

SUBMISSION ON PROPOSED KAIPARA DISTRICT PLAN

Clause 6 of Schedule 1, Resource Management Act 1991

To: Kaipara District Council

Name of submitter: Leighway Holdings Limited

1. Leighway Holdings Limited (**Leighway**) makes this submission on the Proposed Kaipara District Plan (**Proposed Plan**).

Background

2. Leighway owns approximately 114.3 hectares of land in Rehutai held on Records of Title 499504 and NA1044/230, legal descriptions Lot 3 DP 425236 and Section 33 Block I Kopuru Survey District (**Site**). A map of the Site is annexed as **Appendix A**.
3. Under the Operative District Plan, the Site is zoned Rural and is subject to two overlays:
 - (a) Outstanding Natural Landscape Overlay; and
 - (b) West Coast Overlay.
4. Under the Proposed Plan, the Site is zoned General Rural and is subject to additional overlays, including:
 - (a) Coastal Environment (to a very large extent);
 - (b) High Natural Character Areas; and
 - (c) Coastal Flood Hazards (to a very limited extent).
5. The Proposed Plan also introduces new rules for activities within the Coastal Environment overlay. As a result, under the Proposed Plan, resource consent would be required to establish a dwelling on the site except in the few areas that the Coastal Environment overlay does not cover.
6. The Coastal Environment overlay simply adopts the mapped coastal environment line from the Northland Regional Policy Statement. Given the high-level, desktop assessment that informed the development of Northland Regional Policy Statement coastal environment line, Leighway considers that it is inappropriate to adopt the Coastal Environment overlay in the Proposed Plan without further analysis, and inappropriate to have the Coastal Environment overlay drive application of rules that affect the use of property.
7. This submission relates to:
 - (a) the location and extent of the Coastal Environment overlay, particularly as it relates to the Site;
 - (b) the provisions of Chapter CE – Coastal Environment; and
 - (c) the provisions of Chapter GRUZ – General Rural Zone.

Submission

Coastal Environment overlay

8. The Proposed Plan has adopted new maps for the Coastal Environment, High Natural Character Areas and Outstanding Natural Character Areas.

9. The Northland Regional Policy Statement establishes criteria for the assessment of what constitutes the coastal environment.¹ Northland Regional Council undertook a mapping exercise during the development of its RPS between 2011 and 2014.² Understandably, with 3,200km of coastline to assess, the assessment undertaken was largely a desktop exercise that relies on aerial photographs, satellite imagery and mapped information.
10. In relation to the Site, Northland Regional Council's worksheet appears to base the coastal environment line assessment on land contour, presence of dunefields and presence of coastal lakes (being Lake Rehutai). It does not appear that a site visit was undertaken to confirm the findings.
11. Policy 4.5.1 of the RPS contemplates that further detailed assessment will be undertaken, which may supersede the high-level, desktop mapping undertaken for the RPS. Method 4.5.4 of the RPS states:

4.5.4 Method – Statutory plans and strategies

- (1) Within two years of this Regional Policy Statement becoming operative (or the first relevant plan change after the Regional Policy Statement becoming operative, whichever is the earlier) the regional and district councils shall notify a plan change to their relevant regional and district plans to incorporate the Regional Policy Statement – Maps subject to Method 4.5.4(2).
 - (2) The coastal environment, and areas of high and outstanding natural character within the coastal environment, and outstanding natural features and outstanding natural landscapes as shown in the Regional Policy Statement – Maps may be changed, provided the changes are:
 - (i) Undertaken using the attributes and criteria listed in Appendix 1; and
 - (ii) Shown in the regional or district plan.
 - (3) As soon as practicable after this Regional Policy Statement becoming operative the regional and district councils (in collaboration with the Department of Conservation, tangata whenua, and New Zealand Historic Places Trust, and in consultation with affected landowners (and where relevant, local communities) will identify historic heritage accordance with the criteria in Policy 4.5.3. Once identified, the historic heritage that meets the criteria in Policy 4.5.3 will be included within the relevant regional and district plan by way of maps and / or schedules or alert layers where appropriate. Where a heritage area, site, building or other feature spans a council jurisdictional boundary (for example, the coastal marine area) it will be recorded in the schedules and / or maps of both relevant plans.
 - (4) Within two years of the Regional Policy Statement becoming operative the regional and district councils shall undertake a joint exercise to identify and implement the most cost effective and efficient process to map the physical extent of those outstanding natural features listed in Appendix 4, and include the resulting maps into appropriate district and regional plans.
12. Despite changing the regulatory impact of the coastal environment maps, the Proposed Plan has not sought to undertake more detailed mapping and relies on the high-level, desktop maps.
 13. In relation to the Site, the Coastal Environment overlay is inaccurate. It includes land that is not significantly influenced by coastal processes or qualities, not subject to coastal hazards, not covered in coastal vegetation (or providing habitat to coastal species), which does not contain elements and features that contribute to natural character, and which are not areas of

