

SUBMISSION ON

Making it Easier to Build Granny Flats

09 August 2024

To: The Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE)

Name of Submitter: Horticulture New Zealand

Contact for Service:

Michelle Sands
GM Strategy and Policy
Horticulture New Zealand
PO Box 10-232 WELLINGTON
Ph: 021 610 653
Email: michelle.sands@hortnz.co.nz

OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry of Business, Innovation and Employment and the Ministry for the Environment for the opportunity to submit on the Discussion Document '*Making it Easier to Build Granny Flats*' and welcomes any opportunity to continue to work with the Government to discuss our feedback.

The details of HortNZ's submission is set out below.

HortNZ's Role

Background to HortNZ

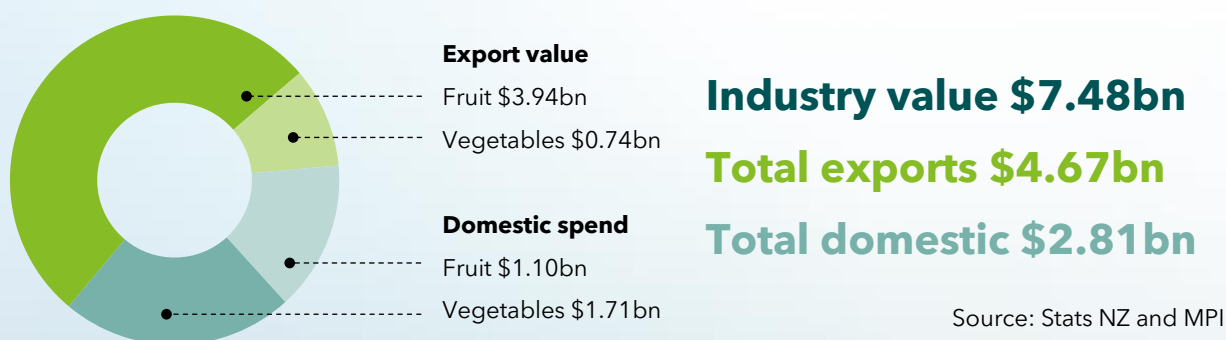
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Executive Summary

Key Points

HortNZ has two areas of interest in the policy proposal.

1. Firstly, workers accommodation in rural zones is provided for through district plans in a number of forms. In some circumstances, this can be through provisions for Minor Residential Units. We support increasing the supply and reducing the regulatory burden for these buildings but are concerned the **stringency of national rules and a floor area limited to 60m² might have unintended consequences for workers accommodation.**
2. Secondly, residential activity in rural zones is consistently identified in district plans as an activity sensitive to the effects of primary production. Reverse sensitivity is a particular concern for the sector and an issue elevated in national policy through the National Policy Statement for Highly Productive Land in the context of land-based primary production. Therefore, while we support enabling Minor Residential Units, **we seek that additional mandatory setbacks are imposed to separate residential buildings from primary production and supporting activities.**

Workers' Accommodation

HortNZ is constantly grappling with district plan review processes around New Zealand, which vary in how they do or do not provide for workers accommodation in rural zones.

If the MRUs were only enabled nationally as a permitted activity to 60m² (as per this policy), this might result in the following unintended consequences:

- A difficult pathway for workers accommodation with noncompliance requiring consent.
- Councils determining that MRUs, in addition to permanent workers accommodation and seasonal workers accommodation, might create a level of residential density that creates an adverse effect.
- Plan change processes being required to clearly provision permanent and seasonal workers accommodation in addition to MRUs.

Small, self-contained houses in the rural zones play a critical role in providing workers accommodation for the primary sector. Accommodating workers in appropriate accommodation near their places of employment is more efficient for the horticulture industry than accommodation that will need to be found further afield, requiring workers to commute.

There has been an inconsistent and, at times, confusing response to provisioning workers accommodation in district plans. Where no specific rule is included in a plan for permanent workers accommodation, it is typical for a plan to accommodate this activity as a Minor Residential Unit (MRU), which might then fall under the proposed national direction. Development standards are often unhelpful for the horticultural use of MRUs in terms of providing for worker privacy and sufficient gross floor area.

