

**BEFORE THE INDEPENDENT HEARINGS PANEL
FAR NORTH DISTRICT COUNCIL**

UNDER

the Resource Management Act 1991

IN THE MATTER

of the Proposed Far North District Plan

**LEGAL SUBMISSIONS ON BEHALF OF
AUDREY CAMPBELL-FREAR**

STRATEGIC DIRECTION HEARING

27 May 2024


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INTRODUCTION

- 1.1 Audrey Campbell-Frear is primary submitter #209 and further submitter #172 on the Proposed District Plan (PDP).
- 1.2 Ms Campbell-Frear owns property south-west of Kerikeri township on Kerikeri Road (in the vicinity of Makana and the Packhouse), but her submission raises broader issues than just those specific to her own site.
- 1.3 Ms Campbell-Frear's primary submission addresses four themes:
 - Delete the Horticulture Zone
 - Review commercial zones (hierarchy of centres)
 - Rezone Kerikeri fringe to enable commercial activities
 - Review Rural Residential zoning west of Kerikeri Road
- 1.4 It is the first three (and primarily the first two) of these themes that are relevant to this Strategic Direction hearing.
- 1.5 Ms Melissa McGrath has filed expert planning evidence for this hearing.

PRELIMINARY MATTERS

- 1.6 The Council's summarising of submissions, and electronic portal for filing further submissions ("Spoken"), have caused unexpected issues.
- 1.7 The Council has coded Ms Campbell-Frear's primary submission to only two topics – Horticulture Zone and Mixed Use Zone – overlooking much of the content of the submission. This has meant that the section 42A report for this Strategic Direction hearing has not responded to Ms Campbell-Frear's submission despite it expressly raising issues with the Strategic Direction section of the Plan.
- 1.8 This issue will be proactively managed by Ms Campbell-Frear attending each relevant hearing whether coded to that topic or not, but this is inefficient and raises issues as to whether submissions are being fully responded to by the Council.

1.9 The 42A report has picked up four further submissions made by Ms Campbell-Frear as relevant to the hearing, but investigation of those has revealed significant issues with the automated numbering of further submission points in Spoken.

- The “FS172.XXX” numbers given in the 42A report for Ms Campbell-Frear do not match those in the record of the further submissions lodged online. (For example, the 42A report cites FS172.157 as a further submission point on the McDonald’s primary submission, but the record of the further submissions lodged shows .157 as a further submission on the Pope submission).
- The record of the further submissions lodged is numbered from .001 to .418, but the Council’s red text on the front page records further submissions from .001 to .416.
- The Spoken automatic numbering has allocated duplicate numbers (such as multiple further submission points numbered .417).

1.10 These allocated numbering errors for further submissions in Spoken appear to have resulted in the Council working from a different list of further submission points than what submitters lodged, and make it almost impossible for submitters to find their individual further submission points. Having only discovered these numbering issues in preparation for this hearing, I will pursue this matter directly with the Council.

SCOPE OF SUBMISSION

1.11 Given that Ms Campbell-Frear’s primary submission has not been coded to the Strategic Direction hearing topic, nor addressed in the 42A report, I will deal first with whether there is scope in the submission for relief under this topic.

1.12 Much of the case law on scope focuses on plan changes and whether a submission is “on” the plan change. Those matters do not arise here in the hearing of a full proposed plan. At issue here is whether the relief sought in evidence was “reasonably and fairly raised in the submission”.

1.13 In my submission the following are the principles of scope on a ‘whole plan’, as summarised by Whata J in *Albany North*¹ from 25 years of predominantly High Court cases:

- The decision maker must consider whether any amendment made to the Plan as notified goes beyond what is “reasonably and fairly raised” in submissions.²
- Plan making is a participatory process, which should not be bound by formality.³
- The assessment of whether any amendment was reasonably and fairly raised in the submission should be approached in a realistic and workable fashion rather than from the perspective of legal nicety.⁴
- The Courts have consistently focused on “substance over form”.⁵
- The “workable” approach requires the decision maker to take into account the whole relief package detailed in the submission.⁶

*"Many of the submissions did not specify the detailed relief or result sought. Many (such as Countdown's) pointed up deficiencies or omissions in the proposed plan. These alleged deficiencies or omissions were found in the body of the submission."*⁷

- Jurisdiction to make amendments is not limited to the express words in the submission. It is sufficient if the amendments can fairly be said to be foreseeable consequences of any changes directly proposed in the submission.⁸
- On subsequent appeal, clause 14(2) of the Act requires only that the person “referred to” the provision or matter in the person’s submission.⁹
- Ultimately whether any amendment was reasonably and fairly raised in the submission is a question of procedural fairness, to the public as well as to the submitter.¹⁰

¹ [2017] NZHC 138 at [115].