¹ RPS, Appendix 1.

² RPS Northland Mapping Project, Coastal Environment Mapping Methodology.

cultural or historic heritage on the coast.³ The Site does not include inter-related coastal marine and terrestrial systems, or flat, low-lying areas.⁴

14. Instead, the vast majority of the Site is in exotic pasture and used for livestock grazing. Only the forefront of the Site has true coastal influence and character, being the area identified as Outstanding Natural Landscape and High Natural Character Area. Beyond the High Natural Character Area, the coastal influence is substantially diminished and certainly not “significant”.
15. The feature known as Lake Rehutai (identified on the Regional Council’s worksheet) is approximately 1.4km north west of the Site and is not visually connected to the Site in any way.
16. Accordingly, Leighway seeks that:
 - (a) the location and extent of the Coastal Environment overlay is revisited, particularly as it relates to the Site; and
 - (b) the Coastal Environment overlay is reduced to align with the High Natural Character Area overlay on the site, as shown in light green in Appendix A.

Chapter CE – Coastal Environment

17. Chapter CE – Coastal Environment includes objectives, policies and rules for activities within the Coastal Environment overlay.
18. Chapter CE seeks to preserve the qualities and characteristics of the coastal environment by managing activities in Outstanding Natural Character Areas and within the Coastal Environment overlay more generally.
19. Chapter CE restricts a range of activities, including:
 - (a) external additions or alterations that increase height of buildings (Rule CE-R1);
 - (b) new buildings and structures outside certain zones that are not ancillary to established land uses (Rule CE-R2); and
 - (c) earthworks in excess of certain thresholds.
20. The consequence for Leighway is that activities that were permitted under the Operative Kaipara District Plan, namely the construction of dwellings and associated earthworks, would now require resource consent as a restricted discretionary activity.
21. These restrictions on the use of land are not justified and are not the most appropriate way to achieve the objectives of the Proposed Plan. Such a broad-brush restriction on new buildings and structures, additions or alterations and earthworks imposes significant costs on landowners, and is an inefficient way to manage significant adverse effects on areas of the coastal environment outside of Outstanding Natural Landscapes, Outstanding Natural Character Areas and High Natural Character Areas.
22. In respect of new buildings and structures, the standards relating to height, colour and reflectivity, and gross floor area are sufficient tools to appropriately manage potential significant adverse effects on coastal character generally. A blanket consenting requirement for a range of zones (including the Rural zone) is not justified.
23. In respect of additions and alterations, a requirement that there be no increase in height is not justified. The appropriate control would be that height not exceed the height limit in Rule CE-S1. In respect of Rule CE-S1, no justification has been provided in the s32 report for why an 8.5m height limit should apply within the Coastal Environment, as opposed to the underlying zone height (for the Site, 10m under GRUZ-S1). The height limit should be modified accordingly.

³ RPS, Appendix 1.

⁴ RPS, Appendix 1.