While we agree that reliance on enabling only MRUs as defined in the National Planning Standards is a useful alignment for this policy, we see some challenges in the way this might affect existing planning frameworks and particularly provisioning workers accommodation.

Managing Adverse Effects on Horticulture

MRUs are residential activities, which are considered sensitive in district plans because of the potential adverse effect of unrealistic expectations for the sights, noise, smells and other features of the rural working environment. This is an important approach to enable the use of the rural environment for primary production, where the residential use is not associated with primary production activities (e.g. workers' accommodation).

If permitted activity standards are to be prescribed, they **must include the following additional mandatory setbacks where the MRU is not associated with a Primary Production Activity** to manage reverse sensitivity effects:

- 30 meters from existing Shelterbelts.
- 30 meters from a Primary Production Activity.
- 30 meters from Artificial Crop Protection Structures.
- 30 meters from any Frost Protection Device (where no acoustic mitigation).
- 250 meters of a Post-Harvest Facility or Post-Harvest Zone (where no acoustic mitigation).

It is common (and good planning practice) to prescribe setbacks between residential activities/MRUs and activities that could be hampered by reverse sensitivity. It would be unreasonable to override long established and effective planning methods through a national environmental standard for an activity that can be sensitive to the effects of primary production, no matter what the scale, including floor area.

The ability to manage other activities such as the examples of visitor accommodation (Air B&B), home businesses and childcare services in the discussion document must remain within the function of councils and district plans. These activities and a number of other activities are sensitive to the effects of primary production, and reverse sensitivity is a significant risk.

Submission

In our submission, we respond directly to the consultation questions below. Our key points are summarised in Part 2, the Executive Summary.

1. General

1.1. Have we correctly defined the problem? Are there other problems that make it hard to build a granny flat?

The Discussion Document: Part One Introduction and Context, describes that:

'Granny flat' is a common term to describe a small, self-contained house. These are also known as secondary or ancillary dwellings, family flats, minor dwellings, self-contained small dwellings and minor residential units.

HortNZ is constantly grappling with the various terms in district plan review processes around New Zealand. The intersect with HortNZ's interests, relate the way district plans provide (or not) for workers accommodation in rural zones.

Small, self-contained houses in the rural zones play a critical role in providing workers accommodation for the primary sector. For the horticultural sector, the need can vary from permanent to seasonal employee requirements and a range of accommodation styles. Accommodating workers in appropriate accommodation near their places of employment is more efficient for the horticulture industry than accommodation that will need to be found further afield and workers will be required to commute.

Seasonal worker accommodation provides for temporary and often communal living arrangements, typically associated with the New Zealand Government's Recognised Seasonal Employer (RSE) scheme that has been in place since 2007. This is quite distinct from permanent worker accommodation which might support a full-time employee and potentially partners and children. Both are used in the horticultural sector.

It has been our experience that there has been an inconsistent and at times confusing response to provisioning workers accommodation in district plans. This ranges from plans providing separate methods for three distinct activities of 'Seasonal Workers Accommodation', 'Permanent Workers Accommodation' and 'Minor Residential Units', to various combinations of these arrangements.

Where a district plan has relied on the National Planning Standards definition of Minor Residential Units with development standards as a method to provide for workers accommodation, this has often proved unhelpful. For example, standards that require the Minor Residential Units to be in close proximity to the Principal Dwelling rather than the primary production activity or accessed from the same residential driveway when an alternative farm entrance is a better option.

The problem definition describes three key issues:

- Housing affordability is a key issue in New Zealand.
- There is increasing demand and a lack of supply of small houses.
- Regulatory barriers increase the time and cost to build new houses and processes should be proportionate to the risks.

The problems are the same for those in the horticultural sector wanting to provision small, self-contained houses for workers on rural properties. Where workers accommodation is not available onsite, this has put added pressure on the private rental market (exacerbating the problem) or housing workers in other off-farm accommodation options including campground cabins.

1.2. Do you agree with the proposed outcome and principles? Are there other outcomes this policy should achieve?

HortNZ supports an intended outcome to increase the supply of small houses, creating more affordable housing options and choice.

