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

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

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LEGAL SUBMISSIONS FOR WAITANGI LIMITED (SUBMITTER 503)

HEARING 15B (REZONING – NEW SPECIAL PURPOSE ZONES)

29 August 2025

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MAY IT PLEASE THE HEARINGS PANEL:

1. INTRODUCTION

1.1 These submissions are made on behalf of Waitangi Limited and address its submission on the Proposed Far North District Plan (**Proposed Plan**) as it relates to Hearing 15B (Rezoning – New Special Purpose Zones).

1.2 The submissions focus on the primary relief sought by Waitangi Limited, which is the application of a new special purpose zone (within the meaning of the National Planning Standards),[1] to apply to the 506-hectare Waitangi National Trust Estate (**Estate**). As the Panel knows, 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.

1.3 These submissions:

(a) briefly recap on the background to Waitangi Limited's submission, including the unique legislative and governance framework that applies to the Estate, the unworkability of the Proposed Plan provisions, and its involvement in earlier hearings on the Proposed Plan;

(b) summarise the good progress made with the Council, key stakeholders and submitters in respect of the proposed Waitangi Estate Special Purpose Zone (**proposed SPZ**), including the preparation of a suite of special purpose and amended district-wide provisions (**WEZ provisions**);[2] and

(c) address the following legal matters that will be relevant for the Panel to consider in its decision-making:

(i) the application of the test for a special purpose zone under the National Planning Standards; and

(ii) why the National Policy Statement for Highly Productive Land (**NPS-HPL**) is not a barrier to the proposed rezoning of the Estate.

1.4 There are a small number of unresolved technical matters in respect of the WEZ provisions, which will be addressed by Ms Rochelle Jacobs, Waitangi Limited's consultant planner, and Mr Simon Cocker, expert landscape architect in their presentations, namely:

[1] As that term is defined in section 77F of the Resource Management Act 1991 (**RMA**).
[2] Included at Appendix K of the report prepared by Ms Jacobs in accordance with section 32AA of the RMA and the Panel's Minute 14 dated (**section 32AA report**).

(a) the application of the Impermeable Surface rule (WEZ-R6) to the Whakanga (Tourism) sub-zone;

(b) the activity status of the Outstanding Natural Landscape rule (NFL-R1);

(c) the exemption for small buildings and structures under CE-S4;

(d) signage (Sign-R15 PER-1 and Sign-S3 Maximum number of signs);

(e) temporary activities (TA-RX Temporary Activities on the Estate PER 1-2); and

(f) other minor amendments.

1.5 Ms Jacobs will explain why the provisions she recommends are the most efficient, effective, and appropriate way to achieve the objectives of the SPZ and to enable Waitangi Limited to care for the taonga that is Waitangi, which is clearly a matter that section 6 of the Resource Management Act 1991 (**RMA**) requires the Panel to recognise and provide for in its recommendations on the Proposed Plan.

2. BACKGROUND

Legislative and governance arrangements for the Estate

2.1 The Waitangi National Trust Board Act 1932 (**Trust Board Act**) continues to provide the legislative basis for the Waitangi National Trust Board (**Trust Board**) and Waitangi Limited to administer the Estate. It is a key consideration when assessing the rezoning of the Estate to the proposed SPZ (**proposed rezoning**); in short, the legislation governing the Estate is unique and merits a bespoke, complementary planning regime, the proposed SPZ.

2.2 The Treaty Grounds and surrounding Estate are administered by the Trust Board and Waitangi Limited as a taonga and a place of belonging, a Tūrangawaewae, for all New Zealanders.

2.3 As described in the evidence of Mr Dalton, the Estate and the Treaty Grounds are governed primarily by the Trust Board Act, which facilitated the vesting of the Estate and established the Trust Board to administer it.

2.4 To summarise, the Trust Board Act:

(a) took effect on 9 December 1932, with the purpose "*to incorporate the Waitangi National Trust Board, to vest certain lands in the said Board, to confer certain powers upon the said Board, and for other purposes*";[3]

(b) recorded that Lord and Lady Bledisloe presented and gifted the Estate, in perpetuity, to the inhabitants of New Zealand as "*a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand*",[4] and that the Trust Board shall hold the Estate on trust for that purpose;[5]

(c) incorporated the Trust Board as a body corporate to administer the Estate,[6] defined its legal powers and responsibilities, and provided for its vesting, management and control in accordance with the Trust Board Act and the trust deed set out at schedule 1 (**Trust Deed**); and

(d) outlines the general powers of the Trust Board, "*in furtherance of its purposes and objects*", including constructing buildings (such as monuments, museums, art galleries, libraries and hostels), landscaping and planting, creating recreation grounds, farming, building and maintaining infrastructure (roads, bridges, and wharves), and entering into contracts for capital works.[7]

2.5 In 2016, the Trust Board established Waitangi Limited, a wholly-owned subsidiary, to manage the day-to-day operations of the Estate on its behalf and in accordance with the Trust Deed. Waitangi Limited is governed by a chairman and directors and managed by Mr Dalton, the chief executive, on behalf of the Trust Board. It oversees all business operations and is responsible for maintaining and operating all activities on the Estate.

