

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER the Resource Management Act 1991 (**RMA**)
IN THE MATTER of the Far North Proposed District Plan –
Hearing 15D: Rezoning Kerikeri-Waipapa

**LEGAL SUBMISSIONS ON BEHALF OF KIWI FRESH ORANGE COMPANY
LIMITED – HEARING 15D**

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MAY IT PLEASE THE PANEL

- 1 The Kiwi Fresh Orange Company Limited (**KFO**) seeks the rezoning of its land from Rural Production zone to a mix of urban zones to enable a master-planned, comprehensive development.
- 2 While this hearing is ostensibly about what zoning pattern and provisions for Kerikeri and Waipapa are the most appropriate in terms of section 32 of the Resource Management Act 1991 (**RMA**), in reality, it is about the future of Kerikeri and Waipapa. Decisions on the Proposed Far North District Plan (PDP) will directly affect the current and future communities of Kerikeri and Waipapa.
- 3 At the core of its Proposal, KFO is seeking to enable its Site to be developed to provide housing supply to an area with significant current (and predicted) housing affordability issues, integrated with appropriate retail and commercial development and delivered in a way that responds to the particular features of the Site and its surrounds.
- 4 The Proposal responds to current and future demand for housing, an issue that KFO identified early but which the Council has only recently accepted. Importantly, the KFO Site presents an opportunity to provide affordable detached housing, which meets the core demand of the community. The benefit of the Proposal of providing affordable housing does not appear to be contested.
- 5 The Proposal is not for opportunistic spot zoning. It has been developed over many years, subject to detailed expert assessment and close engagement with the local community. It has assessed the Site's constraints and responded to them. Hazard risk, highly productive land, ecological values and transportation effects have all been carefully assessed. Infrastructure issues have been considered, and feasible solutions are available. Urban design and planning matters have been evaluated and appropriate provisions drafted.
- 6 In terms of the legal tests, we submit that the weight of evidence shows that the Proposal:
 - (a) gives effect to the NPS-UD;
 - (b) gives effect to the Northland RPS; and
 - (c) is the most appropriate way to achieve the objectives of the PDP.

- (d) The evidence in support of it has had regard to the actual and potential effects that the Proposal would have on the environment.
- 7 The reporting officers recommend that the Proposal be rejected. The core basis is that the reporting officers are advancing a different rezoning proposal that they describe as the “PDP-R”. They also argue that further information should be provided on certain matters.
- 8 The PDP-R is a flawed proposal:
 - (a) It fails to deliver housing of the quality and type demanded by the market (i.e., detached dwellings) and, most importantly, fails to deliver affordable housing. It is concerning that the PDP-R seems to rely on other housing typologies being unaffordable, so that the community will be driven to accept dense typologies (attached dwellings and apartments). We say it is not the role of the PDP to force the community’s behaviour in terms of housing choice, nor is that an outcome proscribed by its objectives and higher-order policy.
 - (b) It is based on an incomplete effects assessment. Ironically, despite criticism about the detail provided by KFO, the reporting officers have provided no assessment of key potential environmental effects of the PDP-R proposal, including effects on the transport network.
 - (c) It will affect people in a way that they did not anticipate, and without adequate consultation. The PDP-R rezones private land without consultation with the landowners or persons affected by the change. There is a real risk of significant prejudice if the PDP-R is confirmed.
- 9 Finally, the Panel will hear about Te Pātukerea – Kerikeri Waipapa Spatial Plan (Spatial Plan). The Spatial Plan was produced after the PDP and is being relied on by the reporting officers. We submit that the Spatial Plan should be given little weight and that it is no substitute for the analysis required under section 32 of the RMA. However, it is notable that the KFO Site has been included in the Spatial Plan as a contingent future growth area, which supports the rezoning of the Site.
- 10 We encourage the Panel to carefully scrutinise the evidence before it. In our submission, when all evidence is considered the most appropriate

zoning pattern and provisions includes the proposed rezoning of the KFO Site.

PART 1: INTRODUCTION

KFO's Proposal

- 11 Kiwi Fresh Orange Company Limited (**KFO**) owns 187 ha of land between Kerikeri and Waipapa (**Site**), which under the notified PDP is proposed to be zoned for Rural Production. KFO's submission on the Proposed Far North District Plan (**PDP**) seeks a live urban zoning for the Site, comprising a mix of general residential (152 ha), mixed-use (22 ha) and natural open space (23 ha) (**Proposal**).
- 12 Specifically, KFO seeks the following relief in relation to Hearing 15D:
- (a) Apply the zones, overlays and precincts in Te Pāe Waiōra Precinct Plan in Appendix A of the Statement of Rebuttal Evidence of Burnette O'Connor to the PDP.
 - (b) Insert in the PDP Te Pāe Waiōra Precinct Provisions in Appendix A to the Statement of Rebuttal Evidence of Burnette O'Connor.
 - (c) Other consequential changes to the GRZ, as set out in KFO's submission, to enable a private solution to infrastructure provision and provide for urban growth in locations that will achieve a quality, well-functioning urban environment.¹
 - (d) No changes to the Flood Hazard Zone Overlay are sought.²

Te Pāe Waiōra Precinct

- 13 KFO's Proposal does not reinvent the wheel. It uses the underlying zones and overlays and adds a precinct to manage matters that require site-specific controls. The relationship between the underlying zones and Te Pāe Waiōra Precinct (**Precinct**), as well as other controls in the RMA,³ is an important feature of the Proposal that cannot be overlooked when evaluating KFO's Proposal.

