

**Before the Independent Hearings Panel
Far North District Council**

Under: the Resource Management Act 1991

In the matter of: Submissions and further submissions in
relation to the proposed Far North District
Plan

And: Submission 551, 585

And: **Lucklaw Farm Limited**

**LEGAL SUBMISSIONS FOR LUCKLAW FARM LTD
Coastal Environment (submissions 551, 585)**

Dated: 2 August 2024

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Introduction

1. These submissions are made on behalf of Lucklaw Farm Ltd, submitter number S551 and S585.
2. The submitter owns and manages a farm property adjacent to Puwheke Beach in the Karikari Peninsula.
3. There are two issues arising from:
 - a. Submission 550 as amended and superseded by S585, concerning control of the use of vehicles in the coastal environment (“the **vehicles in the coastal environment submission**”).¹
 - b. Submission S551 in relation to inconsistencies in the coastal mapping and overlays (“the **mapping and overlays submission**”).²
4. The outcomes sought for the vehicles in the coastal environment submission (S585) are:
 - a. a comprehensive rule in coastal environment overlay, to control vehicle usage, to give effect to Policy 20 of the NZCPS.
 - b. For the proposed rule to apply to the entire beach profile including the adjacent coastal dune system.
 - c. Suggested drafting is in the **schedule** to these submissions. the drafting (acknowledged to need further refinement so that it is adapted to the circumstances of the District) is adopted from the Northland Regional Council’s Vehicle Exclusion Zone (**VEZ**) Rule, approved by consent order of the Environment Court. The VEZ rule only applies below MHWS, not above MHWS.
 - d. The VEZ rule is based on a similar rule from the Bay of Plenty Regional Coastal Plan to which Lucklaw’s submission sought relief

¹ Submission S550 superseded by S585 as confirmed by Minute 2 of the Independent Hearings Panel dated 9 February 2024

² Rezoning matters will be addressed at a later hearing (Hearing 19) and are not addressed at this hearing.

to same or similar effect, but extended to the entire beach profile including the adjacent dune system.

- e. Consequential changes, including to the objectives and policies in the coastal environment overlay, and to the Natural Open Space Zone, where relating to the coastal dune system.
5. The outcome and relief sought in the mapping and overlays submission (S551) is:
- a. There is a simply bewildering array in mapping and landscape clarifications applying to the coastal environment arising from the Regional Policy Statement (**RPS**), the Northland Regional Plan – Appeals Version, and the PDP.
 - b. Outcomes are sought to re-evaluate the accuracy of the mapping of areas of Outstanding Natural Character (“**ONC**”) and High Natural Character (“**HNC**”), and Outstanding Natural Landscapes (“**ONL**”) at Puwheke Beach, and elsewhere within the District;
 - c. the objective is to ensure the mapping of ONC, HNC and ONL areas in the PDP are appropriately aligned with/and not inconsistent with mapping in the regional instruments, primarily the Northland Regional Policy Statement (“**RPS**”).
 - d. This misalignment of coastal landscape mapping appears to be a districtwide or systemic issue, as noted in the s 42A report, at page 33.
6. An image of the surrounding Puwheke / Rangiputa area can be found below, with the boundaries of Lucklaw Farm in red:



Evidence

7. The submitter relies on the following statements and documents as filed:
 - a. Expert evidence from Dr Gareth Taylor, ecologist dated 22 July 2024. Dr Taylor addresses the ecological environment at Puwheke Beach and the adverse effects of vehicles on flora and fauna (refer statement from Dr Taylor dated 22 July 2024, and short (3pp) synopsis for hearing).
 - b. Statement of evidence from John Sturgess (Director of Lucklaw), by statement dated 2 August 2024, who sets out the background and context to the vehicles in the coastal environment issues at Puwheke Beach. Mr Sturgess describes the damage being caused by vehicle at Puwheke Beach.
 - c. Short powerpoint from Mr Sturgess [to be filed in advance of hearing];
 - d. Statement from Steve Sanson, planner who briefly addresses section 32 evaluation issues.
 - e. Bundle of documents (paginated) as referred to by Mr Sturgess and referred to in these legal submissions.
 - f. A summary of the policy hierarchy of various legislation and planning instruments in table form, as a separate **Appendix** to these submissions.