We agree that the proposals should not be limited to older New Zealanders or family members and in that regard the term 'granny flat' is unhelpful. MRU is more inclusive and well-understood in the planning discipline.

Principle 1 is as follows:

- *"enabling granny flats and other structures in the resource management and building systems, with appropriate safeguards for key risks and effects."*

Notwithstanding our concerns with the use of the term 'granny flat' we support the principle and note the importance of incorporating appropriate safeguards for key risks and effects.

We comment further on those aspects below.

1.3. Do you agree with the risks identified? Are there other risks that need to be considered?

In terms of risks and effects, we are of the opinion that the residential use of a 'granny flat' should not be controlled as the effects of residential use are the same whether occupied by older New Zealanders, family members or farm workers.

We would not support provisions that enabled the use of a 'granny flat' as an extension to, or to support new, sensitive activities in rural zones, such as visitor accommodation.

The Discussion Document notes that in terms of Environmental Effects:

"overriding rules and standards in RMA plans could impact privacy, create environmental effects and have other unintended consequences."

We would add that there is a critical need to consider reverse sensitivity where the 'granny flat' is located in a rural zone and adjacent primary production and supporting activities.

This is a matter to consider generally for the rural zone but specifically a concern for 'Land-Based Primary Production'¹ and 'Highly Productive Land'² as expressed through Part 3 Implementation of the National Policy Statement for Highly Productive Land 2022.

"3.13 Managing reverse sensitivity and cumulative effects

(1) Territorial authorities must include objectives, policies, and rules in their district plans that:

(a) identify typical activities and effects associated with land-based primary production on highly productive land that should be anticipated and tolerated in a productive rural environment; and

(b) require the avoidance if possible, or otherwise the mitigation, of any potential reverse sensitivity effects from urban rezoning or rural lifestyle development that could affect land-based primary production on highly productive land (where mitigation might involve, for instance, the use of setbacks and buffers); and

(c) require consideration of the cumulative effects of any subdivision, use, or development on the availability and productive capacity of highly productive land in their district."

Residential Activities and Minor Residential Dwelling Units located in rural zones and where not associated with primary production are consistently defined as 'Sensitive Activities' in district plans around New Zealand. The sensitivity relating to conflict in amenity expectations, typical primary production related activities and associated effects such as noise, odours, sights, lighting and reverse sensitivity. A planning response is then in place that can include an activity status arrangement and/or setbacks.

Overriding rules and standards in RMA plans that have been robustly assessed for effectiveness and efficiency, specifically to address these sensitive activities could have unintended consequences including adversely affecting the productive capacity of rural environments.

2. Building System Proposal

HortNZ makes no comment regarding Questions 4 - 12.

3. Resource Management System Proposal

¹ means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land (NPSHPL 2022)

² means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land) (NPSHPL 2022)

3.1. Do you agree that enabling minor residential units (as defined in the National Planning Standards) should be the focus of this policy under the RMA?

The Discussion Document identifies that the focus of this policy is to enable small, detached, self-contained, single storey houses for residential use. We support the intent.

While we agree that within the outcomes and principles to be achieved, reliance on enabling only Minor Residential Units (MRUs) as defined in the National Planning Standards is a useful alignment, we have some concerns with how this might then affect workers accommodation in rural zones that has otherwise been provided through existing MRU methods in district plans.

As previously noted, it has been our experience that there has been an inconsistent response to provisioning workers accommodation in district plans ranging from plans providing separate methods for 'Seasonal Workers Accommodation', 'Permanent Workers Accommodation' and 'Minor Residential Units' to various combinations of these arrangements. Examples include:

Plan	Provision	Rule
Auckland Unitary Plan RESTRICTED DISCRETIONARY	Minor Dwelling	<ul style="list-style-type: none"> • Site greater than 1ha • Max GFA 65m² • Share a single driveway
	Workers Accommodation	<ul style="list-style-type: none"> • Site greater than 5ha • Max GFA 120m² • Single kitchen • Any number of workers
Proposed Waikato District Plan - Appeals Version PERMITTED	Minor Residential Units	<ul style="list-style-type: none"> • Max GFA 120m² • Same RT as existing residential unit • Be located within 100m of existing residential unit • Share a single driveway
	Seasonal Workers Accommodation	<ul style="list-style-type: none"> • Site greater than 20ha • To supply part of years labour supply • Communal kitchen, eating, separate sleeping & ablutions • No more than 12 workers • Code of Practice for Able Bodied Seasonal Workers
Central Hawke's Bay Proposed District Plan - Appeals Version PERMITTED	Minor Residential Units	<ul style="list-style-type: none"> • Max GFA 100m² • Share a single driveway • Be located within 25m of existing residential unit
	Seasonal Workers Accommodation	<ul style="list-style-type: none"> • Max GFA 125m²
Proposed Waimakariri District Plan PERMITTED	Minor Residential Units	<ul style="list-style-type: none"> • Max GFA 90m²

Partially Operative Selwyn District Plan (Appeals Version)	Minor Residential Unit	<ul style="list-style-type: none"> • Max GFA 90m² • Be located within 30m of existing residential unit
	PERMITTED Seasonal Workers Accommodation	<ul style="list-style-type: none"> • Communal kitchen, eating, sleeping and ablutions. • No more than 12 workers • Code of Practice for Able Bodied Seasonal Workers
Proposed Timaru District Plan	Minor Residential Unit	<ul style="list-style-type: none"> • Max GFA 80m² • Share a single driveway
	PERMITTED Seasonal Workers Accommodation	<ul style="list-style-type: none"> • Site area greater than 40ha/20ha • Max GFA 500m² • A camping area of 1000m² • Occupancy limited to 180days • No more than 20 workers
	Permanent Workers Accommodation	<ul style="list-style-type: none"> • Site area greater than 80ha

Where no specific rule is included in a plan for permanent workers accommodation, it is typical for a plan to accommodate this activity as a Minor Residential Unit. This has proved challenging for the sector noting that the development standards are often unhelpful. For example, development standards that require the MRU to share vehicle access with the principal residential unit or that the MRU must be located a specified distance from a principal residential unit. Furthermore, the gross floor area limitations vary noting that with many permanent farm workers situations it is reasonable to expect there may be an associated household of partners and children.

HortNZ has been involved in many district plan processes seeking specific rules for permanent and seasonal workers accommodation or that provisions for MRU are at best workable and practical, including seeking the GFA is reasonable.

Therefore, while we agree that reliance on enabling only MRUs as defined in the National Planning Standards is a useful alignment for this policy, we see some challenges in the way this might affect existing planning frameworks and particularly provisioning workers accommodation.

If the MRUs were only enabled nationally as a permitted activity to 60m² (as per this policy), this might result in:

- A difficult pathway for workers accommodation with noncompliance requiring consent.
- Councils determining that MRUs additional to permanent workers accommodation and seasonal workers accommodation might create a level of residential density that creates an adverse effect.
- Plan change processes being required to clearly provision permanent and seasonal workers accommodation in addition to MRUs.

3.2. Should this policy apply to accessory buildings, extensions and attached granny flats under the RMA?

No, applying this policy to extensions or attached 'granny flats' would not appear to achieve the intent and in the context of workers accommodation does not resolve the problem or provide a practical solution.

We note that Accessory Buildings are generally permitted under district plans (being ancillary to a principal activity) but can be subject to different standards than MRUs. Given our concerns with development standards that might be applied to MRUs, it may be helpful to further investigate how provisioning a small, self-contained home that is an accessory building to a primary production activity might assist with resolving the problem by providing affordable on farm housing choice with reduced regulatory cost and burden.

3.3. Do you agree that the focus of this policy should be on enabling minor residential units in residential and rural zones?

3.4. Should this policy apply to other zones? If yes, which other zones should be captured and how should minor residential units be managed in these areas?

Irrespective of the zone to which the policy is applied, the response to reverse sensitivity effects as they relate to primary production generally and land-based primary production specifically, must be consistent.

3.5. Do you agree that subdivision, matters of national importance (RMA section 6), the use of minor residential units and regional plan rules are not managed through this policy?

We agree that subdivision, matters of national importance (RMA section 6) and regional plan rules are not managed through this policy.

