

**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

***COUNSEL'S NOTES ON BEHALF OF
AUDREY CAMPBELL-FREAR***

RURAL HEARING

4 December 2024



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INTRODUCTION

- 1.1 Audrey Campbell-Frear (*Ngāti Kahu ki Whangaroa, Ngāti Rua*) is a Kerikeri orchardist.
- 1.2 Many of the submissions are pulling in the same direction – protection of highly productive land for land-based primary production activities (eg horticulture), including from fragmentation and reverse sensitivity. The issue is the most appropriate planning tool.
- 1.3 The team have listened to the Reporting Officer’s opening comments and the Panel’s questions. Ms Campbell-Frear has also attended some of the hearing days in person.

REPORTING OFFICER’S OPENING COMMENTS

Issue is whether the Horticulture Zone is the most efficient and effective tool to protect the horticultural industry in Kerikeri and Waipapa

- 1.4 Ms McGrath’s evidence addresses why this policy of the proposed HZ to provide a HZ only for Kerikeri / Waipapa does not implement the PDP objectives or give effect to the NPS HPL.
- 1.5 The Council’s proposed HZ does not protect the horticultural industry / horticultural irrigation infrastructure:
 - In Kerikeri / Waipapa more efficiently or effectively than RPROZ.
 - In other areas of the FND at all, leaving that to RPROZ.
- 1.6 Using RPROZ would protect them all.

Spatial extent of the HZ / LUC soils evidence is later topic - evidence off topic

- 1.7 Zoning is always a *spatial* planning tool.
- 1.8 The Council’s proposed HZ is justified in the s32 and the s42A as addressing specific *spatial* issues:
 - Protection of the horticultural industry / horticultural irrigation infrastructure in Kerikeri / Waipapa (and not elsewhere in the FND)

- Applying to LUC 1-4 (not HPL: LUC 1-3)

1.9 Evidence has expressly not engaged with the most appropriate zoning site by site within the proposed HZ, except that RPROZ is more appropriate than proposed special purpose zone HZ. (The same issue evaluated in the 42A for this hearing).

HZ needed to give strong policy direction backed up by restrictive rules for decision makers to fall back on to reject applications in Kerikeri / Waipapa

1.10 Ms McGrath’s evidence is that:

- The proposed HZ does not achieve this.
- The RPROZ can. The NPS HPL requires this.

PANEL’S QUESTIONS

How directive are the National Planning Standards?

1.11 Directive language is addressed in legal submissions. Also:

- s58B: The purposes of national planning standards are to set out requirements for plans.
- s58C: Standards may direct councils on structure, form, content.
- s58I: Councils must take action directed by the Standards.

What is the meaning of “impractical” in the special purpose zone criteria?

1.12 Dictionary definitions: not effective, cannot be done effectively.

1.13 Court of Appeal (“practicable”): dictionary definitions do not give much assistance, interpretation must take account of the particular context and the statutory framework.¹

1.14 High Court (“practicable”, “practical” & “possible”): meaning requires interpretation and analysis in the context of the specific wording.²

¹ *Wellington International Airport Ltd v New Zealand Air Line Pilots’ Association Industrial Union of Workers Inc* [2017] NZSC 199 at [65].

² *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201 at [146] – [148].

- 1.15 Aligns with s10 Legislation Act 2019: the meaning of legislation must be ascertained from its text and in light of its purpose and context.
- 1.16 Legal submissions address directive nature of Standards generally (national consistency) and Zone Framework Standard specifically (mandatory direction).
- 1.17 Submitters have referenced MfE guidance on RPROZ that councils use alternative zones to manage the productive capability of the land.³
- This is guidance, not the Standards
 - The guidance explains *background to why* the Standards included both General Rural and RPROZ in the Zone Framework Standard: RPROZ is the zone to manage productive land.

NEXT STEPS

- 1.18 The Reporting Planner stated that:
- If / when the NPS HPL is amended an Addendum 42A report may be produced.
 - The Council's soils expert wasn't available this week to answer questions but may provide comment in the Reply? (If I heard correctly). The Council had the opportunity to provide rebuttal soils evidence (as it did with economics).
- 1.19 For both, fairness likely to require opportunity for submitter response.



Sarah Shaw

Counsel for Audrey Campbell-Frear

4 December 2024

³ [Guidance on Zone Framework and District Spatial Layers Standards](#)