Unworkability of the Proposed Plan provisions

2.6 Waitangi Limited made its submission due to a concern that the Proposed Plan provisions (as notified) do not appropriately reflect the national historic significance of the Estate and its unique characteristics, and that they are misaligned with the legislative scheme under the Trust Board Act that underpins the way the Estate is managed and developed. In particular:

[3] Trust Board Act, purpose.
[4] Trust Board Act, preamble.
[5] Trust Board Act, schedule 1, cl 13.
[6] Trust Board Act, s 2(1)
[7] Trust Board Act, schedule 1, clause 15.

(a) the complex framework of three land use zones and eight spatial overlays that apply to the Estate is very restrictive and requires that the most restrictive / stringent rules in each overlay will apply to proposed activities meaning that even the most basic maintenance activities on the Estate (such as footpath upgrades and the expansion of existing carparks) will require resource consents under the Proposed Plan; and

(b) the Rural Production zoning (**RPZ**), which is proposed to apply to the majority of the Estate, directly conflicts with existing land uses and activities at the Estate, and the purpose for which the land is held under the Trust Board Act.

2.7 As explained in the evidence of Mr Dalton and Ms Jacobs, the Proposed Plan would, unless the relief sought through this submission is granted, 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 the Trust Board Act. 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 Waitangi Limited and the Trust Board's strategic direction and the statutory purposes for which the land is held, for the benefit of all New Zealanders.

Earlier hearings on the Proposed Plan

2.8 The proposed use of a special purpose zone was addressed in legal submissions and evidence filed by Waitangi Limited at hearing four (natural environment values & coastal environment). For ease of reference, those submissions are **appended** to these submissions.

2.9 Waitangi Limited also filed evidence in respect of hearing one (strategic direction, tangata whenua and part 1 / general / miscellaneous), hearings six and seven (general district-wide matters), and hearing nine (rural, horticulture & horticulture processing), to explain its secondary relief as relevant to those topics, in the event that its primary relief – a special purpose zone – was not accepted by the Panel.

2.10 Whether the Estate will be rezoned is a matter for this hearing.

Development of the proposed Waitangi Estate Special Purpose Zone

2.11 Since hearing four, and in accordance with the reverse timetable process, Waitangi Limited has prepared analysis in respect of the proposed rezoning

of the Estate (as set out in the section 32AA report) and drafted the WEZ provisions that were included at Appendix K of that report.[8]

2.12 Those WEZ provisions were developed in consultation with local hapū, Te Tii Marae, Heritage New Zealand Pouhere Taonga (submitter 490) (**HNZPT**), the Council and other interested parties.[9] This process involved discussions regarding the spatial extent of the Estate and the sub-zones, as well as input into the proposed objectives, policies, and rules. Significantly, HNZPT has since formally amended its position to support the creation of the proposed SPZ,[10] and there is otherwise broad support for the relief sought by Waitangi Limited (as explained by Ms Jacobs).[11]

2.13 Since filing its primary evidence and the WEZ provisions with the Panel on 30 May 2025 and making them available to Council staff and submitters, Waitangi Limited and the Council have discussed them at length and a high degree of consensus has been reached, including by amending provisions to address a number of issues initially raised by the Council, and by changing the layout of the policies to reflect their application to the various sub-zones.

2.14 Accordingly, the Council's section 42A report for the proposed SPZ records only a small number of unresolved technical matters and appends an updated set of recommended WEZ provisions at Appendix 3.[12] Waitangi Limited has since filed three statements of rebuttal evidence that address those matters[13] and has engaged further with other submitters on the rezoning topic,[14] as explained in Ms Jacobs' rebuttal evidence.

Evidence for Waitangi Limited

2.15 Three witnesses have prepared primary and rebuttal evidence on behalf of Waitangi Limited and will present at this hearing:

(a) Mr Ben Dalton, Chief Executive of Waitangi Limited.

(b) Ms Rochelle Jacobs, expert consultant planner, who prepared the section 32AA report and the draft WEZ provisions for the proposed SPZ.

[8] https://www.fndc.govt.nz/__data/assets/pdf_file/0017/41129/s32AA-report-Appendix-K-Proposed-Waitangi-Estate-Special-Purpose-Zone-Provisions.pdf
[9] Millennium & Copthorne Hotels New Zealand Limited, Cognitum Corporation Limited, Waitangi Golf Course, and the Bay of Islands Yacht Club. Meetings are currently being sought with the Department of Conservation.
[10] Section 42A report, paragraphs 59-64.
[11] The Council, the Trust Board, Te Tii Marae, Millennium & Copthorne Hotels New Zealand Limited, Cognitum Corporation Limited, the Waitangi Golf Course and the Bay of Islands Yacht Club are among the parties who have expressed support for the proposed SPZ.
[12] https://www.fndc.govt.nz/__data/assets/pdf_file/0012/44130/Appendix-3.pdf
[13] Statements of Rebuttal Evidence of Ben Dalton, Rochelle Jacobs and Simon Cocker dated 18 August 2025.
[14] HNZPT (submitter 490), Northland Planning and Development 2020 Limited (submitter 502) and Doug's Boat Yard Opua (submitter 185).