24. In respect of earthworks, the 500m³ per decade limit is arbitrary and unjustified. No analysis has been provided in the s32 report to conclude that standard is the most appropriate threshold to avoid, remedy or mitigate significant adverse effects. The standard should be deleted for earthworks outside of High Natural Character Areas or Outstanding Natural Character Areas, such that the standard thresholds in the Proposed Plan apply.
25. Coupled with the high-level, desktop nature of the Coastal Environment overlay, the rules result in regulatory capture beyond what is required to appropriately manage the coastal environment in accordance with the New Zealand Coastal Policy Statement 2010, RPS and objectives of the Proposed Plan.
26. Leighway seeks amendments to Chapter CE – Coastal Environment, as outlined in Appendix B to this submission.

Chapter GRUZ – General Rural Zone

27. The GRUZ covers a large area of the Kaipara District. While it is predominantly used for rural production, there are a number of other activities that occur within the General Rural Zone.
28. In light of recent RMA case law, it is essential that objectives and policies of planning documents say what they mean.⁵ The objectives and policies of the General Rural Zone do not reflect the wide range of non-rural activities that may occur in the environment. For example, the zone enables dwellings (up to three on sites of 36 hectares or more) – however, Policy GRUZ-P5 requires that non-rural activities are “avoided” unless all three criteria in that policy are met.
29. “Avoid” is a strong directive that means “do not allow”. Given the intention of the zone to enable dwellings and other activities, the wording of Policy GRUZ-P5 should be reconsidered to ensure that absurd outcomes do not arise.

Decision sought

30. Leighway seeks the decisions from the Council as set out in Appendix B, as well as any consequential or further amendments necessary to the objectives, policies, rules, methods, maps, figures or other provisions of the Proposed Plan to give effect to the relief sought and reasons given.
31. Leighway could not gain an advantage in trade competition through this submission.
32. Leighway wishes to be heard in support of its submission.
33. Leighway is prepared to consider presenting its submission in a joint case with others making a similar submission at the hearing.

Signed for and on behalf of Leighway Holdings Limited by:


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Mike Doesburg

Solicitor for Leighway Holdings Limited

Date: 30 June 2025

⁵ For example, *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 and subsequent case law.

Address for service:

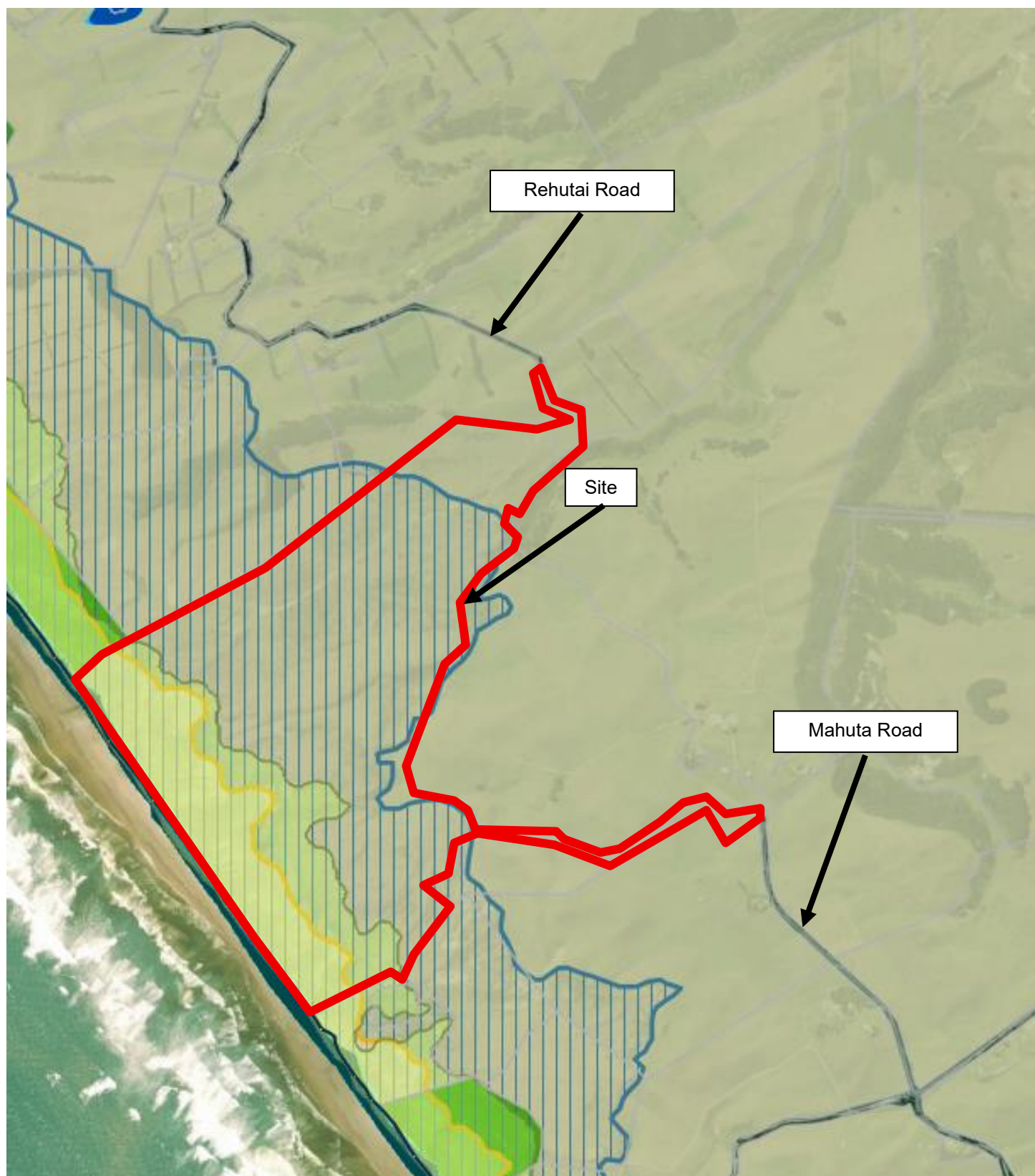
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Appendix A – The Site