Factual and Legal Context

Vehicles on Beaches – Bay of Plenty

8. The submission 585 referenced (by way of example) a rule in relation to vehicles on beaches applying in the Bay of Plenty Regional Plan.³
9. Relief was sought that a *same or similar rule* be applied to the Far North District, together with
 - a. appropriate policies and objectives consequential on any rule.⁴
 - b. applying to the entire 'Beach' and to adjacent dune systems above the foreshore.
10. Subsequent to the close of submissions to the Proposed Far North District Plan, Lucklaw learned of appeals to the proposed Northland Regional Plan which sought rules in the Northland regional plan on the use of vehicles on beaches.
11. Lucklaw was granted leave to join appeals several years after the appeals to the NRC plan had commenced on the condition Lucklaw did not disrupt settlement arrangements (then without prejudice) between the parties to the NRC appeals.⁵
12. Those arrangements were later (after the close of submissions to Far North District Plan) formalised by consent order approved by the Environment Court on 28 June 2023 in *Bay of Islands Maritime Park Incorporated v Northland Regional Council* [2023] NZEnvC 133.
13. The Court approved the adoption of a new rule in the Proposed Regional Plan for Northland – Appeals Version at C.1.5.1 – *Conditional use of vehicles on the foreshore and seabed*.

³ Rule DD 7 Permitted – Vehicle access and use [or to same or similar effect], refer Schedule 1 to Submission 585.

⁴ Submissions 585 at [9](c).

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14. The structure of the rules in the NRC plan, and the coastal plan for the Bay of Plenty provide a similar structure i.e. permitted use, subject to standards controlling vehicle use:
 - a. Providing for permitted activity use of vehicles on beaches (subclause (1)) subject to a number of conditions;⁶
 - b. Subclause (7) – restricting or controlling use of vehicles on beaches.⁷
 15. The Bay of Plenty rule applies to all beaches in the Bay of Plenty and maps Indigenous Biological Diversity Areas.
 16. Similarly, the NRC rule applies to all beaches in subclause (1), but then applies additional controls or restrictions to beaches identified in maps with Vehicle Exclusion Zones (**VEZ**) as identified in the NRC GIS system. The Vehicle Exclusion Zones beaches for the Northland Region include areas identified within significant ecological areas, as well as additional beaches including Puwheke. The rule as adopted in the Proposed Regional Plan for Northland – Appeals Version is at C.1.5.1.

VEZ rule in Regional Plan for Northland

17. A major shortcoming of the rule in the Northland Regional Plan (as approved by the Court) is that the rules apply only in relation to the foreshore and seabed, up to the line of the Mean High Water Springs (“**MHWS**”).
18. This has the result that the ‘dry’ part of the beach (i.e. not covered and uncovered by the tide), and the adjacent dune system is not controlled or regulated by the VEZ rule. In addition, an unintended effect is that the rule effectively displaces vehicle use from below mean high water springs to above MHWS.
19. In approving the consent order sought by the parties, the Environment Court acknowledged (at [34]) the need for interagency cooperation to manage the entire beach area including dunes and adjoining areas.

⁶ Compare Rule DD 7 of Bay of Plenty Rule clause 1 – 6.

⁷ Compare Rule DD 7 of Bay of Plenty Rule clause 7.

20. However, as Mr Sturgess describes, there appears to be no effective interagency cooperation in relation to the control of the use of vehicles on Puwheke Beach, either above MHWS, or below.
21. A map of the VEZ for Puwheke Beach from the Northland Regional Plan- Appeals Version is included below:



Mandatory duties and functions applying to territorial authorities

22. The Far North District Council has a statutory duty to recognise and provide for matters of national importance including in sections:
- a. 6(a) the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development, the protection;
 - b. 6(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;
 - c. 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - d. 6(f) the protection of historic heritage from inappropriate subdivision, use and development;
23. The functions of territorial authorities in s 31 RMA include (relevantly):
- (a) the establishment, implementation, and review of objectives, policies, and methods to **achieve integrated management of the effects of the use, development, or protection of land**

and associated natural and physical resources of the district:

(b) the **control of any actual or potential effects of the use, development, or protection of land**, including for the purpose of—

(iii) **the maintenance of indigenous biological diversity**:

(f) any other functions specified in this Act.

(emphasis **added**)

24. Section 75 RMA sets out the contents of district plans, which includes the following:

(3) A district plan **must give effect to**—

(a) any national policy statement; and

(b) **any New Zealand coastal policy statement**; and

(ba) a national planning standard; and

(c) any regional policy statement.

25. Council has mandatory duty to “*give effect to*” the contents of the New Zealand Coastal Policy Statement (“**NZCPS**”).

26. The district plan must not be inconsistent with any regional plan for a matter in relation to functions of regional councils in s 30(1): s 75(4)(b) RMA.