(c) Mr Simon Cocker, expert landscape architect.

2.16 Ms Ngahuia Harawira, cultural expert, prepared primary evidence and a cultural values assessment[15] on behalf of Waitangi Limited. She will attend the hearing and will be available to answer any questions from the Panel.

3. SPECIAL PURPOSE ZONE TEST UNDER THE NATIONAL PLANNING STANDARDS

The proposed rezoning meets the special purpose zone test

3.1 Waitangi Limited and Ms Morgan (of the Council) agree that the proposed rezoning meets all of the criteria for an additional special purpose zone under mandatory direction 3 of Standard 8 (Zone Framework Standard) of the National Planning Standards.

3.2 Mandatory direction 3 provides:

> 3. An additional special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:
>
> a. are significant to the district, region or country
>
> b. are impractical to be managed through another zone
>
> c. are impractical to be managed through a combination of spatial layers.

3.3 New special purpose zones can only be created when all criteria are met.

3.4 In the section 42A report, Ms Morgan accepted Ms Jacobs' analysis in her evidence and the section 32AA report under mandatory direction 3(a) and (b), but considered that her assessment under mandatory direction 3(c) required further consideration of options, in addition to zones, overlays and precincts.[16]

3.5 The section 42A report then helpfully went on to assess alternative spatial layers for the Estate, as set out Table 18 of the National Planning Standards (development areas, specific control layers, designations and heritage orders).[17]

3.6 For the reasons outlined in that report, Waitangi Limited agrees that these additional spatial layers are impractical for the Estate and that, overall, none of the spatial layers available under the National Planning Standards are appropriate for the Estate.

[15] Section 32AA report, at Appendix D.
[16] Section 42A report, paragraphs 83 and 84.
[17] Section 42A report, paragraphs 87 to 90.

Assessment under mandatory direction 3

3.7 Ms Jacobs' assessment of the proposing rezoning against the National Planning Standard criteria (and relevant NPS MfE Guidance[18]) is set out at section 10 of her evidence and, for completeness, is summarised below:

(a) are significant to the district, region or country

- *Are the activities within the zone significant because of their scale and expanse, or their social, economic, cultural or environmental benefits?*
- *Are the activities located in a specific area and not found elsewhere in the district?*

(a) The Estate is a place of contemporary and future national significance and is managed by Waitangi Limited and the Trust Board as **He Whenua Rangatira – An enduring symbol of nationhood**. 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 Trust Board and Waitangi Limited manage the Estate under the Trust Board Act on behalf of all New Zealanders as a place of historic interest, recreation, enjoyment, and benefit. There is an established independent governance structure that manages the Estate, in conjunction with the interests of HNZPT, to protect the national landmark site.

(c) 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.

(d) The primary land use activity at the Estate is the protection of, and management of public access to, historic heritage contained within the Treaty Grounds which is significant to the district, region and the country. Such activities include daily visits from domestic visitors, international tourists, visiting school groups, and other members of the public, hosting and managing national annual events associated with

[18] Ministry for the Environment National Planning Standard Guidance for 12. District Spatial Layers Standard and 8. Zone Framework Standard (**NPS MfE Guidance**), at page 7.

Waitangi Day celebrations, and the development of the Estate for the recreational enjoyment of New Zealanders.

(e) Finally, the Estate is a specific land area that is governed by the Trust Board Act. It is not found elsewhere in the district (or indeed anywhere else in the country).

(b) are impractical to be managed through another zone

- *Are the provisions required to manage the effects or operation of the activities so highly specific that a zone in the Zone Framework cannot practically enable or manage this?*

(f) 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 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.

(g) The general application of rural zoning (ie the RPZ) to the majority of the Estate and the associated spatial overlays under the notified Proposed Plan do not enable the efficient or appropriate management of the Estate in accordance with the Trust Board Act. There are no other proposed urban or non-urban zones that could effectively provide for the management of the Estate and its existing land uses and activities. Nor is there any other zone which recognises the historic heritage value and could provide for the comprehensive management of the Estate. This need is niche and specific to the Estate.

(h) As described above, the Estate is a dynamic environment that has as its core focus the protection and management of historic heritage in a way that enables ongoing appreciation and enjoyment by both domestic and international visitors. The rural production focus of the RPZ is not appropriate for the Estate, and its continued application will remain at odds with the existing uses and purpose of the Estate. The RPZ and all other existing zones are therefore considered impractical for this site.

(c) are impractical to be managed through a combination of spatial layers

- *Are you satisfied that none of the other spatial planning tools, either individually or as a package, provide a practical management approach for the activities?*

(i) The following spatial layers are impractical for the Estate:

(i) **Zones**: Refer to paragraph 3.7(f) to (h) above.

