

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

UNDER the Resource Management Act 1991 (**RMA**)
IN THE MATTER of the hearing of submissions on the Proposed Far North
District Plan

**MEMORANDUM OF COUNSEL FOR KIWI FRESH ORANGE COMPANY
LIMITED (SUBMITTER 554)**

30 September 2025

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WYNN WILLIAMS

MAY IT PLEASE THE PANEL

- 1 Kiwi Fresh Orange Company Limited (**KFO**) respectfully seeks a direction that Councillor Foy does not participate in the hearing or deliberations on KFO's submission seeking rezoning of its land as part of the Topic 15D hearing for the Proposed Far North District Plan (**PDP**).¹
- 2 In her capacity as Far North District Councillor, Councillor Foy participated in debate and voted on Te Pātukurea – the Kerikeri-Waipapa Spatial Plan at a Council meeting on 18 June 2025. Councillor Foy spoke in opposition to a motion to include KFO's site in the Spatial Plan and voted against that motion. (The motion was ultimately passed and KFO's site was included as a contingent future growth area in the Spatial Plan.)
- 3 In her speech in opposition to the motion, Ms Foy raised issues that are also at issue before the Hearings Panel for the PDP, including the funding of infrastructure and natural hazard risk.
- 4 As a matter of law, a decision-maker should not participate in a decision where there is either actual or apparent bias. Apparent bias arises where a fair-minded lay observer would reasonably apprehend that the decision-maker might not bring an impartial mind to the decision.² The test is whether it is *possible* an observer would draw such a conclusion, not whether that conclusion is *probable*.³
- 5 New Zealand's legal system seeks to avoid apparent bias for important reasons – if decision-makers are not seen as impartial, it can undermine public confidence in a decision or create an impression of unfairness.
- 6 KFO considers that a fair-minded lay observer might draw the conclusion that Councillor Foy has formed a fixed view on the proposed rezoning of KFO's site due to the comments she made and how she voted on the Spatial Plan.
- 7 The danger is compounded by the fact that a significant theme of the Council Officer's s 42A Report goes to the Spatial Plan being a relevant

¹ In accordance with the Hearing Procedures – Minute 1, paragraph 20.

² *Muir v Commissioner of Inland Revenue* [2007] NZCA 334 at [62].

³ *Saxmere Company Limited v Wool Board Disestablishment Company Limited* [2009] NZSC 72 at [4].

consideration that should guide the Panel's determination of rezoning submissions. Putting the proper weight to be given to the Spatial Plan aside, there is a real risk the public would expect that Ms Foy would maintain her previously articulated views. Those views were shaped by material that is not before the Panel (i.e., the Spatial Plan Deliberation Report) and could impact the Panel's wider determination through deliberations.

- 8 The Hearing Procedures for the PDP recognises the potential for issues of this nature to arise. The Procedures identify that conflicts of interest may arise where a Commissioner "has previously advocated a particular position".
- 9 The direction sought by KFO will not cause other issues. The Panel allocated for Topic 15D will still exceed the necessary quorum of two commissioners.
- 10 Accordingly, for the reasons above, KFO respectfully seeks a direction that Councillor Foy does not hear or deliberate on KFO's submission seeking rezoning of its site as part of Topic 15D (or related issues).
- 11 Counsel is willing to speak to this request at the outset of KFO's hearing time for Topic 15D.

Dated 30 September 2025



M J Doesburg
Counsel for Kiwi Fresh Orange Company Limited