New Zealand Coastal Policy Statement 2010

27. Policy 20 of the New Zealand Coastal Policy Statement 2010 (“**NZCPS**”) provides for the “**control use of vehicles**” on beaches where (inter alia) there is “*harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas or shellfish beds*” or “*disturbance to the peaceful environment of the beach environment*”. The full text of Policy 20 and related policy hierarchy are set out in the **Appendix** to these submissions.

28. Other relevant policies of the NZCPS in relation to vehicles in the coastal environment include NZCPS Policies, 5, 6, 11, 13, 14, 15, 17, 18, and 19, the content of which are set out in full in the **Appendix**.

Caselaw – King Salmon and East-West motorway

29. The Supreme Court decision in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 set out the policy hierarchy under the RMA and interpreted the meaning of “give effect to”, along with the meaning of the sections in Part 2 RMA.
30. *King Salmon* held that the NZCPS form an integral part of the legislative framework in the RMA:⁸
31. The Supreme Court further stated the NZCPS was an instrument at the top of the hierarchy.⁹
32. The majority of the Supreme Court (Elias CJ, McGrath, Glazebrook and Arnold JJ, with reasons given by Arnold J) held that the meaning of “give effect to” is a mandatory directive to “implement”.¹⁰
33. Policies 13(1)(a) and 15(a) of the NZCPS were held to be environmental bottom lines that must be complied with, consistently with the definition of sustainable management in s 5(2) RMA.¹¹
34. The majority of the Supreme Court in the recent decision of *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 considered the consenting of an East-West motorway link in Auckland. The Court found that where there were adverse effects on indigenous biodiversity inconsistent with the “avoid” policies of the NZCPS, policies 10 and 11, there was a narrow exception for significant infrastructure projects. The Board incorrectly regressed to an “overall judgment” approach which was rejected in *King Salmon*.¹² The appeal was allowed, and the matter remitted back to the Board of Inquiry for reconsideration.¹³

⁸ *King Salmon* at [31].

⁹ *King Salmon* at [152].

¹⁰ *King Salmon* at [77].

¹¹ *King Salmon* at [132].

¹² *Forest and Bird* at [144].

¹³ The Supreme Court has published a media release summarizing the judgment, refer <https://www.courtsofnz.govt.nz/assets/cases/2024/MR-2024-NZSC-26.pdf>. See also article on the decision published by the Law Association – Vivian Mitchell, *Back to the starting line for Auckland’s east-west highway link* - <https://thelawassociation.nz/back-to-the-starting-line-for-aucklands-east-west-highway-link/>

Definition of Beach and Coastal Marine Area

35. FNDC is a road controlling authority for the purposes of the Land Transport Act 1998 (“LTA”).¹⁴ A road includes a beach.¹⁴ The word “beach” is referred under the definition of “road” under the LTA section 2:

road includes –

(a) a street; and

(b) a motorway; and

(c) a beach; and

(d) a place to which the public have access, whether as of right or not; and

(e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d); and

(f) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment

(emphasis **added**)

36. The meaning of “beach” is elaborated on in the Department of Conservation (“DoC”) guidance note to Policy 20 of the NZCPS:¹⁵
37. “Beach” is also defined in the FNDC Road Use Bylaw 2022, but in a way which excludes land administered by the Department of Conservation:

beach means the foreshore being any area covered and uncovered by the ebb and flow of the tide, **and any adjacent area which can reasonably be considered part of the beach environment including areas of sand, pebbles, dunes or coastal vegetation, but does not include** any private property or land administered by the Department of Conservation.

The need for a rule controlling vehicle use in the coastal environment (above and below MHWS)

38. There is evidence of damage occurring to the coastal environment as a consequence of uncontrolled vehicle use, both above mean high water

¹⁴ The term “Beach” is not defined in either the LTA or the Resource Management Act 1991.

