore City Council* A137/2002 at [94].

held that the phrase is a narrower term than "physically possible" and implies a computation of the quantum of risk against the measures involved in averting the risk (in money, time or trouble), so that if there is a gross disproportion between them, then extensive measures are not required to meet an insignificant risk.[13] Where lives may be at stake, a practicable precaution should not lightly be considered unreasonable, but if the risk is a very rare one and the trouble and expense involved in precautions against it would be considerable but would not afford anything like complete protection, then adoption of such precautions could have the disadvantage of giving a false sense of security.[14] "Practicable" has been held to mean "possible to be accomplished with known means or resources" and synonymous with "feasible," being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience.[15] Conversely, "not reasonably practicable" should not be equated with "virtually impossible" as the obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances; where human safety is involved, factors impinging on that must be given appropriate weight.[16]

[52] While acknowledging that this case is not governed by any of those other Acts referred to and that the case law summarised above was decided under other legislation, nonetheless we consider the approach consistently taken in other legislation and by other Courts to the assessment of the correct approach to or the boundaries of what is "practicable" in relation to a duty to ensure the health and safety of people and the protection of property could be analogous to the approach which may be taken to protecting, or otherwise dealing with adverse effects on, the environment under the Resource Management Act 1991.

[53] We consider that these statutory provisions and cases together illustrate a consistent approach to the meaning of "reasonably practicable" which we respectfully adopt in this case in considering the options before us. We accordingly proceed to consider RPS Policy MN 8B and District Plan Policy IB2(1)(b) and identify reasonably practicable options for achieving the objectives of the proposed District Plan by examining the options having regard to, among other things:

[13] *Edwards v National Coal Board* [1949] 1 KB 704; [1949] 1 All ER 743 (EWCA).
[14] *Marshall v Gotham Co Ltd* [1954] AC 360; [1954] 1 All ER 937 (UKHL).
[15] *Union Steam Ship Co of NZ Ltd v Wenlock* [1959] 1 NZLR 173 (CA).
[16] *Auckland City Council v NZ Fire Service & anor* [1996] 1 NZLR 330 (HC).

i) The nature of the activity and its effects;

ii) The sensitivity of the environment to adverse effects generally and to the identified effects of the activity in particular;

iii) The likelihood of adverse effects occurring;

iv) The financial implications and other effects on the environment of the option compared to other options;

v) The current state of knowledge of the activity, its effects, the likelihood of adverse effects and the availability of suitable ways to avoid or mitigate those effects;

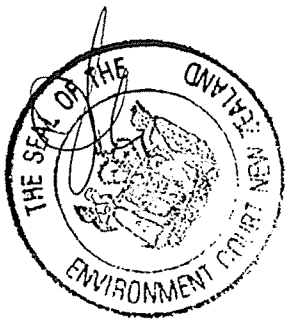
vi) The likelihood of success of the option; and

vii) An allowance of some tolerance in such considerations.

The extent to which adverse effects must be avoided

[54] A further consideration arising from the centrality of RPS Policy MN 8B and District Plan Policy IB2(1)(b) in the argument is the need expressed in those policies to avoid adverse effects on significant indigenous vegetation and scheduled SIBS or, where avoidance is not practicable, to remedy or mitigate adverse effects.

[55] The most obvious meaning of "avoid" in the context of the Act and in policy statements under it, as held by the Supreme Court in *Environmental Defence Society v NZ King Salmon*,[17] is "not allow" or "prevent the occurrence of." The Supreme Court then goes on to explore the contexts in which the word is used and, in particular, the importance of its meaning when used with the word "inappropriate" in relation to subdivision, use and development. That exploration is principally in the context of s 6(a) and (b) of the Act and against the framework of the New Zealand Coastal Policy Statement. It is clear, however, that the approach of the Supreme Court is equally applicable in other contexts where the extent of avoidance called for by a policy is to be considered.[18]



[17] *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442 at [92]-[97].

[18] See for example *R J Davidson Family Trust v Marlborough DC* [2017] NZHC 52 at [61]-[93] where the Supreme Court's approach in relation to a proposed plan change was held to be a lawful consideration in relation to an application for resource consents.

[56] Certainly, in relation to this case which involves a plan review and proposed provisions intended to recognise and provide for the protection of areas of significant indigenous vegetation as required by s 6(c) of that Act, it was common ground that the approach of the Supreme Court was applicable.

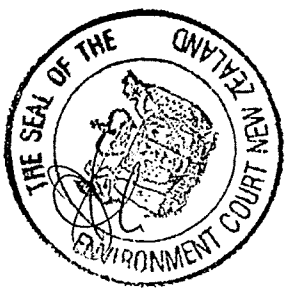
[57] The consideration of context is, as it usually is,[19] an essential part of the interpretation and application of policy provisions. It is generally insufficient to refer to the presence of the word "avoid" as a conclusion in itself: a policy to avoid adverse effects of activities on the environment, without any greater particularity, could be said to be a basis for not allowing any activity at all. As the Court of Appeal recently observed in *Man o'War Station Ltd v Auckland Council,*[20] much turns on what is sought to be protected.

[58] We bear this guidance respectfully in mind in considering not just whether the SIBS listed in Schedules A and C to Chapter 15 of the proposed District Plan should be protected, but the extent of such protection and the manner in which such protection is intended to be achieved.

[59] In considering what rule may be the *most appropriate* in the context of the evaluation under s 32 of the Act, we consider that notwithstanding the amendments that have been made to that section in the meantime, the presumptively correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*:[21] that where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling people to provide for their well-being while addressing the effects of their activities.

Classes, categories or status of activities

[60] The power to categorise activities into one of six classes and to make rules and specify conditions for each class is conferred by s 77A of the Act. The six classes of



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19 *R (Daly) v Secretary of State for the Home Department* [2001] 2 WLR 1622 (UKHL), 1636 per Lord Steyn; referred to in *McGuire v Hastings DC* [2001] NZRMA 557 (PC) at [9] per Lord Cooke.

20 *Man o'War Station Ltd v Auckland Council* [2017] NZCA 24 at [65] as part of discussion in [59]-[66] and [70]-[73].

21 *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

activities are listed in s 77A(2) and described in s 87A. The class of an activity is often referred to as its "activity status."[22]

[61] The six classes may be seen as a spectrum of control from *permitted* through to *prohibited* in a progression of increasing levels of constraint:

(i) a permitted activity requires no resource consent and may be undertaken as of right if it complies with the requirements, conditions and permissions, if any, specified in the Act, regulations or relevant plan;

(ii) a controlled activity requires a resource consent but that consent must (with limited exceptions) be granted and may be subject to conditions within the scope of control specified in the relevant plan or national environmental standard;

(iii) a restricted discretionary activity requires a resource consent but the consent authority's power to decline an application for such an activity or to grant consent and impose conditions is restricted to the matters specified for that purpose in the plan or national environmental standard;

(iv) a discretionary activity requires a resource consent and the consent authority's discretion to decline consent or to grant consent with or without conditions is, within the scope of the Act itself, unlimited;

(v) a non-complying activity must be assessed against the threshold tests in s 104D of the Act and may be granted only if it passes one of those threshold tests; and

(vi) a prohibited activity is one for which no application for resource consent may be made.

[62] Counsel for the Council referred us to well-known decisions in *New Zealand Mineral Industry Association v Thames-Coromandel District Council*[23] and *Mighty River Power Limited v Porirua District Council*[24] in support of her argument that the harvesting of trees from sites listed in Schedule A should be discretionary rather than non-

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22 The phrase "activity status" appears only in s 149G of the Act, inserted on 1 October 2009, but the usage among practitioners is considerably older than that.

23 *New Zealand Mineral Industry Association v Thames-Coromandel District Council* (2005) 11 ELRNZ 105.

24 *Mighty River Power Limited v Porirua District Council* [2012] NZEnvC 213.

complying. She did acknowledge, however, in response to a question from the Court that the statements in those decisions on which she relied were conditioned by the factual circumstances before the Court in those two cases. We consider that acknowledgement to be properly made and, with respect to those decisions and others of a similar nature,[25] we think that caution must be exercised in applying the reasoning in those decisions to other cases. Without doubting the correctness of the statements in the context of the cases in which they were made, the complexity of plan making means that the classification of activities in other circumstances is likely to require specific analysis of the effects of the activity against the particular objectives and policies which relate to the activity being assessed.

[63] It is important to note that the statutory framework for the classification of activities contains no provisions which address the application of these categories or classes to any particular activities or in terms of the nature of the effects of any activity. Instead, the scheme of the Act is that the categorization or classification of an activity is to be done by rules under s 77A. Such rules, like all others in a district plan, must be examined and assessed in accordance with the requirements of s 32 of the Act and consistent with the requirement under s 76(3) of the Act to have regard to the actual or potential effect on the environment of the activity under consideration including, in particular, any adverse effect.

Evaluating the most appropriate activity status

[64] In terms of achieving the objectives of the proposed District Plan, both parties pointed to Objective IB2 as being the most relevant:

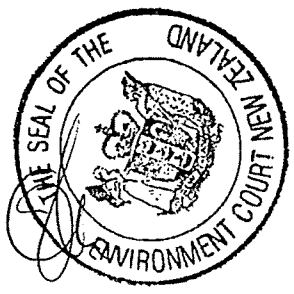
> ***Objective IB2:*** *Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.*

The focus of the argument was then on the issue of the most relevant policy, with the focus of the case being on policies IB2(1)(b) and IB2(5).

[65] Counsel for the Council, in addressing the extent of protection that is appropriate in the circumstances, placed the most weight on Policy IB2(5):

> ***Policy 5:*** *To provide for the sustainable use of indigenous vegetation including scheduled significant indigenous biodiversity sites where the adverse effects of this use are minor.*

[66] She submitted, based on Mr Shaw's evidence, that classifying harvesting in



[25] In relation to permitted activities, see *Twisted World Limited v Wellington City Council* W024/2002 at [62]-[64]; in relation to restricted discretionary activities see *Auckland City Council v John Woolley Trust* (2007) 14 ELRNZ 106 at [49] (HC); and in relation to discretionary activities, see *Lakes District Rural Landowners Society Inc v Wakatipu Environmental Society Inc* C75/2001 at [43]-[44].

Schedule A sites as non-complying would go too far, given the extent to which the plan provided for the assessment of effects in terms of specific criteria and the status of discretionary left open the ability of the Council to decline an application.

[67] In relation to classifying harvesting in Schedule C sites as permitted, she submitted, on the basis of Mr Shaw's evidence that the effects would be no more than minor, that it was unnecessary to impose the costs of the consenting process on landowners except where grazing was proposed during the regeneration phase.

[68] It was common ground that grazing generally slows the regeneration of indigenous species, but that as kānuka and mānuka are relatively unpalatable to stock they are able to regenerate in the presence of managed grazing. On that basis, the parties were agreed that the activity status in Schedule C sites should be restricted discretionary where grazing is proposed during the regeneration phase, which amounts to a partial allowance of the Society's appeal.

[69] The Council proposed that, should the Court confirm the status of Activity 9 in Schedule C sites as otherwise permitted, this outcome could be provided for in the rules by inserting a footnote to that activity status stating that restricted discretionary status applies where grazing is proposed during the natural regeneration phase. The assessment of an application for consent for that activity would not be against the assessment criteria for clearance of indigenous vegetation and so the heading of Rule 15.4.1 would explicitly exclude Activity 9. Instead, such assessment was proposed to be dealt with by a new rule 15.4.4 setting out the restrictions on the Council's discretion, as follows:

> ***15.4.4*** ***Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))***
>
> *15.4.4.1* *Council shall restrict its discretion to:*
>
> *a. Timing to enhance the regeneration or establishment of mānuka and kānuka;*
> *b. Stock type;*
> *c. Grazing intensity;*
> *d. Stock containment methods; and*
> *e. Potential adverse effects on water bodies within the property.*

[70] Counsel for the Council also addressed the relocation and expansion of condition (c) in Activity 15.2.1.2(9) (as notified) to become a new rule 15.2.6, in the following terms:

> ***15.2.6*** ***Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))***
>
> *15.2.6.1* *An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9) is*

> *submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.*

[71] Counsel submitted that this rule would apply to Activity 15.2.1.2(9) regardless of its activity status because it forms part of the rules for indigenous biodiversity generally. We note the statement at the beginning of section 15.2 of the District Plan:

> The following standards and terms apply to Permitted, Controlled, and Restricted Discretionary activities and will be used as a guide for Discretionary and Non-Complying activities.

[72] Should any harvesting of kānuka and mānuka not meet the standards and terms[26] of Rule 15.2.1.2(9) or Rule 15.2.6, counsel noted that then it would be subject to Rule 15.2.1.2(14), the catch-all activity rule which makes activities involving indigenous vegetation clearance or modification or habitat disturbance not otherwise provided for in the activity table a non-complying activity in sites listed in Schedule A and a discretionary activity in sites listed in Schedules B and C.

[73] The Court expressed a doubt about the likelihood of compliance with Rule 15.2.6.1, particularly at years five and 15 and especially where the subject property may have been transferred. In reply, counsel for the Council submitted that much of the land listed in Schedule C is Māori land and unlikely to be transferred to third parties. She said that monitoring of sites that had been subject to harvesting would occur whether the activity was the subject of a consent or not and whether the costs of monitoring were the subject of an administrative charge under s 36(1)(c) or not.

[74] In response, counsel for the Society placed the most weight on Policy IB2(1)(b):

> ***Policy 1(b):*** *To ensure that subdivision, use and development, is undertaken in a manner that protects scheduled* ***significant indigenous biodiversity sites*** *by: ...*
>
> *(b) outside the coastal environment, avoiding and where avoidance is not practicable, remedying or mitigating adverse effects including the loss, fragmentation or degradation of those sites and the cumulative effects on ecosystems.*

[75] Counsel for the Society approached the issue of the appropriate activity status for harvesting kānuka and mānuka by referring us to the decision in *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council*.[27] There the Court was concerned with the level of protection of significant natural areas required in terms

[26] Being the "requirements, conditions, and permissions" referred to in s 87A of the Act.
[27] *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council* [2015] NZEnvC 219.

of s 6(c) of the Act. By analogy with the consideration of the requirements of s 6(a) and (b) of the Act taken by the Supreme Court in *Environmental Defence Society v NZ King Salmon*,[28] the Environment Court held that there was a requirement to implement the protective element of sustainable management in those circumstances.

[76] While recognising that counsel for the Society referred to the *New Plymouth* case for its clarification of the meaning of the word "protection" which is not defined in the Act, we note that the case concerned an application for declarations and enforcement orders based on claims that the Council had not appropriately recognised and provided for protection of areas of significant indigenous vegetation, among other things. Those circumstances clearly come within the exception of incompleteness to the hierarchical approach as explained by the Supreme Court.

[77] In the present case there is a clear relationship between Policy IB2(1)(b) in the District Plan and Policy MN 8B in the RPS where the former gives effect to the latter, providing local and regional substance in terms of the principles in s 6(c) of the Act. On that basis, and consistent with the approach described in the *Appealing Wanaka* decision[29] discussed above, we should not go back to Part 2 of the Act in a more general assessment of what is appropriate.

[78] Counsel for the Society stressed the character of the adverse effects of the harvesting activity and relied on the evidence of Ms Myers in relation to the disruption of forest succession, loss of habitat, hedge effects and the particular threat to Schedule A sites given their small size. She also submitted that the evidence that little or no harvesting was presently occurring in the Schedule A and C sites meant that there was no economic incentive to undertake harvesting and therefore it would be unnecessary to provide for that activity so as to enable reasonable use of the land. With respect, we think that latter submission is not supported by the scheme of the Act or other authority. In our view, the Act is not drafted on the basis that activities are only allowed where they are justified: rather, the Act proceeds on the basis that land use activities are only restricted where that is necessary.

[79] Another point raised in the argument before us was the notion that the classification of an activity as non-complying tended to indicate that it ought not to occur, while the classification as discretionary usually means that the activity will be

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28 *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442 at [24]-[28].

29 *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139.

acceptable if it is made subject to appropriate conditions.

[80] With respect, cognisant of the degree to which some earlier decisions of the Court noted above[30] may give that impression, we consider it better to approach these two classifications in their statutory context. In particular, they share the same consenting provision in s 104B of the Act, which is expressed simply as a general discretion. While a non-complying activity must first pass one of the thresholds set out in s 104D, if it does so then in terms of s 104B it is to be considered on the same statutory basis as a discretionary activity. At that stage, both types of activities must be considered in terms of the matters set out in s 104 of the Act, including having regard to any effects on the environment of allowing that activity and any relevant provisions of any of the planning documents listed in s 104(1)(b). Typically, the most relevant provisions will be the objectives and policies which bear most directly on the activity or others of like nature and on the environmental context in which the activity is proposed to be established.

[81] In relation to the Schedule A sites, we conclude that a discretionary activity classification is the most appropriate for the activity of harvesting of mānuka and kānuka. We consider that this activity status responds to the policy framework in the District Plan by providing suitable protection of SIBS through an assessment and consenting process for sustainable use of the resource. The detailed assessment criteria for this activity should ensure a thorough analysis of all likely effects, including effects on wider ecosystems. Given those provisions in the District Plan, we do not see any reason to require a prior threshold assessment under s 104D of the Act: that would amount to a further restriction which would add little if anything to the assessment under s 104.

[82] In relation to the Schedule C sites, we conclude that a permitted activity classification is the most appropriate for the activity of harvesting of mānuka and kānuka where grazing will not occur during the regeneration phase. We consider that the requirements, conditions, and permissions for this activity appropriately delimit the extent to which it could occur without a resource consent being required and provide a reasonably clear boundary to the activity for the purposes of monitoring and enforcement. We also have regard to the fact that harvesting of mānuka and kānuka has been occurring in the district for a long time without evidence of more than minor adverse effects on the environment. We also note the fact that currently little or no such

[30] At fn 23 and fn 24.

harvesting activity is occurring in the Schedule C sites and see no evidence that a requirement to obtain resource consent should be imposed on any sort of pre-emptive basis. We acknowledge the relationship of the Māori owners with much of the land listed in Schedule C and take into account the principles of the Treaty of Waitangi / Te Tiriti o Waitangi and the purpose and principles of Te Urewera Act 2014 in reaching our conclusion.

[83] We are grateful to the parties for the constructive way in which they have worked together to improve the related provisions of the District Plan, including since mediation. In particular:

(a) We endorse the suggested amendment of the activity description to replace the words "in the same year" with "within one year." This amendment effectively addresses the potential problem of treating the activity as occurring within a calendar year when it is much more likely to be seasonal.

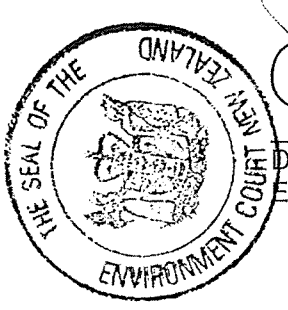
(b) We endorse the agreed position that if harvesting in the Schedule C sites is to be generally a permitted activity, nonetheless it should be a restricted discretionary activity if grazing is proposed in the harvested area during the regeneration phase, given the effect of grazing to delay such regeneration.

(c) As a consequence of that adjustment to the activity status in the Schedule C sites, we also confirm the appropriateness of the amendments to the headings of Rules 15.2.6, 15.4.1 and 15.4.4 to make that distinction clear.

[84] We attach to this decision as **Attachment A** the relevant provisions of the District Plan, amended in accordance with our decision. We attach as **Attachment B** the same provisions with those amendments shown with deletions struck through and additions underlined.

[85] In accordance with the Court's usual practice on appeals under clause 14 of Schedule 1 to the Act, there is no order as to costs.

For the Court:



D A Kirkpatrick
Environment Judge

Attachment A

Relevant provisions of the Whakatāne District Plan, amended in accordance with this decision

1. In Rule 15.2.1 Activity Status Table:

	Activity Status	Schedule A	Schedule B	Schedule C
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted within one year in the same or similar indigenous species or allowed to naturally regenerate; b. the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration; c. no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; and d. kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover.	D	RD	P[1]

[1] RD activity status applies where grazing is proposed during the natural regeneration phase

2. New rule 15.2.6.1

15.2.6 **Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))**

15.2.6.1 An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.

Amended heading of Rule 15.4.1

15.4.1 **Clearance of Indigenous Vegetation (Activity Status 15.2.1), including placement or construction of a building (excluding 15.2.1.2(9) in Schedule C sites where restricted discretionary activity status is due to grazing during regeneration)**

4. New Rule 15.4.4

15.4.4 Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))

15.4.4.1 Council shall restrict its discretion to:

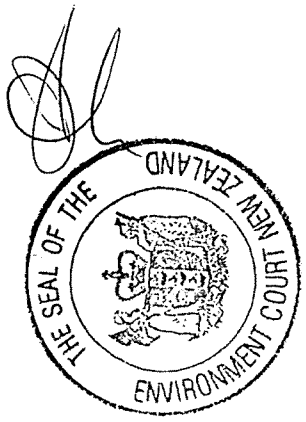
a. Timing to enhance the regeneration or establishment of mānuka and kānuka;
b. Stock type;
c. Grazing intensity;
d. Stock containment methods; and
e. Potential adverse effects on water bodies within the property.

5. New and Amended Definitions

Indigenous Vegetation means any native naturally occurring plant community containing a complement of habitats and native species normally associated with that vegetation type or having the potential to develop these characteristics. It includes vegetation with these characteristics that has regenerated following disturbance or has been restored or planted. It excludes plantations and vegetation that have been established for commercial purposes.

Where indigenous vegetation naturally regenerates or is replanted within a SIB in accordance with Rule 15.2.1.2(9), it is not a "plantation or vegetation established for commercial purposes" as described in the definition of indigenous vegetation.

Naturally regenerate means the harvested area is retired from other active land uses (including grazing) and indigenous vegetation is allowed to regenerate through natural processes. For kānuka and mānuka dominant stands this will typically take ten to twenty years.



Attachment B

Relevant provisions of the Whakatāne District Plan, amended in accordance with this decision

Amendments are shown with deletions ~~struck through~~ and additions underlined

1. In Rule 15.2.1 Activity Status Table:

	Activity Status	Schedule A	Schedule B	Schedule C
9.	Harvesting of mānuka and kānuka, excluding any kānuka in the Rural Coastal zone, for commercial use provided that: a. an area equal to that harvested annually is replanted ~~in the same~~ within one year in the same or similar indigenous species or allowed to naturally regenerate; b. the replanted or regenerating area is not subject to any further harvesting operation until at least twenty years has elapsed from the commencement of replanting or regeneration; ~~b~~c. no more than 10% of the total area of kānuka and mānuka in a scheduled feature on any **site** is harvested in any one year; and d. kānuka and mānuka is harvested only from identified areas where kānuka and mānuka represent at least 80% of the vegetation canopy cover. ~~c. a sustainable management plan verifying the above is submitted to Council.~~	~~RD~~ D	~~C~~ RD	P[1]

[1] RD activity status applies where grazing is proposed during the natural regeneration phase

2. New rule 15.2.6.1

15.2.6 Harvesting of kānuka and mānuka in Schedule C sites (Rule 15.2.1.2(9))

15.2.6.1 An initial plan prepared by a suitably qualified professional identifying that the areas to be harvested meet the requirements in (c) and (d) of 15.2.1.2(9)) is submitted to Council prior to the activity being carried out, and two further plans verifying that replanting and/or regeneration is occurring in accordance with (a) and (b) of 15.2.1.2(9) are submitted to Council at five and 15 year intervals after the clearance has occurred.

3. Amended heading of Rule 15.4.1

15.4.1 Clearance of Indigenous Vegetation (Activity Status 15.2.1), including placement or construction of a building (excluding 15.2.1.2(9) in Schedule C sites where restricted discretionary activity status is due to grazing during regeneration)

4. New Rule 15.4.4

15.4.4 Harvesting of kānuka and mānuka where restricted discretionary activity status is due to grazing during regeneration in Schedule C sites (Rule 15.2.1.2(9))

15.4.4.1 Council shall restrict its discretion to:

a. Timing to enhance the regeneration or establishment of mānuka and kānuka;
b. Stock type;
c. Grazing intensity;
d. Stock containment methods; and
e. Potential adverse effects on water bodies within the property.

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Indigenous Vegetation means any native naturally occurring plant community containing a complement of habitats and native species normally associated with that vegetation type or having the potential to develop these characteristics. It includes vegetation with these characteristics that has regenerated following disturbance or has been restored or planted. It excludes plantations and vegetation that have been established for commercial purposes.

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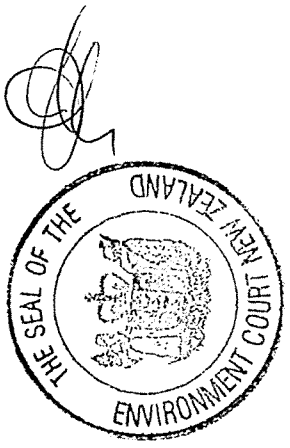


BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 047

IN THE MATTER	of appeals pursuant to Clause 14 of the First Schedule of the Resource Management Act 1991 (**the Act**)
BETWEEN	HORTICULTURE NEW ZEALAND LIMITED (ENV-2014-AKL-000209)
	TURNERS & GROWERS HORTICULTURE LIMITED (ENV-2014-AKL-000194)
	Appellants
AND	THE FAR NORTH DISTRICT COUNCIL
	Respondent

Hearing at: Paihia, 27-29 January 2016

Court: Environment Judge JA Smith
Environment Commissioner RM Dunlop
Environment Commissioner KA Edmonds

Appearances: Ms JS Baguley for Far North District Council (**the Council**)
Ms H Atkins for Horticulture New Zealand Limited (**Horticulture NZ**)
Ms BS Carruthers for Turners & Growers Horticulture Limited (**Turners & Growers**)
Mr RB Brabant for Northland Waste Limited (**Northland Waste**)
Mr PR Gardner for Federated Farmers of New Zealand Inc (**Federated Farmers**)

Date of Decision: 17 March 2016

DECISION OF THE ENVIRONMENT COURT

A. The minor changes as agreed by the parties and set out in this decision are incorporated into PC15. Both appeals are otherwise dismissed and the relevant provisions of PC15 confirmed as set out in Appendix A as amended in Appendix B.

B. Costs are reserved. Any application for costs is to be filed within 20 working days; any reply 10 working days after that and any final reply, if any, 5 working days thereafter.

REASONS FOR DECISION

Introduction

[1] An appeal from Horticulture New Zealand seeks increased setbacks for residential building in the Rural Production Zone in order to require resource consent applications for any breaches to consider potential reverse sensitivity effects. Another appeal from Turners & Growers seeks increased setbacks for outdoor activities and buildings for non-rural industrial and commercial activities in the Rural Production Zone so that resource consent applications for any breaches can consider incompatible effects between neighbouring uses.

[2] We were told that the Far North District Council Plan (**District Plan**) is an *effects-based plan*. We understand that to be shorthand for a plan based around environmental effects rather than the activities that generate them. The activity managed may not actually be mentioned. The Far North District Plan does not contain a list of activities to which specific activity status is assigned, but it does have some standards with an activity base e.g. residential development, and a few of these standards have related general (and even specific) definitions e.g. mining, factory farming, kennels, cattery, farming and forestry. Compliance with those standards determines activity status.

[3] Of course regardless of the style and approach of a District Plan, the RMA requires a council in making a rule in a District Plan to have regard to the actual or

potential effect on the environment of activities including, in particular, any adverse effect (s76(3)).

[4] The District Plan is extremely liberal in the activities that it allows to be conducted within its Rural Production Zone (**the RPZ**) as a permitted activity in accordance with relatively simple standards. The same can be said of activities dealt with as applications for controlled land use activities which must be approved by the Council but can be subject to consent conditions.

[5] A breach of the standards for a permitted or controlled activity can lead to either a restricted discretionary activity or a discretionary activity consent requirement, depending on the type of standard involved. Subdivision, in terms of the Act, must be subject to a consent process, and in this case subdivision in the RPZ at various intensities has a different status. Subdivision to 20ha has a controlled activity status; between 4,000m^2 and 20ha is a restricted discretionary and between 2,000m^2 and 3,999m^2 is full discretionary.

Background

[6] The Plan is operative, but Council recognised at some point that the provisions may be overly liberal. Ms Carruthers for Turners & Growers says this is related to a High Court action it took in respect of a Compliance Certificate obtained by Northland Waste Limited relating to its property on Waipapa Road, Kerikeri. The Turners & Growers' site on Waipapa Road is zoned Horticultural Production Zone (**HPZ**), a spot zone, and has next to it two sites that are zoned RPZ – Northland Waste and one known as Arkline.

[7] Currently, in the RPZ the boundary setback for buildings in the Far North District is 10 metres as a permitted activity.

[8] The appellants seek a substantial increase in that setback to:

(a) 30m for residential dwellings (sought by Horticulture NZ);

(b) 30m for non-rural commercial or industrial outdoor activities (Turners & Growers); and

(c) 100m for buildings associated with non-rural commercial or industrial activities (Turners & Growers).