(ii) **Overlays**: Managing land use activities at the Estate through district-wide spatial overlays is limited by the underlying rural zone, and combining these overlays further restricts activities. While coastal environment and natural character overlays should apply to certain areas, a special purpose zone is needed to provide an appropriate policy framework. Under the Proposed Plan, rural production objectives and rules restrict commercial and visitor activities, building size, earthworks, and vegetation clearance, making it difficult to accommodate the Estate's current and intended uses. A special purpose zone would better recognise the site's purpose and prioritise protection of historic heritage and public use. Applying a historic heritage overlay alone would not adequately provide for the full range of activities at the Estate.

(iii) **Precincts**: As alternative relief, Waitangi Limited proposed applying a precinct over the entire Estate to protect heritage resources and enable rules consistent with the Estate's purpose. However, the underlying rural zoning would still apply, creating uncertainty for future activities and limiting future development – even where activities align with the legislated purpose under the Trust Board Act. This approach could also result in adverse environmental effects if heritage and wider Estate values are not adequately protected. Overall, a precinct is not appropriate where the underlying zoning's focus differs from the intended land use, especially when the legislative regime clearly provides for that use.

3.8 For these reasons, and those set out the Council's section 42A report in respect of alternative spatial layers, a special purpose zone is clearly an available and appropriate outcome for the Estate.

4. NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND

The NPS-HPL does not prevent the proposed rezoning

4.1 There are several parts of the Estate that include land classified as Land Use Capability class (**LUC**) 1-3, ie highly productive land (**HPL**).

4.2 Waitangi Limited and Council officers, Ms Morgan and Ms Melissa Pearson (reporting officer for the rural topics), agree that:

(a) the parts of the Estate that are zoned RPZ and are mapped as LUC 1-3 are deemed HPL to which the NPS-HPL – on its face – applies in accordance with clause 3.5(7) (**deemed HPL**); but

(b) nevertheless, the NPS-HPL does not prevent the proposed rezoning.

4.3 Both Waitangi Limited and the Council officers acknowledge that the NPS-HPL provisions were not drafted with a special purpose zone as unique as the proposed rezoning in mind. That broad acknowledgement, and the agreement that the NPS-HPL does not stand in the way of the relief sought by Waitangi Limited, renders largely moot what are some minor differences in view as to how to interpret the NPS-HPL provisions and apply them to these circumstances.

4.4 For completeness, though, this section of the submissions:

(a) gives a brief overview of the NPS-HPL;

(b) assesses how the NPS-HPL applies to the Estate, including by:

(i) giving an overview of the NPS-HPL, particularly the restrictions for urban rezoning under clause 3.6 and protections to avoid the inappropriate use and development of HPL under clause 3.9; and

(ii) sets out Waitangi Limited's position in respect of the application of the NPS-HPL to the proposed rezoning.

Overview of the NPS-HPL

4.5 The NPS-HPL came into force on 17 October 2022.[19] It seeks to improve the way that HPL is managed under the RMA, and directs councils on how to identify and map HPL and how to manage the subdivision, use and development of the resource.[20]

[19] NPS-HPL Clause 1.2(1).
[20] *Balmoral Developments (Outram) Ltd v Dunedin City Council (**Balmoral**)* [2023] NZEnvC at [31].

4.6 The NPS-HPL (and the National Planning Standards that guide its interpretation)[21] is secondary legislation within the meaning of the Legislation Act 2019. As such, its meaning is to be ascertained from its text and in light of its purpose and context.[22]

4.7 The Court in *Port Otago* stated that, in the context of another national policy statement:[23]

> This means that close attention to the context within which the policies operate, or are intended to operate, and their purpose will be important in interpreting the policies. This includes the context of the instrument as a whole, including the objectives of the NZCPS, but also the wider context whereby the policies are considered against the background of the relevant circumstances in which they are intended to and will operate.

4.8 The objective of the NPS-HPL is that:

> Highly productive land is protected for use in land-based primary production, both now and for future generations.[24]

4.9 The NPS-HPL includes a series of policies and implementation provisions that reflect that objective. The policies all prioritise the use of HPL for land-based primary production. The provisions together direct that subdivision, use or development of HPL for non-productive purposes is generally to be avoided, unless the specific exceptions in the NPS-HPL apply.

4.10 The Environment Court in *Gardon Trust* stated that:

> The NPS-HPL provides for certain exceptions to the use of land containing elite and prime soils for residential purposes. To be clear, this Court agrees that such exceptions should be applied strictly, and all sub-requirements must be met in order that the application meets the necessary tests.[25]
>
> Nevertheless … the tests are not intended to exclude all development on elite and prime soils, and that where a proper exception is established, an allowance should be made on a reasonable basis.[26]

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[21] National planning standards prepared under s58D are secondary legislation as prescribed by s58E RMA. They serve to assist achievement of the RMA purpose and to set out requirements or other provisions as to the structure, format or content of regional policy statements and regional and district plans (s58B). They serve to address what the Minister considers is required for various purposes including "national consistency" and supporting the implementation of other national policy and regulatory instruments (s58B). They must give effect to national policy statements (s58C).
[22] Legislation Act 2019, s 10(1) which applies to both Acts of Parliament and to secondary legislation: s 5 definition of "legislation". A national policy statement is secondary legislation: RMA, s 52(4). See also *RI Carter Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 206.
[23] *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112 (***Port Otago***) at [60].
[24] NPS-HPL Clause 2.1.
[25] *Gardon Trust v Auckland Council (**Gardon Trust**)* [2025] NZEnvC 58 at [13].
[26] *Gardon Trust* at [14].