In terms of the use of a MRU, as noted previously, whether MRUs are occupied by older New Zealanders, family members or farm workers, the effects are the same where this is for residential use. We would not support the policy excluding the use of MRUs for workers accommodation.

The ability to manage other activities such as the identified examples of visitor accommodation (Air B&B), home businesses and childcare services must remain within the function of councils and district plans. These activities and a number of other activities are sensitive to the effects of primary production and reverse sensitivity is a significant risk.

Reverse-sensitivity means the potential for the operation of an existing lawfully established activity to be compromised, constrained, or curtailed by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by an existing activity.

Defining and then applying a particular objective, policy and rule framework to activities sensitive to the effects of activities (particularly primary production related) is from our experience a common approach in district plans to address reverse sensitivity effects.

We note that the definition of what is a *Sensitive Activity* from a district plan perspective consistently includes residential use. We consider that a reasonable approach where that residential use is not associated with primary production activities i.e. an orchardist or workers accommodation.

Examples include:

Plan	Definition - Sensitive Activity
New Plymouth District Plan	means the use of land and buildings for: <ul style="list-style-type: none"> • <u>living activities</u>; • educational facilities; • community facilities; • major healthcare activities; • visitor accommodation; or • residential visitor accommodation
Hurunui District Plan	Includes <ul style="list-style-type: none"> • <u>residential activities, minor dwellings</u>, • visitor accommodation, • entertainment facilities, • health care facilities, community services.
Proposed Waimakariri District Plan	Means activities and facilities including, but is not limited to, <ul style="list-style-type: none"> • educational facilities, • community facility, • healthcare facility, • childcare facilities, • <u>residential units, minor residential units</u>, • retirement village, • visitor accommodation, • community facility, • offices and • hospitals.
PC23 to the Mackenzie District Plan	Means any: <ol style="list-style-type: none"> a. <u>residential activity</u> b. visitor accommodation c. community facility d. educational facility
Partially Operative Selwyn District Plan (Appeals Version)	Means any: <ol style="list-style-type: none"> a. <u>residential activity</u> b. visitor accommodation c. community facility d. educational facility
Proposed Timaru District Plan	Means: <ol style="list-style-type: none"> 1. <u>Residential activities</u>; 2. Education facilities and preschools; 3. Guest & visitor accommodation; 4. Health care facilities which include accommodation for overnight care; 5. Hospitals; 6. Marae (building only); or 7. Place of assembly.

While it is reasonable to expect and provide for some of these Sensitive Activities in the rural environment, expectations of those undertaking or enjoying these activities might conflict with primary production.

In the case of parents looking at rural based educational options this might conflict with the smells, sights, noise and vehicle movements of primary production. The same conflict is possible between supported residential care activity and residential visitor accommodation that might have looked to leverage from a perception of rural character and amenity that might be quite different from the reality of the rural zone.

3.6. Are there other matters that need to be specifically out of scope?

We have commented above in regard to Sensitive Activities and the need for district plans to be able to manage activities that might seek to use an MRU for purposes other than residential use.

What must remain in scope is prescribing setbacks and this should extend to setbacks from primary production activities where the MRU is not associated with a primary production activity.

3.7. Do you agree that a national environmental standard for minor residential units with consistent permitted activity standards (option 4), is the best way to enable minor residential units in the resource management system?

A national environmental standard for minor residential units with consistent permitted activity standards (option 4), appears the best way to enable minor residential units in the resource management system, subject to clarity in regard to the relationship to workers accommodation and imposing additional setbacks from primary production activities where the MRU is not associated with a primary production activity.

3.8. Do you agree district plan provisions should be able to be more enabling than this proposed national environmental standard?

We agree that district plan provisions should be able to be more enabling than a national environmental standard, but not in terms of minimum setbacks where the MRU is not associated with a primary production activity.

Policy clarity and a solution is required in regard to the relationship of the rule structure to workers accommodation. As we have previously commented, we are concerned that if the MRUs were only enabled nationally as a permitted activity to 60m² (as per this policy), this might result in:

- A difficult pathway for workers accommodation with noncompliance requiring consent.