[9] All the witnesses acknowledged that consents for breaches of standards are usually granted, albeit subject to conditions. A resource consent process gives the Council or a neighbour the ability to have a focussed conversation on the potential effects of a proposal and to work with the applicant on avoiding, remedying or mitigating those effects to the benefit of all parties. However the issue in this case is whether further standards on setbacks are the most appropriate method to deal with potential adverse effects from certain buildings and/or activities.

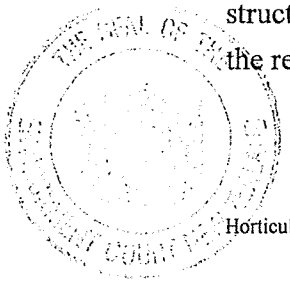
Plan Change 15

[10] We accept that Plan Change 15 (**PC15**) was introduced with the intention of recognising and providing for some of the concerns relating to effects of permitted activities, particularly conflicts with farming and forestry. In that context an earlier plan change had withdrawn the air discharge provisions of the District Plan and the Council now solely relies on the Regional Air Quality Plan to control discharges of odour and dust. Noise is controlled through standards within the Plan. In the RPZ the setback from boundaries remained unchanged from the operative provision, namely 10 metres.

[11] There were also existing provisions relating to traffic intensity. The permitted activity intensity factor for a site in the RPZ was 60 daily one-way movements. PC15 retained this standard, but if the site gains access off a state highway this was reduced to 30 daily one-way movements.

[12] New Scale of Activity provisions were introduced in PC15 and permitted eight persons per site or two persons per hectare, whichever is the greater, for farming and forestry activities. All other activities can have four persons per site or one person per hectare as a permitted activity.

[13] Annexed hereto and marked **A** is a copy of the provisions produced to us by Mr Wilson, the policy planner for FNDC, showing and underlining provisions introduced, with changes made by the hearing commissioners. It can be seen that, although there were minor wording changes to the setback provisions, the 10m setback has essentially been retained. There are some new provisions relating to 3m setbacks for accessory buildings on sites less than 5,000m^2 and crop protection structures. Overall, the Scale of Activities provision is the most significant change to the relevant methods in PC15.



The appeal process

[14] As a result of the hearing commissioners' decision, appeals were filed:

1. by Horticulture NZ relating to the setback provisions seeking a further provision limiting setback within the zone for residential buildings to 30m from the side boundaries. The greater setback was said to be for the purpose of managing reverse sensitivity effects on horticultural activities

2. by Turners & Growers which sought changes to provision 8.6.5.1.6 – Keeping of animals to provide: (new wording)

> 8.6.5.1.6 – Potentially incompatible activities 100m
>
> (a) any building, compound or part of a site used for an abattoir, factory farming, cattery or similar activity shall be located no closer than 50m from any site boundary except for a boundary which adjoins a Residential, Coastal Residential or Russell Township zone, where the distance shall be a minimum of 600m;
> ...
> (b) any building, compound or part of a site used for a non-rural, industrial or commercial activity (such as a waste transfer station, factory or trade processing facility) shall be located no closer than 100m from any site boundary except for a boundary which adjoins a Residential, Coastal Residential or Russell Township zone, where the distance shall be a minimum of 600m.

[15] Although some witnesses sought to characterise these measures as being for reverse sensitivity purposes, Ms Carruthers acknowledged the Turners & Growers provisions were to manage adverse effects, particularly affecting her client's site from adjoining sites. At this hearing however, Turners & Growers sought an amendment to Rule 8.6.5.1.4 – Setback from boundaries. These amendments require:

> (a) any building for a non-rural industrial or commercial activity that is proposed to be erected within 100m of any site boundary (other than a road frontage) to obtain resource consent as a restricted discretionary activity; and
>
> (b) the insertion of a new rule 8.6.5.1.12 – Outdoor activities, to require any of the specified industrial or commercial activities undertaken outside consent as a restricted discretionary activity where it is proposed to undertake that activity within 30m of any site boundary (other than a road frontage).

[16] In respect of the provision originally appealed, 8.6.5.1.6, Turners & Growers' position is unclear. We have concluded, however, that given that the appeal now seeks different changes, the original provisions of 8.6.5.1.6 are intended to be retained in the form adopted by the Commissioners.

Subsequent negotiation

[17] Subsequent to the appeal being filed the parties entered into negotiation and there has been some movement. The Councils understanding was that Turners & Growers sought a setback only in relation to its boundaries as a HPZ, and that this was 30m both for outdoor activities and for buildings. However Ms Carruthers was at pains to advise the Court that this was not the position of Turners & Growers, who saw this issue as being of general importance throughout the RPZ, including at other sites (of which one example given was the Orangewood Packhouse on the corner of Orangewood Lane and Kapiro Road).

[18] There was even less clarity as to what the position of Turners & Growers was in respect of the 100m setback for buildings. We do not understand that there was any formal reduction to 30m in respect of buildings and accordingly we need to proceed on the assumption that a 100m setback for buildings is still sought.

[19] During the mediation process further changes were agreed. Annexed and marked Appendix **B** is a copy of a memorandum filed in July 2015 with a schedule of agreed changes attached.

[20] Unfortunately, it is unclear if these changes are still the parties' agreed position. Ms Baguley for the Council noted:

> [11] As a result of the mediation sessions many of the issues in both appeals were resolved by agreement as amended wording or an agreement not to pursue [Annexure B referred to]
>
> [12] In respect of the matters agreed, they have not formally been presented to the Court for approval, pending the outcome of this hearing. Agreement on the issues was conditional on resolution of the remaining issues. I anticipate that consent will be sought by way of memorandum requesting consent following the delivery of this Court's decision on the remaining unresolved aspects. ... I believe that the following measures represent an appropriate response to the issues:
>
> - adapting the "Outdoor Activities" Rule utilised elsewhere in the plan (but not currently included in the Rural Production Zone) to emulate yard rule provisions and address the separation mechanism sought by Turners & Growers Ltd;
> - focusing the amended rule to manage activities having the greatest likelihood to affect land use compatibility – outdoor activities and storage;
> - imposing the rule on side boundaries only, recognising the buffer effect of a legal road to adjoining sites;

- exempting farming and forestry from the rule, along with traffic associated with access and egress to the site, including construction activities and parking; and

- imposing a boundary separation threshold of 10m throughout the Rural Production Zone and 30m for sites adjoining the Horticultural Processing Zone

[21] Ms Baguley noted in respect of Turners & Growers outstanding issues on appeal (which include scope, outdoor activity setback and non-rural industrial or commercial activities in the RPZ) that:

> Council's position is that the relief should be rejected on the basis of both scope and lack of supporting evidentiary analysis, consistent with the commissioners' decision.

[22] Turners & Growers' submission clearly seeks alterations to the RPZ provisions. As noted, it does not see the outdoor activity rule as applying to the HPZ, but all boundaries (except frontage) "*regardless of the zoning of the adjacent site*".[1]

[23] The position of the appellants as to building setback is not clear in Turners & Growers' submissions, but we are referred to Mr Putt's wording of 8.6.1.4 attached to his evidence. That reads:

> [x] No building for non-rural industrial or commercial purposes involving manufacturing, storing, stockpiling, altering, repairing, dismantling or processing any materials, live produce, goods or articles shall be erected within 100m of any boundary other than a road frontage.
>
> Exemptions: Farming forestry, activities ancillary to farming or forestry, construction traffic (associated with the establishment of an activity) are exempt from rule [x].

[24] From this we must conclude that Turners & Growers still seeks within the RPZ a 30m setback for outdoor activities and 100m for building where there is a non-farming or forestry or ancillary activity, regardless of the adjacent zoning.

[25] We have also concluded that there is no agreement on the inclusion of 8.6.4.12 Outdoor Activity rule or on any setback from the HPZ.

[26] The issue for Horticulture NZ has not had any significant revisions and seeks a 30m setback for residential dwellings within the RPZ.

[1] Ms Carruthers' opening submissions, paragraph [7.22]

[27] We conclude that the changes agreed in **Appendix B** can be read into the wording of **Appendix A** without affecting these issues. We conclude that these changes can be made and assessed as part of PC15 before us. The agreed changes are (underlining shows new text):

> Definition
> "Farming" Any Agricultural or Horticultural activity
>
> (d) normal rural practices including associated buildings and structures
>
> Issue 8.6.14 conflict ~~between~~ with existing activities...
>
> Policy 8.6.4.1 That the Rural Production Zone enables farming and rural production activities as well as a wide range of activities...
>
> Rule 8.6.5.1.7 such as harvesting and the use of aircraft provided that the activity...
>
> Rule 8.6.5.1.11 in proviso remove link word "~~and~~" and replace with link word "or". Exemptions: remove a word from "farming and forestry ~~practice".~~

The difference between side boundaries and site boundaries

[28] Neither Turners & Growers nor Horticulture NZ sought setbacks from road frontage boundaries, but there was some confusion as to whether or not rear boundaries were included within Horticulture NZ's appeal or only side boundaries. Ms Atkins in her submissions changed the words *site boundaries* to read *side boundaries* and acknowledged that this had been the basis of the original submission.

[29] In relation to Turners & Growers it was clear that any provisions for the Horticultural Production Zone (**HPZ**) would, in practice, only control one boundary, that is, the one to Northland Waste. This is because all other boundaries on the Turners & Growers site (HPZ) are road or Rural Living Zone (**RLZ**).

[30] Turners & Growers sought these changes only in the RPZ and not in the RLZ or HPZ. The only boundary exempt from setback was the frontage. If its broader submission was for such a setback on every RPZ site, both the Northland Waste site and the Arkline site would have side and rear boundary setbacks for buildings and outdoor activities on boundaries unrelated to Turners & Growers.

[31] The non-rural commercial or industrial setback on three boundaries of 100m would mean that a building site would be constrained by at least setbacks on three boundaries. We are told that in all cases a 30 x 30 building platform is generally

required by Council provisions. In the case of a 100m building setback, this would mean a minimum dimension of 230m between side boundaries, and 140m between the front and rear boundary. This would require around 32ha to avoid obtaining resource consent for an activity covered by the standard. Even in respect of a 30m building setback from all boundaries (i.e. rear site), this would require a minimum site area of some 8,100m^2 – of which 7,200m^2 would be covered by the setback control.

[32] If the setback control also applied to all non-rural commercial or industrial outdoor activities, this would mean that those activities would need a site substantially larger than 1ha on which to establish. That would then lead to issues as to whether other activities could be conducted on the setback land (i.e. forestry or farming) or the land left fallow.

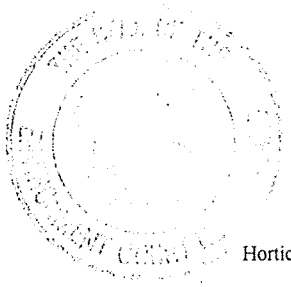
[33] We note that these calculations are based upon regular shaped sites, but of course a long narrow section or an irregularly shaped section may be significantly constrained by the imposed setbacks. We compare this with the building setback requirements under the current Plan, which would require a rear regular single site of 50 x 50m^2 or 2,500m^2, which appears to be close to the minimum lot size permitted as a discretionary activity.

[34] There are s 7(b) implications inherent in these propositions, especially the 100m building setback.

The settled plan provisions

[35] The operative provisions, including the objectives, were largely retained with some small changes. For current purposes the Rural Production Zone is described as:

> This zone applies over the majority of the rural part of the District, other than those areas identified as coastal, rural living or set aside for recreation, conservation or minerals. A wide range of activities are carried out in this zone, and these are generally considered appropriate.
>
> The zone rules provide environmental and amenity standards which will enable the continuation of the wide range of existing and future activities while ensuring that the natural and physical resources of the rural area are managed sustainably. The provisions of the Rural Production Zone are complemented by the subdivision rules and the general rules relating to the protection of environment matters such as landscapes and indigenous flora and fauna.



[36] Chapter 1.1 of the Plan includes the following in relation to rural sustainability:

> The integrity of the rural environment is maintained through appropriate land use and subdivision provisions. Environmental standards and thresholds have been set taking into account the provisions of the relevant regional plans, thereby minimising regulatory intervention. Consequently the outcome will be a rural environment where a diverse range of activities occurs which avoids reverse sensitivity (incompatible land uses), conflicts and where owners are primarily responsible for environmental protection and sustainable management of resources (refer chapters 8, 12 and 13).

[37] Reverse sensitivity (incompatible land uses) is defined as:

> the effects of the existence of sensitive activities on other established activities in their vicinity, particularly by leading to constraints in the carrying out of those established activities.

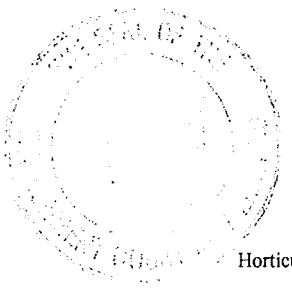
[38] The broad permissiveness of the RPZ permits most activities, including those now described to this Court as non-rural commercial and industrial activities. Of course, given the controls over traffic intensity, scale of activities, and the 10m setbacks, some control is exercised over most forms of activity, including residential and non-rural activities.

[39] It was common ground that the objectives and policies of the Plan, in the form now modified by PC15, were agreed. There also appears to be recognition that the change did seek to more directly address incompatible land uses. Chapter 8, Context now has added the following paragraph:

> However the rural land resource is also sometimes preferred by developers as an alternative location to establish industrial and commercial activities, especially on approach roads, relatively close to existing urban settlements. This can result in cumulative effects and impact on the efficient delivery of infrastructure. Zone provisions are designed to allow for activities that do not detract from the amenity values associated with the rural environment's attributes and character and that they further contribute to the efficient use of the district's physical resources such as infrastructure.

[40] This led to some new or changed issues:

> 8.1.8 – inappropriate subdivision, use and development can adversely impact on the amenity values of the rural environment.
>
> 8.1.9 – activities and services that have a functional relationship with rural production may be more efficient and appropriate to establish within the rural environment rather than in more densely settled areas.
>
> 8.1.10 – inappropriate use and development along approach roads to town centres and domestic airports can adversely impact on prevailing character and amenity values.



8.1.11 – loss of rural production land due to development pressures from non-rural activities.

[41] In Objectives there has been some minor wording changes and two new provisions:

8.3.9 – To enable rural production activities to be undertaken in the rural environment.

8.3.10 – To enable the activities compatible with the amenity values of rural areas and rural production activities to establish in the rural environment.

[42] Policies have been changed with 8.48 having a new sentence added:

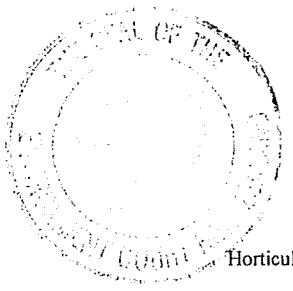
Consideration will further be given to the functional need for the activity to be within the rural environment and the potential cumulative effects of non-farming activities.

[43] When we move to the RPZ, 8.6 of the Plan, the issue of compatibility is expanded with additional sentences, including:

- The zone is predominantly a working productive rural zone, hence it's name; the zone contains environmental and amenity standards which will enable the continuation of a wide range of existing and future activities compatible with normal farming and forestry activities and with rural lifestyle and residential uses, while ensuring that the natural and physical resources of the rural area are managed sustainably;
- Activities that are ancillary to farming or forestry may also have a functional need to be within the rural environment; however such rural processing and servicing activities may be less compatible in more intensively settled locations.
- The standards in the RPZ are also aimed at enabling farming and activities ancillary to rural production whilst maintaining and enhancing amenity values associated with the rural environment and minimising the likelihood and risk of incompatible uses establishing in proximity to each other.

[44] In Issues at 8.6.1 three new provisions are added:

- 8.6.1.3 – The use of land for rural production activities can be adversely affected by the establishment of incompatible activities;
- 8.6.1.4 – Inappropriate subdivision, land use and development in the Rural Production Zone can lead to adverse cumulative effects, the degradation of amenity values, as well as increased conflict with existing activities (reverse sensitivity);



- 8.6.1.5 – Some activities and services have a functional need to be located in rural environments so as to enable rural productivity and contribute to the wellbeing of individuals and communities.

[with agreed change added]

[45] Relevantly, new 8.6.2.4 reads on environmental outcomes:

> A Rural Production Zone where the adverse effects of incompatible activities are avoided, remedied or mitigated.

[46] This leads to new and amended objectives and policies that reflect the preceding issues. In particular, the following objectives.

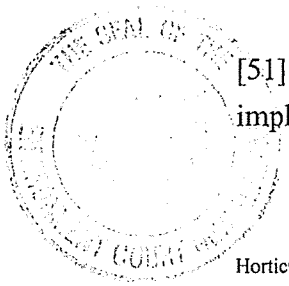
> 8.6.3.6 – To avoid, remedy or mitigate the actual or potential conflicts between new land use activities and existing lawfully established activities (reverse sensitivity) within the Rural Production Zone and on land use activities in neighbouring zones.
>
> 8.6.3.7 – To avoid, remedy or mitigate the adverse effects of incompatible use or development on natural and physical resources.
>
> 8.6.3.8 – To enable the efficient establishment and operation of activities and services that have a functional need to be located in rural environments.
>
> 8.6.3.9 – To enable rural production activities to be undertaken in the zone.

[47] Policy 8.6.4.2 provides that standards are to be imposed to ensure that off-site effects of activities in the RPZ are avoided, remedied or mitigated.

[48] New Policy 8.6.4.7 provides that although a wide range of activities that promote rural productivity are appropriate in the RPZ, an underlying goal is to avoid the actual and potential adverse effects of conflicting land use activities.

[49] New `Policy 8.6.4.8 provides that activities whose adverse effects, including reverse sensitivity effects, cannot be avoided, remedied or mitigated are given separation from other activities.

[50] New Policy 8.6.4.9 provides that activities be discouraged from locating where they are sensitive to the effects, or may compromise the continued operation, of lawfully established existing activities in the RPZ and in neighbouring zones.



[51] New Policies 8.6.4.7 - .9 and more particularly the appropriate method to implement them are at the nub of the appeals.

Analysis of the setback provisions

[52] It can be seen that PC15 has begun to focus on activities that might be incompatible. It makes it clear that any forestry or farming, which definition includes horticulture activities, are acceptable and thus their effects appear to be acceptable whether they are incompatible with other activities or not. One can only say that this has a strong reflection of the theme in *Animal Farm* that "*all animals are equal, but some animals are more equal than others*".[2]

[53] During the hearing, we were unable to get to an exact understanding of what were "*farming and forestry activities, or ancillary thereto, or had a locational need to be associated within the rural area*"; or those activities which were in the **other** category. There seemed to be general agreement that the Turners & Growers processing plant and cool store, although industrial in look, structure and impact, was nevertheless a rural production activity. We were told that the tank manufacturer, on the opposite side of Waipapa Road, was primarily involved in the supply of water tanks to the rural sector. One assumes that the preceding definition would allow activities such as quarries, cement works, building manufacturers and the like. It explicitly includes abattoirs.

[54] It was suggested that Northland Waste was a non-rural commercial or industrial activity. However, there was no analysis or evidence given to us as to whether it was ancillary to the rural or urban sector or had a locational need for a rural site.

[55] As we drove through the area, we noticed the enormous diversity of activities conducted within the RPZ (and RLZ) that seemed to encompass almost the full range of human activity. We note, for example, pottery and art studios that seemed to be low scale yet would appear to fit the general meaning of a non-rural commercial or industrial activity. Yet, more troublesome are those in the grey area such as building manufacturers, i.e. Versatile Garages and others; tank manufacturers; depots for raw materials such as metal and the like; and contractors' depots, all of which arguably have a functional need to be located in the rural area or primarily supply that sector.

[56] It was also not clear to us whether the words *non-rural* by Turners & Growers were conjunctive with both commercial and industrial or whether there were

[2] George Orwell, Chapter 10

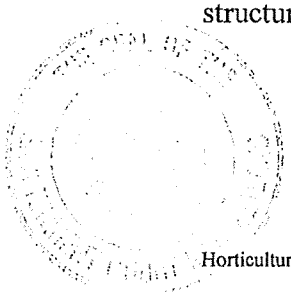
three categories. It appears to be the intention of Turners & Growers that it be non-rural commercial and non-rural industrial activities, given they accepted that some commercial and industrial activities were appropriately within the RPZ. We have a fundamental difficulty in trying to understand how such activity categorisation is going to be able to occur within the context of an effects-based plan that has virtually no method of dealing with the identification and compartmentalisation of activities.

[57] We acknowledge that some of the words utilised within PC15 give the impression that there is such a distinction, and the most clear of those is 8.6.5.1.10, introduced by PC15. This involves a definition of activities ancillary to farming or forestry which provides:

> Processing and packaging facilities for farming, forestry and any rural industry that is dependent primarily on the direct handling of raw produce, or that primarily supplies services to farming, horticulture or forestry. It includes premises for the manufacture of dairy products, abattoirs, timber processing, stockyards and saleyards, coolstores and pack houses, and rural contractor depots.
>
> [emphasis added]

[58] Although this provides some assistance, it immediately gives problems with some of the definitions relevant to this case. For example, whether Northland Waste Limited is a rural contractors' depot would turn on whether it primarily supplies services to farming, horticulture or forestry. This would also be true of such activities as plumbers, butchers, building manufacturers. In each case there would then be the difficulty of establishing whether they *primarily* service the farming or forestry sector, given that most of the land within the Far North District is in various rural zonings – Coastal, Rural Living and Rural Production.

[59] Questions arise as to those activities that may not be dependent on the soil quality of the particular site, including for example mushroom growers, some types of hothouse planting and hydroponics. When one comes to examine the other definitions within the Plan we can similarly see that the basis of this permissive effects-based Plan is undermined once one begins to try and examine how these Plan provisions would apply to various activities that are encouraged or discouraged. If this plan is to move to a more activities-based plan, some relatively fundamental changes in the Plan structure would need to take place.



Residential dwellings in the RPZ

[60] There was very limited evidence given to this Court of concerns on a District-wide basis concerning the RPZ. We were told that around Kerikeri there is some pressure between horticultural activities and other related activities, including Turners and Growers' concerns with Northland Waste and between orchards and residential activity.

[61] The significance of some of the RPZ, particularly near Kerikeri, being reticulated for irrigation water (non-potable) became clear in the latter stages of the hearing. We attach a map that shows the Kerikeri areas serviced by the several local schemes (**Appendix C**). There are similar schemes elsewhere in Northland, but we had no evidence of the number or size. The Kerikeri schemes have limited room for expansion. Witnesses for the horticultural industry, in particular Mr Kelly and Mr Keenan and one of the witnesses before us, Mr Curtis, discussed the importance of this resource.

[62] We have no difficulty in concluding that the irrigation of these areas constitutes an infrastructural element of significant value that would be virtually irreplaceable in today's market. Surprisingly, the Far North District Plan does not have any specific recognition of this irrigated land, and we acknowledge that it is a finite resource. Accordingly, we understand the frustration of the horticulturalists in seeing this resource fragmented into residential housing and lifestyle blocks. The areas that can be irrigated are quite clearly demarcated on Appendix **C**. For example, Waipapa Road North is irrigated, while land to the south is not.

[63] Whilst we recognise that concern, it does not explain why Horticulture NZ seeks a 30m setback for housing. We were told of complainants who were already within 30m of an orchard boundary, and the situation in respect of those homes will not change with a change in this rule. It was also acknowledged that complaints did not always correspond with linear distance; and in particular in relation to sprays and odour, these issues seemed to depend more significantly on the relationship of the parties and sensitivity of the individual involved.

[64] It was suggested by several of the horticulturalists that a 30m setback would enable them to sit down with the intending owner of a new dwelling and have a focussed conversation on the type of activities horticulturalists conduct. With respect, we consider this significantly optimistic. We suspect those intending to erect

dwellings would see this control as a significant constraint on their use of land and more likely to lead to a source of irritation and complaint. If a landowner is limited in the use of the site by such a provision, or is not able to obtain a resource consent, we see ongoing agitation for greater constraints on the horticultural industry being a potential outcome.

[65] We conclude that the appropriate course in respect of the irrigated areas that are particularly of interest to horticulture is for them to be recognised in the Plan and in the zoning and other mechanisms utilised to ensure that the irrigated land is available for future use. In relation to any further subdivision, irrigation is a matter that can be considered by the Council at the time they consider an application. In respect of those sites already subdivided (and there appear to be many within the RPZ in the environs of Kerikeri that have not been built on) this would effectively impose a post-subdivision constraint which is almost inevitably going to lead to significant adverse impact on those landowners.

[66] We see little or no benefit to the horticultural industry from a 30m setback for new residences or even for non-rural activities. Mr Wilson gave evidence on the implications for poorly resourced people seeking to build on relatively small sites in areas distant from Kerikeri. When we consider the application of such a provision throughout the entire Far North District Council area (some 70% of its land area is RPZ), the impacts of this will constrain residential activity well beyond any area of interest to horticulturalists, and almost inevitably have consequences of which we have little evidence and are unable to foresee at this stage.

[67] Quite simply, we have concluded that there is no proper justification for a 30m setback for residential activities as sought by Horticulture NZ. We conclude that the issue of the irrigable lands, particularly around Kerikeri, needs to be considered in the next round of Plan change(s) or Plan review by the Council and some appropriate zoning or other protections put in place to control further subdivision within that area. However, we, like the Commissioners who first considered the Plan change, consider this is best addressed at the next phase of the Plan review.

The effects on residential activity

[68] We reach this conclusion having regard to the type of effects that were identified. There was no evidence that odour was more than a minor issue for residential activity, and the major issue discussed was one of sprays. Though dust can

at times be an issue, the horticulturalist witnesses recognise that proper screen planting around their site is likely to ameliorate that and have an attenuating effect on sprays also.

[69] In general principle, we consider that the horticulturalists should operate their site so that effects beyond the boundary are at minimal and acceptable levels. We appreciate there is also going to be a percentage of the population who are more sensitive to such activities. We note that, of the complaints made to the Council over the last ten years, none has resulted in prosecution. Witnesses for Horticulture NZ told us the horticulture industry recognises its obligation to minimise spray drift, particularly having regard to the type of machinery used, the times of application and the wind conditions.

[70] Witnesses said in doing that they often had complaints about noise, because such operations took place at night or very early in the morning. In our view that is an expected element of the RPZ, and residents in that area cannot expect the same type of activities or effects as in an urban area.

[71] It is difficult for any plan to govern the variety of expectations of people living in the rural area. We recognise that different people have a different threshold and propensity to complain, and also that people who live in a rural community may adopt a *live and let live* approach. We were told that to date none of the complaints have been upheld by the Regional or District Council. However, the process of investigating those complaints may result in improved awareness of horticultural practices, and even changed practices by horticulturalists, for example for spraying.

[72] We had no evidence to convince us that regulation by way of <u>further</u> setback on residential activity would have any impact on these types of complaints.

The Turners & Growers effects

[73] Turners & Growers seems particularly concerned about Northland Waste as an odour creator. We attach as **Annexure D** a copy of the District Plan showing the HPZ and the two, most relevant RPZ sites.

[74] There was evidence from Mr Putt of sea gulls on the Turners & Growers' property, however when challenged he did not draw any connection to the Northland Waste site. At the moment the Northland Waste site appears to be used for temporary

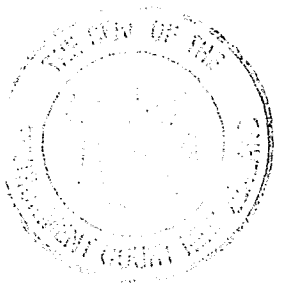
storage of garbage pods, empty pods, waste containers partially full and empty, and various inorganic materials. When the Court conducted its site visit no adverse, cross boundary effects were evident.

[75] There is a 20m wide[3] right-of-way along the boundary of Turners & Growers on its property which services both the Northland Waste site and that of Arkline. It also serves as a truck route from the rear of the Turners & Growers buildings. The access to Arkline is not used, and the access to the Northland Waste site means that only approximately 50 or 60 metres of the right-of-way is utilised. Around 10 to 15 metres from the right-of-way is the side of the Turners & Growers building, with some banks of fans for the cool-store situated somewhat closer to the right-of-way. Even at the time of our visit (which is not peak season) we found the fans were a dominant source of noise in the area.

[76] There seemed to be a deeper concern by Turners & Growers about having a waste operator or other activity near its boundaries. Different activities can generate concern, and there can often be more fundamental objections than effects. Occasionally the Court is faced with residents who do not want various activities within their rural environment. We are unable to see, from the evidence given to us, any fundamental incompatibility between the two current activities, but both would need to operate in a way that minimise impact on the other. During peak season we would have thought that the packaging and cool-storing facility would have a significant demand for waste disposal, given the need to dispose of rejected or damaged fruit. Even at the time of our visit we found a number of crates of discarded fruit stacked at the rear of the site.

