

**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 383 (Trustees of Jet#2 Trust)

LEGAL SUBMISSIONS FOR TRUSTEES OF JET#2 TRUST

Treaty settlement overlay (submission 383)

Dated: 25 March 2025

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Introduction

1. These submissions are filed for the Trustees of the Jet#2 Trust (**Jet2 Trust**) in relation to the Treaty Settlement Land Overlay (**TSLO**), which is designed to incorporate less restrictive rules and standards into zones subject to a treaty settlement.
2. Post settlement governance entities in the Far North have an understandable aspiration to improve the social cultural economic and environmental position of iwi. That commendable objective is not in question but rather concern raised by the submitter is the planning ramifications of broad exemptions through the mechanism of the TSLO, the implications of which appear not to have been fully considered.
3. Jet 2 is a private investor of land at the Karikari peninsula.
4. Land in the Karikari peninsula is not currently subject to treaty settlement. An agreement in principle was reached in 2010 but has not resulted in settlement legislation, and there are claims being pursued in the Waitangi Tribunal.
5. If, however, a treaty settlement comes into effect within the life of the plan there is likely to be a treaty settlement overlay applied to the area (as will apply to other areas not currently the subject of settlement legislation).
6. Any future changes to deal with a treaty settlement overlay in the area of concern to the submitter are likely be a mapping exercise, such that submissions (in the future) beyond a TSLO mapping exercise are likely to be beyond scope.
7. The notes to the TSLO in the PDP at note 3 provide:

*The provisions of the underlying zone apply to Treaty Settlement Land unless otherwise specified in this section. The rules provide that where the activity for the relevant zone provides for the same activity, or where there is conflict between a rule or standard in the underlying zone chapter, **the less restrictive rule applies.***

(emphasis **added**)

8. The treaty settlement land overlay chapter provides for substantial exemptions or departures from the general scheme of the district plan in a way that may give rise to buildings and structures appearing in the

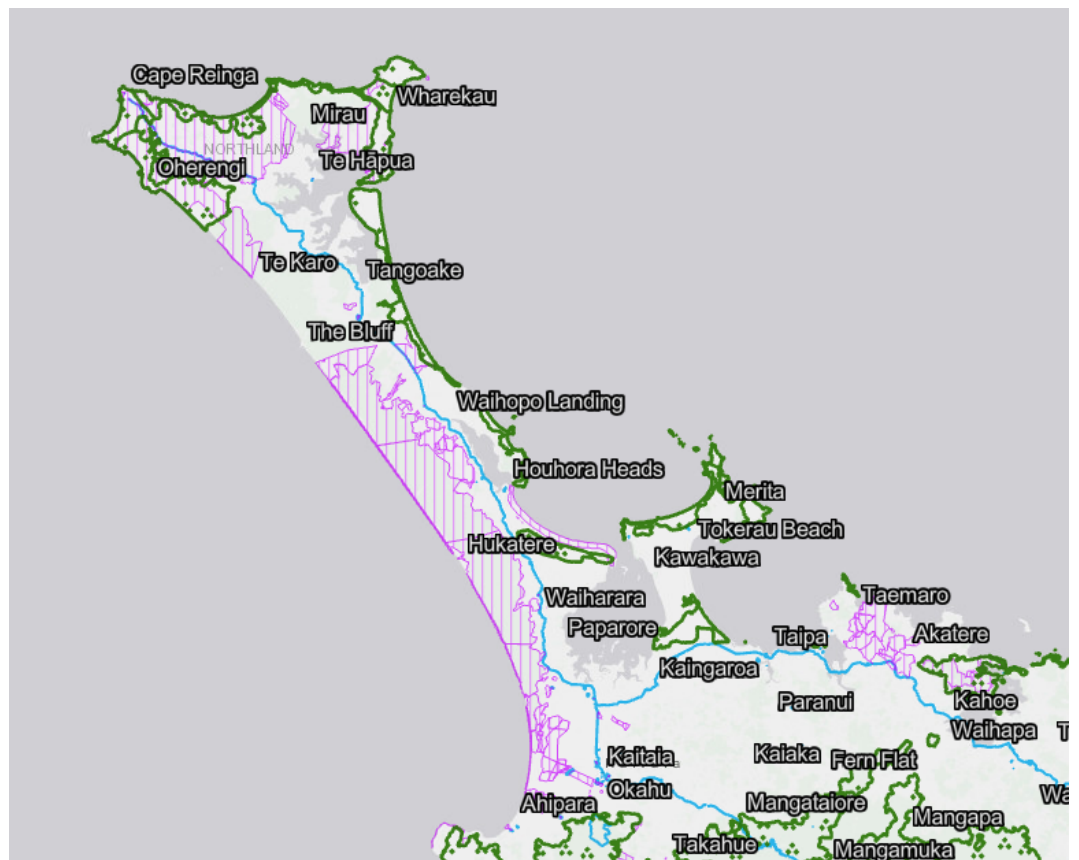
landscape, in a manner that is not anticipated by the community. For example, there may be substantial buildings and structures adjacent to or adjoining to outstanding landscapes - in a way that is not authorised for landowners who are not post settlement governance entities.