- Councils determining that MRUs, additional to permanent workers accommodation and seasonal workers accommodation might create a level of residential density that creates an adverse effect.
- Plan change processes being required to clearly provision permanent and seasonal workers accommodation.

3.9. Do you agree or disagree with the recommended permitted activity standards? Please specify if there are any standards you have specific feedback on.

Standard	Feedback
Internal floor area	Oppose a maximum internal floor area where this might apply to the use of an MRU for workers accommodation and existing plans provide a greater GFA.
Relationship to the principal residential unit	Support a standard requiring that the MRU is held in common ownership with a principal residential unit on the same site (as defined in the National Planning Standards) <i>where this does not apply to workers accommodation on different sites.</i>
Building coverage - the percentage of the net site area covered by the building footprint.	Support no maximum building coverage in rural zones.
Permeable surface - areas of grass and planting and other surfaces where water can filter naturally into the ground	This would be an impractical standard in the rural zones and should not apply to rural sites.
Setbacks	Support option b to provide a 1.5m setback from side and rear boundaries in the residential zone as that relates to the rural zone interface. Support defined setbacks in the rural zone but recommend additional setbacks from Primary Production Activities (and supporting activities) where the MRU is not associated with a primary production activity on the site of at least 30m.
Building height and height in relation to boundary	Support retaining a district plan response.

3.10. Are there any additional matters that should be managed by a permitted activity standard?

As previously identified, residential activities and MRUs are commonly defined in district plans as Sensitive Activities to which a range of activity status responses exist and/or setbacks. It is common (and good planning practice) to prescribe setbacks between residential activities/MRUs, and:

- Intensive Indoor and Outdoor Primary Production.
- Plantation Forestry.
- Shelterbelts.
- Primary Production Activities.
- Frost Protection Devices.
- Artificial Crop Protection Structures.
- Infrastructure (Airports, the National Grid).

It would be unreasonable to override long established and effective planning methods through a national environmental standard for an activity that can be sensitive to the effects of primary production, no matter what the scale (gross floor area).

If permitted activity standards are to be prescribed this must include the following:

Setback for MRU not associated with a Primary Production Activity	Example References
30 meters from existing Shelterbelts.	Refer Partially Operative Selwyn District Plan: Selwyn District Council - Decisions
30 meters from a Primary Production Activity.	Refer Western Bay of Plenty Operative District Plan: Western Bay of Plenty Operative District Plan
30 meters from Artificial Crop Protection Structures.	Refer Proposed Timaru District Plan Proposed District Plan - Proposed Timaru District Plan - He Po. He Ao. Ka Awatea. (isoplan.co.nz)
300 meters from any frost protection device (where no acoustic mitigation).	Refer Tasman Resource Management Plan: ch 17 - Zone Rules (2).pdf Refer Proposed Marlborough Environment Plan Appeal Version - Rules - Chapter 3 - Rural Environment Zone (Updated 15 May 2024) (marlborough.govt.nz)

250 meters of a post-harvest facility or post-harvest zone (where no acoustic mitigation).	Refer Whangarei District Plan: ePlan - Whangarei District Council (wdc.govt.nz) Refer Western Bay of Plenty Operative District Plan: Western Bay of Plenty Operative District Plan
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3.11. For developments that do not meet one or more of the permitted activity standards, should a restricted discretionary resource consent be required, or should the existing district plan provisions apply? Are there other ways to manage developments that do not meet the permitted activity standards?

HortNZ prefers that existing district plan provision should apply in the case of non-compliance with permitted activity standards. This is particularly important in the situation of non-compliance with setbacks which have largely been determined through robust planning processes that have resolved the most effective and efficient methods for a district.

A default restricted discretionary activity status may not be sufficient to anticipate and adequately assess all potential effects from non-compliance.

3.12. Do you have any other comments on the resource management system aspects of this proposal?

HortNZ reiterates its overall support for the intent of the policy but concerns for the way in which reliance on the definition of Minor Household Units might affect existing planning frameworks that accommodate workers accommodation.

4. Notification and Funding Infrastructure

HortNZ makes no comment regarding Questions 25 - 27.

5. Māori land, papakāinga and kaumātua housing

HortNZ makes no comment regarding Questions 28 - 29.