Conclusion on effects

[77] PC15 does not address what it is about non-rural commercial or industrial activities that create concern. Although incompatible activity is cited, the concern appears to be about adverse effects of new non-rural activities on existing farming or forestry activities. These effects seem to resolve to odour, dust and noise. However, it is clear that some rural activities exempted have significant potential to generate these effects anyway. Abattoirs have been exempted, yet nationally some have been the cause of odour issues. Similarly, cool-stores and packing sheds have given rise to noise issues in the past.



[3] Mr Kemp, evidence-in-chief, paragraph [8]

[78] We conclude that there is no substantive evidence before us of incompatibility between these two activities that satisfies us that some new or different rule needs to be imposed. We recognise that there are current controls under the Regional Air Quality Plan to ensure that the operator of Northland Waste must ensure that there are no nuisance odours beyond its boundary. We note that an abattoir or saleyards could establish on the Northland Waste site without the proposed Turner & Grower controls. These could potentially involve more significant odour effects controlled, again, by the Regional Air Quality Plan.

[79] We note that Northland Waste has planted trees on the boundary and these are growing well, although it will be several years before they entirely screen views from the Turners & Growers site. There seems to be no reason in principle why Turners & Growers could not grow trees on the building side of the right-of-way if it wanted further screening for attenuation of dust and odours.

[80] Similarly, dust generation seems to be controlled by Northland Waste's use of metal on its yard. We would have considered that the right-of-way could be sealed by both companies, given they are both users of the right-of-way. It appears that a significant number of trucks from Turners & Growers use this right-of-way during peak season and drive the entire length of Northland Waste's boundary to exit the site. New activities would need to tolerate the significant number of vehicle movements, and also dust generated from the right-of-way (if not sealed) on the Turners & Growers site.

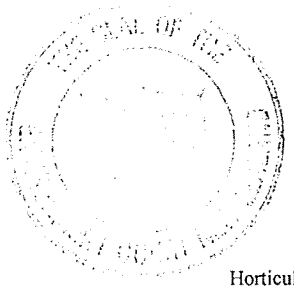
Council's section 32 report

[81] The Council must evaluate the changes under s 32 of the Act. Mr Wilson provided a s 32 report dated May 2013, which he considered met the various tests of the Act. Chapter 7 of that report identified issues relating to:

(a) potential incompatible activities;

(b) potential cumulative effects; and

(c) providing for the wellbeing of rural communities.



[82] Three options were developed for evaluation in Chapter 9 of the report, being:

1. do nothing;
2. introduce activity-based controls;
3. incorporate further effects-based controls.

[83] Option 3 was chosen and no party disputed that this was the appropriate approach. The report, at Chapter 11, identifies:

(a) the Scale of Activity control as a method to maintain zone integrity, with more liberal thresholds for activities ancillary to rural production and Restricted Discretionary Activity status for breaches of the permitted activity controls; other non-farming activities not permitted under the rule would be discretionary;

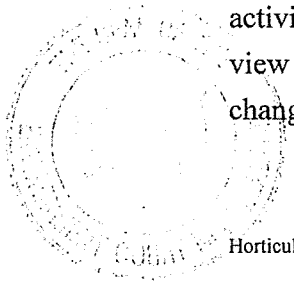
(b) cumulative effects were addressed with additional assessment criteria and lower traffic threshold for sites fronting State Highways;

(c) wellbeing of rural communities led to several changes, including reducing the road frontage setback to 3m on lots under 5,000m^2 and maintaining the 10m setback on road boundaries [to] assist in managing amenity, reverse sensitivity and dust suppression;

(d) greater separation of factory farming, kennels and catteries from other activities.

[84] The various considerations were addressed at Chapter 12. A key element of this, relied on by Mr Wilson, is that the Plan Change was Phase 1 of an ongoing review of the Plan. Although the report recognises that commercial and industrial activities not related to rural production would be more efficiently sited outside the RPZ, it reaches no clear conclusion on residential housing.

[85] Mr Wilson agreed with the s 32 report that option 3 was the most appropriate response. He acknowledged that the traffic intensity/scale of activities/setback provisions may not deal with every situation of incompatibility. His view was that a more focussed approach may occur in the next round of the Plan change/review.



Further analysis under s 32

[86] The Court also has a duty to consider s 32 in evaluation proposals before it. The relevant legal tests were stated in ***Eldamos Investments Limited v Gisborne District Council***[4] and ***Long Bay Okura v Auckland Regional Council.***[5] No party suggested amendments to the RMA and s 32 had materially changed these tests. In this case we are only dealing with a method (i.e. standards) in each appeal. The joint witness statement and counsel agreed we can work on the basis that the objectives and policies generally are accepted and applicable. The question then is which standards are the most appropriate way to achieve the purpose of the Act. The purpose of the Act is enabling unless there is good reason for constraint. It should also seek to sustainably manage natural and physical resources. The provisions to apply are those prior to the latest Resource Amendment Act 2013, particularly s 32(2). We shall be relying on s 32 as in force from 1 October 2011 to 3 December 2013.

Achieve policy objectives and purpose of Act

[87] As we have already noted it is difficult to see how the significant increase in setbacks will achieve the purpose of the Act. There is no adverse effect that we are satisfied is going to be significantly addressed by the appellant's proposed provisions. Moreover, there appear to be adverse effects from the proposed method, including the fact that many of the sites within the district would require some form of resource consent. It was suggested to us that this would not incur a significant cost (we understand between $2,000 and $2,500) and that the Council could process the consents at little or no cost to applicants. It appears to us that this is a Council which works in a particularly impecunious area. This district reputedly has the highest level of deprivation in New Zealand. Although we acknowledge that possibly many of the landowners around Kerikeri would be able to engage in this process, the provisions affect the whole of the Far North District Council, including vast areas of land where the mere construction of a home constitutes a significant financial barrier. We think the Council was rightly concerned about the addition of further regulatory, and potentially, development costs.

[88] Although we acknowledge that the objectives and policies of the plan now provide for managing the adverse effects of incompatible activities, we are not

[4] W47/2005
[5] A78/2008

satisfied that the Appellants' proposed standards are the most appropriate way to achieve those objectives or policies.

[89] Furthermore, we cannot see how the proposed increased setbacks would assist the territorial authority to carry out its functions to achieve the purpose of the Act. Mr Hodgson gave evidence of other District Plans that contain greater and different separation distances from the 10m in the Far North District Plan. However, he was unable to inform us as to the reasons for these greater separation distances, which may include scientific, policy, regulatory or industry good practice reasons.

[90] As we understood it from Mr Hodgson, all applications for consent to dispense with setback standards of various dimensions that he has lodged for applicants in other areas have been successful and he anticipated the same would occur here. Although he says it enables a focussed conversation to take place, we gather that is essentially around how design or other approaches, including planting, might be adopted to adequately address the setback issue.

[91] What the evidence establishes to our satisfaction is that an increased setback across the district is not the only or the best method to achieve the purpose of the Plan as it stands. We accept that more sophisticated and/or different approaches may yield the same or better results, although these are not clearly set out before us as options at this stage. For example, planting (without reference to a setback distance) was described to us by a number of parties, including Mr Hodgson and the horticulturalists, as a successful method by which some activity conflicts could be addressed. Under the Horticulture NZ proposal for an increased setback across the district we see council officers dealing with many unnecessary consent applications at significant cost and inevitable delay.

[92] We were in even more doubt in the case of Turners & Growers as to what particular issue it was concerned about. If it was odour there was no compelling evidence before us, or any other basis, on which we could conclude that an extra 20 metres or even 100 metres separation would make any significant difference to odour effects. Moreover, we find it curious that Turners & Growers would be suggesting a 30m setback for outdoor activities and 100m for buildings when it was acknowledged that activities within buildings (including those producing odour) are less likely to have an adverse impact. In any event, the Council has changed its District Plan, making air discharge the sole domain of the Regional Council.

[93] Accordingly, though a setback provision might achieve the purposes of Part 2, and might achieve the objectives and policies of PC15, we consider it a particularly coarse measure to be adopted over an entire zone of this size when there is no clear purpose or outcome established.

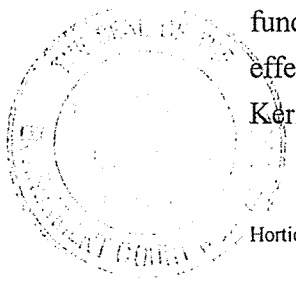
Efficiency and effectiveness

[94] The inchoate benefits must be measured against the cost of imposing these provisions, which are likely to impact upon much useful development within the district. There was some dispute as to the exact proportion of sites, but somewhere between 50-70 percent of land areas in the district are within the RPZ.

[95] Costs and benefits can also be seen in terms of their efficiency and effectiveness. We have concluded that it is highly inefficient to impose a blanket control in circumstances where the outcome is inevitably going to be to grant a dispensation from the standard, but at cost to the Council and parties and with unclear objectives from doing so. There was no compelling evidence about the type of conditions that might be imposed to avoid or mitigate complaints. As mentioned above, a 30m separation would not avoid complaints, including from those sensitive to particular effects. Nor would it deter those with a predisposition to complain.

[96] Although the setback is a simple method, it is also one that should not be used as a blanket control to change the status of permitted activities to restricted discretionary or discretionary activities. Given its broad impact, the overall effect of the Appellants' changes would be to change the status of residential activity and a range of other activities to restricted discretionary activities on many sites. The justification for this appears to be that it would enable a focussed discussion around siting of buildings and potentially outdoor activities. Its impact, of course, would be over many of the rural lots that have already been subdivided within the district. We were told that the potential effects can already be addressed in terms of the scope of considerations for new subdivisions in the future.

[97] We have concluded that it is an inefficient and ineffective way of achieving the objective and policies to deal with incompatible activities. If in fact the intent is to change to an activities based plan, then this requires a redesign of the plan to take that fundamental change into account. If the Appellants' concern is more around the effects of particular activities, such as residential land use within the irrigated area of Kerikeri, then a more focussed approach would be appropriate. If there is a concern



about separation of activities generally in the rural zone, then significantly greater attention would need to be paid as to what would constitute an unacceptable activity and how that might be addressed.

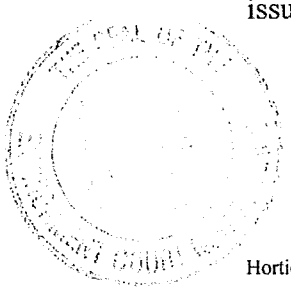
[98] We agree with Mr Wilson that the issue of management of potentially incompatible land uses and reverse sensitivity is complex for the district, given the effects based nature of the plan and the evolving competitive forces influencing land use in the rural environment, especially in the near urban areas.

[99] We have concluded that the imposition of the setbacks sought by both appellants would not be a proportionate response to the issues identified at this time, and that a more focussed approach in the next phase of planning is the appropriate way in which these issues should be dealt with. In saying this we acknowledge the very real concerns of the horticulture industry, particularly in relation to the irrigated area, and believe that these are best approached in the next phase of the planning provisions.

The risk of acting or not acting

[100] In this case there are risks both to those who wish to use their land for a permitted activity, and those who have established farming or forestry activities who may be affected or constrained in such use.

[101] The Council has acknowledged that a change to the status quo is necessary by introducing PC15. Are the provisions of PC15 sufficient or is there still a significant risk if the setbacks sought are not introduced? We conclude that there is no more than poorly defined or inchoate risk. We conclude the risk of acting in such an arbitrary manner over such a large area of land is significant. Given our conclusion that the purpose of the constraint is ill defined, we would be imposing a significant burden on landowners to address far more localised issues around horticulture near Kerikeri. The lack of sufficient information about impacts beyond Kerikeri concerns us. Even in the immediate area the provisions seem to do little to address the risks of adverse effects on Turners & Growers or on the irrigated lands around Kerikeri. We conclude a more focussed approach needs to be taken on these issues in the next phase of the Plan review.



Conclusion on s 32

[102] The most appropriate methods are those supported by the Council, Northland Waste and Federated Farmers. They introduce a platform for consideration of incompatible activities, and give methods around the scale of activities. Whether more focussed attention needs to be given to these issues will be part of the next Plan review.

Section 290A – the commissioners' decision

[103] The commissioners also concluded that the issues raised by both these Appellants were best addressed through a more thorough and targeted evaluation of the issues and subsequent Plan changes (11.1).

[104] In relation to the increased setbacks sought by Turners & Growers, to increase setback to 300m, they noted:

> No planning evidence on the appropriateness of the 300m criteria and why it should be increased or decreased and the impacts of applying it to a broad category of activities was provided at the hearing...

[105] Before us Mr Putt promotes a 100m setback for non-rural commercial or industrial builds and a 30m setback for outdoor activities (which are not farming or forestry), but we consider the rationale for these distances to be entirely lacking. Overall, we have concluded that the setback sought is:

(a) to prevent Northland Waste from further utilising their site without a resource consent;

(b) to preclude anyone else on a small site setting up any non-rural, commercial or industrial activity in the RPZ without a resource consent.

[106] We conclude many sites could not accommodate a 100m setback from all non frontage boundaries for building, and/or would have difficulty with even 30m for outdoor activities. Even if they did so, it would be costly and completely inefficient. For completeness we also reject a building setback of 30m for non-rural commercial and industrial activity. Although Mr Wilson accepted a setback for the HPZ, his assessment was based on using the Turners & Growers side of the 20m right-of-way yielding an unchanged 10m setback. Since Turners & Growers did not seek such a change, we consider the issue only briefly. Given our earlier conclusion, neither the

Council nor Turners & Growers sought setbacks only for the HPZ boundary. Given the existing separation we conclude a 10m setback from the boundary for buildings is sufficient. This would yield a minimum distance of some 40m between the existing building on Turners & Growers and any building constructed on the Northland Waste site. The Turners & Growers building has blank cool-store walls facing Northland Waste and banks of fans. The rear site is in the RLZ and thus cannot be subject to any rule in the RPZ.

[107] The matter was considered by independent commissioners (B Smith and K Howley), who reached conclusions relating to the wording of the Plan based upon recognising the various interests involved. We agree with their approach and have reached a similar conclusion. Although the appeals before us have been more refined, and arguably not within scope, we have dismissed them in any event on their merits.

Scope issues

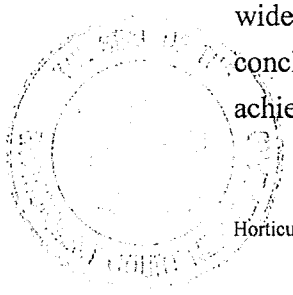
[108] No party argued Horticulture NZ's appeal was not in scope.

[109] Our conclusion on the lack of merit of the amendments to PC15 put forward at the hearing means that we do not need to consider and decide issues on the scope of Turners & Growers' appeal.

Part 2

[110] In the end PC15 is intended to achieve the purpose of the Act set out in Part 2. The District Plan is a local interpretation and application of that purpose. There is no dispute that the issues, objectives and policies of the Plan achieve that purpose. This Plan is liberal in seeking to provide for social, economic and cultural wellbeing, health and safety by enabling those in the RPZ to undertake a wide range of activities while managing the use, development, and protection of natural and physical resources to achieve Sections 5(2)(a), (b) and (c).

[111] PC15 recognises that incompatible activities may impact on farming and forestry activities, and uses a new method Scale of Activities in addition to the existing standards. We conclude that the setbacks sought on appeal would have very wide impacts over a physically large area of Northland for no clear purpose. We conclude the methods adopted currently are the most appropriate at this time to achieve the purpose of the Act and the objectives and policies of the Plan.



[112] Further review of the Plan and the effect of the current provisions may support the need for further or targeted controls, but they are not appropriate at this stage. Much better analysis is required than that produced by any of the parties and their witnesses to justify the changes proposed by Horticulture NZ and Turners & Growers.

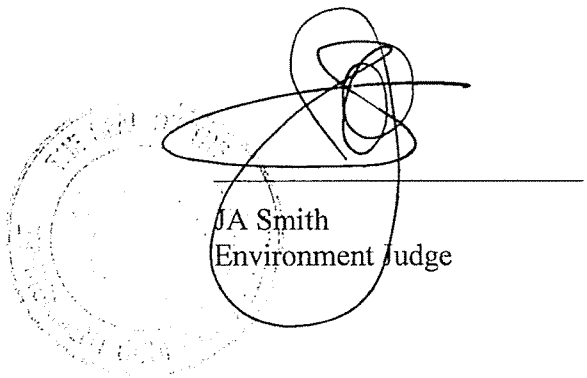
Outcome

[113] For the reasons we have given we consider that both appeals must be dismissed, subject to changes agreed between the parties and referred to in this decision. The relevant provisions of PC15 as set out in Appendix **A** are confirmed subject to the minor changes agreed between the parties and set out in Appendix **B** in this decision. We understand that there may be some other provisions of PC15 unrelated to these appeals which are currently subject to draft consent orders or memorandum yet to be filed, and the wording of PC15 is subject to any changes that might be finally agreed in that regard.

[114] Applications for cost are not generally appropriate in relation to plan changes. If any application is to be made it is to be filed within 20 working days; any response 10 working days after that; and any final response 5 working days thereafter.

SIGNED at AUCKLAND this 17th day of March 2016

for the Court



JA Smith
Environment Judge

8 RURAL ENVIRONMENT

CONTEXT

The majority of the land in the Far North is, and will remain, rural, where rural production is the main activity (29/10) but there are distinct differences in rural character and amenity across the various rural areas. There is also a greater sense of nature and of open space in the rural environment than in the more densely settled areas.

~~Rural land is characterised by relatively large land holdings, a relatively low intensity of built development and diverse activities. Even though there are big differences in the character of various areas of the rural environment, there is generally a greater sense of nature and of space in the rural area than in the more densely settled urban areas. It is this that distinguishes the rural from the urban environment.~~

Much of the rural environment is also coastal. The Act places particular responsibilities on councils to preserve the natural character of the coastal environment and for this reason it is differentiated from that part of the rural environment that does not have a significant coastal character.

Because of the ~~general character of the~~ lower density of development in the rural area and generally larger site sizes, there is a perception that the likelihood of adverse effects occurring from activities is less than it may be in more densely settled areas, or at least that adverse effects are more easily "absorbed" within the site. ~~As the zone name suggests, the Rural Production Zone is, in most but not all locations, characterised by a working rural production environment, with the usual noises, smells and visual effects associated with a wide range of farming, horticultural, forestry and mineral extraction purposes. Some activities, including activities that are ancillary to farming, horticulture or forestry may also have a functional need to be within the rural environment, however, such rural processing and servicing activities may be less compatible in more intensively settled locations. Overall, there is an expectation that rural production activities should be able to continue to operate without overly onerous or restrictive intervention by way of District Plan rules.~~ (21/2)

The consequence is that controls on activities in the rural environment generally ~~allow~~ enable a wide range of complementary rural activities to occur whilst avoiding, remedying, or mitigating any adverse effects on the environment. These various zone provisions ~~controls are, however,~~ supported by other controls in ***Part 3 of the Plan – District Wide Provisions*** ~~that~~ are designed to protect the natural and physical resources of the rural environment.

However, the rural land resource is also sometimes preferred by developers as an alternative location to establish industrial and commercial activities, especially on approach roads, relatively close to existing urban settlements. This can result in cumulative effects and impact on the efficient delivery of infrastructure. Zone provisions are designed to allow for activities that do not detract from the amenity values associated with the rural environment's attributes and character and that further contribute to the efficient use of the District's physical resources such as infrastructure.

~~Infrastructure and network utility operations are also located in the rural environment, often due to technical and operational requirements (47/0) and constraints. (FS-00498/6) Development in close proximity to such infrastructure requires careful management, as it can lead to adverse effects on the operation, maintenance and upgrading of those important facilities (47/0) and infrastructure. (FS-00498/6)~~

The character of the rural environment is constantly changing. These changes are largely in response to economic imperatives. They take the form of changes in farming and forestry practices and the type of productive activities that take place on the land, hence the zone name "Rural Production". They also result in the expansion of rural residential living on relatively small rural lots in some areas. Conflicts between land uses can arise due to these changes. For example, where countryside living occurs, the effects of odour, spraydrift and noise on residents becomes an issue. The Plan is designed to take account of the likely pressures for and consequences of change in the rural environment including settlement patterns for rural villages.

8.1 ISSUES

8.1.1 The subdivision, use and development of rural land can have adverse effects on the environment.

8.1.2 The requirement of the Plan to be effects-based places emphasis on the need to define effects and the minimum standards to be applied to those effects.

8.1.3 The loss of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a result of land use activities in the rural environment.

8.1.4 The effects of activities within the rural environment and between the rural and urban environments are not always compatible. The management of the effects of the change in activities which occur within the rural environment and on the rural-urban fringe as a result of the expansion of urban areas onto rural land is an issue.

8.1.5 The requirement to sustainably manage rural resources has implications both for the use of land and for its subdivision.

8.1.6 The effects of inappropriate subdivision, use and development on outstanding natural features and landscapes.

8.1.7 There is a risk that adverse environmental effects can result from incompatible activities located close together, including cumulative effects in near urban areas.

8.1.8 Inappropriate subdivision, use and development can adversely impact on the amenity values of the rural environment

8.1.9 Activities and services that have a functional relationship with rural production may be more efficient and appropriate to establish within the (17/5) rural environment rather than more densely settled areas.

8.1.10 ~~Industrial-style~~ **Inappropriate use and** (23/9) development along approach roads to town centres and domestic airports can adversely impact on prevailing character and amenity values.

8.1.11 Loss of rural production land due to development pressure from non-rural activities.

8.2 ENVIRONMENTAL OUTCOMES EXPECTED

8.2.1 A rural environment where natural and physical resources are managed sustainably.

8.2.2 A rural environment in which a wide variety of activities is enabled, consistent with safeguarding the life supporting capacity of air, water, soil and ecosystems.

8.2.3 A dynamic rural environment which is constantly changing to meet the social and economic needs of the District's communities through the sustainable management of natural and physical resources.

8.2.4 The maintenance of areas of significant indigenous vegetation and significant habitats of indigenous fauna including aquatic habitats, and an increase in such areas that are formally protected.

8.2.5 Adverse effects arising from potentially incompatible activities are avoided, remedied or mitigated.

8.2.6 The maintenance of values associated with outstanding natural features and landscapes in the rural environment.

8.2.7 A rural environment where change is acknowledged whilst amenity values are maintained and enhanced to a level that is consistent with the productive intent of the zone.

8.3 OBJECTIVES

8.3.1 To promote the sustainable management of natural and physical resources of the rural environment. ~~while enabling compatible activities to establish in the rural environment.~~ (29/18)

8.3.2 To ensure that the life supporting capacity of soils is not compromised by inappropriate subdivision, use or development.

8.3.3 To avoid, remedy or mitigate the adverse and cumulative effects of activities on the rural environment.

8.3.4 To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.

8.3.5 To protect outstanding natural features and landscapes.

8.3.6 To avoid actual and potential conflicts between land use activities in the rural environment.

8.3.7 To promote the maintenance and enhancement of amenity values of the rural environment to a level that is consistent with the productive intent of the zone.

8.3.8 To facilitate the sustainable management of natural and physical resources in an integrated way to achieve superior outcomes to more traditional forms of subdivision, use and development through management plans and integrated development.

8.3.9 **To enable rural production activities to be undertaken in the rural environment.** (29/17)

8.3.10 **To enable the activities compatible with the amenity values of rural areas and rural production activities to establish in the rural environment** (29/19)

8.4 POLICIES

8.4.1 That activities which will contribute to the sustainable management of the natural and physical resources of the rural environment are enabled to locate in that environment.

8.4.2 That activities be allowed to establish within the rural environment to the extent that any adverse effects of these activities are able to be avoided, remedied or mitigated and as a result the life supporting capacity of soils and ecosystems is safeguarded and rural productive activities are able to continue.

8.4.3 That any new infrastructure for development in rural areas be designed and operated in a way that safeguards the life supporting capacity of air, water, soil and ecosystems while protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes.

8.4.4 That development which will maintain or enhance the amenity value of the rural environment and outstanding natural features and outstanding landscapes be enabled to locate in the rural environment.

8.4.5 That plan provisions encourage the avoidance of adverse effects from incompatible land uses, particularly new developments adversely affecting existing land-uses (including by constraining the existing land-uses on account of sensitivity by the new use to adverse affects from the existing use – i.e. reverse sensitivity).

8.4.6 That areas of significant indigenous vegetation and significant habitats of indigenous fauna habitat be protected as an integral part of managing the use, development and protection of the natural and physical resources of the rural environment.

8.4.7 That Plan provisions encourage the efficient use and development of natural and physical resources, including consideration of demands upon infrastructure.

8.4.8 That, when considering subdivision, use and development in the rural environment, the Council will have particular regard to ensuring that its intensity, scale and type is controlled to ensure that adverse effects on habitats (including freshwater habitats), outstanding natural features and landscapes on the amenity value of the rural environment, and where appropriate on natural character of the coastal environment, are avoided, remedied or mitigated. Consideration will further be given to the functional need for the activity to be within rural environment and the potential cumulative effects of non-farming activities.

8.5 METHODS OF IMPLEMENTATION

DISTRICT PLAN METHODS

8.5.1 Policies will be implemented through the pattern of zoning and zone rules and through the rules relating to subdivision (***Chapter 13***).

8.5.2 Integrated development is provided for in the rules to promote innovative land uses, and to enable tangata whenua to utilise ancestral land.

8.5.3 Financial contributions (refer ***Chapter 14***) towards provision of car parking associated with non-residential activities and esplanade areas may be required. The amount of contribution will take account of the need for such services.

8.5.4 Protection and enhancement of indigenous flora and fauna is provided for in ***Section 12.2***.

8.5.5 Protection and enhancement of outstanding natural features and landscapes is provided for in ***Section 12.1***.

OTHER METHODS

8.5.6 Non regulatory methods including education, publicity and incentives that encourage activities that are compatible with the surrounding environment.

8.5.7 Education is an important method. The Council will provide information to landowners and the public generally about sustainable management of the rural environment.

8.5.8 Liaison with the Northland Regional Council concerning education, co-ordination of work programmes, policy development and plan administration.

8.5.9 Incentives will be made available to assist landowners to protect areas of significant indigenous vegetation and habitats of indigenous fauna.

8.5.10 In conjunction with the Northland Regional Council, explore the feasibility of setting up a register of contractors who are specially trained in good environmental practices and licensed to carry out

their work in accordance with approved codes of practice. Work undertaken by a licensed contractor that complies with the relevant Code of Practice would not require a property-specific resource consent.

COMMENTARY

The objectives, policies and methods of the rural environment are intended to give effect to the purpose of the Act. They also take account of the particular nature of the rural environment of the district. Accordingly emphasis is placed on enabling a wide range of activities to take place, limited only by the need to ensure that environmental quality is maintained.

8.6 RURAL PRODUCTION ZONE

CONTEXT

The Rural Production Zone applies over the majority of the rural part of the District other than those areas defined as Coastal, Rural Living or set aside for Recreation, Conservation or Minerals. ~~A wide range of activities are carried out in this zone at present and these are generally considered to be appropriate.~~ The zone is predominantly a working productive rural zone, hence its name.

The zone contains environmental and amenity standards which will enable the continuation of ~~the~~ a wide range of existing and future activities, compatible with normal farming and forestry activities, and with rural lifestyle and residential uses, while ensuring that the natural and physical resources of the rural area are managed sustainably. Activities that are ancillary to farming or forestry may also have a functional need to be within the rural environment, however, such rural processing and servicing activities may be less compatible in more intensively settled locations. The standards in the Rural Production Zone are also aimed at enabling farming and activities ancillary to rural production whilst maintaining and enhancing amenity values associated with the rural environment, and at minimising the likelihood and risk of incompatible land uses establishing in proximity to each other.

The provisions of the Rural Production Zone are complemented by the subdivision rules and the general rules relating to protection of environmental matters such as landscapes and indigenous flora and fauna, and having regard to amenity values.

The zone contains specific amenity standards designed to protect the special amenity values of the frontage Road between SH10 and the urban edge of Kerikeri.

8.6.1 ISSUES

These issues supplement those set out in ***Section 8.1***.

8.6.1.1 People who are dependant on the use of land in the Rural Production Zone for their livelihood can be adversely affected by controls designed to ensure sustainable management of natural and physical resources.

8.6.1.2 The sustainable management of natural and physical resources in the Rural Production Zone could be under threat in the absence of controls designed to avoid, remedy or mitigate the adverse effects of activities, including cumulative effects.

8.6.1.3 The use of land for rural production activities can be adversely affected by the establishment of incompatible activities.

8.6.1.4 Inappropriate subdivision, land use and development in the Rural Production Zone can lead to adverse cumulative effects, the degradation of amenity values, as well as increase conflict ~~with~~ between existing activities (reverse sensitivity).

8.6.1.5 Some ~~intensive~~ (29/30) activities and services have a functional need to be located in rural environments so as to enable rural productivity and contribute to the well-being of individuals and communities.