Appendix B – Table of relief sought and reasons

#	Section of the plan and provision reference	Support / oppose	Reasons	Decision sought
1.	Coastal Environment overlay maps	Oppose	<p>The Coastal Environment overlay maps are inaccurate as they relate to the Site. The maps are based on the high-level, desktop mapping undertaken more than a decade ago for the Regional Policy Statement. The majority of the Site does not meet the criteria for mapping as coastal environment under the Regional Policy Statement.</p> <p>The mapping should be updated as contemplated by Method 4.5.4 of the Regional Policy Statement and generally removed from the Site.</p>	Amend the Coastal Environment overlay maps as it relates to the Site to align with the boundary of the High Natural Character Area maps.
2.	CE – Coastal Environment, Rule CE-R1	Oppose	<p>Rule CE-R1 inappropriately restricts alteration or additions to existing buildings or structures that increase height. There is no credible analysis that suggests any increase in height will create risk of significant effects on the coastal environment from inappropriate development.</p> <p>Rule CE-S1 sets a maximum building height. Rule CE-R1 should be amended to only require consent if that maximum height would be exceeded by the additions or alterations.</p>	<p>Amend Rule CE-R1 as follows:</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. The alteration or addition of any existing building or structure shall not increase the height of the existing building; and</p> <p>b. The activity complies with the following standards:</p> <p><u>i. CE-S1 Maximum building height;</u></p> <p><u>ii. CE-S2 Exterior colour and reflectivity; and</u></p> <p><u>iii. CE-S3 Gross floor area.</u></p>
3.	CE – Coastal Environment, Rule CE-R2	Oppose	Rule CE-R2 inappropriately restricts new dwellings or structures throughout the Coastal Environment overlay that are not within the General Residential, Commercial or Estuary Estate zone, ancillary to established land uses or on approved building platforms.	<p>Amend Rule CE-R2 to either:</p> <p>1. Activity status: Permitted</p>