¹⁵ At 24.

springs and below. John Sturgess in his statement of evidence, and the evidence of Dr Gareth Taylor,¹⁶ note:

- a. There has been an increase in the use of vehicles in the coastal environment.
 - b. Locally, in the Karikari peninsula there has been several decades of planned or sporadic subdivision which has increased population.
 - c. According to the Boffa Miskell report referred to in the evidence of John Sturgess (and noted in the consent order by the Environment Court), Puwheke Beach has high ecological values.
 - d. Puwheke Beach contains numerous important threatened and at-risk species (Dr Taylor).
 - e. An observed decline in successful dotterel nests (Mr Sturgess);
 - f. Juvenile tuatua on the sand are being crushed by vehicles (Mr Sturgess);
 - g. Adverse environmental effects are occurring landward of MHWS, including effects on the coastal dune system (Mr Sturgess) causing increased adverse effects on vegetation and bird nesting areas and migration of dunes into coastal farmland.
 - h. Adverse effects on identified archaeological sites, including sites of significance to tangata whenua (Mr Sturgess).
39. As noted above, there is an absence of effective control of the management of vehicles in the coastal environment at Puwheke Beach and elsewhere in the Far North. This regulatory gap arises because:
- a. As above, the regional rule only applies seaward of MHWS, applying over the foreshore and seabed (i.e. the regional rule has limited application),
 - b. the Far North Road Use Bylaw 2022 administered by the Far North District Council as road controlling authority under the Land

¹⁶ Statement of Evidence of Gareth Foley Taylor dated 22 July 2024 at [19] – [28].

Transport Act and the Local Government Act does not control vehicle use on beaches, with the exception of Coopers Beach; notably:

- i. FNDC enacted a Road Use Bylaw dated 19 May 2022. Under Part 8 of the Road Use Bylaw, vehicles are only prohibited at Coopers Beach,¹⁷ and there are no beaches where vehicle use is restricted.¹⁸ The bylaw does not contain any other rules relating to vehicle usage on beaches.
 - c. The Northland Reserves Bylaw 2007 administered by the Department of Conservation only applies to a limited number of coastal reserves identified in schedule 2 to the Northland Reserves Bylaw 2007. It does not apply to Puwheke Beach (or many other VEZ beaches identified in the regional rules).
 - d. The Department of Conservation has the responsibility to manage marginal strips under the Conservation Act 1987, ss 24 to 24L. While power to control use of marginal strips (administered under the Conservation Act 1987), those powers are either not being exercised, or not being exercised effectively (refer Mr Sturgess).
 - e. The PDP effectively allows unregulated vehicle use within the coastal environment, and *adjacent public lands* (compare, policy 20 NZCPS). The PDP rules for the Natural Open Space Zone (which at Puheke Beach extends to the Department of Conservation administered marginal strip) allow for leisure activities as a permitted activity at rule NOSZ-R6. Leisure activities (as defined) likely include vehicle use. The NOSZ rules within the coastal environment overlay provide no control or standard in respect of use of vehicles over identified archaeological sites, or areas of significant indigenous biodiversity values.
40. The Far North District Council's functions and duties include:
- a. control the use, development, or protection of land, including for the purposes of the maintenance of indigenous biological diversity

¹⁷ Far North District Council Road Use Bylaw 2022 Schedule 6.

¹⁸ Schedule 7.

(section 31). “Control” in Policy 20 NZCPS implies restriction. The dictionary definition of “control” is “*the restriction of an activity, tendency, or phenomenon [...] a means of limiting or regulating something*”.¹⁹

- b. An obligation to “*give effect to*”, meaning “implement” the NZCPS, which is at the top of the policy hierarchy.
41. In terms of these other policies, and the other various NZCPS policies (referred above) it is submitted that:
- a. there is a mandatory obligation to avoid, remedy and mitigate adverse effects on the coastal environment, such as those caused by inappropriate vehicles use,²⁰ particularly where there is damage to indigenous ecosystems,²¹
 - b. there is an obligation to implement rules to promote the restoration and rehabilitation of the coastal environment as a result of damage caused by vehicle use;²²
 - c. there is a duty to recognise need for public open space for public use and recreation, including active and passive recreation.²³
 - d. recognition of passive recreation (e.g. walking per Policy 18(c) and Policy 19 NZCPS requires walking access to be maintained and enhanced and the loss of walking access to be avoided) is diminished by inappropriate active recreation (vehicular use).
 - e. there is a mandatory duty to protect historic heritage in the coastal environment from inappropriate use.²⁴ The New Zealand Archaeological Association has identified archaeological sites along Puwheke Beach and as identified in the district plan. The

¹⁹ *The New Oxford Dictionary of English* (1998, Oxford University Press) at 400.

²⁰ NZCPS Policies 5(1)(d), 13(1)(a), (1)(b), (2)(b), 2(c), Policy 15.

²¹ NZCPS Policy 11(a)(i), (iii), (iv), (v), (b)(ii), (b)(iii), 13(2)(b), 13(2)(c).

²² NZCPS Policy 14(a), (b).

²³ NZCPS Policy 18.

