

**BEFORE HEARING COMMISSIONERS DELEGATED BY FAR NORTH
DISTRICT COUNCIL / TE KAUNIHERA O TE TAI TOKERAU KI TE RAKI
AT ŌMĀPERE**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on the Proposed Far North
District Plan

**LEGAL SUBMISSIONS FOR WAITANGI LIMITED (SUBMITTER 503)
HEARING FOUR (NATURAL ENVIRONMENT VALUES & COASTAL
ENVIRONMENT)**

6 August 2024

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MAY IT PLEASE THE HEARINGS PANEL:

1. INTRODUCTION

- 1.1 Waitangi Limited is the operating company of the Waitangi National Trust Board (the **Trust**), and was established by the Trust in 2016 to manage the day-to-day operations of the 506-hectare Waitangi National Trust Estate (**Estate**). The Estate contains the historic Waitangi Treaty Grounds / Te Pitowhenua (**Treaty Grounds**) which are considered by many to be the pre-eminent historical site in New Zealand.
- 1.2 The Trust was established by the Waitangi National Trust Board Act 1932 (**Trust Board Act**) to administer the Estate, which was gifted to the nation by Lord and Lady Bledisloe as "*a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand*".¹
- 1.3 The Trust is empowered by statute to use and develop the Estate in various ways to achieve those public benefits, and today the Estate accommodates a variety of land uses and activities in addition to the Treaty Grounds themselves, including a hotel, a golf club and other sports facilities, a concert venue, a public boat ramp, and a wharf.
- 1.4 Waitangi Limited manages the Estate on behalf of the Trust Board and in accordance with the Trust Board Act as a taonga and a place of belonging, a Tūrangawaewae, for all New Zealanders. Waitangi is a place of contemporary and future national significance and is managed by Waitangi Limited and the Trust as **He Whenua Rangatira – An enduring symbol of nationhood**.
- 1.5 Waitangi Limited's submission on the Proposed Far North District Plan (**Proposed Plan**) relates solely to the Estate. It has made its submission because the Proposed Plan provisions (as notified) that apply to the Estate are unworkable. For one, the Estate is a 'planning hot-spot' that is proposed to feature no fewer than 11 different land use zones and spatial overlays, which would make for a very complex regime. Further, given that the most restrictive provisions apply in each case, the Proposed Plan would have a disabling effect for even common, small-scale activities, which

¹ Trust Board Act, preamble.

would cut across the Trust's ability to administer this special place for the benefit of us all.

- 1.6 Against this background, Waitangi Limited is seeking the application of special purpose zoning under the National Planning Standards (the **Standards**)² to apply to the Estate. This is sought as an alternative to the many zones and overlays in the Proposed Plan that apply to the Estate, but would incorporate precincts corresponding to the relevant values to ensure their protection.
- 1.7 Whether the Estate will be rezoned is a matter for Hearing 19 (Rezoning) which has been set down for 25 to 28 August 2025. Waitangi Limited has been developing the relevant provisions and supporting analysis for discussion with Council officers, tangata whenua, and stakeholders (including further submitters such as Heritage New Zealand Pouhere Taonga), and will report back to the Panel in detail prior to Hearing 19.
- 1.8 Specific to this Hearing 4, Waitangi Limited's submission also describes secondary relief in respect of parts of the (notified) Proposed Plan, if the Hearings Panel is not minded to recommend special purpose zoning. Secondary relief relevant to this hearing, including Waitangi Limited's responses to recommendations in the Council's section 42A reports, is addressed in the evidence of Ms Rochelle Jacobs and Mr Simon Cocker.
- 1.9 The purpose of these legal submissions, having outlined the case for Waitangi Limited, is briefly to set out the applicable legal framework, signal three legal matters that will be relevant for the Panel to consider, in due course, regarding special purpose zoning, and introduce the submitter's witnesses.

2. LEGISLATIVE FRAMEWORK FOR DISTRICT PLAN-MAKING

- 2.1 The 'Overview Section 32 Report'³ sets out the standard considerations under the RMA that apply to district plan reviews and the Proposed Plan, as largely adopted by the section 42A reports prepared by the Far North District Council (**Council**). These summaries, as well as those provided in legal submissions for earlier hearings,⁴ are generally accepted.

² As that term is defined in section 77F of the Resource Management Act 1991 (**RMA**).

³ Dated May 2022, at section 4.

⁴ Legal submissions on behalf of Bentzen Farm Limited, Setar Thirty Six Limited, the Shooting Box Limited, Matauri Trustee Limited, P S Yates Family Trust, and Mataka Residents Association Incorporated dated 24 May 2024 at paragraphs 16 to 29.