4.11 Together, the policies in the NPS-HPL require:[27]

(a) "*HPL is recognised as a resource with finite characteristics and long-term values for land-based primary production*", and its use "*for land-based primary production is prioritised and supported*" (Policies 1 and 4);

(b) HPL identification and management to be "*undertaken in an integrated way*" (Policy 2);

(c) HPL to be mapped and included in regional policy statements and district plans (Policy 3);

(d) Urban rezoning, rural lifestyle development and rezoning, and subdivision of HPL to be avoided except as provided in the NPS-HPL (Policies 5, 6, and 7);

(e) HPL to be "*protected from inappropriate use and development*" (Policy 8); and

(f) "*Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on HPL*" (Policy 9).

4.12 Part 3 of the NPS-HPL addresses implementation, prescribing "*a non-exhaustive list of things that local authorities must do to give effect to the objective and policies*".[28] The specific requirements in Part 3 include:

(a) Integrated management of HPL, including "*taking a long-term, strategic approach to protecting and managing highly productive land for future generations*";[29]

(b) Actively involving tangata whenua in giving effect to the NPS-HPL in planning instruments;[30]

(c) A regional council-led process of mapping HPL, to be included in the regional policy statement (**RPS**) and subsequently in district plans;[31]

(d) Restricting urban rezoning of HPL;[32]

(e) Avoiding rezoning of HPL for rural lifestyle, avoiding subdivision of HPL, and protecting HPL from inappropriate use and development,[33]

[27] NPS-HPL, Part 2: objectives and policies.
[28] NPS-HPL Clause 3.1.
[29] NPS-HPL Clause 3.2.
[30] NPS-HPL Clause 3.3.
[31] NPS-HPL Clauses 3.4 and 3.5.
[32] NPS-HPL Clause 3.6.
[33] NPS-HPL Clauses 3.7, 3.8 and 3.9.

with specified exemptions prescribed;[34] and

(f) Including objectives, policies and rules in district plans to enable the continuation of existing activities on HPL,[35] support appropriate use of HPL (including to prioritise use of HPL for land-based primary production over other uses),[36] and manage reverse sensitivity and cumulative effects on HPL.[37]

4.13 Part 4 of the NPS-HPL addresses timing. Key points for the Panel to note are that:

(a) Section 55 of the RMA generally requires local authorities to give effect to an NPS.[38]

(b) Clause 4.1 of the NPS-HPL specifies that:

(i) local authorities must give effect to the NPS-HPL from the commencement date; and

(ii) changes to district plan provisions to give effect to the NPS-HPL must be notified as soon as practicable and no later than 2 years after the HPL mapping carried out by regional councils becomes operative in the relevant RPS.[39]

4.14 Overall, the NPS-HPL seeks to protect HPL from being developed for non-productive uses.

Relevance of the NPS-HPL to rezoning of and activities in the Estate

Technically applies but limited relevance on a purposive interpretation

4.15 HPL is defined in the NPS-HPL to mean:

> land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).[40]

[34] In clauses 3.8 and 3.9 specifically in respect of rezoning and use and development (respectively) and in clause 3.10 where subdivision, use or development is not otherwise enabled under clauses 3.7, 3.8 and 3.9.
[35] NPS-HPL Clause 3.11.
[36] NPS-HPL Clause 3.12.
[37] NPS-HPL Clause 3.13.
[38] Sections 55(1)(c), (2B), (2C) and (2D). Sections 55(2) and (2A) provide for amendments directed by an NPS without using the Schedule 1 process. That applies only to later district plan amendments to reflect regional council mapping of HPL, per clause 3.5 of the NPS-HPL.
[39] This directive is empowered by section 55(2)(D) of the RMA, which provides that plan changes to give effect to an NPS must be made either as soon as practicable, or within any time specified or before the occurrence of any event specified in the NPS.
[40] NPS-HPL Clause 1.3.

4.16 Northland Regional Council has not yet completed the specific identification and mapping process required by clauses 3.4 and 3.5.