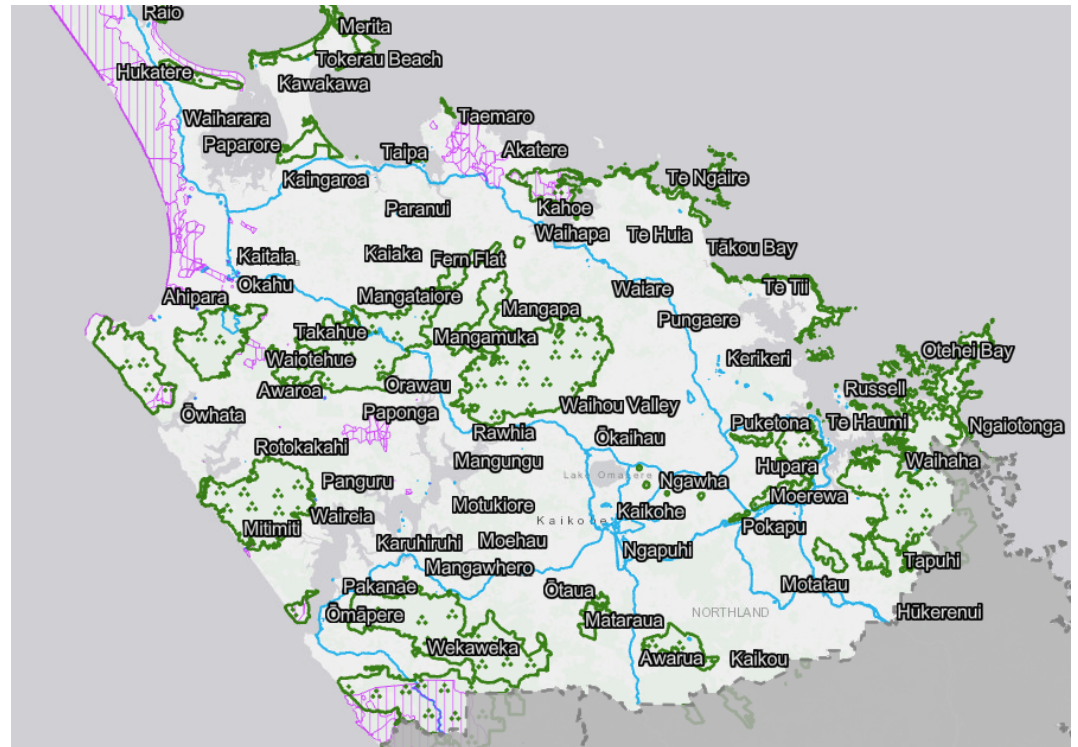
9. In the RMA, rules typically regulate activities (as to bulk and location, and activity classification) without express regard to the identity of the landowner. The RMA is effects based – and is concerned with the effects on the environment ***of activities***:
 - a. The touchstone for activity classification in section 76(3) of the RMA, is that when making a rule, a territorial authority shall have regard to the actual or potential effects on the environment *of activities* including, in particular, any adverse effect.
 - b. While theoretically scope remains to have a resource consent personal to the holder (refer section 134(1) RMA), in practice consents are not typically personal to the identity of the particular consent holder i.e. consents that apply to the activity, regardless of the identity of the person undertaking the activity.
 - c. It is not self-evident why performance standards that relate to activity classification and bulk and location controls should materially differ depending on whether the applicant is a post-settlement governance entity, or someone else.
10. The scale of departures or exemptions is large. A comparison between the rules and standards in the treaty settlement land overlay and the natural open space zone and the rural production zone reveal a significant relaxation of rules and standards in the treaty settlement land overlay, as compared with the rural zones is contained in **schedule 1**.
11. The following key departures are noted:
 - a. TSL-R2 – the maximum impermeable surface coverage for a site is 35% in the TSLO, whereas it is 10% in the NOSZ and 15% in the RPZ.
 - b. TSL-R12 - Commercial activities are permitted provided they do not exceed a GBA (Gross Business Area) of 250m², whereas they are non-complying in the NOSZ and RPZ zones.