- 2.2 For completeness, the most relevant statutory provisions are sections 30 to 32 and 72 to 77 of the RMA which build on the foundation of Part 2 and provide the legal framework for district plan-making.
- 2.3 Section 31 provides that a function of territorial authorities is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural and physical resources. The provisions in the Proposed Plan must therefore be designed to accord with (and assist the Council to carry out) its functions so as to achieve the purpose of the RMA.⁵
- 2.4 Under section 32, an evaluation report must examine whether objectives of the plan change are the most appropriate way to achieve the purpose of the RMA, and whether the policies and other provisions are the most appropriate way of achieving those objectives. This requires:
- (a) identifying reasonably practicable options and assessing the efficiency and effectiveness of the provisions through identifying, assessing and, if practicable, quantifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment; and
 - (b) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- 2.5 The legal framework specific to district plans is set out in sections 72 to 77 of the RMA. In accordance with section 74 a territorial authority must prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, its obligations to have particular regard to its section 32 evaluation report, and the consideration of other planning documents and regulations, including national planning standards.
- 2.6 A territorial authority must also "*have regard to*" the listed instruments, which include any proposed regional policy statement, proposed regional plan, management plans and strategies prepared under other Acts, and a relevant entry on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014. It must take into account any relevant planning document recognised by an iwi authority.

⁵ See also section 72 of the RMA.

- 2.7 Under section 75, a district plan must "give effect to" any national policy statement, the New Zealand Coastal Policy Statement, a national planning standard, and the regional policy statement and "must not be inconsistent with" a water conservation order or a regional plan (for any matter specified in section 30(1)).
- 2.8 Finally, sections 75(1) and 76 contemplate district plan policies implementing objectives and rules implementing policies, with rules thereby achieving the objectives and policies of a plan, and section 77 enables rules about esplanade reserves on subdivision and road stopping to be included in a district plan.
- 2.9 The Environment Court gave a comprehensive summary of the mandatory requirements for district plans in *Colonial Vineyard Ltd v Marlborough District Council*,⁶ an extract from which is set out in **Appendix 1**. The decision predated the 2013⁷, 2017⁸ and 2021⁹ amendments to the Act coming into effect so must be read subject to the effects of those amendments. Together, the *Colonial Vineyard Ltd* requirements and those amendments provide the legal tests that must be applied when considering submissions and evidence on the Proposed Plan, and making recommendations on that plan.

3. SCOPE OF RELIEF

- 3.1 As described above, Waitangi Limited seeks the application of special purpose zoning (or a precinct of similar effect) to the Estate. That relief (and its more limited secondary relief) is within the broad scope afforded to submitters in a full district plan review process, as discussed by the High Court in *Albany North Landowners & Ors v Auckland Council*.¹⁰
- 3.2 Counsel adopt the summary of the relevant scope principles, as summarised by Whata J in *Albany*, given in legal submissions for earlier hearings. In particular, counsel agree¹¹ that the common issue of whether or not a submission is "on" a plan change (by reference to leading

⁶ [2014] NZEnvC 55, at [17].

⁷ In particular, amendments to section 74(1) (which brought together and clarified the matters a District Plan must be "in accordance with").

⁸ In particular, amendments to section 74(1)(ea) (which added "National Planning Standards" to the matters a District Plan must be "in accordance with"); and section 75(3)(ba) (which added "National Planning Standards" to the matters a District Plan must "give effect to").

⁹ Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

¹⁰ [2017] NZHC 138; see for example, [115] to [134].

¹¹ Legal submissions on behalf of Audrey Campbell-Frear dated 27 May 2024 at paragraph 1.13.

authorities such as *Clearwater*¹² and *Motor Machinists*¹³) has limited relevance in the context of a full plan review. The High Court in *Albany* observed that the Auckland Unitary Plan planning process (and other full reviews of planning documents) are far removed from the relatively discrete variations and plan changes considered in *Clearwater* and *Motor Machinists*, and that the scope for a coherent submission in the context of a full plan review is therefore very wide.¹⁴

3.3 In due course, counsel will explain why the special zone provisions put forward by Waitangi Limited align with the relief clearly signalled in its submission. The High Court's decision in *Albany* endorsed the orthodox "*fairly and reasonably raised*" test set out by the High Court in *Countdown Properties*,¹⁵ which requires a decision-maker to consider whether an amendment made to a proposed plan or plan change (as notified) goes beyond what is reasonably and fairly raised in submissions.¹⁶

4. WHY A SPECIAL PURPOSE ZONE IS APPROPRIATE

4.1 As provided in its submission and further explained in the evidence of Ms Jacobs, Waitangi Limited is seeking that a special purpose zone be created to apply to the Estate. Its submission solely relates to the Estate, with no broader implications for other parts of the Far North District.