²⁴ NZCPS Policy 17.

Association's publicly available information has mapped the archaeological sites per the map below:²⁵



- f. Recognition of existing rights have limited application in the context of the mandatory statutory duties to give effect to the NZCPS, and obligations arising from the higher-order policy documents to maintain indigenous biodiversity, and protect historic heritage, etc.

Section 42A Report – Vehicles in the Coastal Environment

42. With regard to the report writer's response to the Vehicles in the coastal environment Submission, it is noted that the s 42A report addressed S550, which was superseded by S585 on 9 February 2024 per Minute 2 of the Panel. It is unclear to Lucklaw why the later in time s 42A report refers to S550.
43. The report writer's response at [259] is essentially that vehicle access is managed by bylaws. However, this response does not engage with the fact that FNDC's Road Use Bylaw 2022 does *not* control vehicles in the coastal environment with the sole exception of Coopers Beach. Part 8 of the bylaw refers to vehicle prohibited beaches (Schedule 6) and restricted beaches (Schedule 7). Coopers Beach is the only scheduled beach in Schedule 6. Schedule 7 lists no beaches.

²⁵ The Association's mapping tool can be found on the following website: <https://nzaa-archsite.hub.arcgis.com/apps/4b86c77cbfb942d48166909d8d93142c/explore>

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44. As submitted above, the bylaw does not “give effect to” the NZCPS Policy 20 because it fails to “control” vehicles under the ordinary meaning of “control”.
 45. The s 42A report does not engage with submission 585, nor applies Policy 20 in the context of the policy hierarchy generally.

Response to Other Submitters

46. In response to the submission of the New Zealand Defence Force FS576.001:
 - a. The rules proposed by Lucklaw will not be ultra vires and they are only intended to apply to the FNDC district boundaries, i.e. the marginal strip, dunes, and beach up to the MHWS;
 - b. The Regional VEZ rules and bylaw do not adequately control vehicle use, as above;
 - c. The proposed rules have an exception for emergency response vehicles.
47. In response to the submission of Bentzen Farm, FS578.001, The Shooting Box Ltd, FS579.001, P S Yates Family Trust, FS580.001, Mataka Residents' Association Inc FS581.001, and Matauri Trustee Ltd FS582.001:
 - a. A district rules is not a “blunt mechanism” as the rule can be tailored to allow for nuanced restrictions on vehicles in the coastal environment, including the provision of vehicle access where appropriate. Where prohibition is necessary, such as in the case of Puwheke Beach, this is appropriate to avoid adverse effects on the environment.
 - b. A bylaw is not a better mechanism as the current bylaw has been shown to be ineffective, as submitted above.

Mapping and Overlays at Puwheke Beach

48. The zoning under the PDP of Lucklaw Farm is Rural Production, and the marginal strip area of Puwheke Beach is zoned Natural Open Space.



49. There are various overlays to Puwheke Beach, both in the PDP, Northland Regional Plan, and Regional Policy Statement (“**RPS**”).
50. The PDP contains 5 overlays as to:
- Coastal environment;
 - Outstanding Natural Landscape (“**ONL**”);
 - Outstanding Natural Features (“**ONF**”);
 - High Natural Character (“**HNC**”);
 - Outstanding Natural Character (“**ONC**”).
51. The overlays can be seen in the map below:



Outstanding Natural Landscape



Outstanding Natural Feature



High Natural Character

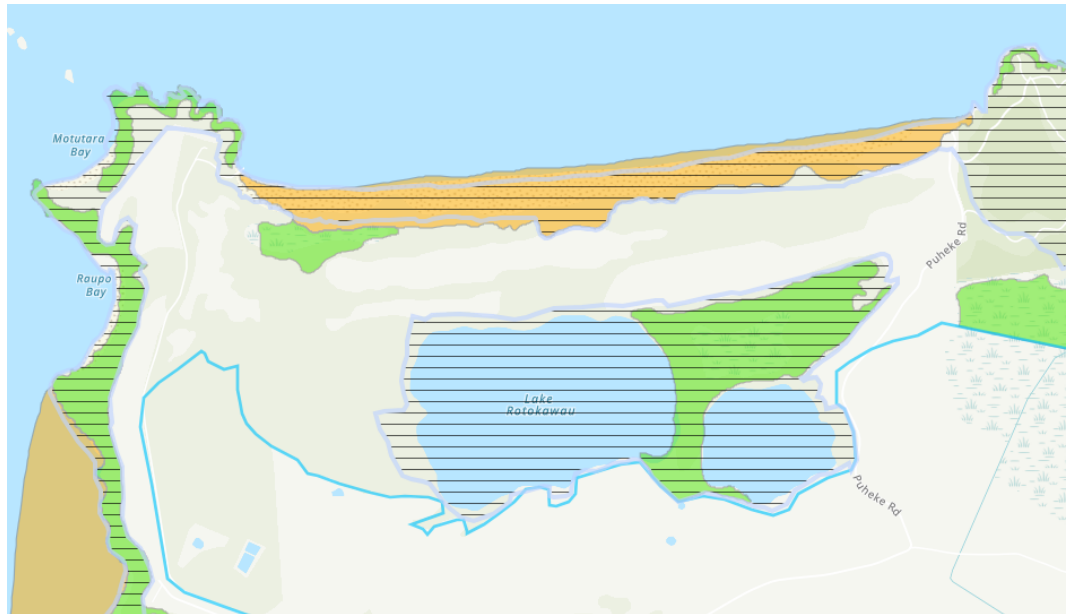







Outstanding Natural Character



52. The beach shoreline at Puwheke Beach contains an area of Outstanding Natural Landscape, and the marginal strip has Outstanding Natural Character (ONC44).

53. The RPS contains its own mapping of ONL, ONF, HNC and ONC features, per the map below.²⁶









- Outstanding Natural Landscapes

- Outstanding Natural Features

- Coastal Environment

- Natural Character
 -  High Natural Character
 -  Outstanding Natural Character

54. The beach and marginal strip are shown to be of Outstanding Natural Character and are Outstanding Natural Landscapes.

²⁶ Note: there is an error in page 8 of Lucklaw’s Submission 551, in that the maps in Figure 5 and Figure 6 in that submission should be reversed.

55. The Northland Regional Plan – Appeals Version contains the following mapping of areas of Outstanding Natural Character and High Natural Character:



- Outstanding Natural Features
 -  On Land
 -  In Water
- Natural Character
 - Outstanding (Subject to Appeal)
 -  Within CMA
 -  Unit spans CMA
 - High (Subject to Appeal)
 -  Within CMA
 -  Unit spans CMA

56. It can be seen that in the Northland Regional Plan – Appeals Version, there is no ONC or HNC areas within Puwheke Beach.
57. Policy 4.5.2 of the RPS states the following:

4.5.2 Policy – Application of the Regional Policy Statement - Maps

The Regional Policy Statement Maps of high and outstanding natural character and outstanding natural features and outstanding natural landscapes identify areas that are sensitive to subdivision, use and development. The maps of these areas

identify where caution is required to ensure activities are appropriate. However, suitably qualified assessment at a site or property-specific level can be used to demonstrate lesser (or greater) sensitivity to particular subdivision, use and development proposals given the greater resolution provided.

58. Policy 4.5.4(2) of the RPS provides:

4.5.4 Method – Statutory plans and strategies

(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.

Mapping and overlays submission

59. The starting point under the RMA is that a district plan must give effect to any regional policy statement,²⁷ and not be inconsistent with a regional plan.²⁸
60. It is submitted that the PDP overlay concerning ONC and HNC areas is not consistent with the RPS and does not give effect to the RPS.
61. The obligation to assess and ensure that district plans map and contain policies and rules preserving areas of high natural character arises under NZCPS Policy 13(1), itself reinforcing the obligations to preserve natural character in s 6 RMA.
62. The below composite map of the PDP and RPS overlays shows the inconsistency.

²⁷ RMA s 75(3)(c).

²⁸ RMA s 75(4)(b).



FNDC PDP Legend:

RPS Legend:

Outstanding Natural Landscape



Outstanding Natural Feature



High Natural Character



Outstanding Natural Character



Outstanding Natural Landscapes




Outstanding Natural Features



Coastal Environment



Natural Character

 High Natural Character

 Outstanding Natural Character

63. The composite map demonstrates that:

- a. There is no mapping in the PDP of the marginal strip at Puhake Beach as an ONL, whereas it is an ONL in the RPS;
- b. There is no mapping in the PDP of ONC44 seaward of the marginal strip at Puhake Beach, whereas it is and ONC in the RPS.