8.6.2 ENVIRONMENTAL OUTCOMES EXPECTED

These outcomes supplement those set out in ***Section 8.2***.

8.6.2.1 A Rural Production Zone where a wide variety of activities take place in a manner that is consistent with the sustainable management of natural and physical resources and compatible with the productive intent of the zone.

8.6.2.2 A Rural Production Zone which enables the social, economic and cultural well-being of people and communities, and their health and safety, while safeguarding the life supporting capacity of the environment and avoiding, remedying or mitigating adverse effects on it.

8.6.2.3 A Rural Production Zone where the adverse cumulative effects of activities are managed and amenity values are maintained and enhanced.

8.6.2.4 A Rural Production Zone where the adverse effects of incompatible activities are avoided, remedied or mitigated.

8.6.3 OBJECTIVES

These objectives supplement those set out in ***Section 8.3***.

8.6.3.1 To promote the sustainable management of natural and physical resources in the Rural Production Zone.

8.6.3.2 To enable the efficient use and development of the Rural Production Zone in a way that enables people and communities to provide for their social, economic, and cultural well being and for their health and safety.

8.6.3.3 To promote the maintenance and enhancement of the amenity values of the Rural Production Zone to a level that is consistent with the productive intent of the zone.

8.6.3.4 To promote the protection of significant natural values of the Rural Production Zone.

8.6.3.5 To protect ~~and enhance~~ (7/6) the special amenity values of the frontage to Kerikeri Road between its intersection with SH10 and the urban edge of Kerikeri.

8.6.3.6 To avoid, remedy or mitigate the actual and potential conflicts ~~among land use activities~~ **between new land use activities and existing lawfully established activities** (29/38)(reverse sensitivity) **within** (26/2) the Rural Production Zone **and on land use activities in neighbouring zones.** (26/2).

8.6.3.7 To avoid remedy or mitigate the adverse effects of incompatible use or development on natural and physical resources.

8.6.3.8 To enable the efficient establishment and operation of activities and services that have a functional need to be located in rural environments ~~so as to enable rural productivity.~~ (16/3)

8.6.3.9 To enable rural production activities to be undertaken in the zone. (29/35)

8.6.4 POLICIES

These policies supplement those set out in ***Section 8.4***.

8.6.4.1 That a wide range of activities be allowed in the Rural Production Zone, subject to the need to ensure that any adverse effects **on the environment** (26/3), including any reverse sensitivity effects, ~~on the environment~~ (26/3) resulting from these activities are avoided, remedied or mitigated and are not to the detriment of rural productivity.

8.6.4.2 That standards be imposed to ensure that the off site effects of activities in the Rural Production Zone are avoided, remedied or mitigated ~~That standards consistent with the rural production environment be used to avoid, remedy or mitigate adverse off site effects of activities in the Rural Production Zone.~~ (29/41)

8.6.4.3 That land management practices that avoid, remedy or mitigate adverse effects on natural and physical resources be encouraged.

8.6.4.4 That the type, scale and intensity of development allowed shall have regard to the maintenance and enhancement of the amenity values of the Rural Production Zone to a level that is consistent with the productive intent of the zone.

8.6.4.5 That the efficient use and development of physical and natural resources be taken into account in the implementation of the Plan.

8.6.4.6 That the built form of development allowed on sites with frontage **to Kerikeri Road** (21/5) between its intersection with SH10 and Cannon Drive be maintained as small in scale, set back from the road, relatively inconspicuous and in harmony with landscape plantings and shelter belts.

8.6.4.7 That although a wide range of activities that promote rural productivity are appropriate in the Rural Production Zone, an underlying goal is to avoid the actual and potential adverse effects of conflicting land use activities.

8.6.4.8 That activities whose adverse effects, **including reverse sensitivity effects**, (26/4) cannot be avoided remedied or mitigated are given separation from other activities

8.6.4.9 That activities be discouraged from locating where they are sensitive to the effects of or may compromise the continued operation of lawfully established existing activities **in the Rural Production zone and in neighbouring zones.** (26/5)

COMMENTARY

The objectives and policies of the Rural Production Zone are a subset of those for the rural environment. As such they are aimed at a particular zone within the rural environment and the particular constraints and opportunities inherent in the environment of that zone. They are intended to be as flexible, permissive and enabling as possible in order to ensure that rural productivity is not stifled and that other activities can establish where ~~*their significant adverse effects are avoided remedied or mitigated these do not create*~~

~~adverse effects~~ (FS 0050/21) *on rural production or* (29/45) *the natural and physical environment, including its people. ~~because the expansive settlement pattern of the Rural Production Zone means that the effects of activities in this zone are likely to have less adverse impact here than in some other zones.~~*

There is an emphasis on non-regulatory methods including education, incentives and publicity. This is because regulation has a negative connotation whereas non-regulatory methods are more positive.

The provision for integrated development clearly indicates that thinking "outside the square", and development that is innovative but provides for the protection of the environment, is to be encouraged.

The entrance along Kerikeri Road from SH10 is an important part of the towns' identity for local residents and visitors alike. The roadside stalls, tourist orientated enterprises, extensive landscape planting and shelter belts, add to the character of the entrance to Kerikeri, which is one of a mature landscape in which built form is well integrated with the surrounding vegetation. Specific requirements for building setbacks, landscape planting, vehicle parking and vehicle access will ensure that these special amenity values are recognised and protected.

There are roads within the District that have comparatively high levels of vehicle use ~~(over 1,000 vehicle movements per day). These~~ require particular consideration in terms of the management of traffic effects.

8.6.5 ZONE RULES

Activities in the Rural Production Zone must comply not only with the zone rules but also with the relevant rules in ***Part 3 of the Plan - District Wide Provisions.*** An activity may be permitted by the zone rules but may require a resource consent because it does not comply with one or more of the rules in **Part 3**.

Particular attention is drawn to:

(a) ***Chapter 12 Natural and Physical Resources*** (and the ***District Plan Maps***);
(b) ***Chapter 13 Subdivision***;
(c) ***Chapter 14 Financial Contributions***;
(d) ***Chapter 15 Transportation***;
(e) ***Chapter 16 Signs and Lighting***;
(f) ***Chapter 17 Designations and Utility Services*** (and the ***Zone Maps***).

Attention is also drawn to ***Section 18.3 Waimate North Zone*** (and ***Zone Maps)***. This special zone replaces the general zone for an area of land centred on Showgrounds Rd, Waimate North.

Particular attention is also drawn to ***Rules 15.2.5.1.1 & 15.2.5.1.2*** in ***Chapter 15.2 Airports*** which may result in an activity that is a permitted activity under ***Rule 8.6.5.1*** below no longer being permitted because of its proximity to the airport protection surfaces and runways of the Kaitaia, Kerikeri and Kaikohe Airports.

8.6.5.1 PERMITTED ACTIVITIES

An activity is a permitted activity in the Rural Production Zone if:

(a) it complies with the standards for permitted activities set out in ***Rules 8.6.5.1.1*** to ***8.6.5.1.9 11*** (11/10)(38/22) below; and
(b) **unless otherwise specified in the rule** (38/23) it complies with the relevant standards for permitted activities set out in ***Part 3 of the Plan - District Wide Provisions***.

8.6.5.1.1 RESIDENTIAL INTENSITY

Residential development shall be limited to one unit per 12ha of land. In all cases the land shall be developed in such a way that each unit shall have at least 3,000m² for its exclusive use surrounding the unit plus a minimum of 11.7ha elsewhere on the property.

Except that this rule shall not limit the use of an existing site, or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)*** for a single residential unit for a single household, provided that all other standards for permitted activities are complied with.

Note: There is a separate residential intensity rule applying to Papakainga Housing (refer to ***Rule 8.6.5.2.2***).

8.6.5.1.2 SUNLIGHT

No part of any building shall project beyond a 45 degree recession plane as measured inwards from any point 2m vertically above ground level on any site boundary (refer to definition of Recession Plane in ***Chapter 3 - Definitions***).

Exemptions: crop protection structures not exceeding 6m in height (29/3)

8.6.5.1.3 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 15%.

~~8.6.5.1.4 SETBACK FROM BOUNDARIES~~

~~(a) no building shall be erected within 10m of any site boundary;~~

~~(b) except that no accessory building shall be erected within 3m of boundaries other than road boundaries, on sites less than 5000m^2;~~

~~(c) and further that no crop protection structures shall be located within 3m of boundaries; (29/6)~~

~~(c)(d) except and further that no building shall be erected within 12m of any road boundary with Kerikeri Road on properties with a road frontage with Kerikeri Road between its intersection with SH10 and Cannon Drive;~~

~~(d)(e) and further except that no building for residential purposes shall be erected closer than 100m from any zone boundary with the Minerals Zone;~~

~~(e)(f) and further except that no building shall be erected within the building line restriction area as marked in *Appendix 6C*, located immediately north of the Te Waimate Heritage Precinct. Any proposed building to be erected within this building line restriction area shall be deemed a discretionary activity and the New Zealand Historic Places Trust will be considered an affected party to any such application made under this rule.~~

~~Attention is also drawn to the setback from *Lakes, Rivers, Wetlands and the Coastline* provisions in *Chapter 12.7*.~~

8.6.5.1.4 SETBACK FROM BOUNDARIES

No building shall be erected within 10m of any site boundary, with the following exceptions;

(a)~~(b)~~ no accessory building shall be erected within 3m of boundaries other than road boundaries, on sites less than 5000m^2;

(b)~~(c)~~ no crop protection structures shall be located within 3m of boundaries; (29/6)

(c)~~(d)~~ no building shall be erected within 12m of any road boundary with Kerikeri Road on properties with a road frontage with Kerikeri Road between its intersection with SH10 and Cannon Drive;

(d)~~(e)~~ no building for residential purposes shall be erected closer than 100m from any zone boundary with the Minerals Zone;

(e)~~(f)~~ no building shall be erected within the building line restriction area as marked in ***Appendix 6C***, located immediately north of the Te Waimate Heritage Precinct. Any proposed building to be erected within this building line restriction area shall be deemed a discretionary activity and the New Zealand Historic Places Trust will be considered an affected party to any such application made under this rule.

Attention is also drawn to the setback from ***Lakes, Rivers, Wetlands and the Coastline*** provisions in ***Chapter 12.7***.

8.6.5.1.5 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is 60 daily one way movements, unless the site gains access off a State Highway administered by the New Zealand Transport Agency, in which case the Traffic Intensity Factor is 30 daily one way movements.

The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity or changing an activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt.

~~Note: Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly any change to form or intensity of land use on such land is may be~~ (39/20) ~~subject to the approval of the NZTA.~~

Note: Applicants are advised that where an application is required because of non compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State highway) the New Zealand Transport Agency may be considered an affected party. (38/20)

8.6.5.1.6 KEEPING OF ANIMALS

(a) Any building, compound or part of a site used for factory farming ~~or boarding kennels~~ or a cattery, shall be located no closer than ~~50m~~ 300m from any site boundary, except for a boundary which adjoins a Residential, Coastal Residential or Russell Township Zone, where the distance shall be a minimum of 600m.(13/2)

(b) ~~except that a~~Any building, compound or part of a site used for a boarding kennel cattery accommodating no more than 20 cats shall be located no closer than 300 ~~50~~ metres from any site boundary except for a boundary which adjoins a Residential, Coastal Residential or Russell Township Zone, where the distance shall be a minimum of 600m. (32/1)

8.6.5.1.7 NOISE

(a) All activities except temporary military training activities shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits as measured at or within the boundary of any other site in this zone, or at any site in the Residential, Coastal Residential or Russell Township Zones, or at or within the notional boundary of any dwelling in any other rural or coastal zone:

0700 to 2200 hours	~~65~~ 55 dBA L_{10}
2200 to 0700 hours	45 dBA L_{10} and
	70 dBA L_{max}

Exemptions: The foregoing noise limits shall not apply to airport operations at Kaitaia, Kerikeri and Kaikohe including aircraft being operated during or immediately before or after flight. For the purposes of this exemption aircraft operations shall include all aircraft activity from start up to shut down of engines. The noise limits shall also not apply to activities periodically required by normal farming and forestry practice such as harvesting, provided that the activity shall comply with the requirements of s.16 of the Act.

Noise Measurement and Assessment:

Sound levels shall be measured in accordance with *NZS 6801:1991 "Measurement of Sound"* and assessed in accordance with *NZS 6802:1991 "Assessment of Environmental Sound"*.

The notional boundary is defined in *NZS 6802:1991 "Assessment of Environmental Sound"* as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Construction Noise:

Construction noise shall meet the limits recommended in, and shall be measured and assessed in accordance with, *NZS 6803P:1984 "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work"*.

(b) Noise limits for temporary military training activities are as follows:

Time	Limits (dBA)		
(Any Day)	L_{10}	L_{95}	L_{max}
0630 to 0730	60	45	70
0730 to 1800	75	60	90
1800 to 2000	70	55	85
2000 to 0630	55		

Impulse noise resulting from the use of explosives, explosives simulators or small arms shall not exceed 122 dBC.

Temporary military training activities shall be conducted so as to ensure the following noise limits are not exceeded at any point within the notional boundary of any dwelling, or residential institution, or educational facility within the district.

8.6.5.1.8 BUILDING HEIGHT

The maximum height of any building shall be 12m.

8.6.5.1.9 HELICOPTER LANDING AREA

A helicopter landing area shall be at least 200m from the nearest boundary of any of the Residential, Coastal Residential, Russell Township or Point Veronica Zones

8.6.5.1.10 SCALE OF ACTIVITIES

For activities other than those provided for in the in the exemptions below, (29/50) ~~The~~ total number of people engaged at any one period of time in activities on a site, including employees and persons making use of any facilities, but excluding people who normally reside on the site or are members of the household shall not exceed

i. For activities ancillary to farming or forestry, 8 persons per site or 2 person per 1 hectare of net site area, whichever is the greater

ii. For all other activities, 4 persons per site or 1 person per 1 hectare of net site area, whichever is the greater.

Provided that:

(a) this number may be exceeded for a period totalling not more than 60 days in any 12 month period where the increased number of persons is a direct result of activities ancillary to the primary activity on the site; and

(b) this number may be exceeded where persons are engaged in constructing or establishing an activity (including environmental enhancement) on the site; and

(c) this number may be exceeded where persons are visiting marae.

In determining the total number of people engaged at any one period of time, the Council will consider the maximum capacity of the facility (for instance, the number of beds in visitors accommodation, the number of seats in a restaurant or theatre), the number of staff needed to cater for the maximum number of guests, and the number and nature of the vehicles that are to be accommodated on site to cater for those engaged in the activity.

Exemptions: the foregoing limits shall not apply to ~~activities of limited duration required by normal farming and forestry practice, such as harvesting, or~~ Temporary Military Training activities (11/4) provided that Temporary Military Training Activities shall comply with the noise standards in Rule 8.6.5.1.7(b). All other activities ~~the activity~~ shall comply with the requirements of s16 of the Act.

Note: a definition of Activities Ancillary to Farming or Forestry, is contained in Chapter 3 and reads proposed as follows:

Processing and packaging facilities for farming, forestry, ~~and other primary production activities,~~ and any rural industry that is dependent primarily on the direct handling of raw produce, or that primarily supplies services to farming, horticulture, ~~intensive farming~~, or forestry. Includes premises used for the manufacture of dairy products, abattoirs, timber processing, stock yards and sale yards, cool stores and pack houses and rural contractor depots (9/2) ~~and retail of produce derived from the site.~~ (18/8)

~~8.6.5.1.11 TEMPORARY EVENTS~~

~~Temporary events (refer to *Chapter 3 Definitions*) are a permitted activity in the zone, provided that:~~

~~(a) do not operate daily (27/2) outside the hours of 6.30am to 10pm;~~

~~(b) does not have a duration of more than two days;~~

~~(c) complies with excavation and/or filling rules as contained in *Chapter 12.3 of Part 3 of the District Plan* (and/or any necessary Earthworks Permit has been obtained);~~

~~(d) it complies with the noise provisions applying in the zone~~

~~(e) they do not involve the daily (27/2) assembly of more than 500 persons;~~

~~(f) prior to the event, a Traffic Management Plan (including parking) has been approved by the Council's Roading Engineer, or by NZTA representatives where access is off State Highway, or where traffic to and from the event will impact on State Highways in the vicinity. The approved plan is to be lodged with Council's Resource Consents Manager or other duly delegated officer at least 20 days prior to the event taking place and be complied with for the duration of the event.~~ (21/3)(34/14)(27/2)

8.6.5.1.11 TEMPORARY EVENTS

Temporary events ~~(refer to Chapter 3 Definitions)~~ are a permitted activity in the zone, provided that:

(a) ~~the activity~~ does not have a duration of more than two days;

(b) ~~the activity~~ does not operate ~~daily~~ outside the hours of 6.30am to 10pm ~~on each day~~; (27/2);

(c) the activity does not involve the ~~daily~~ (27/2) assembly of more than 500 persons ~~on each day~~; (27/2);

(d) ~~the activity~~ complies with excavation and/or filling rules as contained in Chapter 12.3 of Part 3 of the District Plan (and/or any necessary Earthworks Permit has been obtained);

~~(e) the activity complies with the noise provisions applying in the zone~~ (38/23)

~~(e)~~(f) prior to the event, a Traffic Management Plan (including parking) has been approved by the Council's Roading Engineer, or by NZTA representatives where access is off State Highway, or where traffic to and from the event will impact on State Highways in the vicinity. ~~The approved plan is to be lodged with Council's Resource Consents Manager or other duly delegated officer at least 20 days prior to the event taking place and be complied with for the duration of the event.~~ (21/3)(34/14)(27/2)

Note 1: ~~A temporary event need not comply with the Zone rules nor the Traffic Parking and Access provisions of Chapter 16.1. A temporary event must otherwise comply with the District Wide rules and those matters specified within the rule itself.~~ (27/2)(38/23)

Exemptions: The foregoing limits shall not apply to temporary military training activities ~~and temporary structures associated with the temporary event.~~ (27/2)(0047/32)

Note: a definition of Temporary Events is ~~contained~~ in Chapter 3 and reads ~~proposed~~ as follows:

~~A temporary event must be of an intermittent nature, i.e. it cannot be a regular occurrence weekly or monthly; and can include entertainment, cultural, educational and sporting events. A temporary event includes structures associated with the event. This definition excludes permanently licensed premises.~~ A temporary event is an infrequent event held outside a dedicated venue such as a showground or sports field which occurs no more frequently than once in any twelve month period on a particular site. It can encompass entertainment, cultural, educational and sporting events. It includes temporary removable structures associated with the event but does not include permanently licensed premises (38/40)(27/2) or Temporary Military Training Activities. (11/2)

8.6.5.2 CONTROLLED ACTIVITIES

An activity is a controlled activity in the Rural Production Zone if:

(a) it complies with all of the standards for permitted activities except for any one of the following ***Rules 8.6.5.1.3 Impermeable Surfaces***; and/or ***8.6.5.1.7(b) Noise Limits for Temporary Military Training*** above; and

(b) it complies with ***Rules 8.6.5.2.1 Impermeable Surfaces; 8.6.5.2.2 Papakainga Housing***; ~~and/or~~; ***8.6.5.2.3 Minor Residential Unit*** and/or ***8.6.5.2.34***(11/11) ***Noise Limits for Temporary Military Training*** below; and

(c) it complies with the relevant standards for permitted or controlled activities set out in ***Part 3 of the Plan - District Wide Provisions***.

The Council must approve an application for a land use consent for a controlled activity but it may impose conditions on that consent.

8.6.5.2.1 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 20%.

In considering an application under this provision the Council will restrict the exercise of its control to:

(a) the extent to which building site coverage and impermeable surfaces contribute to total catchment impermeability and the provisions of any catchment or drainage plan for that catchment;

(b) the extent to which Low Impact Design principles have been used to reduce site impermeability in order to avoid, remedy or mitigate any adverse effects of stormwater runoff on receiving environments;

(c) the ability to provide adequate landscaping for all activities associated with the site;

(d) the degree to which mitigation measures are proposed for loss of open space and vegetation to the surrounding environment;

(e) any cumulative effects on total catchment impermeability;

(f) the extent to which building site coverage and impermeable surfaces will disturb the ground and alter the physical qualities of the soil type, soil pattern and natural contour of the site;

(g) any adverse effects on the life supporting capacity of soils;

(h) the availability of land for the disposal of effluent and stormwater on the site without adverse effects on the water quantity and water quality of water bodies (including groundwater and aquifers) or on adjacent sites;

(i) the extent to which paved, impermeable surfaces are necessary for the proposed activity;

(j) visual amenity effects;

(k) the extent to which prevailing climatic conditions and landscaping may reduce adverse effects;

(l) any recognised standards promulgated by industry groups;

(m) the ability to provide adequate landscaping for all activities associated with the site.

8.6.5.2.2 PAPAKAINGA HOUSING

Papakainga housing is a controlled activity in the Rural Production Zone provided that:

(a) it complies with all the standards for permitted activities in this zone and in ***Part 3 - District Wide Provisions***, except for the standards for residential intensity; and

(b) each residential unit has at least 3,000m² surrounding the unit for its exclusive use;

provided that the amount of land elsewhere on the site, in addition to the 3,000m² surrounding the unit, is not less than that required for the discretionary activity residential intensity standard (refer to ***Rule 8.6.5.4.1***).

In considering an application under this provision, the Council will restrict the exercise of its control to the following matters:

(i) the number and location of dwellings;

(ii) the location and standard of access;

(iii) screening and planting.

8.6.5.2.3 MINOR RESIDENTIAL UNIT

Minor residential units ~~(refer to *Chapter 3 Definitions*)~~ are a controlled activity in the zone provided that:

(a) there is no more than one minor residential unit per site;

(b) the site has a minimum net site area of 5000m^2 ~~or greater~~; (21/10)

(c) the minor residential unit shares vehicle access with the principal dwelling;

(d) ~~the minor residential unit is no greater than 30m from the principal dwelling~~ **the separation distance of the minor residential unit is no greater than 30m from the principal dwelling.** (21/10)

In considering an application under this provision, the Council will restrict the exercise of its control to the following matters:

(i) the extent of the separation between the principal dwelling and the minor residential unit;
(ii) the degree to which design is compatible with the principal dwelling;
(iii) the extent that services can be shared;
~~(iv) the extent that the floor plan is fit for purpose (e.g. 3 bedrooms in 65m^2 would not be considered appropriate for the purpose of a minor residential unit);~~ (38/24)
(iv)~~(v)~~ ~~landscaping.~~ **the ability to mitigate any adverse effects by way of provision of landscaping and screening.** (27/1)(38/24)
(v) the location of the unit (27/1)(0047/31)

Note: a definition of Minor Residential unit is contained in Chapter 3 and reads ~~proposed~~ as follows:

Means a residential unit that:

(i) is not more than 65m^2 GFA, plus an attached garage or carport with GFA not exceeding 18m^2 (for the purpose of vehicle storage, general storage and laundry facilities). The garage area shall not be used for living accommodation;
(ii) is subsidiary to the principal dwelling on the site; and,
(iii) is located and retained within the same Certificate of Title as the principal dwelling on the site.

8.6.5.2.4 NOISE LIMITS FOR TEMPORARY MILITARY TRAINING

In considering a controlled activity application resulting from a breach of ***Rule 8.6.5.1.7(b) Noise Limits for Temporary Military Training*** the Council will restrict the exercise of its control to:

(a) the location, duration and frequency of any noise emissions.

8.6.5.3 RESTRICTED DISCRETIONARY ACTIVITIES

An activity is a restricted discretionary activity in the Rural Production Zone if:

(a) it does not comply with any one of the following ***Rules 8.6.5.1.1 Residential Intensity, 8.6.5.1.2 Sunlight; 8.6.5.1.4 Setback from Boundaries; 8.6.5.1.5 Traffic Intensity; 8.6.5.1.7 Noise; 8.6.5.1.8 Building Height; and 8.6.5.1.10(i) Scale of Activities, as*** set out above; but

(b) it complies with all of the other rules for permitted and controlled activities under ***Rules 8.6.5.1*** and ***8.6.5.2***; and

(c) it complies with ***Rules 8.6.5.3.1 Traffic Intensity; 8.6.5.3.2 Building Height; 8.6.5.3.3 Sunlight; 8.6.5.3.4 Setback from Boundaries, 8.6.5.3.5 Noise; 8.6.5.3.6 Residential Intensity***; and ***8.6.5.3.7 Scale of Activities*** below; and

(d) it complies with the relevant standards for permitted, controlled or restricted discretionary activities set out in ***Part 3 of the Plan - District Wide Provisions***.

The Council may approve or refuse an application for a restricted discretionary activity, and it may impose conditions on any consent.

In assessing an application for a restricted discretionary activity, the Council will restrict the exercise of its discretion to the specific matters listed for each rule below, or where there is no rule, to the specific matters listed below under the appropriate heading.

8.6.5.3.1 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is 31-200 daily one way movements where access is obtained off a State Highway administered by the New Zealand Transport Agency;

and 61-200 daily one way movements elsewhere. The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity or changing an activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt from this rule.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the time of day when the extra vehicle movements will occur;

(b) the distance between the location where the vehicle movements take place and any adjacent properties;

(c) the width and capability of any street to be able to cope safely with the extra vehicle movements;

(d) the location of any footpaths and the volume of pedestrian traffic on them;

(e) the sight distances associated with the vehicle access onto the street;

(f) the existing volume of traffic on the streets affected;

(g) any existing congestion or safety problems on the streets affected;

(h) with respect to effects in local neighbourhoods, the ability to mitigate any adverse effects through the design of the access, or the screening of vehicle movements, or limiting the times when vehicle movements occur;

(i) with respect to the effects on through traffic on roads with more than 1000 vehicle movements per day, the extent to which Council's *"Engineering Standards and Guidelines" (2004)* are met;

(j) effects of the activity where it is located within 500m of reserve land administered by the Department of Conservation upon the ability of the Department to manage and administer that land;

(k) the extent to which the amenity values of the immediate area, including adjacent properties and the road frontage, will be adversely affected by traffic movements.

(l) the effects on the safety and/or efficiency on any State Highway and its connections to the local roading network.

(m) the effects of the proposed development on the continued operation, or future expansion, of the existing activities in the surrounding area.

~~**Note:** Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly any change to form or intensity of land use on such land is may be (30/26) subject to the approval of the NZTA.~~

Note: **Where an application is required because of non-compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State Highway) the New Zealand Transport Agency may be considered an affected party for notification purposes.**

8.6.5.3.2 BUILDING HEIGHT

The maximum height of any building shall be 15m.

In assessing application under this provision the Council will restrict the exercise of its discretion to:

(a) the extent to which adjacent properties will be adversely affected in terms of visual domination, overshadowing, loss of privacy and loss of access to sunlight and daylight;

(b) the ability to mitigate any adverse effects by way of increased separation distances between buildings or the provision of landscaping and screening.

8.6.5.3.3 SUNLIGHT

In assessing an application resulting from a breach of ***Rule 8.6.5.1.2 Sunlight*** the matters to which the Council will restrict its discretion are:

(a) the extent to which adjacent properties will be adversely affected in terms of visual domination, overshadowing, loss of privacy and loss of access to sunlight and daylight;

(b) the location and proximity of adjacent residential units, and the outdoor space used by those units;

(c) the ability to mitigate any adverse effects of loss of sunlight.

8.6.5.3.4 SETBACK FROM BOUNDARIES

In assessing an application resulting from a breach of ***Rule 8.6.5.1.4 Setback from Boundaries*** the matters to which the Council will restrict its discretion are:

(a) the extent to which the building(s) reduces outlook and privacy of adjacent properties;

(b) the extent to which the buildings restrict visibility for access and egress of vehicles;

(c) the ability to mitigate any adverse effects on the surrounding environment, for example by way of planting;

(d) for sites having a frontage with Kerikeri Road (between its intersection with SH10 and Cannon Drive:

(i) the scale of the buildings;

(ii) the extent of set back from Kerikeri Road;

(iii) the visual appearance of the site from the Kerikeri Road frontage;

(iv) the extent to which the building(s) are in harmony with landscape plantings and shelter belts;

(e) for residential buildings located within 100m of Minerals Zone:

(i) the position of the building platform(s) in relation to the mine or quarry;

(ii) the likelihood of the mine or quarry causing environmental effects, especially noise and loss of amenity values, that will impact adversely on the occupiers of the proposed residential building;

(iii) the effectiveness of any mitigation measures proposed;

Where an application is required under this rule, the owner and/or operator of any mine or quarry within the adjacent Minerals Zone shall be considered an affected party. Where the written approval of the owner and the mine or quarry operator has been obtained, the application will be non-notified.

(f) the extent to which the buildings and their use will impact on the public use and enjoyment of adjoining esplanade reserves and strips and adjacent coastal marine areas.