¹ See Submission by KFO, Appendix C, Part 3. (Including submissions labelled S554.014 to S554.025.)

² KFO sought that the Flood Hazard Overlay be amended in light of the proposed flood spillway. However, that relief is no longer sought. Instead, the Te Pāe Waiōra Precinct includes provisions that enable development in the Flood Hazard Overlay, provided the flood spillway has been constructed and it is demonstrated that flood risk has been managed.

³ Such as the regional plan, regional policy statement, and national environmental standards and national policy statements.

- 14 First, the District-Wide Matters of the PDP will apply to an activity within the Precinct. Because no changes are sought to the Flood Hazard Overlay Zone, the Natural Hazards Chapter of the plan applies as it ordinarily would. Other PDP controls related to ecosystems and indigenous biodiversity,⁴ natural features and landscapes,⁵ public access,⁶ and subdivision,⁷ apply.
- 15 Secondly, Area-Specific Matters apply to the Precinct in accordance with the provisions of the applicable underlying zone. Use, subdivision or development that is not enabled by the underlying zone is not enabled by the Precinct.
- 16 Lastly, the Precinct provisions apply in addition to the District-Wide and Area-Specific matters. This is important because the Precinct provisions do not (and should not) need to duplicate objectives, policies and methods in the PDP that are already deemed appropriate. Instead, where a specific approach is needed that is not otherwise covered by the PDP, the Precinct provisions offer the necessary mechanism.
- 17 This includes ensuring the floodway is constructed before any development occurs within the Flood Hazard Overlay, maintaining stormwater hydrological neutrality, and staging development to remain within modelled transport thresholds.
- 18 The Precinct provisions require a lodgement of a Comprehensive Development Plan (**CDP**) as part of the first resource consent application for any subdivision, use or development within the Precinct. The CDP deals with matters of detailed design related to layout and location of development, proposed staging, road connections, funding and delivery of infrastructure, stormwater and hazard management and so on. The CDP can be implemented in stages, with matters of discretion designed to manage adverse effects and secure outcomes contemplated and planned for by the Structure Plan.⁸

4 Chapter IB.

5 Chapter NFL.

6 Chapter PA

7 Chapter SUB.

8 Rebuttal Evidence of Grant Neill at [12] and [13].

KFO's evidence

- 19 KFO has filed comprehensive evidence in support of its submission on Hearing 15D from the following witnesses, in their order of presentation:
- (a) Mr Steve Brownlie – Corporate.
 - (b) Mr Dennis Corbett – Community Liaison and Kerikeri-Waipapa Market.
 - (c) Mr Adam Thompson – Economics and Property Market.
 - (d) Mr Jeremy Hunt – Rural Productivity.
 - (e) Mr Laddie Kuta – Flood Mitigation.
 - (f) Ms Treffery Barnett – Ecology.
 - (g) Mr Johan Ehlers – Infrastructure.
 - (h) Mr Philip Brown – Transport.
 - (i) Mr Daryl Hughes – Transport peer review.
 - (j) Mr Grant Neil – Urban Design.
 - (k) Ms Burnette O'Connor – Planning.

Primary Issues

- 20 After a long hearing process, the Panel will be familiar with their statutory obligations under the RMA as decision-makers on provisions and submissions on the PDP.
- 21 To assist the Panel in understanding how KFO's Proposal and the evidence in support of it respond to the guidance criteria, a roadmap is appended to these submissions as **Appendix A**, which identifies which parts of KFO's evidence address each of the relevant criteria.
- 22 The key issues raised by KFO's submissions allocated to Hearing 15D are:
- (a) How does the PDP give effect to the NPS-UD as it relates to the options for zoning housing and business land in Kerikeri-Waipapa?
 - (b) Does KFO's Proposal meet the exception for rezoning highly productive land under section 3.6 of the NPS-HPL?

- (c) Is KFO's Proposal the most appropriate way to achieve the objectives of the PDP in terms of the evaluations required under s 32 of the RMA?
- 23 In terms of the options available to the Panel to give effect to the NPS-UD, the s42A report presents three options:
 - (a) Option 1 – Proposed District Plan – Recommendations Version Package (**PDP-R scenario**).
 - (b) Option 2 – rezone Kiwi Fresh Orange Company Limited's land in accordance with its submission (**KFO scenario**).
 - (c) Option 3 – a combination of the PDP-R scenario and the KFO scenario (**Hybrid scenario**).
- 24 We agree that those are the reasonably practicable options before the Panel. The notified PDP does not give effect to the NPS-UD, and there are no other rezoning proposals that will do so for Kerikeri-Waipapa. Where KFO differs from the s42A report is that it says that the PDP-R scenario will not provide housing of a quality, price or typology to meet demand. Only Options 2 or 3 will achieve that.
- 25 As an initial important point, when reading the s42A report and supporting evidence, one gets the impression that the PDP-R scenario is the "status quo" or the default position against which other proposals should be weighed. That is incorrect. The PDP-R scenario is a recommendation arising from a combination of submissions – like any other submission, it must be assessed in accordance with s 32AA and decisions made based on credible evidence.