4.17 Clause 3.5(7) therefore determines the current application of the NPS-HPL in the Far North District. The Court recorded in *Balmoral* that:

> … until the NPS-HPL has been given effect to in the relevant regional policy statement, each territorial authority and all consent authorities, including the court, must apply the NPS-HPL to land within the scope of cl 3.5(7)(a) where it is not excluded by the exemptions in cl 3.5(7)(b).[41]

4.18 In the Far North District, the NPS-HPL is to be treated as if references to HPL were references to land that, at 17 October 2022, was:[42]

(a) zoned general rural or rural production; and

(b) LUC 1, 2, or 3 land;

but is not:

(c) identified for future urban development; or

(d) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

4.19 Of relevance to clause 3.5(7):

(a) For the Far North District, a reference to a 'zone' in the NPS-HPL is "*as described in Standard 8 (Zone Framework Standard) of the National Planning Standards*".[43]

(b) The Estate is zoned part RPZ and part General Coastal (which is an RPZ equivalent zone) under the Operative District Plan.[44]

(c) Parts of the Estate are mapped LUC 2-3 under the New Zealand Land Resource Inventory (**NZLRI**).[45] The Court confirmed in *Bluegrass* that the NZLRI mapping must be applied until the regional council-led mapping exercise has been completed, and not through an ad-hoc process undertaken by private landowners.[46]

(d) It is for this reason that Waitangi Limited does not rely on the specialist soils report prepared by Bob Cathcart, which is Appendix D

[41] *Balmoral* at [91].
[42] NPS-HPL Clause 3.5(7).
[43] NPS-HPL Clause 1.3(4).
[44] Refer to Figure 27 in the section 32AA report. These are the areas shown in light blue and light green.
[45] Refer to Figure 28 in the section 32AA report. These are the two areas shown in dark green which are identified as LUC 2s1 and 3e3. These areas include the Treaty Grounds, the golf course and the Paihia Pony Club to the southwest of the Estate.
[46] *Blue Grass Ltd v Dunedin City Council* [2024] NZEnvC 83 at [50] and [51(b)].

to the section 32AA report – notwithstanding that Mr Cathcart's investigations show that only a small (less than 5 hectare) area of the Estate is LUC 3 land, around the Treaty Grounds and part of the golf course.

(e) The Estate has not been identified for future urban development, and is not subject to a Council plan change to rezone it to urban or rural lifestyle.

4.20 As such, there are parts of the Estate to which the NPS-HPL technically applies currently (pending the Northland Regional Council's process), as they contain LUC 2-3 land currently zoned RPZ. In the section 32AA report, Ms Jacobs identifies the parts of the Estate that contain deemed HPL as follows:

(a) the upper Treaty Grounds;

(b) the southern part of the golf course;

(c) the farm leased area; and

(d) the Pony Club leased area.

4.21 The current and proposed use of the farm leased area is likely captured by the definition of "*land-based primary production"* in the NPS-HPL,[47] and may therefore be required to be protected for those purposes under objective 2.1 of the NPS-HPL. Relevantly, both the Trust Board Act and the proposed SPZ provide for its productive use to be retained / protected.[48]

4.22 However, it is clear that the current use of the upper Treaty Grounds, part of the golf course and the Pony Club leased area (approximately 44 hectares in total) is not for "*land-based primary production*", nor is the land particularly relevant to the purpose of the NPS-HPL, being to "*ensure the availability of highly productive land for food and fibre production*".[49] It would be unrealistic, for example, for the District Plan to focus on the future use of the upper Treaty Grounds for those purposes (which would conflict with the purpose for which the land is held under the Trust Board Act).

4.23 This real-world context should be borne in mind by the Panel as it considers the relief sought by Waitangi Limited against the provisions of the NPS-HPL.

[47] Land-based primary production means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.
[48] Trust Board Act, schedule 1, cl 13. Farming is a permitted activity in the Ahuwhenua (General Activities) sub-zone (WEZ-R8
[49] Ministry for the Environment National Policy Statement for Highly Productive Land: Information Sheet (September 2022).

The proposed SPZ is not an 'urban rezoning' of HPL restricted by clause 3.6 of the NPS-HPL

4.24 In any event, clause 3.6 provides a specific pathway for the urban rezoning of HPL, where such rezoning is required to give effect to the NPS-UD, and to enable local authorities to fulfil their functions under the RMA to provide for housing and business development in their regions and districts.[50]

4.25 Despite Policy 5, which requires that urban rezoning of HPL be avoided, land that meets the relevant criteria in clause 3.6 may be rezoned as urban.[51]

4.26 Of relevance to clause 3.6:

(a) 'Urban rezoning' is defined as "*changing from a general rural or rural production zone to an urban zone"*.[52]

(b) 'Urban', defined as a description of a zone:

> means any of the following zones:
>
> (a) low density residential, general residential, medium density residential, large lot residential, and high density residential:
>
> (b) settlement, neighbourhood centre, local centre, town centre, metropolitan centre, and city centre:
>
> (c) commercial, large format retail, and mixed use:
>
> (d) light industrial, heavy industrial, and general industrial:
>
> (e) **any special purpose zone, other than a Māori purpose zone:**
>
> (f) any open space zone, other than a Natural Open Space zone:
>
> (g) sport and active recreation
>
> (emphasis added).

(c) Those 'zones' have the meaning given in Standard 8 (Zone Framework Standard) of the National Planning Standards.