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- c. TSL-S5 – Maximum combined building or structure coverage of a site is 50%, compared with 8% in NOSZ and 12.5% in RPZ.
12. To illustrate the point that activities are typically ‘blind’ to the question of who the owner is, performance standards for surface flow of stormwater are inherently an issue not affected by the identity of the landowner:
- a. Such a rule relating (for example) to maximum impermeable surface coverage has implications for adjacent owners, in terms of the potential for managing flow of drainage and surface waters.
- b. If (as here) the proposed Far North Plan provides a general performance standard providing for maximum impermeable surface coverage at 15% in the rural production zone, then that would indicate that the standard is generally considered appropriate within the rural production zone, regardless of the identity of the landowner.
13. There are likely policy implications – beyond the exemptions themselves:
- a. The scale of the exemptions is likely in practice to be relied on by applicants in establishing a permitted baseline, for a comparison of any effects which may exceed even these more liberal standards.
- b. This risks giving rise to so-called ‘environmental creep’ (where an applicant relies on a baseline established by rules).
- c. The treaty settlement land overlay does not appear to address conflict between the overlay provisions and the objectives and policies of the underlying zone. The overlay only addresses conflict with the rules (by saying in Note 3 that the least restrictive rule applies).
- d. It is not self-evident how performance standards for bulk and location can be departed from over potentially such a large area of land covered by the overlay, while maintaining plan coherence.
- e. The broad application of the overlay (with more land to come, when there are other settlements) may compromise the underlying zone objectives, and contribute to our sporadic or haphazard

development in a way which will not maintain the character and amenity of adjacent areas, and

- f. the risk of unplanned or sporadic or incoherent development would appear to run counter to regional policy imperatives which must be given effect to, refer, **schedule 2**.
14. If compliance with landscape overlays will still be required (because of Note 2) then there is still an issue that potentially large structures may be adjacent to outstanding natural landscapes, affect the coherence of current mapping. - The PDP states at Appendix 1 "*Coherence was used to describe the patterns of land cover and land use and whether they are 'in harmony' with the underlying natural pattern of the landform of the area, and whether there are any significant discordant elements of land cover or land use. It assessed how 'natural', or unmodified the landscape is.*" Refer map overlays below:





Treaty Settlement Land



Outstanding Natural Landscape



15. More broadly, at a policy/philosophical level:
 - a. The overlay may have evolved from the assumption that the Natural and Built Environment Act 2023 would come into law. That legislation- has now been repealed.
 - b. The RMA is to be repealed with the replacement legislation to be 'guided by property rights'. It is not self-evident how Council will in the future resist other landowners seeking to have the same exemptions, if the policy imperatives in the legislation change.
 - c. Issues of redress is appropriately the subject of treaty settlement legislation. The settlement legislation does not have any express words approving have broad carveouts or exceptions to general district plan bulk and location or a permitted activity control.
 - d. The treaty settlement land overlay would appear to be 'a solution in search of a problem'. Is there evidence of a compelling kind that

suggests that post-settlement governance entities are actually being held back from worthy land use development opportunities as a result of resource management rules at a district level, given that most consents are typically dealt with on a non-notified basis?

16. It is submitted for the Jet 2 Trust that:
- a. General activity classifications and bulk and location standards should be applied consistently, otherwise there is a risk of incoherent planning responses over the life of the plan.
 - b. Rather than providing exemptions for Treaty settlement lands, it is preferable to adopt established planning concepts, such as papakainga zones, settlement zones, special purpose zones, precincts etc. to provide opportunities for use and development of Treaty settlement lands in a planned and coherent way. This is preferable to provisions which provide for 'less stringent' application or exemptions, which risk incoherent, inconsistent or sporadic outcomes.
 - c. The treaty settlement land overlay be limited to an information rule, so that the overlay is retained, for information purposes.