8.6.5.3.5 NOISE

In assessing an application resulting from a breach of ***Rule 8.6.5.1.7 Noise*** the matters to which the Council will restrict its discretion are:

(a) the character, level and duration of noise from any activity as received at the boundary, or notional boundary of another site;

(b) the hours of operation in relation to the surrounding environment;

(c) the effectiveness of any noise mitigation measures proposed.

8.6.5.3.6 RESIDENTIAL INTENSITY

Excluding a Minor Residential Unit, which is covered in Rule 8.6.5.2.3, Residential development shall be limited to ~~a cumulative total of no more than~~ one ~~principal residential unit and an associated minor residential~~ unit, per 4ha of land. ~~provided the minor residential unit is consented to pursuant to *Rule 8.6.5.2.3* above~~. In all cases the land shall be developed in such a way that **each** ~~the unit(s)~~ shall have at least 3,000m^2 for its exclusive use surrounding the unit plus a minimum of 3.7ha elsewhere on the property. (38/26)(21/12)

Except that this rule shall not limit the use of an existing site, or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)*** for a single residential unit for a single household, provided that all other standards for permitted, **controlled and restricted discretionary** (21/12) activities are complied with.

Note: There is a separate residential intensity rule applying to Papakainga Housing (refer to ***Rule 8.6.5.2.2***).

When considering an application under this provision the Council will restrict the exercise of its discretion to matters relating to:

(a) effects on the natural character of the coastal environment for proposed residential units which are in the coastal environment (for the purposes of this rule the upstream boundary of the coastal environment in the upper reaches of the harbours is to be established by multiplying the width of the river mouth by five);

(b) for residential units within 500m of land administered by the Department of Conservation, effects upon the ability of the Department to manage and administer its land;

(c) effects on areas of significant indigenous flora and significant habitats of indigenous fauna;

(d) the mitigation of fire hazards for health and safety of residents;

(e) the character and appearance of building(s) and the extent to which the effects they generate can be avoided, remedied or mitigated;

(f) the siting of the building(s), decks and outdoor areas relative to adjacent dwellings and properties (including the road boundary) in order to avoid visual domination and loss of privacy and sunlight to those adjacent dwellings and properties;

(g) the size, location and design of open space associated with each residential unit, and the extent to which trees and garden plantings are utilised for mitigating adverse effects;

(h) the ability of the immediate environment to cope with the effects of additional vehicular and pedestrian traffic;

(i) any servicing requirements and/or constraints of the site;

(j) the ability to provide adequate opportunity for landscaping and buildings and for all outdoor activities associated with the residential unit(s);

(k) the extent of visual and aural privacy between residential units on the site and their associated outdoor spaces;

(l) **The extent to which the location of the building could create reverse sensitivity effects on adjacent rural production activities.** (29/59)

8.6.5.3.7 SCALE OF ACTIVITIES

Activities ancillary to farming or forestry that breach ***Rule 8.6.5.1.10(l) Scale of Activities*** are a Restricted Discretionary Activity. The matters to which the Council will restrict its discretion when assessing an application resulting from a breach are:

(a) the effects of the proposed activity on the continued operation, or future expansion, of the existing activities in the surrounding area.

(b) the extent to which the activity has a functional need to be located in the rural environment so as to support rural productivity;

(c) the siting of the building(s), decks and outdoor areas relative to adjacent properties and the road frontage in order to avoid visual domination and loss of privacy and sunlight;

(d) the size, location and design of open space and the extent to which trees and plantings are utilised for mitigating adverse effects

(e) the location and design of vehicular traffic and pedestrian access, on-site vehicle manoeuvring and parking areas and the ability of those to mitigate the adverse effects of additional traffic;

(f) the location in respect of the roading hierarchy – the activity should be assessed with regard to an appropriate balance between providing access and the function of the road;

(g) the extent to which hours of operation are appropriate in terms of the surrounding environment;

(h) noise generation and the extent to which reduction measures are used;

(i) any servicing requirement and/or constraints of the site – whether the site has adequate water supply and provision for disposal of waste products and stormwater;

(j) where a property is adjacent to a public reserve, the potential impacts on the public use and enjoyment of that reserve.

Note: Activities on a site, other than activities ancillary to farming or forestry that do not comply with ***Rule 8.6.5.1.10(l)*** are a discretionary activity. Refer to ***Rule 8.6.5.4.4.***

8.6.5.4 DISCRETIONARY ACTIVITIES

An activity is a discretionary activity in the Rural Production Zone if:

(a) it complies with ***Rules 8.6.5.4.1 Residential Intensity***; ***8.6.5.4.2 Integrated Development*** ~~and/or~~ ***8.6.5.4.3 Helicopter Landing Area*** and/or ***8.6.5.4.4 Scale of Activities*** below; and

(b) it complies with the relevant standards for permitted, controlled, restricted discretionary or discretionary activities set out in ***Part 3 of the Plan - District Wide Provisions*** unless it is an Integrated Development pursuant to ***Rule 8.6.5.4.2*** below; but

(c) it does not comply with one or more of the other standards for permitted, controlled or restricted discretionary activities in this zone as set out under ***Rules 8.6.5.1***; ***8.6.5.2*** and ***8.6.5.3*** above.

The Council may impose conditions of consent on a discretionary activity or it may refuse consent to the application. When considering a discretionary activity application, the Council will have regard to the assessment criteria set out under ***Chapter 11***.

If an activity does not comply with the standards for a discretionary activity, it will be a non-complying activity in this zone.

8.6.5.4.1 RESIDENTIAL INTENSITY

Excluding a Minor Residential Unit, which is covered in Rule 8.6.5.2.3, Residential development shall be limited to ~~a cumulative total of no more than~~ one ~~principal residential unit and an associated minor residential~~ unit, per 2ha of land~~, provided the minor residential unit is consented to pursuant to *Rule 8.6.5.2.3* above~~. In all cases the land shall be developed in such a way that each unit~~(s)~~ shall have at least 2,000m² for its exclusive use surrounding the unit plus a minimum of 1.8ha elsewhere on the property.[38/29)(21/13)]

Except that this rule shall not limit the use of an existing site, or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)*** for a single residential unit for a single household, provided that all other standards for discretionary activities are complied with.

8.6.5.4.2 INTEGRATED DEVELOPMENT

Notwithstanding the rules in this zone relating to the management of the effects of activities, an application for integrated development of activities only on Maori freehold land and Maori customary land and Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993) may be made where the proposed development does not comply with one or more of the rules.

This rule applies to Maori customary land, Maori freehold land and Crown land reserved for Maori for activities including papakainga housing and marae and associated buildings.

Integrated development plans will be considered in the context of other whanau and hapu lands in the vicinity, including an acknowledgement of areas of open space, reserve, natural vegetation and other amenities already provided by the land owning groups concerned.

A management plan for integrated development under this rule shall include information on the following where relevant and necessary for a sufficient understanding of the proposal:

(a) a plan showing the location of the property (including property boundaries), topography, adjoining uses, location of the activities proposed in the application, existing vegetation (type and location), drainage patterns, existing and proposed access road/s, location of any outstanding landscapes or natural features, location of any covenanted or otherwise protected areas;

(b) a description of the purpose of the application and the activities which are proposed;

(c) a description of the degree (if any) to which the proposed development will exceed the standards set for permitted, controlled, restricted discretionary and discretionary activities in the zone;

(d) details of the staging (if any) which is proposed;

(e) a description of any heritage resources on the property;

(f) other information which is relevant to any assessment of the effects of the application, is as follows:

  (i) details of provisions made for sewage and stormwater disposal and the proposals for avoiding, remedying or mitigating any adverse effects on receiving environments of stormwater flows;

  (ii) details of any earthworks;

  (iii) details of the geotechnical aspects of the property;

(jv) details of any natural hazard areas and the measures which will be taken to avoid any adverse effects;

(v) details of the measures (if any) to protect indigenous vegetation and habitats, outstanding landscapes and natural features, heritage resources and riparian margins;

(vi) the extent to which areas of open space, reserves, natural vegetation and other amenities are already provided by the land owning group on other whanau and hapu lands in the vicinity.

(g) The extent to which the application promotes energy efficiency and renewable energy development and use as provided for in Policy 13.4.15 through incorporating the following initiatives:

(i) development of energy efficient buildings (e.g. by providing a north-facing site with the ability to place a building on an east/west axis);

(ii) reduced travel distances and car usage by designing a layout with as many links to adjacent sites and surrounding roads as practicable;

(iii) encouragement of pedestrian and cycle use by designing a layout that allows easy direct access to and from, shops, schools, work places, reserves and other amenities;

(iv) access to alternative transport facilities;

(v) domestic scale renewable energy and/or community renewable energy development;

(vi) solar street lighting.

In assessing an application under this rule the Council will have regard to the following matters:

(i) the objectives and policies of the Plan;

(ii) the degree to which the application exceeds the standards for the zone;

(iii) the degree to which the potential effects of the application have been avoided, remedied or mitigated;

(iv) any other matter which it determines to be relevant to the application.

Note: Attention is drawn to ***Rule 13.9.2 Management Plans*** which provides for a once-off opportunity for integrated development which results in superior outcomes to more traditional forms of use and development for land which is not either Maori freehold land, Maori customary land or Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993).

8.6.5.4.3 HELICOPTER LANDING AREA

A helicopter landing area within 200m of the nearest boundary of any of the Residential, Coastal Residential, Russell Township or Point Veronica Zones.

8.6.5.4.4 SCALE OF ACTIVITIES

When the total number of people engaged at one period of time in activities on a site, other than activities ancillary to farming or forestry, including employees and persons making use of facilities, but excluding people who normally reside on a site or are members of the household, does not comply with ***Rule 8.6.5.1.10(i)*** it is a discretionary activity.

In determining the total number of people engaged at any one period of time, the Council will consider the maximum capacity of the facility (for instance, the number of beds in visitor accommodation, the number of seats in a restaurant or a theatre), the number of staff need to cater for the maximum number of guests, and the number and the nature of the vehicles that are to be accommodated on site to cater for those engaged in the activity.

8.7 RURAL LIVING ZONE

CONTEXT

The Rural Living Zone is an area of transition between town and country. The transition is expressed in terms mainly of residential intensity and lot sizes. The potential for the adverse effects of farming to be of concern for residential zones and vice versa, is reduced by the presence of the Rural Living Zone, where both rural and residential activities co-exist and form an area with a distinctive and separate character.

As an area of transition, parts of the Rural Living Zone may from time to time be proposed for rezoning to urban purposes. An intermediate step towards urban zoning can be taken through the preparation of a structure plan, such as that proposed for Kerikeri. The structure plan would need to be formalised by way of a Plan Change before an urban zoning could be applied.

While Council will be alert to the need for, and may initiate, a structure plan, developers and landowners may also prepare and submit structure plans.

The zone contains specific amenity standards designed to protect the special amenity values of the frontage to Kerikeri Road between SH10 and the urban edge of Kerikeri.

8.7.1 ISSUES

These issues supplement those set out in ***Section 8.1***.

8.7.1.1 Residential development on relatively small rural lots is popular in some areas of the District, but can have adverse effects for rural activities where these adjoin rural residential areas.

8.7.1.2 The greater population density of the Rural Living Zone, as compared to the Rural Production Zone, has the potential to cause both physical and cultural effects on the environment that could be adverse.

8.7.2 ENVIRONMENTAL OUTCOMES EXPECTED

These outcomes supplement those set out in ***Section 8.2***.

8.7.2.1 A Rural Living Zone where residential living on small rural lots is compatible with those other rural activities that have an emphasis on production rather than lifestyle.

8.7.2.2 A Rural Living Zone where the controls on the activities ensure a high standard of privacy and amenity for residential activities.

8.7.2.3 A Rural Living Zone where activities are self sufficient in terms of water supply, sewerage and drainage, while not causing adverse effects on the environment.

8.7.3 OBJECTIVES

These objectives supplement those set out in ***Section 8.3***.

8.7.3.1 To achieve a style of development on the urban periphery where the effects of the different types of development are compatible.

8.7.3.2 To provide for low density residential development on the urban periphery, where more intense development would result in adverse effects on the rural and natural environment.

8.7.3.3 To protect the special amenity values of the frontage to Kerikeri Road between SH10 and the urban edge of Kerikeri.

8.7.4 POLICIES

These policies supplement those set out in ***Section 8.4***.

8.7.4.1 That a transition between residential and rural zones is achieved where the effects of activities in the different areas are managed to ensure compatibility.

8.7.4.2 That the Rural Living Zone be applied to areas where existing subdivision patterns have led to a semi-urban character but where more intensive subdivision would result in adverse effects on the rural and natural environment.

8.7.4.3 That residential activities have sufficient land associated with each household unit to provide for outdoor space, and where a reticulated sewerage system is not provided, sufficient land for on-site effluent disposal.

8.7.4.4 That no limits be placed on the types of housing and forms of accommodation in the Rural Living Zone, in recognition of the diverse needs of the community.

8.7.4.5 That non-residential activities can be established within the Rural Living Zone subject to compatibility with the existing character of the environment.

8.7.4.6 That home-based employment opportunities be allowed in the Rural Living Zone.

8.7.4.7 That provision be made for ensuring that sites, and the buildings and activities which may locate on those sites, have adequate access to sunlight and daylight.

8.7.4.8 That the scale and intensity of activities other than a single residential unit be commensurate with that which could be expected of a single residential unit.

8.7.4.9 That activities with effects on amenity values greater than a single residential unit could be expected to have, be controlled so as to avoid, remedy or mitigate those adverse effects on adjacent activities.

8.7.4.10 That provision be made to ensure a reasonable level of privacy for inhabitants of buildings on adjoining sites.

8.7.4.11 That the built form of development allowed on sites with frontage to Kerikeri Road between its intersection with SH10 and Cannon Drive be maintained as small in scale, set back from the road, relatively inconspicuous and in harmony with landscape plantings and shelter belts.

8.7.4.12 That the Council maintains discretion over new connections to a sewerage system to ensure treatment plant discharge quality standards are not compromised (refer to ***Rule 13.7.3.5***).

COMMENTARY

The Rural Living Zone is necessary and desirable because it focuses attention on the issues that arise when small lot, and often intensive, agriculture faces the incremental development of rural residential development. There is potential for conflicting aspirations and demands, both at the boundary of the zone and within the zone. The objectives and policies are designed, as far as possible, to reduce the likelihood of conflict between various activities, and to maintain the state of the physical environment.

The rules also provide for the same integrated development rule as is included in the Rural Production Zone in order to promote innovation and a comprehensive approach to development and environment protection.

The entrance to the township of Kerikeri along Kerikeri Road from SH10 is an important part of the town's identity for local residents and visitors alike. The road side stalls, tourist orientated enterprises, extensive landscape planting and shelter belts, add to the character of the entrance to Kerikeri, which is one of a mature landscape in which built form is well integrated with the surrounding vegetation. Specific requirements for building setbacks, landscape planting, vehicle parking and vehicle access will ensure that these special amenity values are recognised and protected.

There are roads within the District that have comparatively high levels of vehicle use ~~*(over 1,000 vehicle movements per day).*~~ [21/14] *These require particular consideration in terms of the management of traffic effects.*

8.7.5 ZONE RULES

Activities in the Rural Living Zone must comply not only with the zone rules but also with the relevant rules in ***Part 3 of the Plan - District Wide Provisions***. An activity may be permitted by the zone rules but may require a resource consent because it does not comply with one or more of the Rules in ***Part 3***.

Particular attention is drawn to:

(a) ***Chapter 12 Natural and Physical Resources*** (and the ***District Plan Maps***);

(b) ***Chapter 13 Subdivision***;

(c) ***Chapter 14 Financial Contributions***;

(d) ***Section 15.1 Traffic, Parking and Access***;

(e) ***Chapter 16 Signs and Lighting***;

(f) ***Chapter 17 Designations and Utility Services*** (and the ***Zone Maps***).

Particular attention is also drawn to ***Rules 15.2.5.1.1 & 15.2.5.1.2*** in ***Chapter 15.2 Airports*** which may result in an activity that is a permitted activity under ***Rule 8.7.5.1*** below no longer being permitted because of its proximity to the airport protection surfaces and runways of the Kaitaia, Kerikeri and Kaikohe Airports.

8.7.5.1 PERMITTED ACTIVITIES

An activity is a permitted activity in the Rural Living Zone if:

(a) it complies with the standards for permitted activities set out in ***Rules 8.7.5.1.1*** to ***8.7.5.1.12*** below; and

(b) it complies with the relevant standards for permitted activities set out in ***Part 3 of the Plan - District Wide Provisions***.

8.7.5.1.1 RESIDENTIAL INTENSITY

Residential development shall be limited to one unit per 4,000m² of land. In all cases the land shall be developed in such a way that each unit shall have at least 3,000m² for its exclusive use surrounding the unit plus a minimum of 1,000m² elsewhere on the property.

Except that this rule shall not limit the use of an existing site or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)***, for a single residential unit for a single household; provided that all other standards for permitted activities are complied with.

Note: There is a separate residential activity rule applying to Papakainga Housing (refer to ***Rule 8.7.5.2.1***).

8.7.5.1.2 SCALE OF ACTIVITIES

The total number of people engaged at any one period of time in activities on a site, including employees and persons making use of any facilities, but excluding people who normally reside on the site or are members of the household shall not exceed 1 person per 1,000m² of net site area.

Provided that:

(a) this number may be exceeded for a period totalling not more than 60 days in any 12 month period where the increased number of persons is a direct result of activities ancillary to the primary activity on the site; and

(a) this number may be exceeded where persons are engaged in constructing or establishing an activity (including environmental enhancement) on the site; and

(b) this number may be exceeded where persons are visiting marae.

In determining the total number of people engaged at any one period of time, the Council will consider the maximum capacity of the facility (for instance, the number of beds in visitors accommodation, the number of seats in a restaurant or theatre), the number of staff needed to cater for the maximum number of guests, and the number and nature of the vehicles that are to be accommodated on site to cater for those engaged in the activity.

Exemptions: the foregoing limits shall not apply to activities of limited duration required by normal farming and forestry practice~~, such as harvesting~~, provided that the activity shall comply with the requirements of s16 of the Act.

8.7.5.1.3 BUILDING HEIGHT

The maximum height of any building shall be 9m.

8.7.5.1.4 SUNLIGHT

No part of any building shall project beyond a 45 degree recession plane as measured inwards from any point 2m vertically above ground level on any site boundary (refer to definition of Recession Plane in ***Chapter 3 - Definitions***).

8.7.5.1.5 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 10% or 3,000m², whichever is the lesser.

Note: It is recommended that the Low Impact Design principles are used where appropriate to promote the on-site percolation of stormwater to reduce runoff volumes and to protect receiving environments from the adverse effects of stormwater discharges.

8.7.5.1.6 SETBACK FROM BOUNDARIES

(a) the minimum building setback from the boundary of any Rural Production Zone shall be 10m and from any boundary with the Minerals Zone the setback shall be 20m;

(b) the minimum building setback from boundaries, apart from a boundary with any Rural Production and Minerals Zones, shall be 3m, and

(c) a continuous shelter belt is to be established comprising species capable of growing to a height of 6m on any boundary which adjoins a Rural Production and Minerals Zone, provided that a break in this shelter belt is permitted where it is necessary in order to provide access to the site;

(d) except that no building shall be erected within 12m of any road boundary with Kerikeri Road on properties with a road frontage with Kerikeri Road between its intersection with SH10 and Cannon Drive.

Attention is also drawn to the setback from ***Lakes, Rivers, Wetlands and the Coastline*** provisions in ***Chapter 12.7.***

8.7.5.1.7 SCREENING FOR NEIGHBOURS – NON-RESIDENTIAL ACTIVITIES

For all sites in the Rural Living Zone, outdoor areas providing for activities such as parking, loading, outdoor storage and other outdoor activities associated with non-residential activities on the site shall be screened from adjoining sites by landscaping, wall/s, close boarded fence/s or trellis/es or a combination thereof. They shall be of a height sufficient to wholly or substantially separate these areas from the view of neighbouring properties. Structures shall be at least 1.8m in height, but no higher than 2.0m, along the length of the parking or storage area, except along internal boundaries adjoining a Commercial or Industrial Zone. Where such screening is by way of landscaping it shall be a strip of vegetation which has or will attain a minimum height of 1.8m for a minimum depth of 2m.

These rules shall not apply to a single residential unit on a single site.

8.7.5.1.8 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is 20 daily one way movements. The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt from this rule.

~~**Note:** Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly, any change to form or intensity of land use on such land is may be subject to the approval of the NZTA.~~

Note: Applicants are advised that where an application is required because of non compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State highway) the New Zealand Transport Agency may be considered an affected party.

8.7.5.1.9 HOURS OF OPERATION - NON-RESIDENTIAL ACTIVITIES

(a) The maximum number of hours the activity shall be open to visitors, clients or deliveries shall be 50 hours per week; and

(b) Hours of operation shall be limited to between the hours:

0700 - 2000 Monday to Friday

0800 - 2000 Saturday, Sunday and Public Holidays

Provided that this rule does not apply:

(i) where the entire activity is located within a building; and

(ii) where each person engaged in the activity outside the above hours resides permanently on the site; and

(iii) where there are no visitors, clients or deliveries to or from the site outside the above hours.

Exemptions: This rule does not apply to activities that have a predominantly residential function such as lodges, motels and homestays.

8.7.5.1.10 KEEPING OF ANIMALS

(a) Any building, compound, or part of a site used for factory farming, ~~boarding kennels~~ or a cattery shall be located no closer than 50m from any site boundary, except for a boundary which adjoins the Residential, Coastal Residential or Russell Township Zones where the distance shall be a minimum of 600m.(13/2)

~~(a) No site shall be used for factory farming, a boarding or a breeding kennel.~~

(b) ~~except that a~~Any building, compound or part of a site used for a ~~boarding kennel cattery accommodating no more than 20 cats~~ shall be located no closer than ~~300~~ 50 metres from any site boundary.(32/1)

8.7.5.1.11 NOISE

All activities shall be conducted so as to ensure that noise from the site shall not exceed the following noise limits as measured at or within the boundary of any other site in this zone or any site in the Coastal Residential, Residential or Russell Township Zones or at or within the notional boundary of any dwelling in any other rural or coastal zone:

0700 to 2200 hours	55 dBA L_{10}
2200 to 0700 hours	45 dBA L_{10} and
	70 dBA L_{max}

Exemptions: The foregoing limits shall not apply to activities of a limited duration required by ~~normal~~ farming and forestry practice, ~~such as harvesting~~, provided that the activity shall comply with the requirements of s16 of the Act.

Noise Measurement and Assessment:

Sound levels shall be measured in accordance with *NZS 6801:1991 "Measurement of Sound"* and assessed in accordance with *NZS 6802:1991 "Assessment of Environmental Sound".*

The notional boundary is defined in *NZS 6802:1991 "Assessment of Environmental Sound"* as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Construction Noise:

Construction noise shall meet the limits recommended in, and shall be measured and assessed in accordance with, *NZS 6803P:1984 "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work".*

8.7.5.1.12 HELICOPTER LANDING AREA

A helicopter landing area shall be at least 200m from the nearest boundary of any of the Residential, Coastal Residential, Russell Township or Point Veronica Zones.

8.7.5.2 CONTROLLED ACTIVITIES

An activity is a controlled activity in the Rural Living Zone if:

(a) it complies with all of the standards for permitted activities ~~except~~(21/16); and

(b) it complies with ***Rule 8.7.5.2.1 Papakainga Housing*** below; and

(c) it complies with the relevant standards for permitted or controlled activities set out in ***Part 3 of the Plan - District Wide Provisions.***

The Council must approve an application for a land use consent for a controlled activity but it may impose conditions on that consent.

8.7.5.2.1 PAPAKAINGA HOUSING

Papakainga housing is a controlled activity in the Rural Living Zone provided that:

(a) it complies with all the standards for permitted activities in this zone and in ***Part 3 - District Wide Provisions***, except for the standards for the residential intensity; and

(b) each residential unit has at least 3,000m² surrounding the unit for its exclusive use.

In considering an application under this provision, the Council will restrict the exercise of its control to the following matters:

(i) the number and location of dwellings;
(ii) the location and standard of access;
(iii) screening and planting.

8.7.5.3 RESTRICTED DISCRETIONARY ACTIVITIES

An activity is a restricted discretionary activity in the Rural Living Zone if:

(a) it does not comply with any one of the following ***Rules 8.7.5.1.2 Scale of Activities; 8.7.5.1.3 Building Height; 8.7.5.1.4 Sunlight; 8.7.5.1.5 Impermeable Surfaces; 8.7.5.1.6 Setback from Boundaries; 8.7.5.1.8 Traffic Intensity;*** and/or ***8.7.5.1.11 Noise***; but

(b) it complies with all of the other rules for permitted and controlled activities under ***Rules 8.7.5.1*** and ***8.7.5.2***; and

(c) it complies with ***Rules 8.7.5.3.1 Building Height; 8.7.5.3.2 Sunlight; 8.7.5.3.3 Traffic Intensity; 8.7.5.3.4 Impermeable Surfaces; 8.7.5.3.5 Scale of Activities; 8.7.5.3.6 Setback from Boundaries;*** and ***8.7.5.3.7 Noise;*** below; and

(d) it complies with the relevant standards for permitted, controlled or restricted discretionary activities set out in ***Part 3 of the Plan - District Wide Provisions.***

The Council may approve or refuse an application for a restricted discretionary activity, and it may impose conditions on any consent.

In assessing an application for a restricted discretionary activity, the Council will restrict the exercise of its discretion to the specific matters listed for each rule below, or where there is no rule, to the specific matters listed below under the appropriate heading.

8.7.5.3.1 BUILDING HEIGHT

The maximum height of any building shall be 10m.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the extent to which adjacent properties will be adversely affected in terms of visual domination, overshadowing, loss of privacy and loss of access to sunlight and daylight;

(b) the ability to mitigate any adverse effects by way of increased separation distances between buildings or the provision of landscaping and screening.

8.7.5.3.2 SUNLIGHT

No part of any building shall project beyond a 45 degree recession plane as measured inwards from any point 3m vertically above ground level on any site boundary (refer to definition of Recession Plane in ***Chapter 3 - Definitions***) for a length not exceeding 25% of the relevant boundary.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the extent to which adjacent properties will be adversely affected in terms of visual domination, overshadowing, loss of privacy and loss of access to sunlight and daylight;

(b) the location and proximity of adjacent residential units, and the outdoor space used by those units;

(c) the ability to mitigate any adverse effects of loss of sunlight.

8.7.5.3.3 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is 40 daily one way movements. The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt from this rule,.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the time of day when the extra vehicle movements will occur;

(b) the distance between the location where the vehicle movements take place and any adjacent properties;

(c) the width and capability of any street to be able to cope safely with the extra vehicle movements;

(d) the location of any footpaths and the volume of pedestrian traffic on them;

(e) the sight distances associated with the vehicle access onto the street;

(f) the existing volume of traffic on the streets affected;

(g) any existing congestion or safety problems on the streets affected;

(h) with respect to effects in local neighbourhoods, the ability to mitigate any adverse effects through the design of the access, or the screening of vehicle movements, or limiting the times when vehicle movements occur;

(i) with respect to the effects on through traffic on arterial roads with more than 1000 vehicle movements per day, the extent to which Council's *"Engineering Standards and Guidelines" (2004)* are met.

(j) the extent to which the amenity values of the immediate area, including adjacent properties and the road frontage, will be adversely affected by the traffic movements.

(k) effects on the safety and/or efficiency on any State Highway and its connections to the local roading network.

(l) the effects of the proposed development on the continued operation, or future expansion, of the existing activities in the surrounding area.

~~Note: Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly any change to form or intensity of land use on such land is may be [88/26] subject to the approval of the NZTA.~~

Note: Where an application is required because of non-compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State Highway) the New Zealand Transport Agency may be considered an affected party for notification purposes.

8.7.5.3.4 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 30% or 5,000m² whichever is the lesser; and measures are required to promote the on-site percolation of stormwater to reduce runoff volumes and to protect receiving environments from the adverse effects of stormwater discharges.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the extent to which building site coverage and impermeable surfaces contribute to total catchment impermeability and the provisions of any catchment or drainage plan for that catchment;

(b) the extent to which Low Impact Design principles have been used to reduce site impermeability in order to avoid, remedy or mitigate any adverse effects of stormwater runoff on receiving environments;

(c) the ability to provide adequate landscaping for all activities associated with the site;

(d) the degree to which mitigation measures are proposed for loss of open space and vegetation to the surrounding environment;

(e) any cumulative effects on total catchment impermeability;

(f) the extent to which building site coverage and impermeable surfaces will disturb the ground and alter the physical qualities of the soil type, soil pattern and natural contour of the site;

(g) any adverse effects on the life supporting capacity of soils;

(h) the availability of land for the disposal of effluent and stormwater on the site without adverse effects on the water quantity and water quality of water bodies (including groundwater and aquifers) or on adjacent sites;

(i) the extent to which paved, impermeable surfaces are necessary for the proposed activity;

(j) visual amenity effects;

(k) the extent to which prevailing climatic conditions and landscaping may reduce adverse effects;

(l) any recognised standards promulgated by industry groups;

(m) the ability to provide adequate landscaping for all activities associated with the site.