4.27 Different processes apply under clause 3.6 of the NPS-HPL depending on which 'tier' a territorial authority is defined as in the NPS-UD and RMA:

(a) Under clause 3.6(4), territorial authorities that are not Tiers 1 or 2 (such as the Council which is a Tier 3 territorial authority) may only

[50] RMA, ss 30(1)(ba) (regional councils) and 31(1)(aa) (territorial authorities).
[51] *Gardon Trust* at [59].
[52] NPS-HPL Clause 1.3(1).

allow urban rezoning of HPL if:

(a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and

(b) there are no other reasonably practicable and feasible options for providing the required development capacity; and

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

(b) Clause 3.6(5) requires that territorial authorities take measures to ensure that the spatial extent of the urban zone covering HPL is the minimum necessary to provide the requirement for development capacity.[53]

4.28 As signalled above, Waitangi Limited's position is that clause 3.6(4) does not apply to the unique circumstances underpinning the proposed rezoning, including because it is not an 'urban rezoning' for the purposes of the NPS-HPL. That is because, in particular:

(a) The proposed rezoning, despite being for a 'special purpose zone' which, on its face, falls within the definition of 'urban' under the NPS-HPL, is not, as a matter of fact, an 'urban rezoning'. The proposed SPZ is not urban in nature; rather, it establishes a bespoke planning framework for the Estate, managed through rules and standards that apply to four unique sub-zones, each of which is applied to appropriate locations within the Estate. Together, these provisions enable and support the continued use of the Estate for the benefit of all New Zealanders (rather than any activities of a particularly 'urban' character).

(b) The NPS-HPL treats all special purpose zones – apart from Māori purpose zones – as 'urban', which makes some sense by reference to the standard types of special purpose zone listed in the National Planning Standards – such as airport, hospital, port and stadium zones – which typically have a highly 'urban' focus. The drafters of the NPS-HPL appear to have overlooked, however, the ability for

[53] *Gardon Trust* at [61].

special purpose zones to be created in accordance with the National Planning Standards criteria that do not result in a zone that is 'urban' in character, such as in the present case.

(c) The NPS-HPL MfE Guidance provides that the reference to 'special purpose zone' in the definition of 'urban' under the NPS-HPL is intended to capture the standard zones listed in the Zone Framework Standard, and not bespoke special purpose zones that may be more rural in nature, when considering the *"nearest equivalent zone"*, such as the proposed SPZ.[54]

(d) Of the deemed HPL at the Estate, the farm leased area and Pony Club leased area remain rural in nature, and the upper Treaty Grounds is considered more akin to a Māori purpose zone,[55] which is excluded from the definition of 'urban' under the NPS-HPL. Only the southern part of the golf course is being zoned for sport and recreation purposes within the Papa Rehia (Recreation) sub-zone, which could be argued to be akin to a sport and active recreation zone under the NPS-HPL definition of 'urban'. Taken in the round, however the proposed SPZ has its own character which is not 'urban'.

4.29 Notwithstanding this position, Waitangi Limited is equally comfortable to accept the Council officers' approach to clause 3.6(4) and (5), which is that the NPS-HPL does not prevent the proposed rezoning because, of the tests in clause 3.6(4), clause 3.6(4)(c) is the most relevant and should be given the most weight in its assessment.

Protecting HPL from inappropriate use and development – clause 3.9

4.30 Also potentially relevant is clause 3.9 of the NPS-HPL, which specifies that:[56]

(a) Territorial authorities must avoid the inappropriate use or development of HPL that is not for land-based primary production.

(b) A use or development of HPL is inappropriate, except where:

(i) at least one of the circumstances listed in clause 3.9(2)(a) to (j) of the NPS-HPL applies; and

[54] Ministry for the Environment. 2023. National Policy Statement for Highly Productive Land: Guide to implementation. Wellington: Ministry for the Environment (**NPS-HPL MfE Guidance**), at p 42.
[55] Māori purpose zone is defined in the National Planning Standards as "*areas used predominantly for a range of activities that specifically meet Māori cultural needs including but not limited to residential and commercial activities*".
[56] NPS-HPL Clause 3.9.

(ii) measures are taken to minimise or mitigate against the cumulative loss of the availability and productive capacity of HPL in the district; and to avoid if possible or otherwise mitigate any actual or potential reverse sensitivity effects.

4.31 Clause 3.9 applies to plan making processes; clause 3.9(4) requires territorial authorities to "*include objectives, policies and rules in their district plans to give effect to this clause*."

4.32 Under clause 3.9(4), the Council is required to include provisions in the Proposed Plan that give effect to the directive to avoid inappropriate development of HPL.

4.33 In this case, however, the uses enabled by the proposed SPZ are appropriate, in terms of clause 3.9, because the exception under clause 3.9(2)(c) of the NPS-HPL applies to the deemed HPL in the Estate that is not proposed for productive use (namely the upper Treaty Grounds, part of the golf course and the Pony Club leased area) because that land is, and will continue to be, held and managed for, or for a purpose associated with, a matter of national importance under section 6(e) and (f) of the RMA. This is because:

(a) as described above, the Treaty Grounds and the surrounding Estate is a nationally important historic site associated with the signing of Te Tiriti. It is a place of contemporary and future national significance that attracts thousands of visitors each year and is a key gathering place for government and iwi, especially during Waitangi week. It will also host major bicentenary events in 2035 (He Whakaputanga) and 2040 (Te Tiriti) which are of significant national and constitutional importance; and

(b) the Estate is held and managed in accordance with the Trust Board Act for all New Zealanders as a place of historic interest, recreation, enjoyment, and benefit. All land use at the Estate is subject to the Trust Board Act purpose and legislative requirements which underpin the WEZ provisions.