Dated: 25 March 2025



SJ Ryan
Counsel for the submitter

Schedule 1 – Comparison table of activity status and standards

	ZONE CHAPTERS					
	Treaty Settlement Land Overlay (TSLO)		Natural Open Space Zone (NOSZ)		Rural Production Zone (RPROZ)	
ACTIVITY STATUS						
Impermeable surfaces	TSL-R2	Maximum impermeable surface coverage of any site is 35%.	NOSZ-R2	Maximum impermeable surface coverage is 10% or 1,000m ² , whichever is the lesser.	RPROZ-R2	Maximum impermeable surface coverage is 15%.
Residential unit	TSL-R3	Permitted where: PER-1: Sites less than 1200m ² , the site area per standalone residential unit/multi-unit development is at least 600m ² . PER-2: The number of residential units on any site does not exceed six.	NOSZ-R16	Non-complying activity	RPROZ-R3	Permitted where: PER-1: The site area per residential unit is 40ha. PER-2: The number of residential units on a site does not exceed six.
Papakāinga/ Papakāinga Housing	TSL-R4	Permitted where: PER-1: The number of residential units does not exceed the greater of <ul style="list-style-type: none"> a. 10 residential units per site; or b. One residential unit per 40ha of site area. PER-2: Any commercial activity associated with the papakāinga does not exceed a GBA of 250m ² .	NOSZ-R14	Activities not otherwise provided for are a Discretionary activity (Papakāinga is not listed as an activity)	RPROZ-R20	Restricted discretionary activity where: RDIS-1: The number of residential units does not exceed 10. RDIS-2: There is a legal mechanism in place to ensure the land will stay in communal ownership and continue to be

						used in accordance with ancestral cultural practices.
Visitor Accommodation	TSL-R5	Permitted where: PER-1: The occupancy does not exceed six guests per night.	NOSZ-R10	Discretionary activity	RPROZ-R4	Permitted where: PER-1: It is within a residential unit, accessory building or minor residential unit. PER-2: The occupancy does not exceed 10 guests per night. PER-3: The site does not share access with another site.
Educational Facility	TSL-R11	Permitted where: PER-1: The educational facility is within a residential unit or accessory building. PER-2: The number of persons attending at any one time does not exceed four; excluding those who reside on site.	NOSZ-R11	Discretionary activity	RPROZ-R6	Permitted where: PER-1: It is within a residential unit, accessory building or minor residential unit. PER-2: Hours of operation are between; 1. 7am – 8pm Mon -Fri. 2. 8am-8pm Weekends and public holidays. PER-3: The number of students attending at one time does not exceed four, excluding those who reside onsite.
Community Facility	TSL-R7	Permitted activity	NOSZ-R13	Discretionary activity	RPROZ-R26	Discretionary activity
Commercial activity	TSL-R12	Permitted where: PER-1: The commercial activity does not exceed a GBA of 250m ² .	NOSZ-R15	Non-complying activity	RPROZ-R33	Non-complying activity where commercial activities are not otherwise provided for as a permitted, restricted discretionary or discretionary activity.

STANDARDS						
Maximum height	TSL-S1	12m above ground level.	NOSZ-S1	8m above ground level.	RPROZ-S1	12m above ground level.
Height in relation to boundary	TSL-S2	1. 2m + 55° northern boundary 2. 2m + 45° eastern and western boundaries 3. 2m + 35° southern boundary.	NOSZ-S2	1. 2m + 55° northern boundary 2. 2m + 45° eastern and western boundaries 3. 2m + 35° southern boundary.	RPROZ-S2	1. 2m + 55° northern boundary 2. 2m + 45° eastern and western boundaries 3. 2m + 35° southern boundary.
Setbacks (excluding MHWS or wetland, lake and river margin)	TSL-S3	10m setback from all site boundaries, except: i. Habitable buildings to be 30m from boundary with an unsealed road. ii. Sites less than 5,000m ² setback is to be 3m from boundaries other than a road or a site within the Rural Production Zone iii. No setback for a maximum of 10m along any one boundary other than a road boundary.	NOSZ-S3	10m setback from all site boundaries.	RPROZ-S3	10m setback from all site boundaries, except: i. Sites less than 5,000m ² minimum setback is 3m from boundaries that do not adjoin a road; or ii. Artificial crop protection and support structures must be a minimum of 3m from all site boundaries; or iii. Habitable buildings must be setback a minimum 30m from the boundary of an unsealed road.
Setback MHWS	TSL-S4	26m from MHWS.	NOSZ-S4	26m from MHWS.	RPROZ-S4	30m from MHWS.
Building or structure coverage	TSL-S5	Maximum combined building or structure coverage of the site is 50%	NOSZ-S5	Maximum combined building or structure coverage of the site is 8% or 800m ² , whichever is the lesser.	RPROZ-S5	Maximum building or structure coverage is 12.5%.