-
64. To reconcile this discrepancy, Lucklaw submits that it is appropriate for FNDC to undertake the following actions to “give effect to” the RPS:²⁹
- a. Review the accuracy of the PDP mapping of ONL, ONC and HNC areas;
 - b. Undertake ground truthing of ONL, ONC and HNC areas in the PDP to ensure the PDP mapping reflects policy 4.5.2 and method 4.5.4(2) of the RPS;
 - c. Provide further information including methodology, technical reports and s 32 evaluation evidence in support of the PDP mapping;
 - d. Amend the PDP overlays to reflect the mapping found in the RPS, i.e. extend the PDP ONL mapping at Puwheke Beach to cover the marginal strip, and extend the mapping of ONC44 seaward to include the dunes and beach.

Section 42A Report – Mapping and overlays submission

65. The report writer’s response to Lucklaw’s submission is summarised as follows:³⁰
- a. It is not³¹ necessary, practicable or appropriate for Council to undertake ground truthing of ONC and HNC areas, as these overlays in the PDP give effect to the RPS and the Northland Regional Mapping methodology.
 - b. There is no expectation that territorial authorities undertake detailed ground truthing of all ONC and HNC areas mapped in the RPS. The intent is for site-specific assessments to be undertaken where this is appropriate on a case-by-case basis. The onus is on Lucklaw to demonstrate that the ONC or HNC maps are not accurate.
 - c. Site-specific relief in relation to the subject site is addressed in the Melean Absalom Limited (**MAL**) report.

²⁹ And refer Submission 551 at [16] – [22].

³⁰ Refer Coastal Environment s 42A report at [526] – [528], Pg 129 – 130.

³¹ There appears to be a typographical error at [526]. The intended words appear to be “*do **not** consider that it is necessary...*”

- d. The boundary of ONC44 should align with the boundary of the coastal environment overlay consistent with the RPS. There appears to be a wider mapping issue in terms of how some of these overlays align with the coastal environment overlay and MHWS.

66. In response, Lucklaw Farm submits:

- a. It is required by the s 75 “give effect to” requirements of the RMA to resolve the discrepancy noted above.
- b. The onus is not on Lucklaw to demonstrate the ONC and HNC maps are inaccurate, rather it is sufficient for Lucklaw to identify a discrepancy, with the task falling to Council to resolve this in order to “*give effect to*” the RPS.
- c. The MAL report notes the discrepancy but does not resolve the issue. At pg 4 the report states:

“The Coastal Environment, (CE), Outstanding and High Natural Character Areas (ONC and HNCs), and the Outstanding Natural Landscapes (ONLs), included in the PDP maps are all derived from the Northland Regional Policy Statement (NRPS), having been identified as part of the Northland Mapping Project.”

The MAL report further states at pg 33:

“I agree that there is a difference between the maps in that ONC44 does not extend seaward in the PDP as far as it does in the RPS. I note that the CE in the PDP maps extends as far as the HNC in the RPS map, so the difference would not appear to be a matter of the extent of FNDC jurisdiction. I therefore cannot explain the difference.”

- d. Lucklaw submits that the boundary of ONC44 should be aligned to be made consistent with the RPS and agrees there are wider mapping issues to be addressed. These issues are best resolved by Council reviewing the PDP mapping and undertaking ground truthing of the site at Puwheke Beach.

Response to Other Submitters - Mapping

67. No further submissions were received by Lucklaw regarding its submission on the mapping issue.

68. Two further submissions were received in relation to zoning: In response to the submission of Ross Morley FS286.2 and Michael Morse FS98.2:
- a. The change to area A will not necessarily result in pressure on the stream areas of the wetlands behind Puwheke. Environmental effects can be managed through conditions in regards to stormwater and sewerage.
 - b. Some loss of regenerating bush may occur, but the environmental effects can be managed through conditions of resource consent.
 - c. Further intensified zoning will not necessarily increase the use of parking at Rangiputa for boat trailers.

Dated: 2 August 2024



S J Ryan

Counsel for Lucklaw Farm Ltd

SCHEDULE – suggested drafting for vehicles in coastal environment - beaches objective, policy and rule

Objective - Coastal Environment Overlay

CE-04 – vehicle use in the coastal environment on beaches and coastal dune systems in adjoining public land (including marginal strips and reserves) is controlled to avoid adverse effects and ensure the preservation of the natural character of the coastal environment and to maintain the indigenous biological diversity in the district, in order to give effect to Policy 20 of the NZCPS.

Policy - Coastal Environment Overlay

CE-P11 – avoid adverse effects on the natural character of the coastal environment including beaches and coastal dune systems in adjoining public land (including marginal strips and reserves) and maintain the indigenous biological diversity in the district by controlling, limiting and restricting the use of vehicles in the coastal environment.