² *Countdown Properties (Northlands) Ltd v Dunedin City Council* (HC) [1994] NZRMA 145 at p 41.

³ *Countdown* at p 42; *General Distributors Ltd v Waipa DC* (HC) 15 ELRNZ 59 at para [54].

⁴ *Royal Forest and Bird Protection Society of NZ v Southland DC* (HC) [1997] NZRMA 408 at p 413.

⁵ *Shaw v Selwyn DC* (HC) [2001] 2 NZLR 277 at [30].

⁶ *Shaw* at [31].

⁷ *Countdown* at p 37.

⁸ *Westfield (NZ) Ltd v Hamilton CC* (HC) [2004] NZRMA 556 at [73].

⁹ *General Distributors* at [57].

¹⁰ *Westfield* at [74].

1.14 In the first theme of Ms Campbell-Frear's submission, while the specific relief stated is to delete the proposed Horticulture Zone, the reasons stated specifically refer to Strategic Direction including:

- *The PDP does not provide strategic direction or policy support for the suite of rural zones proposed, nor does it support the Horticultural Zone;*
- *Under the National Planning Standards, the strategic direction provisions are key to understand the balance and trade-offs between often conflicting matters of national, regional and local importance. The proposed Strategic Direction objectives and policies are silent with respect to the proposed rural zones.*

1.15 In the second theme, while the specific relief stated is to review the suite of commercial zones and to rezone, again the reasons stated specifically refer to Strategic Direction including:

- *The PDP does not provide strategic direction or policy support for the suite of urban zones proposed;*
- *The PDP does not include any form of direction by way of mapping or provisions to set a clear hierarchy of centres. This lack of strategic direction will hinder the ability to achieve a sustainable and compact urban form.*

1.16 In my submission taking a realistic and workable approach to the whole relief package stated in the submission it is clear that - as stated by the High Court in *Countdown* - "the alleged deficiencies or omissions were found in the body of the submission".

1.17 Amendments to the Strategic Direction section were in my submission reasonably and fairly raised in the submission.

PLANNING EVIDENCE

1.18 Ms McGrath's has prepared detailed planning evidence, including a section 32AA analysis, setting out the issues with the Strategic Direction section as notified and her response to the 42A report.

1.19 Ms McGrath identifies:

- The critical importance of the Strategic Direction section, and that the PDP fails to meet the mandatory direction of the National Planning

Standards because the Strategic Direction section fails to adequately outline and address significant resource management matters.

- The failure to include Strategic Direction policies, or adequately demonstrate that the required policies are located in other chapters, fails to meet the mandatory direction of the National Planning Standards and section 32; and the need for policies in the Strategic Direction section to address zoning and centres hierarchy (which apply across zones and across the district).
- The failure in the 42A report to respond to submissions seeking Strategic Direction establishing a hierarchy of centres, and the planning importance of such a hierarchy in the PDP.
- The failure in the 42A report to assess the extent to which the Strategic Direction gives effect to the National Policy Statement on Highly Productive Land, and the planning importance of a rural zoning framework in the PDP.
- The 42A report error in considering future changes to national policy statements, contrary to section 74 which requires that the Council prepare the PDP “in accordance with” the national policy statements and national planning standards as they exist.

WIDER ISSUES

1.20 Of particular concern is the 42A report recommending the rejection of submissions seeking additional commercial zones (a hierarchy of centres) on the basis that a future technical assessment by the Council will address housing and business capacity. It is not in accordance with natural justice to reject submissions based on assessment which doesn't currently exist, and concerning that the Council notified its PDP and commenced hearings when fundamental technical assessment (foundation to section 32 assessment) has not been undertaken.

1.21 This strongly indicates that the Panel may need to revisit the Strategic Direction hearing (in particular submissions seeking a hierarchy of centres and zoning policy) after the technical assessment of housing and business capacity has been completed.

- 1.22 How can the Strategic Direction section fulfil its National Planning Standards mandated function of setting out objectives and policies that address key strategic or significant matters for the district to guide decision making at a strategic level, when fundamental assessment of how housing and business capacity is to be spatially accommodated has not been undertaken?

CONCLUSION

- 1.23 Ms Campbell-Frear's submission reasonably and fairly raised omissions or deficiencies in the Strategic Direction section.
- 1.24 These have been addressed in Ms McGrath's planning evidence which recommends amendments to include policies, direct the zone framework (including a centres hierarchy), give effect to the NPS HPL, and accord with the National Planning Standards and section 32.

A handwritten signature in black ink, appearing to read 'ASL', written in a cursive style.

Sarah Shaw

Counsel for Audrey Campbell-Frear

27 May 2024