Schedule 2 - Northland Regional Policy Statement 2016

Objective/Policy	Comment
<p>Issue 2.4 Regional form</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><i>Unplanned and un-coordinated development and poor urban design can lead to reduced levels of amenity, higher infrastructure costs, and reduced community wellbeing.</i></p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="text-align: center;">Issue 2.4 is addressed by the following objectives:</p> <p>3.6 <i>Economic activities – reverse sensitivity and sterilisation</i> 3.11 <i>Regional form</i></p> <p>3.8 <i>Efficient and effective infrastructure</i></p> </div> <p>Objective 3.11 Regional form</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><i>Northland has sustainable built environments that effectively integrate infrastructure with subdivision, use and development, and have a sense of place, identity and a range of lifestyle, employment and transport choices.</i></p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Objective 3.11 addresses the following issues:</p> <p>2.3 <i>Infrastructure and economic activities</i> 2.4 <i>Regional form</i></p> <p style="text-align: center;">Objective 3.11 is achieved by the following policies:</p> <p>5.1 <i>Regional form</i> 5.2 <i>Effective and efficient infrastructure</i></p> </div>	<p>The explanation for objective 3.11 specifies that developing sustainable built environments means consolidating new urban development within and adjacent to existing settlements.</p> <p>Also specified is that the objective seeks development that is compatible with surrounding uses and values, is serviced by an appropriate level of infrastructure and is appropriate within the context of the surrounding area.</p>
<p>Policy 5.1 Regional form</p>	<p>The explanation for policy 5.1.1 is that it aims to create a framework for getting the right development in the right place at the right time, ensuring there is a planned and coordinated approach to developing the built environment that anticipates and addresses cumulative effects.</p> <p>Policy 5.1.2 is specific to development in the coastal environment and enables appropriate</p>

5.1.1 Policy – Planned and coordinated development

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- (a) *Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
- (b) *Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;*
- (c) *Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects;*
- (d) *Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
- (e) *Should not result in incompatible land uses in close proximity and avoids the potential for reverse sensitivity;*
- (f) *Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils¹⁰, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and*
- (g) *Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.*
- (h) *Is or will be serviced by necessary infrastructure.*

Note: in determining the appropriateness of subdivision, use and development (including development in the coastal environment – see next policy), all policies and methods in the Regional Policy Statement must be considered, particularly policies relating to natural character, features and landscapes, heritage, natural hazards, indigenous ecosystems and fresh and coastal water quality.

5.1.2 Policy – Development in the coastal environment

Enable people and communities to provide for their wellbeing through appropriate subdivision, use, and development that:

- (a) *Consolidates urban development¹² within or adjacent to existing coastal settlements and avoids sprawling or sporadic patterns of development;*
- (b) *Ensures sufficient development setbacks from the coastal marine area to;*
 - (i) *maintain and enhance public access, open space, and amenity values; and*
 - (ii) *allow for natural functioning of coastal processes and ecosystems;*
- (c) *Takes into account the values of adjoining or adjacent land and established activities (both within the coastal marine area and on land);*
- (d) *Ensures adequate infrastructure services will be provided for the development; and*
- (e) *Avoids adverse effects on access to, use and enjoyment of surf breaks of national significance for surfing.*

Note: in determining the appropriateness of subdivision, use and development, all policies and methods in the Regional Policy Statement must be considered, particularly policies relating to natural character, features and landscapes, heritage, natural hazards, indigenous ecosystems and fresh and coastal water quality.

subdivision, use and development that avoids sprawling or sporadic patterns of development and takes into account the values of adjoining or adjacent land and established activities. This aims to result in less ad-hoc development within the coastal environment and maintain existing amenity values ensuring that the special qualities of the coastal environment are not degraded.

Policy 5.1.3 seeks to avoid the adverse effects of new subdivision and development on already established land uses and activities, such as land based primary production. The explanation for the policy specifies that inappropriately located new residential subdivision and other types of development have the potential to constrain existing productive uses of land (i.e reverse sensitivity effects).

5.1.3 Policy – Avoiding the adverse effects of new use(s) and development

Avoid the adverse effects, including reverse sensitivity effects of new subdivision, use and development, particularly residential development on the following:

- (a) Primary production activities in primary production zones (including within the coastal marine area);*
- (b) Commercial and industrial activities in commercial and industrial zones;*
- (c) The operation, maintenance or upgrading of existing or planned¹³ regionally significant infrastructure¹⁴; and*
- (d) The use and development of regionally significant mineral resources¹⁵.*