8.7.5.3.5 SCALE OF ACTIVITIES

In assessing an application resulting from a breach of ***Rule 8.7.5.1.2 Scale of Activities*** the matters to which the Council will restrict its discretion are:

(a) the siting of the building(s), decks and outdoor areas relative to adjacent properties and road frontage in order to avoid visual domination and loss of privacy and sunlight ~~to those properties~~;

(b) the location and design of vehicular and pedestrian access, on site vehicle manoeuvring and parking areas and the ability of those to mitigate the adverse effects of additional traffic;

(c) the extent to which hours of operation are appropriate in terms of the surrounding environment;

(d) noise generation and the extent to which reduction measures are used;

(e) any servicing requirements and/or constraints of the site – whether the site has adequate water supply and provision for disposal of waste products and stormwater;

(f) where a property is adjacent to a public reserve, the potential impacts on the public use and enjoyment of that reserve.

8.7.5.3.6 SETBACK FROM BOUNDARIES

In assessing an application resulting from a breach of ***Rule 8.7.5.1.6 Setback from Boundaries*** the matters to which the Council will restrict its discretion are:

(a) the extent to which the building(s) reduces outlook and privacy of adjacent properties;

(b) the extent to which the buildings restrict visibility for access and egress of vehicles;

(c) the ability to mitigate any adverse effects on the surrounding environment, for example by way of planting;

(d) for sites having a frontage with Kerikeri Road between its intersection and SH10 and Cannon Drive:

  (i) the scale of the buildings;

  (ii) the extent of set back from Kerikeri Road;

  (iii) the visual appearance of the site from the Kerikeri Road frontage;

  (iv) the extent to which the building(s) are in harmony with landscape plantings and shelter belts.

(e) the extent to which the buildings and their use will impact on the public use and enjoyment of adjoining esplanade reserves and strips and adjacent coastal marine areas.

8.7.5.3.7 NOISE

In assessing an application resulting from a breach of ***Rule 8.7.5.1.11 Noise*** the matters to which the Council will restrict its discretion are:

(a) the character, level and duration of noise from any activity as received at the boundary, or notional boundary of another site;

(b) the hours of operation in relation to the surrounding environment;

(c) the effectiveness of any noise mitigation measures proposed.

8.7.5.4 DISCRETIONARY ACTIVITIES

An activity is a discretionary activity in the Rural Living Zone if:

(a) it complies with ***Rules 8.7.5.4.1 Residential Intensity***; ***8.7.5.4.2 Integrated Development*** and/or ***8.7.5.4.3 Helicopter Landing Area*** below; and

(b) it complies with the relevant standards for permitted, controlled, restricted discretionary or discretionary activities set out in ***Part 3 of the Plan - District Wide Provisions***; but

(c) it does not comply with one or more of the other standards for permitted, controlled or restricted discretionary activities in this zone as set out under ***Rules 8.7.5.1***; ***8.7.5.2*** and ***8.7.5.3*** above.

The Council may impose conditions of consent on a discretionary activity or it may refuse consent to the application. When considering a discretionary activity application, the Council will have regard to the assessment criteria set out under ***Chapter 11***.

If an activity does not comply with the standards for a discretionary activity, it will be a non-complying activity in this zone.

8.7.5.4.1 RESIDENTIAL INTENSITY

Residential development shall be limited to one unit per 3,000m² of land. In all cases the land shall be developed in such a way that each unit shall have at least 2,000m² for its exclusive use surrounding the unit plus a minimum of 1,000m² elsewhere on the property.

Except that this rule shall not limit the use of an existing site, or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)*** for a single residential unit for a single household, provided that all other standards for permitted activities are complied with.

Note: There is a separate residential activity rule applying to Papakainga Housing (refer to ***Rule 8.7.5.2.1***).

8.7.5.4.2 INTEGRATED DEVELOPMENT

Notwithstanding the rules in this zone relating to the management of the effects of activities, an application for integrated development of activities only on Maori freehold land and Maori customary land and Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993) may be made where the proposed development does not comply with one or more of the rules.

This rule applies to Maori customary land, Maori freehold land and Crown land reserved for Maori for activities including papakainga housing and marae and associated buildings.

Integrated development plans will be considered in the context of other whanau and hapu lands in the vicinity, including an acknowledgement of areas of open space, reserve, natural vegetation and other amenities already provided by the land owning groups concerned.

A management plan for integrated development under this rule shall include information on the following where relevant and necessary for a sufficient understanding of the proposal:

(a) a plan showing the location of the property (including property boundaries), topography, adjoining uses, location of the activities proposed in the application, existing vegetation (type and location), drainage patterns, existing and proposed access road/s, location of any outstanding landscapes or natural features, location of any covenanted or otherwise protected areas;

(b) a description of the purpose of the application and the activities which are proposed;

(c) a description of the degree (if any) to which the proposed development will exceed the standards set for permitted, controlled, restricted discretionary and discretionary activities in the zone;

(d) details of the staging (if any) which is proposed;

(e) a description of any heritage resources on the property;

(f) other information which is relevant to any assessment of the effects of the application, is as follows:

  (i) details of provisions made for sewage and stormwater disposal and the proposals for avoiding, remedying or mitigating any adverse effects on receiving environments of stormwater flows;

  (ii) details of any earthworks;

  (iii) details of the geotechnical aspects of the property;

  (iv) details of any natural hazard areas and the measures which will be taken to avoid any adverse effects;

  (v) details of the measures (if any) to protect indigenous vegetation and habitats, outstanding landscapes and natural features, heritage resources and riparian margins;

  (vi) the extent to which areas of open space, reserves, natural vegetation and other amenities are already provided by the land owning group on other whanau and hapu lands in the vicinity.

(g) The extent to which the application promotes energy efficiency and renewable energy development and use as provided for in Policy 13.4.15 through incorporating the following initiatives:

(i) development of energy efficient buildings (e.g. by providing a north-facing site with the ability to place a building on an east/west axis);

(ii) reduced travel distances and car usage by designing a layout with as many links to adjacent sites and surrounding roads as practicable;

(iii) encouragement of pedestrian and cycle use by designing a layout that allows easy direct access to and from, shops, schools, work places, reserves and other amenities;

(iv) access to alternative transport facilities;

(v) domestic scale renewable energy and/or community renewable energy development;

(vi) solar street lighting.

In assessing an application under this rule the Council will have regard to the following matters:

(i) the objectives and policies of the Plan;

(ii) the degree to which the application exceeds the standards for the zone;

(iii) the degree to which the potential effects of the application have been avoided, remedied or mitigated;

(iv) any other matter which it determines to be relevant to the application.

Note: Attention is drawn to ***Rule 13.9.2 Management Plans*** which provides for a once-off opportunity for integrated development which results in superior outcomes to more traditional forms of use and development for land which is not either Maori freehold land, Maori customary land or Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993).

8.7.5.4.3 HELICOPTER LANDING AREA

A helicopter landing area within 200m of the nearest boundary of any of the Residential, Coastal Residential, Russell Township or Point Veronica Zones.

18.3 WAIMATE NORTH ZONE

CONTEXT

Whilst rural in nature, the Waimate North Zone (refer to ***Appendix 6C*** and ***Zone Maps***) is unique. It is an area with both distinctive physical features and a legacy of Maori and European settlement. The result of human occupation of the land, particularly since the mid 1800's, has been the development of a landscape that has heritage value and outstanding visual qualities. This is expressed in the present day roading pattern, the buildings and other historic and cultural elements, the settlement pattern, characterized by low-density lifestyle blocks, and the park-like rural character in which puriri and other indigenous and exotic specimen trees are a significant part.

The visual quality of the existing environment of Waimate North Zone has been developed over many years by landowners in the area. Their efforts have benefited the whole District and need to be supported if the outstanding character of the landscape is to be retained or enhanced. For this reason, while retaining some consistency with the standards applying to the Rural Production Zone, special zone provisions have been inserted in the Plan that contain specific measures designed to assist landowners to protect and enhance the historic and visual character of the area.

18.3.1 ISSUES

18.3.1.1 The unique combination of natural character, managed landscapes and historic elements, could be adversely affected by inappropriate subdivision, use and development.

18.3.1.2 There is a high demand for lifestyle blocks in the Waimate North Zone and the effects of development on lifestyle blocks can adversely affect the historic and visual character of the area.

18.3.1.3 Existing farms are surrounded by lifestyle blocks. Economic realities make it difficult for existing landowners to carry on farming and can create pressure to alter the landscape in ways that may not contribute to the retention or enhancement of the historic and visual character of the area.

18.3.1.4 Puriri trees form one of the special elements of the character of the Waimate North Zone but could be removed as a result of development.

18.3.1.5 Views of, and over, the historic landscapes of the Waimate North area can be compromised by inappropriate development.

18.3.2 ENVIRONMENTAL OUTCOMES EXPECTED

18.3.2.1 The outstanding visual character of the Waimate North Zone is protected and enhanced.

18.3.2.2 The historic legacy and heritage value of the Waimate North Zone is preserved and maintained.

18.3.2.3 Subdivision, use and development in the Waimate North Zone that is carried out in a manner that maintains and/or enhances the unique historic and visual qualities of the area.

18.3.3 OBJECTIVES

18.3.3.1 To maintain and enhance the natural character, landscapes, historic heritage values, and park-like vistas of the Waimate North Zone.

18.3.3.2 To manage the subdivision, use and development of the Waimate North Zone in a way that contributes to the social, economic and cultural well being of the Waimate North Zone community in particular, and the wider community in general.

18.3.3.3 To promote and encourage the enhancement of the historic and visual character of the Waimate North Zone.

18.3.4 POLICIES

18.3.4.1 That the protection of the special character and values of the Waimate North Zone is achieved primarily by voluntary measures.

18.3.4.2 That community awareness of the benefits of enhancing the landscape in the Waimate North Zone is promoted.

18.3.4.3 That incentives for protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and for protection and enhancement of outstanding

landscapes and natural features be applied (refer to development bonus provisions under ***Rule 18.3.6.4.3***).

18.3.4.4 That the effects of activities that could compromise the heritage and/or landscape values of the Waimate North Zone be avoided, remedied, or mitigated.

18.3.5 METHODS OF IMPLEMENTATION

DISTRICT PLAN METHODS

18.3.5.1 Policies are implemented in part through the Waimate North Zone rules, and in part through the provisions in ***Part 3 - District Wide Provisions.***

OTHER METHODS

18.3.5.2 The Council will encourage the protection of landscapes, areas of indigenous vegetation and habitat, and/or historic places or features by various means, including covenant, registration, or imposition of reserve status when considering conditions of consent for resource consents.

18.3.5.3 The Council may waive fees for resource consents where conditions of consent achieve protection of the special elements of the area.

18.3.5.4 A database of areas under statutory protection is held by the Council and will be updated as further information becomes available. The database includes a register of areas volunteered by land owners for protection.

18.3.5.5 Land owners may choose to volunteer land and suitable areas for protection can be identified by community Landcare groups in consultation with landowners.

18.3.5.6 The Council will, provide information to land owners on land care methods.

18.3.5.7 The Council will recognise and support efforts by land owners for protection of the visual and historic values of the Waimate North Zone.

COMMENTARY

The unique visual and heritage character of Waimate North, and the desire by the Council and landowners to ensure its protection and enhancement, provides the rationale for establishing the Waimate North Zone. It is considered that not only the physical environment itself, but also the people who live in it and who view it, will benefit from the achievement of the objectives of the Waimate North Zone.

It was also considered that, although Waimate North is a rural area and a working landscape, to which normal controls on the effects of rural activities could be applied, its special character warrants special consideration in respect of objectives, policies and methods.

Consequently, in addition to the normal rural controls, there is an emphasis on development bonuses or incentives, to be provided where people voluntarily protect or enhance the character of the area.

The bonus provisions may be applied in a variety of circumstances that cannot be predicted in advance. For this reason, the Council has reserved a wide discretion to decide the details of the bonus that is appropriate in particular circumstances.

There are also non regulatory methods such as sharing of information, recognizing the efforts of landowners, liaising with community groups, and supporting the initiatives of the Waimate North Landcare Trust. These will encourage and support the voluntary measures provided for in the Waimate North Zone.

There are roads within the District that have comparatively high levels of vehicle use (over 1000 vehicle movements per day). These require particular consideration in terms of the management of traffic effects.

18.3.6 RULES

Activities in the Waimate North zone must comply not only with the Waimate North Zone rules but also with the relevant rules in ***Part 3 of the Plan – District Wide Provisions.*** An activity may be permitted by the zone rules, but may require a resource consent because it does not comply with one or more of the rules in ***Part 3.***

Particular attention is drawn to:

(a) ***Chapter 12 Natural and Physical Resources*** (and the ***District Plan Maps***);

(b) ***Chapter 13 Subdivision***;

(c) ***Chapter 14 Financial Contributions***;

(d) ***Section 15.1 Traffic, Parking and Access***;

(e) ***Chapter 16 Signs and Lighting***;

(f) ***Chapter 17 Designations and Utility Services*** (and the ***Zone Maps***).

18.3.6.1 PERMITTED ACTIVITIES

An activity is a permitted activity in the Waimate North Zone if:

(a) it complies with the standards for permitted activities set out in ***Rules 18.3.6.1.1*** to ***18.3.6.1.10*** below; and

(b) it complies with the relevant standards for permitted activities set out in ***Part 3 of the Plan - District Wide Provisions***.

18.3.6.1.1 RESIDENTIAL INTENSITY

Residential development shall be limited to one unit per 4ha of land. In all cases the land shall be developed in such a way that each unit shall have at least 3,000m^2 for its exclusive use surrounding the unit plus a minimum of 3.7ha elsewhere on the property.

Except that this rule shall not limit the use of an existing site or a site created pursuant to ***Rule 13.7.2.1*** (***Table 13.7.2.1***), for a single residential unit for a single household, provided that all other standards for permitted activities are complied with.

18.3.6.1.2 SCALE OF ACTIVITIES

~~For activities other than those provided for in the in the exemption below,~~ (29/64) The total number of persons engaged at any one period of time in activities on a site, including employees and persons making use of any facilities, but excluding people who normally reside on the site or are members of the household shall not exceed 8 persons per 4ha of net site area. Provided that:

(a) this number may be exceeded for a period totalling not more than 60 days in any 12 month period where the increased number of persons is a direct result of activities ancillary to the primary activity on the site;

(a) this number may be exceeded where persons are engaged in constructing or establishing an activity (including environmental enhancement) on the site;

(b) this number may be exceeded where persons are visiting marae.

In determining the total number of people engaged at any one period of time, the Council will consider the maximum capacity of the facility (for instance, the number of beds in visitors accommodation, the number of seats in a restaurant or theatre), the number of staff needed to cater for the maximum number of guests, and the number and nature of the vehicles that are to be accommodated on site to cater for those engaged in the activity.

Exemptions: The foregoing limits shall not apply to activities of a limited duration required by ~~normal~~ farming and forestry practice, ~~such as harvesting~~, provided that the activity shall comply with the requirements of s16 of the Act.

18.3.6.1.3 BUILDING HEIGHT

The maximum height of any building shall be 10m.

18.3.6.1.4 SUNLIGHT

No part of any building shall project beyond a 45 degree recession plane as measured inwards from any point 2m vertically above ground level on any site boundary (refer to definition of Recession Plane in ***Chapter 3 Definitions***).

18.3.6.1.5 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 15% or 5,000m^2, whichever is the lesser.

18.3.6.1.6 SETBACK FROM BOUNDARIES

Buildings are permitted activities in terms of this rule if they are:

(a) located 75m or more from the road boundaries of SH1, Te Ahu Ahu, Showgrounds and/or Waikaramu Roads;

(b) located 10m or more from any other site boundary, except that on any site with an area less than 4,000m^2, this setback shall be 3m on any internal boundary.

Attention is also drawn to the setback from ***Lakes, Rivers, Wetlands and the Coastline*** provisions in ***Chapter 12.7***.

18.3.6.1.7 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is ~~100~~ 60 daily one way movements unless the site gains access off a State Highway administered by the New Zealand Transport Agency, in which case the Traffic Intensity Factor is 30 daily one way movements. (18/5)

The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity or changing an activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt from this rule.

~~Note: Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly any change to form or intensity of land use on such land is may be "deemed", subject to the approval of the NZTA.~~ (28/4) (18/5)

Note: **Applicants are advised that where an application is required because of non compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State Highway), the New Zealand Transport Agency may be considered an affected party.**

18.3.6.1.8 KEEPING OF ANIMALS

No site shall be used for factory farming, a boarding or breeding kennel or a cattery.

18.3.6.1.9 NOISE

All activities shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits as measured at or within the boundary of any other site in this zone, or at or within the notional boundary of any dwelling in any other rural zone:

0700 to 2200 hrs 55dBA L_{10}

2200 to 0700 hrs 45dBA L_{10} and

70dBA L_{max}

Exemptions: The foregoing limits shall not apply to activities periodically required by **normal** farming practice, ~~such as harvesting~~, provided that the activity shall comply with the requirements of s16 of the Act.

Noise Measurement and Assessment:

Sound levels shall be measured in accordance with *NZS 6801:1991 "Measurement of Sound"* and assessed in accordance with *NZS 6802:1991 "Assessment of Environmental Sound".*

The notional boundary is defined in *NZS 6802:1991 "Assessment of Environmental Sound"* as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Construction Noise:

Construction noise shall meet the limits recommended in, and shall be measured and assessed in accordance with, *NZS 6803P:1984 "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work".*

18.3.6.1.10 HELICOPTER LANDING AREA

A helicopter landing area shall be at least 200m from the nearest boundary of any Residential Zone.

18.3.6.2 CONTROLLED ACTIVITIES

An activity is a controlled activity in the Waimate North Zone if:

(a) it complies with all of the standards for permitted activities except for ***Rule 18.3.6.1.5 Impermeable Surfaces*** above; and

(b) it complies with ***Rule 18.3.6.2.1 Impermeable Surfaces*** below; and

(c) it complies with the relevant standards for permitted or controlled activities set out in ***Part 3 of the Plan - District Wide Provisions***.

The Council must approve an application for a land use consent for a controlled activity but it may impose conditions on that consent.

18.3.6.2.1 IMPERMEABLE SURFACES

The maximum total site area covered by buildings and other impermeable surfaces shall be 20% or 8,000m^2, whichever is the lesser.

In considering an application under this provision the Council will restrict the exercise of its control to:

(a) the extent to which building site coverage and impermeable surfaces contribute to total catchment impermeability and the provisions of any catchment or drainage plan for that catchment;

(b) the extent to which Low Impact Design principles have been used to reduce site impermeability in order to avoid, remedy or mitigate any adverse effects of stormwater runoff on receiving environments;

(c) the ability to provide adequate landscaping for all activities associated with the site;

(d) the degree to which mitigation measures are proposed for loss of open space and vegetation to the surrounding environment;

(e) any cumulative effects on total catchment impermeability;

(f) the extent to which building site coverage and impermeable surfaces will disturb the ground and alter the physical qualities of the soil type, soil pattern and natural contour of the site;

(g) any adverse effects on soils;

(h) the availability of land for the disposal of effluent and stormwater on the site without adverse effects on the water quantity and water quality of water bodies (including groundwater and aquifers) or on adjacent sites;

(i) the extent to which paved, impermeable surfaces are necessary for the proposed activity;

(j) visual amenity effects;

(k) the extent to which prevailing climatic conditions and landscaping may reduce adverse effects;

(l) any recognised standards promulgated by industry groups.

18.3.6.3 RESTRICTED DISCRETIONARY ACTIVITIES

An activity is a restricted discretionary activity in the Waimate North Zone if:

(a) It does not comply with ***Rules 18.3.6.1.7 Traffic Intensity;*** and/or ***18.3.6.1.9 Noise*** as set out above; but

(b) It complies with all of the other rules for permitted and controlled activities under ***Rules 18.3.6.1*** and ***18.3.6.2***; and

(c) It complies with ***Rules 18.3.6.3.1 Traffic Intensity;*** and/or ***18.3.6.3.2 Noise*** below; and

(d) It complies with the relevant standards for permitted, controlled or restricted discretionary activities set out in ***Part 3 of the Plan – District Wide Provisions.***

The Council may approve or refuse an application for a restricted discretionary activity, and it may impose conditions on any consent.

In assessing an application for a restricted discretionary activity, the Council will restrict the exercise of its discretion to the specific matters listed for each rule below, or where there is no rule, to the specific matters listed below under the appropriate heading.

18.3.6.3.1 TRAFFIC INTENSITY

The Traffic Intensity Factor for a site in this zone is ~~61 – 200~~ 31-200 daily one way movements where access is obtained off a State Highway administered by the New Zealand Transport

Agency; and 61-200 daily one way movements elsewhere. The Traffic Intensity Factor shall be determined by reference to ***Appendix 3A*** in ***Part 4.***

This rule only applies when establishing a new activity or changing an activity on a site. It does not apply to existing activities, however, the Traffic Intensity Factor for the existing uses (apart from those exempted below) on site need to be taken into account when assessing new activities in order to address cumulative effects.

Exemptions: A single residential unit, farming, forestry and construction traffic (associated with the establishment of an activity) are exempt from this rule.

In assessing an application under this provision the Council will restrict the exercise of its discretion to:

(a) the time of day when the extra vehicle movements will occur;

(b) the distance between the location where the vehicle movements take place and any adjacent properties;

(c) the width and capability of any street to be able to cope safely with the extra vehicle movements;

(d) the location of any footpaths and the volume of pedestrian traffic on them;

(e) the sight distances associated with the vehicle access onto the street;

(f) the existing volume of traffic on the streets affected;

(g) any existing congestion or safety problems on the streets affected;

(h) with respect to effects in local neighbourhoods, the ability to mitigate any adverse effects through the design of the access, or the screening of vehicle movements, or limiting the times when vehicle movements occur;

(i) with respect to the effects on through traffic on roads with more than 1000 vehicle movements per day, the extent to which Council's *"Engineering Standards and Guidelines" (2004)* are met;

(j) effects of the activity where it is located within 500m of reserve land administered by the Department of Conservation upon the ability of the Department to manage and administer that land;

(k) the extent to which the amenity values of the immediate area, including adjacent properties and the road frontage, will be adversely affected by the traffic movements.

(l) effects on the safety and/or efficiency on any State Highway and its connections to the local roading network.

(m) the effects of the proposed development on the continued operation, or future expansion, of the existing activities in the surrounding area.

~~Note: Vehicle access to and from land adjoining a Limited Access Road is subject to restrictions and is controlled by the New Zealand Transport Agency (NZTA) under the Government Roading Powers Act 1989. Accordingly any change to form or intensity of land use on such land is may be (will be) subject to the approval of the NZTA.~~

Note: Where an application is required because of non-compliance with this rule and the access is off a State Highway or nearby (up to 90m of an intersection with a State Highway) the New Zealand Transport Agency may be considered an affected party for notification purposes.

18.3.6.3.2 NOISE

In assessing an application resulting from a breach of ***Rule 18.3.6.1.9 Noise*** the matters to which the Council will restrict its discretion are:

(a) the character, level and duration of noise from any activity as received at the boundary or national boundary of another site;

(b) the hours of operation in relation to the surrounding environment;

(c) the effectiveness of any noise mitigation measures proposed.

18.3.6.4 DISCRETIONARY ACTIVITIES

An activity is a discretionary activity in the Waimate North Zone if:

(a) it does not comply with one or more of the standards for permitted, controlled or restricted discretionary activities in the Waimate North Zone; and

(b) it complies with ***Rules 18.3.6.4.1 Residential Intensity; 18.3.6.4.2 Integrated Development; 18.3.6.4.3 Development Bonus*** and ***18.3.6.4.4 Helicopter Landing Area*** below; and

(c) it complies with the relevant standards for permitted, controlled, restricted discretionary or discretionary activities set out in ***Part 3 of the Plan - District Wide Provisions***.

The Council may impose conditions of consent on a discretionary activity or it may refuse consent to the application. When considering a discretionary activity application, the Council will have regard to the assessment criteria set out under ***Chapter 11*** in ***Part 2 Environment Provisions*** and ***Section 18.3.7*** below.

If an activity does not comply with the standards for a discretionary activity, it will be a non-complying activity in the Waimate North Zone.

18.3.6.4.1 RESIDENTIAL INTENSITY

Residential development shall be limited to one unit per 2ha of land. In all cases the land shall be developed in such a way that each unit shall have at least 2,000m² for its exclusive use surrounding the unit plus a minimum of 1.8ha elsewhere on the property.

Except that this rule shall not limit the use of an existing site or a site created pursuant to ***Rule 13.7.2.1 (Table 13.7.2.1)*** for a single residential unit for a single household, provided that all other standards for discretionary activities are complied with.

18.3.6.4.2 INTEGRATED DEVELOPMENT

Notwithstanding the rules in this zone relating to the management of the effects of activities, an application for integrated development of activities only on Maori freehold land and Maori customary land and Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993) may be made, where the proposed development does not comply with one or more of the rules.

This rule applies to Maori customary land, Maori freehold land and Crown land reserved for Maori land for activities including papakainga housing, and marae and associated buildings.

Integrated development plans will be considered in the context of other whanau and hapu lands in the vicinity, including an acknowledgement of areas of open space, reserve, natural vegetation and other amenities already provided by the land owning groups concerned.

A management plan for integrated development under this rule shall include information on the following where relevant and necessary for a sufficient understanding of the proposal:

(a) a plan showing the location of the property (including property boundaries), topography, adjoining uses, location of the activities proposed in the application, including identified building platforms, existing vegetation (type and location), drainage patterns, existing and proposed access road/s, location of any outstanding landscapes or natural features, location of any covenanted or otherwise protected areas;

(b) a description of the purpose of the application and the activities which are proposed;

(c) a description of the degree (if any) to which the proposed development will exceed the standards set for permitted, controlled, restricted discretionary and discretionary activities in the Waimate North Zone;

(d) details of the staging (if any) which is proposed;

(e) a description of any heritage resources on the property;

(f) other information which is relevant to any assessment of the effects of the application, is as follows:

  (i) details of provisions made for sewage and stormwater disposal;

  (ii) details of any earthworks;

  (iii) details of the geotechnical aspects of the property;

  (iv) details of any natural hazard areas and the measures which will be taken to avoid any adverse effects;

  (v) details of the measures (if any) to protect indigenous vegetation and habitats, outstanding landscapes and natural features, heritage resources and riparian margins;

  (vi) the extent to which areas of open space, reserves, natural vegetation and other amenities are already provided by the land owning group on other whanau and hapu lands in the vicinity.

In assessing an application under this rule the Council will have regard to the following matters:

(i) the objectives and policies of the Waimate North Zone and the Plan;

(ii) the degree to which the application exceeds the standards for the Waimate North Zone and ***in Part 3 – District Wide Provisions***;

(iii) the degree to which the potential effects of the application have been avoided, remedied and or mitigated;

(iv) any other matter which it determines to be relevant to the application.

Note: Attention is drawn to ***Rule 13.9.2 Management Plans*** which provides for a once-off opportunity for integrated development which results in superior outcomes to more traditional forms of use and development which is not either Maori freehold land, Maori customary land or Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993).

18.3.6.4.3 DEVELOPMENT BONUS

(a) Where a landowner wishes to permanently protect a view shaft, an area of indigenous vegetation or habitat, and/or a landscape or heritage feature, or undertakes to plant an area of indigenous vegetation, the Council may grant consent to increase the residential intensity beyond the level set under ***Rule 18.3.6.4.1*** above.

The Council will require that the covenant, or other legal instrument, is registered on the title of the site before this bonus can be given effect to.

In determining the level of residential intensity that may be granted by the Council under this rule, reference will be made to the assessment criteria under ***Section 18.3.7***.

(b) Where a landowner undertakes to set new buildings back more than 100m from the road boundaries of SH1, Te Ahu Ahu, Showgrounds or Waikaramu Roads, and where development of new buildings will not increase the number of accessways to the above mentioned roads, residential intensity may be increased to one unit per 1ha of land. Each unit shall have at least 2,000m^2 for its exclusive use surrounding the unit and 0.8ha elsewhere on the property.

The Council will require that the building location is registered on the title of the site before this bonus can be given effect to.

(c) Where a landowner wishes to permanently protect a view shaft, an area of indigenous vegetation or habitat, and/or a landscape or heritage feature, or undertakes to plant an area of indigenous vegetation, the Council may grant consent to locate new buildings closer to SH1, Te Ahu Ahu, Showgrounds and Waikaramu Roads than allowed for under ***Rule 18.3.6.1.6(a)*** above.

The Council will require that the covenant, or other legal instrument, is registered on the title of the site before this bonus can be given effect to.