Rule in Coastal Environment Overlay and NOSZ (adopted from Proposed Regional Plan-Appeals Version C .1 .5.1, *subject to further refinement to apply to the circumstances of the FNDC*) -

Conditional use of vehicles in the coastal environment – permitted activity

The use of a vehicle on beaches and any associated and adjoining public land within the coastal environment overlay is a permitted activity, **provided** that apart from emergency services vehicles providing an emergency response:³²

- 1) vehicle access is only via authorised or existing lawful vehicle access points, and
- 2) there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites, and
- 3) there is no disturbance of, or damage to, a mapped Historic Heritage area (refer I Maps), and

³² including but not limited to surf lifesaving operations, law enforcement operations and works undertaken by a local authority or network utility operator (in relation to any project or work that it is approved as a requiring authority) for the purpose of emergency works as defined by sections 330 or 330B of the Resource Management Act 1991.

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- 4) there is no disturbance of, or damage to, a mapped Site or Area of Significance to tangata whenua (refer I Maps), and
 - 5) vehicles do not drive over pipi or cockle beds except where necessary for the use, maintenance, repair or removal of infrastructure, and do not damage or destroy other shellfish beds,³³ and
 - 6) vehicles do not drive over saltmarsh, saltmeadow, saltmeadow turfs, seagrass meadows³⁴, mangroves or mangrove aerial roots (pneumatophores) and do not damage or destroy other indigenous vegetation, and
 - 7) vehicles do not drive on beaches and adjoining coastal dune systems within a mapped Vehicle Exclusion Zone (refer I Maps) unless the activity is for one of more of the following listed activities:
 - a) access to property where the only access is via the coastal marine area; or
 - b) the launching or retrieval of vessels at the closest practicable point³⁵ along the beach from the vehicle access; or
 - c) the use, maintenance, repair or removal of an authorised structure (including hard protection structures, aids to navigation structures and infrastructure structures); or
 - d) conservation and reserve management activities undertaken by or formally on behalf of the Department of Conservation or local authority in accordance with its statutory functions; or
 - e) environmental monitoring or data collection undertaken by consent holders, the regional council, district councils, universities and research institutes (such as NIWA), or the authorised agents; or
 - f) kaitiakitanga monitoring in accordance with Mātauranga Māori; or
 - g) access to customary marine title group where the only access is via the coastal marine area; or
 - h) attending to a rescue of stranded marine mammals; or
 - i) burial of dead animals or marine mammals (including the customary processing of carcasses before burial) by the Department of Conservation, tangata whenua, a local authority or their delegated agents; or

³³ This rule does not apply to the use of vehicles in the harvesting of Te Oneroa-a-Tōhē (GLM9) mussel spat off Te Oneroa-a-Tōhē (90 Mile Beach).

³⁴ For the purpose of condition 6, a “seagrass meadow” is a contiguous area of seagrass of 10m² or more.

³⁵ What is the “closest practicable point” will require an assessment of each vehicle access point and the nearest area of reasonable access to the beach or coastal water. It is not anticipated to involve using vehicles to travel hundreds of metres to the “best” or preferred area.

- j) clearance of pipe outlets, artificial water courses and tidal stream mouths; or
 - k) removal or recovery of wrecked vessels; or
 - l) dune and coast restoration, enhancement and maintenance projects undertaken by a registered coast care group or group authorised by the territorial authority; or
 - m) access for people with mobility disabilities (while displaying a mobility card) to the closest practicable point³⁶ along the beach from the vehicle access, or
 - n) surf life-saving operations, and law enforcement operations, and
- 8) the activity complies with C.1.8 Coastal works general conditions, with the exception of C.1.8(5).

Notes:

Compliance with this rule does not remove the need to comply with all relevant bylaw provisions.

For the avoidance of doubt this rule covers the following RMA activities:

- Disturbance of any beach and adjoining coastal dune system by a vehicle or an activity not the subject of any other rule in this Plan (s12(1)).

Other/consequential changes

Natural Open Space Zone

- consequential changes to Natural Open Space Zone (NOSZ)-provisions to recognise objectives, policies and rules in Coastal Environment Overlay
- Standard or Default Rule default rule in NOSZ- which provides that leisure or other activities contravening vehicles in coastal environment rule are discretionary.
- Mapping VEZ beaches and adjacent public land within coastal environment overlay

³⁶ What is the “closest practicable point” will require an assessment of each vehicle access point and the nearest area of reasonable access to the beach or coastal water. It is not anticipated to involve using vehicles to travel hundreds of metres to the “best” or preferred area.