4.2 The Trust Board and Waitangi Limited share a current statement of strategic intent, which is to see Waitangi as **He Whenua Rangatira** and to **illustrate the ongoing promise of Waitangi** in all that we do. A bespoke planning framework is needed to facilitate the use, development, and protection of the various parts and features of the Estate in line with this vision and the statutory purposes for which the land is held.

4.3 The Proposed Plan provisions (as notified) are considered to be unworkable and do not appropriately reflect the national significance and special nature of the Estate, and its many uses. In short:

- (a) the complex framework of three land use zones and eight spatial overlays that apply to the Estate is very restrictive and requires that

¹² *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

¹³ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.

¹⁴ Above n 10, at [129].

¹⁵ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (HC) [1994] NZRMA 145.

¹⁶ Above n 15, at p 41 (referred to in *Albany* at [115]).

the most restrictive / stringent rules in each overlay will apply to proposed activities; and

- (b) the prevailing Rural Production zoning directly conflicts with existing land uses and activities at the Estate, and the purposes under the Trust Board Act.

4.4 As explained in the evidence of Mr Dalton and Ms Jacobs, the Proposed Plan will significantly constrain Waitangi Limited from carrying out the day-to-day activities required to protect and manage the Treaty Grounds, associated historic heritage and the surrounding Estate in accordance with statute.

4.5 In particular, the Proposed Plan (as notified) will require Waitangi Limited to obtain resource consents under the RMA for minor activities, including:

- (a) footpath upgrades to improve disability access to buildings;
- (b) planting trees for members of the Royal family and incumbent dignitaries;
- (c) the expansion of existing carparks; and
- (d) installing bench seating to provide a rest area for visitors walking around the Treaty Grounds.

4.6 The circumstances of the Estate strongly support special purpose zoning, in line with the Standards:¹⁷

- (a) The Estate is of national significance. It contains the historic Treaty Grounds that were the location of the first signing of te Tiriti o Waitangi / the Treaty of Waitangi (**Te Tiriti**) between Māori and the British Crown on 6 February 1840, and are considered by many to be the pre-eminent historical site in New Zealand.
- (b) The Estate is a unique and complex environment that combines very special historical and cultural significance with recreational and tourism values, productive uses, and coastal, estuarine, and other natural values.
- (c) The complexities of the various areas and features of the Estate are so highly specific that it is not practicable for activities at the Estate

¹⁷ Standard 8: Zone Framework Standard, Directions 1 and 3; and Guidance on the Zone Framework and District Spatial Layers Standards (1 April 2019) at page 7.

to be managed by general zoning and rule frameworks. No other zones have been identified in the Proposed Plan as being appropriate to manage the complexities of activities undertaken at the Estate.

- (d) The addition of further spatial layers (such as a precinct) over the Estate would introduce a further overlay of rules and add to the complexity of the planning framework for the Estate. This may cause undue confusion and perverse outcomes in terms of the activities that could be inadvertently captured, as is already the case under the Proposed Plan.

4.7 A special purpose zoning would provide an efficient and effective management approach for the Estate by including:

- (a) tailored rules, objectives, and policies that reflect the special nature of the Estate and its varied values, sensitivities and land uses;
- (b) clear objectives and policies that protect historic heritage and the values of the Estate (including those currently provided for by the overlays in the Proposed Plan) and provide for operational activities to be undertaken by Waitangi Limited; and
- (c) rules that provide appropriate protections for different parts of the Estate, and also enable operational activities to be undertaken without the requirement for Waitangi Limited to obtain resource consent under the RMA.

4.8 As relevant to this hearing, the values and protections of the overlays in the Proposed Plan are proposed to be incorporated into the new framework, including the Coastal Environment, Outstanding Natural Landscape, Outstanding Natural Feature and High Natural Character Overlays. These are proposed to be reframed in a way that balances the protection principles of the relevant overlay with the need for Waitangi Limited to undertake operational activities at the Estate. Neither the values nor the boundaries of those overlays are disputed.

4.9 As explained in the evidence of Mr Dalton, such an approach will help to give effect to the legislative framework that applies to the Estate, support the delivery of the Trust Board's vision and long-term master planning for

the Estate, and ensure that Waitangi is ready to commemorate the upcoming bicentenaries in 2035 and 2040.¹⁸

5. THE TRUST BOARD ACT

5.1 Also relevant to the proposed special purpose zoning is the empowering legislation that is specific to the Estate, which enshrines the trust terms on which the land is administered for the public good, and empowers the Trust to use and develop the land to those ends. It goes without saying that this puts the Estate in a unique context that supports a bespoke planning solution.