In determining the level of dispensation from ***Rule 18.3.6.1.6(a)*** that may be granted by the Council under this rule, reference will be made to the assessment criteria under ***Section 18.3.7***.

(d) Where a landowner wishes to permanently protect a view shaft, an area of indigenous vegetation or habitat, and/or a landscape or heritage feature, or undertakes to plant an area of indigenous vegetation, the Council may grant consent to an application to subdivide one or more bonus lots. The new lot(s) can be either from the parent title on which the area to be protected or revegetated is located, or on another title.

The new lot(s) may be created in addition to the rights to subdivide which otherwise apply, and may include the area to be protected or revegetated. The minimum area of a bonus lot shall be 2,000m^2.

The Council will require that a covenant, or other legal instrument, is registered on the title of the site before this bonus can be given effect to.

In determining the amount of bonus which may be granted by the Council under this rule, reference will be made to the assessment criteria under ***Section 18.3.7***.

The Council may impose, as a condition of consent to any application for a development bonus, a requirement that a bond be paid, to be refunded when the Council is satisfied that the conditions attached to that consent have been complied with.

The Council may provide assistance in respect of any such application by waiving resource consent charges. It may also provide assistance with fencing and fees associated with achieving formal protection.

18.3.6.4.4 HELICOPTER LANDING AREA

A helicopter landing area within 200m of the nearest boundary of any Residential Zone.

18.3.7 ASSESSMENT CRITERIA

The matters set out in s104 and s105, and in Part II of the Act, apply to the consideration of all resource consents for land use activities.

In considering whether or not to grant consent or impose conditions, the Council shall also have regard to the relevant assessment matters outlined in ***Chapter 11*** in ***Part 2 of the Plan – Environment Provisions***.

In addition to the above, the Council shall also apply the relevant assessment matters set out below:

(a) The elements which make up the unique character of the Waimate North Zone, in particular whether consent to an application will result in the permanent protection of a view shaft or an area of significant indigenous vegetation or habitat or a heritage item, or in the planting of an area of indigenous vegetation, or in the protection of such other items as the Council may determine will help to achieve the objectives of the Waimate North Zone.

(b) The extent to which the activity may impact adversely on the unique character of the Waimate North Zone.

(c) The extent to which adverse effects on areas of indigenous vegetation and habitat are avoided, remedied or mitigated.

(d) The extent to which any measures, whether existing or proposed, will result in the protection and enhancement of any area being protected.

(e) Whether any agreement by a landowner to protect and/or enhance any area is registered with the Council.

(f) Proposals for the relocation of endangered species and/or replanting or restoration of habitats and indigenous vegetation.

(g) The extent to which identified building locations conserve the low density of visible buildings and park like rural character of the Waimate North Zone.

(h) The extent to which vehicular accessways are minimised through the use of existing accessways, sharing of accessways and avoidance of newly formed accessways, wherever practicable.

CONSEQUENTIAL and FURTHER AMENDMENTS

CHAPTER 3 – Definitions

ACTIVITIES ANCILLARY TO FARMING OR FORESTRY

Processing and packaging facilities for farming, forestry ~~and other primary production activities~~ and any rural industry that is dependent primarily on the direct handling of raw produce, or that primarily supplies services to farming, horticulture, ~~intensive farming~~, or forestry. Includes premises used for the manufacture of dairy products, abattoirs, timber processing, stock yards and sale yards, cool stores and pack houses and rural contractor depots (9/3) ~~and retail of produce derived from the site~~ (18/8)

TEMPORARY EVENTS

~~A temporary event must be of an intermittent nature, i.e. it cannot be a regular occurrence weekly or monthly; and can include entertainment, cultural, educational and sporting events. A temporary event includes structures associated with the event. This definition excludes permanently licensed premises.~~ **A temporary event is an infrequent event held outside a dedicated venue such as a showground or sports field which occurs no more frequently than once in any twelve month period on a particular site . It can encompass entertainment, cultural, educational and sporting events. It includes temporary removable structures associated with the event but does not include permanently licensed premises** (38/40)(27/2) *or* Temporary Military Training Activities. (117/2)(27/2)

MINOR RESIDENTIAL UNIT (Definition)

Means a residential unit that:

(i) is not more than 65m^2 GFA, plus an attached garage or carport with GFA not exceeding 18m^2 (for the purpose of vehicle storage, general storage and laundry facilities). The garage area shall not be used for living accommodation;
(ii) is subsidiary to the principal dwelling on the site; and
(iii) is located and retained within the same Certificate of Title as the principal dwelling on the site.

TEMPORARY MILITARY TRAINING ACTIVITY (Definition)

Temporary Military Training Activity means a temporary military activity, which may include an activity on the surface of any waterbody, undertaken for Defence purposes. Defence purposes are those in accordance with the Defence Act 1990. (117/3)

ARTIFICIAL CROP PROTECTION (Definition)

Structures with cloth material used to protect crops. (29/7)

FARMING (Definition)

Any agricultural activity having as its primary purpose the commercial production of any livestock or vegetative matter for human or animal consumption. The production of livestock or vegetative matter utilises the in situ production capacity of the soil, water and air as a medium for production. Farming includes:

(a) all types of livestock breeding, cropping, grazing, aquaculture; ~~and~~

(b) horticulture, including covered cropping as in greenhouses;

(c) apiaries;

(d) normal rural practices;

(e) crop support structures and artificial crop protection

(f) airstrips.

But excludes:

(i) forestry and factory farming. (29/3)

BUILDING

Any structure or part of a structure, whether temporary or permanent, movable or immovable, which would require a building consent under the Building Act 2004, including additions to buildings. Notwithstanding the provisions of Schedule 1 of the Building Act 2004, buildings also include:

(a) any fence or boundary retaining wall or combination thereof exceeding 2m in height measured from the lowest adjacent ground level, and any retaining wall more than 1.5m above ground level provided that this does not apply to fences in the Rural Production, General Coastal, Rural Living or Coastal Living Zones used for the purposes of stock enclosure;

(b) any pool more than 1m in height or tank more than 2.7m in height above ground level (including a retention tank, swimming pool and spa pool);

(c) any vehicle, caravan, shipping container or structure whether moveable or immovable, used as a place of residence or business or for assembly or storage purposes but excludes temporary buildings associated with the construction of a building provided they do not exceed a height of 3m or an area of 15m²;

(d) any veranda, bridge or other construction over a public place or any tunnel or excavation beneath a public place;

(e) any lighting pole, flagpole, mast, pole, aerial or telecommunications structure which exceeds 6m in height;

(f) any permanent tent or marquee or air-supported canopy;

(g) any part of a deck or terrace which is more than 1m above ground level;

(h) any stand alone satellite dishes exceeding 1m in height above the ground level on which it stands.

Excluded from this definition are Artificial Crop Protection and Crop Support Structures no greater than 6m in height and located 3m from the boundary. [29/6][29/3]

HELICOPTER LANDING AREA

Helicopter landing area means any defined area of land intended or designed to be used. Whether wholly or partly, for the landing, departure, movement, or servicing of helicopters, **but does not include area used for landing and take off as part of intermittent use for rural production activities.** [29/5]

CHAPTER 11 – Assessment Criteria

11.1 RESIDENTIAL INTENSITY (INCLUDING MINOR RESIDENTIAL UNITS) AND SCALE OF ACTIVITIES

(a) The character and appearance of building(s) and the extent to which the effects they generate can be avoided, remedied or mitigated, consistent with the principal activity on the site and with other buildings in the surrounding area.
(b) The siting of the building(s), decks and outdoor areas relative to adjacent properties and the road frontage, in order to avoid visual domination and loss of privacy and sunlight ~~to those properties~~.
(c) The size, location and design of open space and the extent to which trees and garden plantings are utilised for mitigating adverse effects.
(d) The ability of the immediate environment to cope with the effects of increased vehicular and pedestrian traffic.
(e) The location and design of vehicular and pedestrian access, on site vehicle manoeuvring and parking areas and the ability of those to mitigate the adverse effects of additional traffic.
(f) Location in respect of the roading hierarchy – the activity should be assessed with regard to an appropriate balance between providing access and the function of the road.
(g) The extent to which hours of operation are appropriate in terms of the surrounding environment.
(h) Noise generation and the extent to which reduction measures are used.
(i) Any servicing requirements and/or constraints of the site – whether the site has adequate water supply and provision for disposal of waste products and stormwater.
(j) Whether the development is designed in a way that avoids, remedies or mitigates any adverse effects of stormwater discharge from the site into reticulated stormwater systems and/or natural water bodies.
(k) The ability to provide adequate opportunity for landscaping and buildings and for all outdoor activities associated with the residential unit(s) permitted on the site.

(l) The degree to which mitigation measures are proposed for loss of open space and vegetation.
(m) Any adverse effects on the life supporting capacity of soils.
(n) The extent of visual and aural privacy between residential units on the site and their associated outdoor spaces.
(o) Visual effects of site layout on the natural character of the coastal environment.
(p) The effect on indigenous vegetation and habitats of indigenous fauna.
(q) The extent to which the activity may cause or exacerbate natural hazards or may be adversely affected by natural hazards, and therefore increase the risk to life, property and the environment.
(r) Proximity to rural production activities and potential for incompatible and reverse sensitivity effects. (29/61)

(rs) When establishing a minor residential unit
(i) the extent of the separation between it and the principal dwelling;
(ii) the degree to which the design is compatible with the principal dwelling;
(iii) the extent that services can be shared;
(iv) the extent that the floor plan is fit for purpose;
(v) the extent to which landscaping is utilised to mitigate adverse effects;
(vi) the design of the building in regard to how easily it may be removed from a site should circumstances change.

11.12 TRAFFIC INTENSITY

(a) The extent by which the expected traffic intensity exceeds the threshold set by the Traffic Intensity Factor contained in ***Appendix 3A*** in ***Part 4*** of the Plan.
(b) The time of day when the extra vehicle movements will occur.
(c) The distance between the location where the vehicle movements take place and any adjacent properties.
(d) The width and capability of any street to be able to cope safely with the extra vehicle movements.
(e) The location of any footpaths and the volume of pedestrian traffic on them.
(f) The sight distances associated with the vehicle access onto the street.
(g) The existing volume of traffic on the streets affected.
(h) Any existing congestion or safety problems on the streets affected.
(i) With respect to effects in local neighbourhoods, the ability to mitigate any adverse effects through the design of the access, or the screening of vehicle movements, or limiting the times when vehicle movements occur.
(j) With respect to the effects on through traffic on arterial roads, strategic roads and State Highways, any measures such as right-turn bays, flush medians, left turn deceleration tapers, etc. proposed to be installed on the road as part of the development to accommodate traffic turning into and out of the site.
(k) The extent to which the activity may cause or exacerbate natural hazards or may be adversely affected by natural hazards, and therefore increase the risk to life, property and the environment.
(l) The extent to which the activity may result in adverse effects on the safety and efficiency of the State Highway system and its connections to the local roading network.

APPENDICES

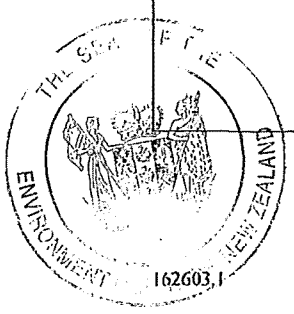
APPENDIX 3A

LAND USE ACTIVITY	TRAFFIC INTENSITY FACTOR (based on average daily one-way vehicle movements)
Residential	
Standard Residential Unit	10 per unit
Home Unit / Town House / House on Papakainga / Minor Residential Unit (18/10)(0044/15)(0053/14)	7 per unit / house
Home Occupations	10 per unit
Pensioner Housing	2 per unit
Boarding Houses	2 per person accommodated

B

APPENDIX A: AGREEMENT IN RELATION TO POINTS ON APPEAL REACHED AT MEDIATION

SUBMISSION NUMBER(S)	POSITION REACHED (*CHANGES TO DECISIONS WORDING INDICATED BY UNDERLINING AND STRIKETHROUGH)
29/1 } 29/4 } 29/9 }(Definitions) 29/52 } 29/53 }	Amend definition of "Farming" by amending as follows: "Any agricultural **or horticultural** activity having its..." and "(d) normal rural practices **including associated buildings and structures"** Otherwise, no additional changes required
29/2 (Rural Character)	REQUIRES HEARING TIME
29/8 (New definition – reverse sensitivity)	No new definition required but amendment to Issue 8.6.1.4 to replace the word "conflict ~~between~~ existing activities" to "conflict with existing activities".
29/40 (Policy 8.6.4.1)	Amend Policy 8.6.4.1 to read "That **the Rural Production Zone enables farming and rural productions activities, as well as** a wide range of activities ~~be allowed in the Rural Production Zone~~, subject to [...]"
29/46 (Dwelling setback)	REQUIRES HEARING TIME
29/48 (Noise exemption)	Amend the exemption in Rule 8.6.5.1.7 to read "[...] The noise limits shall also not apply to activities periodically required by normal faming and forestry practice, such as harvesting **and the use of aircraft** provided that the activity shall comply with the requirements of s.16 of the Act."



29/50 }(Scale of Activities) 29/54 }	No changes required. These parts of the appeal are withdrawn.
29/51 (Scale of Activities)	Change the wording of rule 8.6.5.1.11 in the proviso by removing the link word "~~and~~" and replacing it with the link "or". Consequential amendment to Exemptions: remove a word "farming and forestry ~~practice~~". Appeal point allowed by consent.
29/58 (Assessment Criteria 8.6.5.3.4)	Replicate 8.6.5.3.6 (l) in the new proposed Yard Rule Assessment Criteria (refer MOU for mediation dated 18 February for timetable for distribution of new proposed Yard rule). UNRESOLVED. REQUIRES HEARING TIME
29/60 (Scale of Activities)	No change required to Rule 8.6.5.3.7 because of amendment to definitions. Withdraw this part of the appeal.

APPENDIX B

Alternative Draft Provisions (for the purpose of Mediation)

Include a new provision to the Rural Production Zone:

OUTDOOR ACTIVITIES

Any activity may be carried out outside except that any commercial non-residential activity involving manufacturing, storing, stockpiling, altering, repairing, dismantling or processing of any materials, live produce, goods or articles shall not be carried out:

a) within 10m of any side boundary;

b) within 30m of a boundary adjoining a Horticultural Processing Zone.

Exemptions: Farming, forestry, construction traffic (associated with the establishment of an activity) and traffic associated with access and egress from a site are exempt from this rule.

District Wide version 24 04 15

OUTDOOR ACTIVITIES

Any activity may be carried out outside except that any commercial non-residential activity involving manufacturing, storing, stockpiling, altering, repairing, dismantling or processing of any materials, live produce, goods or articles shall not be carried out:

a) within 10m of any side boundary other than a road frontage;

b) ~~within 100 30m of a boundary adjoining a Horticultural Processing Zone.~~

Exemptions: Farming, forestry, construction traffic (associated with the establishment of an activity) and traffic associated with access and egress from a site are exempt from this rule.

Hort processing Zone,

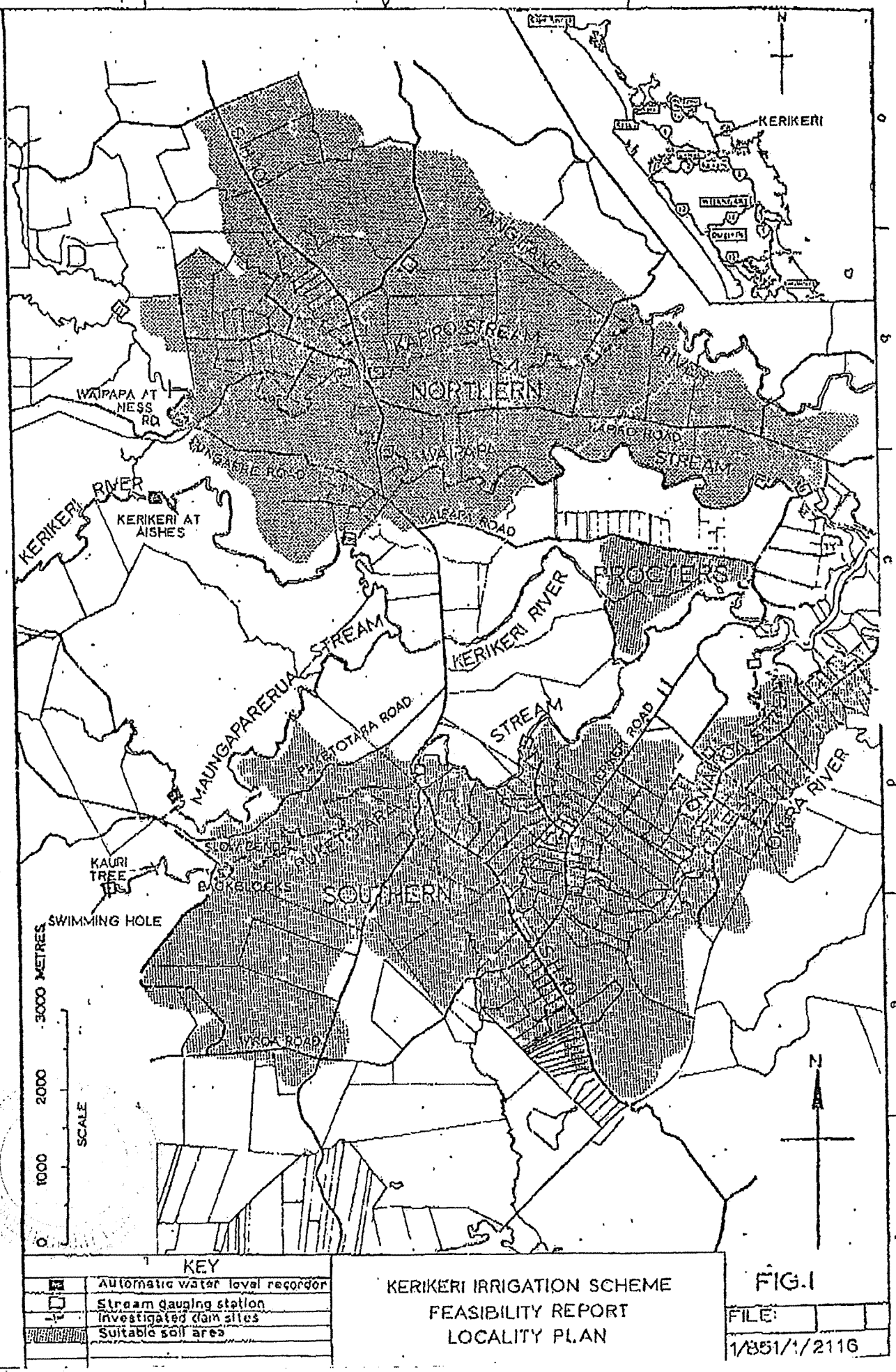
~~OUTDOOR ACTIVITIES~~ SETBACK FROM BOUNDARIES (amend rule 8.6.5.1.4)

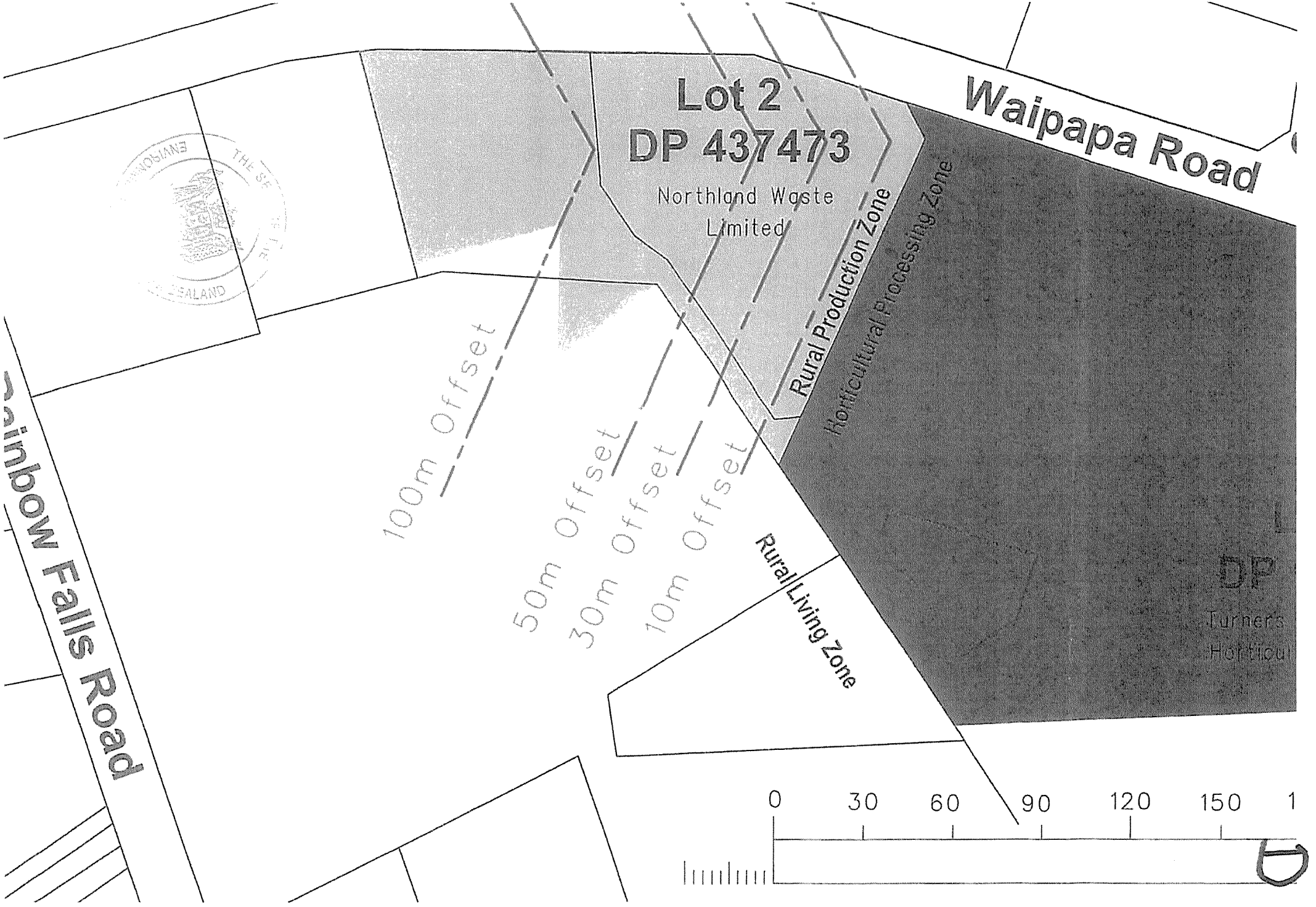
~~Any activity may be carried out outside except that~~ Any building or part of a site used for a commercial non-residential activity involving manufacturing, storing, stockpiling, altering, repairing, dismantling or processing of any materials, live produce, goods or articles shall not be carried out:

a) within 100m 50m 30m 10m of a boundary adjoining a Horticultural Processing Zone.

Exemptions: Farming, forestry, activities ancillary to farming or forestry, construction traffic (associated with the establishment of an activity) and traffic associated with access and egress from a site are exempt from this rule.

Exemptions: Farming, forestry, activities ancillary to farming or forestry, construction traffic (associated with the establishment of an activity) and traffic associated with access and egress from a site are exempt from this rule.


KERIKERI
NORTHERN
SOUTHERN
KAIPO STREAM
WAIPAPA
WAIPAPA AT NESS RD
KERIKERI RIVER
KERIKERI AT AISHES
WAIPAPA ROAD
STREAM
PROCTERS
MAUNGAPARERUA STREAM
PUKETOTARA ROAD
KERIKERI RIVER
KAURI TREE
SWIMMING HOLE
BLOCKWORKS
WYNDHAM ROAD
KERIKERI ROAD
3000 METRES
2000
1000
0
SCALE
N
KEY
Automatic water level recorder
Stream gauging station
Investigated dam sites
Suitable soil area
KERIKERI IRRIGATION SCHEME
FEASIBILITY REPORT
LOCALITY PLAN
FIG.1
FILE:
1/851/1/2116


Lot 2
DP 437473
Northland Waste
Limited
Waipapa Road
Rainbow Falls Road
Rural Production Zone
Horticultural Processing Zone
Rural Living Zone
100m Offset
50m Offset
30m Offset
10m Offset
Turners
0
30
60
90
120
150

Before the Panel of Hearing Commissioners for the Queenstown Lakes Proposed District Plan

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of Proposed District Plan: Stage 2 Hearing Stream 15 - Visitor Accommodation

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Legal submissions of Counsel for Bookabach Ltd (S2302) and Bachcare (S2620)

Date: 14 September 2018

DLA PIPER

205 Queen Street, Auckland 1010
PO Box 160, Auckland 1140
DX CP24027 Auckland
Tel +64 9 303 2019
Fax +64 9 303 2311

Solicitor on the record	Diana Hartley	diana.hartley@dlapiper.com	Tel +64 9 300 3826
Contact solicitor	**Anne Buchanan**	**anne.buchanan@dlapiper.com**	**Tel +64 9 300 3807**

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MAY IT PLEASE THE PANEL

1 INTRODUCTION

1.1 These legal submissions are presented on behalf of Bookabach (submitter 2303) and Bachcare (submitter S2620) (together '**BB**') in respect of submissions on the Queenstown Lakes Proposed District Plan (**Proposed Plan**) Stage 2 visitor accommodation provisions.

1.2 BB currently operate in the Queenstown Lakes District (**District**) and their businesses provide travellers with the opportunity to rent residential visitor accommodation properties on a short term basis. The majority of these are whole home properties used by the owners as family holiday homes.[1] This activity assists in ensuring that there is a choice of visitor accommodation and contributes to the economy by providing a range of jobs, and also provides an income stream for individual owners.

1.3 BB oppose the Proposed Plan visitor accommodation provisions supported by Queenstown Lakes District Council (**Council**) which include rules for residential visitor accommodation that are more restrictive than in the operative Queenstown Lakes District Plan (**Operative Plan**). BB proposes alternative more flexible Proposed Plan provisions.

1.4 BB is calling one expert planning witness, Mr Mark Chrisp of Mitchell Daysh.

1.5 BB's legal submissions are structured as follows:

1.5.1 overview of the Council's and BB's visitor accommodation provisions;

1.5.2 the law;

1.5.3 evidence relating to the Proposed Plan visitor accommodation provisions; and

1.5.4 conclusion.

[1] BB's submissions, page 3.

2 OVERVIEW OF THE COUNCIL'S AND BB'S VISITOR ACCOMMODATION PROVISIONS

Operative Plan

2.1 Under the Operative Plan rules, visitor accommodation requires a resource consent.[2] There are however exceptions from the definition of visitor accommodation and, the requirement to obtain a resource consent, for:

2.1.1 a single annual let for one or two nights;

2.1.2 homestay accommodation for up to 5 guests in a 'registered homestay'; and

2.1.3 accommodation for one household of visitors for a minimum stay of 3 consecutive nights up to 90 nights per calendar year in a 'registered holiday home'.

2.2 The Operative Plan sets out a process and standards for registration of holiday homes and homestays to obtain the exemptions for those activities.[3] The standards apply to both activities and include the requirements to keep records, not exceed a maximum of two adults per bedroom, and to provide on-site car parking.

The Council's Proposed Plan provisions

2.3 Stage 2 of the Proposed Plan notified on 27 November 2018 proposes to vary the text of visitor accommodation-related Chapter 2 - definitions and add various objectives, polices and rules into some of the Chapters for residential and other zones.

2.4 The Proposed Plan visitor accommodation provisions currently supported by the Council (**Council provisions**) are set out in Appendix A of the rebuttal evidence of the Council's planning witness, Ms Amy Bowbyes.[4] By way of brief summary, key features of the Council provisions include:

2.4.1 the separation of visitor accommodation into three defined categories:

(a) homestays (hosted visitor accommodation);

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[2] Where the relevant standards in the Operative Plan are met, a controlled activity resource consent is required in High Density Residential Zone and Low Density Visitor Accommodation Sub-Zones and a restricted discretionary activity resource consent is required in the Low Density Residential, Medium Density Residential and Arrowtown Residential Historic Management Zones. See Rule 7.5.3.2(ii) and Rule 7.5.3.4(i), Operative Plan, Chapter 7, pages 7-18 to 7-19 and pages 7-20 to 7-21.

[3] See Appendix 12 Standards for a Registered Holiday Home or Registered Homestay, Operative Plan, page A12-1.

[4] Amy Bowbyes, Rebuttal evidence, Appendix A.

(b) residential visitor accommodation (whole of home accommodation); and

(c) visitor accommodation (accommodation not in a home);

2.4.2 permitted activity status for residential visitor accommodation providing accommodation for paying guests up to 42 nights per year where there is no generation of vehicle movements by heavy vehicles, coaches or buses to and from the site;

2.4.3 varying activity statuses where there is a breach of the permitted residential visitor accommodation standards dependent on the location (non-complying activity in a number of the residential zones outside the Visitor Accommodation Sub-Zone);

2.4.4 permitted activity status for homestays not exceeding 3 paying guests per night where there is no generation of vehicle movements by heavy vehicles, coaches or buses to and from the site and compliance with minimum parking requirements; and

2.4.5 an amendment to the definition of Activities Sensitive to Airport Noise to include residential visitor accommodation and homestay activities.