4.34 More generally, given the purpose for which the land is held and its existing uses, the proposed rezoning will not result in any actual loss of HPL availability or productive capacity. In addition, the future use of that deemed HPL is not proposed to change: the Pony Club lease and associated activities can continue under the Ahuwhenua (General Activities) sub-zone,

the golf course will remain in use under the Papa Rehia (Recreation) sub-zone, and the upper Treaty Grounds will continue to be protected under the Te Pitowhenua (Treaty Grounds) sub-zone. The proposed rezoning will not result in any actual or potential reverse sensitivity effects under clause 3.9(3)(b) of the NPS-HPL.

Conclusion in respect of NPS-HPL

4.35 Again, there is no dispute that the proposed SPZ can proceed, notwithstanding the need for the Council to give effect to the NPS-HPL. There are a number of possible routes to arrive at that same conclusion; the Council planners prefer one route, whereas Waitangi Limited's position is that this is so because:

(a) While the NPS-HPL technically applies at present (given the LUC 2-3 land on parts of the Estate and the operative RPZ zoning), on a purposive reading the NPS-HPL has limited relevance to this proposed SPZ.

(b) The proposed SPZ is not an 'urban rezoning', so is not subject to the restriction in clause 3.6 (again, on a purposive reading).

(c) Nor are the activities enabled by the proposed SPZ inappropriate, in terms of clause 3.9, because they are *"for a purpose associated with, a matter of national importance under section 6 of the Act"*.

4.36 For completeness, as the Panel will be aware, the Supreme Court in *NZ King Salmon*[57] observed that a requirement to give effect to an 'avoid' policy could not fairly be read as intended to prohibit an activity with a minor or transitory effect.

4.37 This provides another route for the Panel to grant the relief sought by Waitangi Limited, even if it considered the proposed SPZ to be an 'urban rezoning' and that the precursors in clause 3.6(4) are not all met. That is, allowing the proposed SPZ would have a trivial effect on HPL and its

[57] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* (***NZ King Salmon***) [2014] NZSC 38.

protection *"for use in land-based primary production, both now and for future generations"*.

5. CONCLUSION

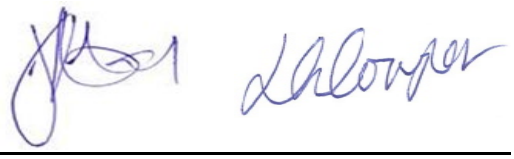
5.1 Waitangi Limited is grateful to the Panel for the opportunity to present its case for the proposed SPZ at this hearing, and acknowledges the constructive and collaborative process undertaken with Council officers, HNZPT, other submitters and stakeholders in preparing both the overall SPZ proposal and the more detailed WEZ provisions.

5.2 Both Waitangi Limited and the Council officers agree that the proposed SPZ satisfies the test for a new special purpose zone under the National Planning Standards and is not precluded by the NPS-HPL.

5.3 The proposed SPZ establishes a bespoke planning framework for the Estate that will enable and support the continued use of the Estate for the benefit of all New Zealanders in accordance with its empowering legislation.

5.4 For these reasons, Waitangi Limited respectfully requests that the Panel approve the proposed SPZ and associated WEZ provisions for the Estate.

Dated: 29 August 2025



D G Randal / L G Cowper
Counsel for Waitangi Limited

Appendix – Waitangi Limited's legal submissions for Hearing Four ((natural environment values & coastal environment)

[Overleaf]

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

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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 2013[7], 2017[8] and 2021[9] 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 agree[11] 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

……

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 functions[20] so as to achieve, the purpose of the Act[21].*
2. *The district plan (change) must be prepared **in accordance with** any regulation[22] (there are none at present) and any direction given by the Minister for the Environment[23];*
3. *When preparing its district plan (change) the territorial authority **must give effect to** any national policy statement or New Zealand Coastal Policy Statement[24].*
4. *When preparing its district plan (change) the territorial authority shall:*
   (a) *have regard to any proposed regional policy statement[25];*
   (b) *give effect to any operative regional policy statement[26].*
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 order[27]; and*

   ***must have regard to** any proposed regional plan on any matter of regional significance etc[28];*
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 regulations[29] 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 authorities[30];*
   - ***take into account** any relevant planning document recognised by an iwi authority[31]; and*
   - *not have regard to trade competition[32] 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) must[33] also state its objectives, policies and the rules (if any) and may[34] 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 policies[36];*

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 objectives[37] 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 methods[38]; 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 circumstances[39].

Rules

11. *In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment[40].*

12. *Rules have the force of regulations[41] .*

13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive[42] than those under the Building Act 2004.*

14. *There are special provisions for rules about contaminated land[43].*

15. *There must be no blanket rules about felling of trees[44] in any urban environment[45].*

Other statutes:

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

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[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.