#	Section of the plan and provision reference	Support / oppose	Reasons	Decision sought
			<p>The consequence is that large areas of coast in the Kaipara District will require resource consent for dwellings or simple structure, which are unlikely to detract from the coastal character of the environment. No analysis has been provided in the s32 report of the efficiency or effectiveness of this approach. The impact on the Site demonstrates the significant impact that Rule CE-R2 can have, requiring resource consent for any building or structure across the majority of the property.</p> <p>Given the high-level, desktop assessment that informed the Coastal Environment overlay, imposing additional regulatory costs are not justified, particularly in the face of other methods to manage significant adverse effects.</p> <p>A more appropriate approach would be to either:</p> <ul style="list-style-type: none"> • Enable buildings and structures within the Coastal Environment overlay (regardless of zone), subject to appropriate standards; or • Only restrict buildings and structures within High Natural Character Areas. 	<p>Where:</p> <p>a. The building or structure is:</p> <p>i. Located within the General residential, Commercial, or Estuary Estate zone; or</p> <p>ii. Located within any other zone and is:</p> <p>i. Ancillary to an existing lawfully established use; or</p> <p>ii. On a building platform identified in an existing subdivision consent approved prior to 1 April 2025; and</p> <p>b. The building or structure complies with the following standards:</p> <p>i. CE-S1 Maximum building height;</p> <p>ii. CE-S2 Exterior colour and reflectivity; and</p> <p>iii. CE-S3 Gross floor area.</p> <p>Or:</p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. <u>For a The building or structure is located within the High Natural Character Area, it is:</u></p> <p>i. Located within the General residential, Commercial, or Estuary Estate zone; or</p> <p>ii. Located within any other zone and is:</p>

#	Section of the plan and provision reference	Support / oppose	Reasons	Decision sought
				i. Ancillary to an existing lawfully established use; or ii. On a building platform identified in an existing subdivision consent approved prior to 1 April 2025; and b. The building or structure complies with the following standards: i. CE-S1 Maximum building height; ii. CE-S2 Exterior colour and reflectivity; and iii. CE-S3 Gross floor area.
4.	CE – Coastal Environment, Rule CE-S1	Oppose	<p>Rule CE-S1 applies an 8.5m height limit in the Coastal Environment generally, and a 5.5m height limit in High Natural Character Areas and Outstanding Natural Character Areas. While a differentiation between the Coastal Environment generally and High and Outstanding areas is understandable, no assessment has been provided in the s32 report for the general 8.5m height limit. There is no analysis to support the conclusion that height above that level will always result in significant adverse effects on coastal character.</p> <p>The 8.5m height limit constrains the height limit in the General Rural Zone (10m) as well as other zones. Rule CE-S1 should be amended to either refer to the height limit in the underlying zone, or apply a 10m height limit.</p>	<p>Amend Rule CE-S1 to either:</p> <p>1. The maximum height of the building or structure is 8.5m above ground level in the coastal environment outside HNCA and ONCA <u>complies with the height limit of the underlying zone.</u></p> <p>Or:</p> <p>1. The maximum height of the building or structure is 8.5<u>10</u>m above ground level in the coastal environment outside HNCA and ONCA.</p>
5.	CE – Coastal Environment, Rule CE-R4, CE-S4 and CE-S5	Oppose	The 500m ³ per decade limit for earthworks in the coastal environment is arbitrary and unjustified – the general standards in Chapter EW – Earthworks are sufficient. The part of the rule restricting earthworks in the Coastal Environment (other than Outstanding Natural Landscape Areas) should be deleted.	Delete Rule CE-R3 as it applies to the Coastal Environment (excluding ONCA) and delete Rules CE-S4 and CE-S5.

#	Section of the plan and provision reference	Support / oppose	Reasons	Decision sought
6.	GRUZ – General Rural Zone – Policy GRUZ-P5	Oppose	<p>The Policy requires that non-rural activities are avoided, unless all three criteria are met. The effect of the three criteria is that almost all non-rural activities would fail to pass the criteria.</p> <p>The Policy should be amended to clarify that such non-rural activities are discouraged, but not necessarily avoided.</p>	<p>Amend Policy GRUZ-P5 as follows:</p> <p>Avoid <u>Discourage</u> non-rural activities in the General rural zone unless they:</p> <ol style="list-style-type: none"> 1. Have a functional or operational need to locate in the General rural zone; 2. Are compatible with primary production activities; and 3. Do not result in the loss of availability and productive capacity of highly productive land, including consideration of the cumulative effects of such losses.