5.2 These matters will be addressed in further detail prior to Hearing 19.

6. MATTERS SPECIFIC TO THIS HEARING

6.1 Waitangi Limited's submission seeks secondary relief as a fall-back position, in the event the special zoning is not accepted by the Hearings Panel.

6.2 The secondary relief relevant to this hearing, is explained in the evidence of Ms Jacobs and Mr Cocker. As Ms Jacobs will explain, there is a high degree of agreement with the position arrived at by the Council reporting officers. The majority of recommendations in the relevant section 42A reports are endorsed by Ms Jacobs without further amendment, and only a small number of residual matters remain. These are matters of technical detail, rather than substantive legal issues, and will be explained by Ms Jacobs and Mr Cocker.

7. WITNESSES FOR WAITANGI LIMITED

7.1 Waitangi Limited is calling three witnesses for this hearing:

(a) Mr Ben Dalton (chief executive of Waitangi Limited);

¹⁸ Firstly, in 2035 to commemorate the signing of He Whakaputanga (the Declaration of Independence), and in 2040 to commemorate the signing of Te Tiriti.

- (b) Ms Rochelle Jacobs (planning); and
- (c) Mr Simon Cocker (landscape effects).

DATED 6 August 2024



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D G Randal / L G Cowper
Counsel for Waitangi Limited

APPENDIX 1: CASE EXTRACT

Colonial Vineyard Ltd v. Marlborough District Council [2014] NZEnvC 55 at [17]
(bolded emphasis original):

A. General requirements

1. A district plan (change) should be designed to **accord with**¹⁹, and assist the territorial authority to **carry out** – its functions²⁰ so as to achieve, the purpose of the Act²¹.
2. The district plan (change) must be prepared **in accordance with** any regulation²² (there are none at present) and any direction given by the Minister for the Environment²³;
3. When preparing its district plan (change) the territorial authority **must give effect to** any national policy statement or New Zealand Coastal Policy Statement²⁴.
4. When preparing its district plan (change) the territorial authority shall:
 - (a) have regard to any proposed regional policy statement²⁵;
 - (b) give effect to any operative regional policy statement²⁶.
5. In relation to regional plans:

the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order²⁷; and

must have regard to any proposed regional plan on any matter of regional significance etc²⁸;
6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations²⁹ to the extent that their content has a bearing on resource management issues of the district, and to consistency with plans and proposed plans of adjacent territorial authorities³⁰;
 - **take into account** any relevant planning document recognised by an iwi authority³¹; and
 - **not have regard to** trade competition³² or the effects of trade competition;

¹⁹ Section 74(1) of the Resource Management Act 1991 (the Act).

²⁰ As described in section 31 of the Act.

²¹ Sections 72 and 74(1) of the Act.

²² Section 74(1) of the Act.

²³ Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

²⁴ Section 75(3) Act.

²⁵ Section 74(2)(a)(i) of the Act.

²⁶ Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

²⁷ Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

²⁸ Section 74(2)(a)(ii) of the Act.

²⁹ Section 74(2)(b) of the Act.

³⁰ Section 74(2)(c) of the Act.

³¹ Section 74(2A) of the Act.

³² Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.

7. *The formal requirement that a district plan (change) must³³ also state its objectives, policies and the rules (if any) and may³⁴ state other matters.*
- B. *Objectives [the section 32 test for objectives]*
8. *Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act.³⁵*
- C. *Policies and methods (including rules) [the section 32 test for policies and rules]*
9. *The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies³⁶;*
 10. *Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives³⁷ of the district plan **taking into account**:*
 - (i) *the benefits and costs of the proposed policies and methods (including rules); and*
 - (ii) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods³⁸; and*
 - (iii) *if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances³⁹.*

Rules

11. *In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment⁴⁰.*
12. *Rules have the force of regulations⁴¹.*
13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁴² than those under the Building Act 2004.*
14. *There are special provisions for rules about contaminated land⁴³.*
15. *There must be no blanket rules about felling of trees⁴⁴ in any urban environment⁴⁵.*

Other statutes:

16. *Finally territorial authorities may be required to comply with other statutes.*

³³ Section 75(1) of the Act.

³⁴ Section 75(2) of the Act.

³⁵ Section 74(1) and section 32(3)(a) of the Act.

³⁶ Section 75(1)(b) and (c) of the Act (also section 76(1)).

³⁷ Section 32(3)(b) of the Act.

³⁸ Section 32(4) of the Act.

³⁹ Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.

⁴⁰ Section 76(3) of the Act.

⁴¹ Section 76(2) Act.

⁴² Section 76(2A) Act.

⁴³ Section 76(5) as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.

⁴⁴ Section 76(4A) as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

⁴⁵ Section 76(4B) — this 'Remuera rule' was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.