BB's Proposed Plan provisions

2.5 BB have lodged virtually identical submissions on the Proposed Plan's Stage 2 visitor accommodation provisions that seek the same relief. BB's submissions propose an alternative approach to the Council's provisions through various amendments to:

2.5.1 the visitor accommodation definitions in Chapter 2;

2.5.2 zone purpose statements, objectives, policies, and rules in the zones affected by the Proposed Plan's new visitor accommodation provisions; and

2.5.3 the Proposed Plan Planning Maps to identify the areas in Appendix A to BB's submissions as 'Residential Sub-zones' where there is less evidence of demand for visitor accommodation.

2.6 The components of BB's alternative approach are discussed in the evidence of Mr Chrisp. Key features include:

2.6.1 amendments to the residential visitor accommodation and homestay definitions to ensure that occupancy is on the basis of paying guests who function as 'one household';

2.6.2 removal of the activity of 'bed and breakfasts' from the homestay definition and the inclusion of 'bed and breakfasts' in the definition of 'visitor accommodation';

2.6.3 the reintroduction of the concepts of 'unregistered' and 'registered' residential visitor accommodation and homestays;

2.6.4 prioritisation of the 'Residential Sub-zones' for residential occupancy rather than for short term visitor accommodation;

2.6.5 outside of the Residential Sub-zones, permitted activity status for unregistered residential visitor accommodation and homestays providing accommodation up to 28 nights per 12 month period provided the maximum occupancy is 2 guests per bedroom plus 2 additional persons, and vehicle trip requirements are met;

2.6.6 outside of the Residential Sub-zones, permitted activity status for registered residential visitor accommodation and homestays providing accommodation up to 90 nights per 12 month period provided letting records are kept, the maximum occupancy is 2 guests per bedroom plus 2 additional persons, and vehicle trip requirements are met;

2.6.7 outside of the Residential Sub-zones, restricted discretionary activity status where there is a breach of the permitted activity standards for registered residential visitor accommodation and homestays;

2.6.8 within the Residential Sub-zones, permitted activity status for residential visitor accommodation and homestays providing accommodation up to 28 nights per 12 month period provided the maximum occupancy is 2 guests per bedroom plus 2 additional persons, and vehicle trip requirements are met; and

2.6.9 within the Residential sub-zones, non-complying activity status where there is a breach of the permitted activity standards for residential visitor accommodation and homestays.

2.7 A table setting out the text of the changes to the notified Proposed Plan provisions that BB sought in their submissions and the maps of their proposed Residential Subzone areas are included in the appendices to their submissions.

Alternative relief sought by BB

2.8 BB are supportive of the amendments proposed by Ms Bowbyes in the Section 42A Report[5] and her rebuttal evidence that increase the permitted threshold for residential visitor accommodation from 28 nights to 42 nights per year, and the removal of the rule in the notified Proposed Plan which only provided for 3 separate lets per annum. However, BB does not consider that those amendments are sufficient.

2.9 In the event that BB's Residential Sub-zone approach is rejected by the Panel, BB seek alternative relief. Specifically, BB seek that:

2.9.1 the 42 night per year permitted activity threshold for residential visitor accommodation activities proposed by Ms Bowbyes be increased to 90 nights per year (as currently provided for in the Operative Plan) and also be applied to homestay activities; and

2.9.2 restricted discretionary activity status for resource consent applications where the permitted activity standards for residential visitor accommodation and homestay activities are not met.

2.10 This alternative relief sought by BB is within the scope of submissions on the Proposed Plan's Stage 2 visitor accommodation provisions.

3 THE LAW

Relevant statutory tests

3.1 The mandatory requirements for plan preparation are referred to in the Council's Opening Legal submissions.[6] A summary of the tests derived from the *Colonial Vineyard v Marlborough District Council*[7] and *Long Bay-Okura Great Park Society v North Shore City Council*[8] line of cases, updated to reflect the 2013 and 2017 amendments to the Resource Management Act 1991 (**RMA**), are set out in Appendix 1 to those submissions.

3.2 As the principal focus of the relief sought by BB is on the Proposed Plan's rules and definitions, it is submitted that particularly important elements of the statutory tests include:

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[5] Section 42A Report of Amy Bowbyes on behalf of Queenstown Lakes District Council, Visitor Accommodation, 23 July 2018 (**Section 42A Report**).
[6] Opening Representations / Legal Submissions for Queenstown Lakes District Council, Stream 15 dated 31 August 2018, paragraphs 2.1 to 2.3.
[7] *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17].
[8] *Long Bay-Okura Great Park Society v North Shore City Council,* above n 3, at [34].

3.2.1 whether the provisions are designed to accord and assist the Council to carry out its functions and achieve the purpose of the RMA;[9]

3.2.2 under section 32 of the RMA, whether:

(a) the policies and other provisions that implement or give effect to the Proposed Plan's objectives are the most appropriate way to achieve the objectives, including assessing their efficiency and effectiveness by:

(i) identifying and assessing[10] and, if practicable, quantifying[11] the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated; and

(ii) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;[12] and

3.2.3 the requirement for the Hearings Panel, when evaluating rules, to have regard to the actual or potential effects of activities on the environment.[13]

Case law relating to section 32

3.3 As the Hearings Panel will be aware, there is no presumption that the provisions of a proposed plan are correct or appropriate. It is well established that plan review proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and plans.[14]

3.4 In BB's submission, the Panel's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.[15]

Case law supports a less restrictive regime

3.5 The principles applying to section 32 evaluations are also well-established. In terms of the tests applying to the rules, the Hearings Panel must determine which rules are the 'most appropriate' when measured against the relevant objectives. The courts have held that

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[9] RMA, Section 74(1).
[10] RMA, Section 32(2)(a).
[11] RMA, Section 32(2)(b).
[12] RMA, Section 32(2)(c).
[13] RMA, Section76(3).
[14] *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533, cited with approval in *Kennedy v Auckland City Council*, A110/08.
[15] *Eldamos Investments Limited v Gisborne District Council* W47/05 at [129].

appropriate means 'suitable' and there is no need to place any gloss on the term by requiring a provision to be 'optimum' or 'superior.'[16]

3.6 In a recent Environment Court decision, the Court also re-confirmed the appropriateness of the long-established presumption that where the purpose of the RMA and the objectives of the relevant plan(s) can be met by a less restrictive regime, then that regime should be adopted. The Court in *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council*[17] found that, notwithstanding the amendments to the RMA that have occurred in the meantime:

> [59] ... the presumptively correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* (Decision C153/2004 at [56]): that where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s 32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling people to provide for their well-being while addressing the effects of their activities.

3.7 BB submits that the least restrictive regime should be adopted. This is consistent with an understanding that the overarching purpose of section 32 is to ensure that any restrictions on activities and the freedom to develop are justified, rather than the converse.[18]

Assessing efficiency and effectiveness of the provisions

3.8 One aspect of the assessment of the efficiency and effectiveness of the rules in achieving the objectives involves an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the rules. There is a need to avoid significant unforeseen circumstances and high unexpected negative impacts.

3.9 The risk of acting/not acting was considered by the Environment Court in *Horticulture New Zealand Ltd v Far North District Council*[19] where the Court was concerned about the lack of evidence supporting rules requiring significant setbacks, which were proposed to be introduced over a significant part of the district. The Court noted a lack of sufficient information about the effects of the rules and found there would be a significant risk from acting in an arbitrary manner. It also expressed concerns about significant additional

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[16] *Rational Transport Society Inc v NZTA* [2012] NZRMA 298 (HC) at [45].
[17] *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51. See also *Long Bay-Okura Great Park Society Inc v North Shore City Council* Decision No. [2010] NZEnvC 319 at [79]-[80] and *Thumb Point Station Ltd v Auckland Council* [2014] NZEnvC 175 at [101].
[18] See *Hodge v Christchurch City Council* [1996] NZRMA 127 at 139.
[19] *Horticulture New Zealand Ltd v Far North District Council* [2016] NZEnvC 47.

burdens being imposed on a wide group of landowners to address what were far more localised issues.[20]

3.10 As will be discussed later in these submissions, similar factors apply here. It is submitted that the Panel should consider the risks of an overly restrictive and prescriptive regime as is currently proposed by the Council.

4 EVIDENCE RELATING TO THE PROPOSED PLAN PROVISIONS

Policy approach of the Proposed Plan

4.1 The Council's Section 32 Report[21] and the relevant proposed Plan objectives and policies indicate that the Proposed Plan's visitor accommodation provisions are intended to address two key concerns within the residential areas. These are the actual and potential adverse environmental and socio-economic effects of short term visitor accommodation activities on:

4.1.1 the amenity, and residential character and cohesion of the relevant zone; and

4.1.2 housing availability and affordability.

4.2 At the same time, the Proposed Plan recognises the importance of visitor accommodation activities and includes a strategic policy direction of making provision for the visitor industry.[22]

4.3 It is against this planning policy background that the issues need to be considered.

Evidence of BB

4.4 BB has pre-lodged planning evidence from Mr Chrisp in respect of their submissions on the Proposed Plan's Stage 2 visitor accommodation provisions. Mr Chrisp's evidence builds on the comprehensive 63 page submissions that were lodged by BB.

4.5 Key matters outlined in the material that BB has provided to the Hearings Panel include:

4.5.1 there is no discernible difference between residential visitor accommodation in a primary or secondary residence;

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[20] *Horticulture New Zealand Ltd v Far North District Council* [2016] NZEnvC 47 at [101].
[21] Queenstown Lakes District Proposed Plan Section 32 Evaluation Stage 2 Components October 2017 for Visitor Accommodation Chapter 2 Definitions and consequential Variations to Proposed District Plan 26 August 2015 26 August 2015, Report dated 2 November 2017 (**Section 32 Report**).
[22] See Mark Chrisp, Evidence, paragraphs 5.3 to 5.4 and Strategic Policy 3.3.1.

4.5.2 there is very little difference between residential visitor accommodation and homestays, other than a host is on site in homestay situation;

4.5.3 whole of home residential visitor accommodation is particularly suited to families and groups that function as one household;

4.5.4 whole of home residential visitor accommodation often provides a more affordable holiday for family and groups than other traditional visitor accommodation;

4.5.5 there is no evidence that the more restrictive regime proposed by the Council that limits permitted residential visitor accommodation to 42 nights per year instead of the 90 nights allowed by the Operative Plan, would result in those properties being available for long term rental.

4.5.6 the feedback[23] that BB has received from property owners and managers indicates that holiday home owners want flexible access so that family and friends can stay at their properties whenever they wish;

4.5.7 rather than contributing to the supply of long term rental accommodation, the more restrictive regime proposed by the Council is therefore more likely to result in properties remaining vacant for longer periods because they are not available for short term accommodation;

4.5.8 properties that are empty for longer periods of time do not make a significant contribution to residential cohesion;

4.5.9 there is no evidence that the Operative Plan residential visitor accommodation provisions which allow homes to be rented for up to 90 nights per year to a single household of guests, are currently having adverse effects on residential character and amenity;

4.5.10 the potential for adverse effects on residential character and amenity to be generated by visitor accommodation (including in relation to traffic, parking and waste) are linked to the nature, scale and intensity of the particular visitor accommodation activity;

4.5.11 the nature, scale and intensity of the effects of residential visitor accommodation and homestays can be addressed by provisions such as those proposed by BB's planning witness Mr Chrisp which address the maximum occupancy of

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[23] See Appendix C research attached to BB's submissions.

properties (2 persons per bedroom plus 2 additional persons), the number of vehicle trips and occupancy (single household rather than multiple parties occupying the same property);

4.5.12 where permitted activity standards are breached, the potential adverse effects of residential visitor accommodation and homestay activities are readily identifiable. They therefore lend themselves to matters of discretion and assessment criteria for restricted discretionary activity resource consent applications; and

4.5.13 to the extent that there are concerns about the effects of increasing residential visitor and homestay activities, a Residential Sub-zone approach provides certainty about where such activities will be restricted.

Evidence of the Council

4.6 The Council has lodged evidence from two witnesses whose evidence is relevant to the text of the Proposed Plan visitor accommodation provisions and BB's submissions, Ms Bowbyes and Mr Robert Heyes. The evidence of these witnesses is discussed in turn below.

Evidence of Robert Heyes - economics

4.7 Mr Heyes has provided evidence on behalf of the Council in relation to the economic issues associated with the Proposed Plan's visitor accommodation provisions. Mr Heyes has prepared both evidence-in-chief (**EIC**)[24] and rebuttal evidence.[25]

Adverse effects

4.8 Mr Heyes has relied on a range of material and datasets in preparing his evidence including a study by Infometrics entitled 'Measuring the scale and scope of Airbnb in Queenstown Lakes District[26] which uses data on Airbnb's listings.

4.9 Mr Heyes has acknowledged in his evidence the role that residential visitor accommodation has had in the continued growth in the number of visitor arrivals in the District and that it provides an important source of revenue to businesses that services the properties.[27]

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[24] Statement of evidence of Robert Heyes on behalf of Queenstown Lakes District Council - Visitor Economics - 23 July 2018.
[25] Rebuttal evidence of Robert Heyes on behalf of Queenstown Lakes District Council - Visitor Accommodation : economics dated 22 August 2018.
[26] An initial version of the Infometrics Report dated October 2017 is attached as Appendix 1 to the section 32 report and an updated version dated November 2017 is attached to Ms Bowbyes' Section 42A Report.

4.10 Mr Heyes also sets out in his evidence that in early 2018 whole of home properties listed on residential visitor accommodation websites accounted for 21% of all dwellings in the District and expresses the view that if these properties were to be made available for long-term rental, it would put downward pressure on rental prices.[28] He also notes that just over one-third of whole-house properties in the District in 2017 were available year round making them candidates for long term rental.[29]

4.11 However, Mr Heyes recognises in his evidence that the growth of the residential visitor accommodation sector is not necessarily responsible for all these properties being unavailable for long-term rental as it depends on a complex combination of economic and personal factors.[30]

4.12 Consistent with BB's evidence, Mr Heyes expresses the view that properties such as holiday homes were probably never part of the long-term rental market and are unlikely to become so in the future as long as their current owners want to maintain the option of residing there for a few weeks a year.[31]

4.13 As there is insufficient information to discern which of the listed properties are of the different types, Mr Heyes states in his EIC and confirms in his rebuttal evidence that he is unable to accurately quantify how many of the listed properties have been taken out of the long-term rental stock and the extent to which growth in residential visitor accommodation is responsible for an increase in long-term rental prices.[32]

4.14 It appears that the most Mr Heyes can say about this issue is that for those hosts whose incentives are primarily financial, the yields from short-term rental are much greater than those possible through long term rental and such properties might have been taken out of the long-term rental market.[33]

4.15 BB submits that Mr Heyes' evidence demonstrates that the Council is unable to quantify the effect that residential visitor accommodation may be having on long-term rental housing availability and affordability *at all*. There is therefore no evidential basis beyond that of a *speculative nature* to suggest that residential visitor accommodation is playing a role in these issues.

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[27] Robert Heyes, EIC, paragraphs 2.1(a) to (d).
[28] Robert Heyes, EIC, paragraph 2.1(f).
[29] Robert Heyes, EIC, paragraph 2.1(h).
[30] Robert Heyes, EIC, paragraph 2.1(g).
[31] Robert Heyes, EIC, paragraph 2.1(i).
[32] Robert Heyes, EIC, paragraph 2.1(j) and Robert Heyes, Rebuttal evidence paragraph 6.6.
[33] Robert Heyes, EIC, paragraph 2.1(g) and Robert Heyes, Rebuttal evidence paragraph 6.6.

4.16 BB also draws the Hearing Panel's attention to the limited scope of Mr Heyes' economic evidence. Mr Heyes' evidence only addresses the potential economic effects of providing short term visitor accommodation in residential visitor accommodation, i.e. whole of home situations. He does not discuss the potential economic effects that homestay activities may be having on housing availability and affordability in the District arising from the use of spare rooms for visitor accommodation when these could potentially be available for use by longer term flatmates. There is therefore no economic evidence which justifies the Council's more restrictive approach to residential visitor accommodation when compared to homestays which are able to operate as a permitted activity every night of the year.

Permitted activity threshold

4.17 Mr Heyes' evidence is also relevant to the threshold at which residential visitor accommodation activity should be permitted. He expresses the view that analysis of Airbnb host median incomes and average Airbnb rental process suggests that restricting residential visitor accommodation activity to less than 90 nights a year will probably result in long-term rental becoming a more lucrative option for some hosts whose incentives are primarily financial.[34]

4.18 Mr Heyes also states in his evidence that the same analysis indicates that restricting visitor accommodation to 45 nights a year would enable hosts who are renting out their properties at the mean rate of $247 per night to generate annual earnings equivalent to the median income for an Airbnb host in the District ($11,000). Mr Heyes observes that this is close to the Council's proposed threshold of 42 nights.[35]

4.19 BB submits that Mr Heyes' evidence supports its view that 90 nights a year is the appropriate level at which the permitted activity threshold for the provision of residential visitor accommodation should be set. This is because the threshold would be set at the level that Mr Heyes considers long-term rental would be the more lucrative option for hosts whose motivations are primarily financial.

4.20 It is also submitted that the point at which the owner of a property earns the median income currently being enjoyed by Airbnb hosts (i.e. 45 nights) is irrelevant to the level at which the permitted activity threshold for residential visitor accommodation should be set. This figure is not derived from a consideration of any potential adverse effects of the activity of residential visitor accommodation on the environment. Rather, it may be the only reason that Mr Heyes could find to support Ms Bowbyes' 42 night limit proposal.

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[34] Robert Heyes, EIC, paragraph 2.1(k).
[35] Robert Heyes, EIC, paragraph 2.1(l).

4.21 Further, in response to Mr Chrisp's evidence, Mr Heyes in his rebuttal evidence clarifies that in making the 45 night observation he was not attempting to take a view on what might be considered an appropriate level of financial return for landowners.[36] It is therefore submitted that the 45 night figure discussed by Mr Heyes in his evidence serves no useful purpose at all in the discussion about the level at which a threshold should be set.

Evidence of Amy Bowbyes - planning

4.22 Ms Bowbyes has prepared the Council's section 42 Report on the visitor accommodation provisions and has also prepared a rebuttal statement of evidence.[37]

Adverse effects

4.23 In her discussion in the Section 42A Report of the general opposition to the Stage 2 visitor accommodation and why she does not support maintaining the existing Operative Plan planning controls, Ms Bowbyes states that the Section 32 Report has shown that the existing planning regime has been neither effective nor efficient in managing the adverse effects of this activity.[38]

4.24 With respect to the key potential adverse effects identified by the Proposed Plan's policy framework, Ms Bowbyes expresses the view that the operative regime of 90 nights' short-term letting of Registered Holiday Homes in all zones has resulted in adverse effects on residential amenity and cohesion. In support of this, she references a further discussion of these matters in the Section 32 Report.[39] In reliance on Mr Heyes' evidence, Ms Bowbyes is of the opinion that operative regime also threatens to adversely impact on the availability of housing for occupation by residents.[40] It is for these reasons that she considers a revised planning framework is necessary.[41]

4.25 The reasons why Mr Heyes' evidence does not demonstrate that residential visitor accommodation is having an effect on long-term rental housing availability and affordability and actually supports a 90 night a year approach for permitted residential visitor accommodation, have been discussed above.

4.26 In relation to Ms Bowbyes' contention that the Operative Plan provisions have resulted in adverse effects on residential amenity and cohesion, there is no detailed analysis to support

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[36] Robert Heyes, rebuttal evidence, paragraphs 6.7 to 6.8.
[37] Rebuttal evidence of Amy Narlee Bowbyes on behalf of Queenstown Lakes District Council Visitor Accommodation: Text 22 August 2018.
[38] Amy Bowbyes, Section 42A Report, paragraph 9.19.
[39] Amy Bowbyes, Section 42A Report, paragraph 9.19 and footnote 93.
[40] Amy Bowbyes, Section 42A Report, paragraph 9.19 and footnote 94.
[41] Amy Bowbyes, Section 42A Report, paragraph 9.19.

this in the Section 42A Report or in Ms Bowbyes' rebuttal evidence. No other witness has been called by the Council to specifically address residential character and amenity effects. The sole basis of Ms Bowbyes opinion therefore appears to be the Section 32 Report.

4.27 The Section 32 Report contains very limited discussion of residential character and cohesion effects associated with visitor accommodation. The Section 32 Report refers to a 10-year-old discussion paper on the relationship between residential coherence and visitor accommodation prepared by Hill Young Cooper Ltd (**HYC**) in 2008 in support of a previous plan change (Plan Change 23).

4.28 The Section 32 Report states that HYC considered the intermixing of visitor accommodation activities with residential development tends to adversely impact the integrity of community cohesion, possibly resulting in noise and parking issues and a reduced feeling of safety.[42]

4.29 The Section 32 Report acknowledges that, despite the extent of visitor accommodation growth experienced since that plan change was developed, there is no clear evidence that visitor accommodation is having direct adverse effects on parking availability, noise, built form, or safety that can be distinguished from what otherwise would occur with residential activities in these areas. Instead the Section 32 Report suggests that:[43]

> The effects are more subtle in nature and relate to the neighbourhood feel and sense of safety from a combination of factors such as high numbers of empty, dark houses at night, more transient residential populations, business and agencies having significant trouble housing new staff, as well as families and workers having trouble settling in the District on a long term basis.

4.30 The Section 32 Report also makes various statements in relation to residential amenity and parking which suggest visitor accommodation activities 'could' result in additional noise and nuisance effects and 'can' result in significant adverse effects associated with traffic movements and additional parking demand.[44]

4.31 The Section 32 Report that Ms Bowbyes relies on therefore does not establish that the existing rules for registered holiday homes in the Operative Plan *are* resulting in adverse effects on residential character and cohesion and amenity. At best, BB submits that the Section 32 Report's discussion of these issues is based on a range of potential scenarios that are not supported by any clear evidence or analysis.

4.32 The opinion that Ms Bowbyes expresses in the Section 42A report that residential visitor accommodation activities has a set of effects that are discernibly greater than the ancillary

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[42] Section 32 Report, paragraph 6.27.
[43] Section 32 Report, paragraph 6.30.
[44] Section 32 Report, paragraphs 6.32 and 6.34.

use of a home for permitted homestay activities is similarly not supported by any detailed analysis or evidence.[45] Ms Bowbyes' view overlooks that there could be more comings and goings and therefore more amenity effects over a longer period with a homestay operation when compared to the use of a holiday home up to 90 nights per year by a family or group that function as one household. She also does not appear to recognise the potential for rooms used for homestay activities to be rented to long term flatmates and to therefore be removed from the pool of long term residential accommodation that might otherwise be available in the District.

4.33 As a result of these factors, it is submitted that little weight can be placed on Ms Bowbye's opinions about the actual and potential effects of the existing Operative Plan rules on residential character / cohesion and amenity effects and housing availability and affordability and the difference in effects between residential visitor accommodation and homestay activities.

Permitted activity threshold

4.34 The Section 42A Report also includes the reasons why Ms Bowbyes supports a revised 42 night threshold for permitted residential visitor accommodation. Ms Bowbyes considers that a permitted standard of 42 nights per annum would enable the usual resident(s) in a dwelling to vacate the dwelling whilst they are on annual leave (including public holidays) and would serve to ensure that the main use of a residential unit is for residential activities.[46]

4.35 Ms Bowbyes also considers that a 42 night limit would still achieve the goal of limiting adverse effects on residential amenity and residential cohesion.[47]

4.36 It is submitted that Ms Bowbyes' reliance on a property owner's statutory entitlement to holiday leave is not an appropriate environmental effects based reason for justifying a 42 night limit. It also completely ignores the situation of holiday home owners (who are likely to be in occupation of their holiday properties when they have annual leave).

4.37 A 90 night limit would also ensure that the main use of a property was for residential purposes (being approximately a quarter of a year) and as discussed previously, there is no cogent evidence that demonstrates that the existing 90 night limit is having adverse effects on residential amenity and residential cohesion. In fact, it is submitted that for otherwise

[45] Section 42A Report, Amy Bowbyes, see paragraphs 9.51 to 9.52.
[46] Section 42A Report, Amy Bowbyes, paragraph 9.82.
[47] Section 42A Report, Amy Bowbyes, paragraph 9.82.

vacant holiday homes, a 90 night limit is more likely to result in increased residential cohesion because more people will be in the neighbourhood.

Activity status for breach of permitted activity standards

4.38 Another matter arising from Ms Bowbyes' Section 42A Report is the appropriate activity status for resource consent applications where the permitted residential visitor accommodation standards are not complied with.

4.39 Ms Bowbyes supports the non-complying activity status for breaches of the permitted activity standards in some parts[48] of the Low Density Residential, Medium Density Residential, Arrowtown Residential Historic Management and Large Lot Residential Zones and the non-commercial areas of Jack's Point, and Waterfall Park. Ms Bowbyes appears to consider that non-complying activity status is required for the effective management of the adverse effects of residential visitor accommodation activities in those areas.[49]

4.40 However, in other areas where Ms Bowbyes supports restricted discretionary activity status for breach of permitted activity standards, she has proposed a number of matters over which the Council's discretion can be reserved including the location, nature and scale of activities, and the location, provision and screening of parking and other access.[50]

4.41 It is submitted that there is no reason why this approach cannot be applied across the entirety of the zones affected by the visitor accommodation variation as the issues of concern to the Council are clearly identifiable and capable of being included in plan provisions for restricted discretionary activities.

5 CONCLUSION

5.1 As there is no cogent and reliable evidence that the existing Operative Plan rules are having adverse effects on residential character, cohesion and amenity or, housing availability and affordability, the provisions sought by BB that would reinstate the 90 night threshold for permitted residential visitor accommodation and treat homestays in a similar way are the most appropriate way to achieve the Proposed Plan's objectives and implement its policies.

5.2 Specifically, BB's alternative provisions would strike an appropriate balance between the themes evident in the Proposed Plan's objectives and policies of enabling the use and development of natural and physical resources while avoiding remedying or mitigating any potential adverse effects.

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[48] The main exception to this is within the Visitor Accommodation Sub-Zone.
[49] Section 42A, Amy Bowbyes, paragraph 9.102.
[50] Amy Bowbyes, rebuttal evidence, paragraph 3.6.

5.3 The relief sought by BB also has appropriate regard to the effects of residential visitor accommodation activity on the environment. By proposing a permitted activity threshold of 90 nights and restricted activity status for applications where the permitted activity standards are breached, BB's provisions are supported by the collective body of evidence before the Hearings Panel.

5.4 BB's approach would also enable applications that breach permitted activity standards to be considered on their merits having regard to all of the information available to the Council about the effects of residential visitor accommodation and homestay activities at the time the application is considered.

5.5 By contrast, it is submitted that the Council has not fully considered alternative methods for addressing its concerns in relation to the District's housing availability and affordability issues and there is insufficient evidence to justify intervention of the nature proposed by the Council's Provisions.

5.6 In these circumstances, the previously discussed case law[51] directs that a less restrictive regime such as the approach BB propose should be preferred as better meeting the purpose of the RMA and the objectives of the Proposed Plan.

5.7 The lack of information about the potential adverse effects of residential visitor accommodation in the District means that the Council's Provisions for permitted residential visitor accommodation are arbitrary in nature.

5.8 The arbitrary nature of the Council's Provisions is reinforced by its proposal to treat homestay activities more favourably including by allowing them to operate as permitted activities 365 nights per year, when there is no evidence to suggest that their potential adverse effects are discernibly different to those of residential visitor accommodation.

5.9 There is therefore a significant risk (comparable to the scenario in the *Horticulture New Zealand*[52] case) that the Council's Proposed Provisions will result in significant economic costs to businesses involved in the residential visitor accommodation sector, to property owners and to visitors, with no proven benefits. This is neither an efficient or effective outcome especially given that the housing stock of the District is a finite resource.

5.10 There is also no evidence before the Hearings Panel that indicates the Council's Provisions will assist the Council to carry out its functions under section 32 of the RMA.

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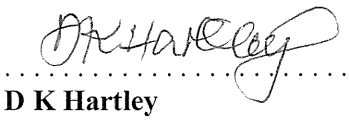
[51] *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51.
[52] *Horticulture New Zealand Ltd v Far North District Council* [2016] NZEnvC 47.

5.11 For all of these reasons it is submitted that BB's options, with more flexible Proposed Plan provisions, better meet the statutory criteria that the Council's Provisions and the Hearings Panel should reject the Council's Provisions and prefer the relief sought by BB.

Date: 14 September 2018



D K Hartley
Counsel for Bookabach Ltd and Bachcare