Scope

- 26 A further important point is the issue of scope. The s42A report and some of the supporting evidence assess submissions by comparison to scenarios D and E of Te Pātukerea – Kerikeri Waipapa Spatial Plan (**Spatial Plan**). No person has made a submission seeking that those scenarios be implemented through the PDP (nor could they have, given that those scenarios were created after the PDP was notified). Under Schedule 1 of the RMA, the Panel is constrained by the scope of submissions before it – it cannot rezone the land referred to as scenarios D and E, and so any comparative evidence about the merits of rezoning that land is irrelevant to the Panel's decision.

The Parties' Positions

- 27 The position of the reporting officers and their technical experts (who we will refer to collectively as the reporting officers for ease of reference) is that the PDP-R provides sufficient development capacity in Kerikeri Waipapa for attached and detached typologies over the short and medium term, and attached dwellings in the long term.⁹ They say the long-term shortfall in capacity for detached dwellings will be solved by rezoning land identified in the Spatial Plan.¹⁰
- 28 Mr Wyeth, the reporting officer for KFO's submission, considers that, because the PDP-R scenario provides sufficient development capacity, KFO's Proposal does not satisfy the "sufficiency" test under section 3.6(4)(a) of the NPS-HPL.¹¹ Nor, in his view, is KFO's Proposal necessary for the PDP to give effect to Policy 2 of the NPS-UD.¹²
- 29 The reporting officers oppose KFO's Proposal on various technical and policy grounds, which encompass the following topics:¹³ economics, urban design, rural productivity and land use capability, flood hazards and proposed mitigation, transport, ecology, landscape, cultural/ mana whenua, infrastructure (three waters) servicing. We use these topics as headings in our policy and effects analysis in paragraphs Part 4.
- 30 The essence of the reporting officers' case is summarised at paragraph 476 of the s42A report:

In summary, I consider the KFO proposal would give effect to the NPS-UD provisions relating to competitive land markets and would contribute to providing sufficient development capacity to meet expected demand (while noting uncertainties as to when any "plan-enabled" development capacity may be "infrastructure ready"). However, the economic evidence of Mr McIlrath has demonstrated that the PDP-R also gives effect to these requirements and that there are a range of adverse economic effects associated with an additional overzoning greenfield development capacity above the NPS-UD "competitiveness margins". Specifically, an over-zoning supply is expected to undermine the effectiveness of the PDP-R to enable intensification (which give effect to Objectives 3 and 5) and reduce the benefits associated with a more compact urban growth pattern. The KFO proposal will not contribute to well-functioning urban environments due to

⁹ Section 42A Report at [482(a)].

¹⁰ Statement of Evidence of Lawrence McIlrath at [3.7].

¹¹ Section 42A Report at [482(a)].

¹² Section 42A Report at [471].

¹³ Effects and policy grounds not at issue include archaeological effects, contaminated land, and geotechnical.

its limited connectivity and has the potential to undermine the current vitality and function of Kerikeri and Waipapa.

(our emphasis)

- 31 Unpacking paragraph 476, it seems to us that Mr Wyeth accepts that KFO's Proposal would give effect to the NPS-UD. However, he considers that:
- (a) KFO's Proposal is unnecessary because the PDP-R already gives effect to the NPS-UD.¹⁴
 - (b) There are adverse economic effects associated with oversupplying greenfield land.
 - (c) One of those adverse economic effects is that it would undermine the effectiveness of the PDP-R to "enable intensification" and therefore reduce the benefits associated with a compact urban growth pattern.
 - (d) Therefore, the KFO Proposal will not contribute to a well-functioning urban environment.
- 32 To put it more simply, Mr Wyeth accepts that the KFO Proposal would enable the PDP to give effect to the NPS-UD (including by providing detached dwellings at lower price points¹⁵) but he considers that this would "undermine the uptake of intensification enabled under the PDP-R and reduce the benefits that intensification is intended to provide, which is inconsistent with the NPS-UD provisions."¹⁶
- 33 When properly considered, this is an astonishing position.
- 34 Essentially, the reporting officer's position is that rather than providing sufficient greenfield land to allow affordable detached housing, supply should be constrained to force an intensification imperative. The vision that the reporting officers seek that the Panel impose on the community is one of density and intensification, predominantly of townhouses and apartments.
- 35 The problem with this ideology is that it is not supported by credible evidence, or community engagement or consultation. On Mr McIlrath's evidence, the community strongly favours detached housing (90% of

¹⁴ We refer to our earlier note at [25] that the PDP-R scenario is not a default position.

¹⁵ Section 42A Report at [467].

¹⁶ Section 42A Report at [473].

demand) over attached (10% of demand).¹⁷ As the reporting officers seem to accept, the only way to achieve the “intensification efforts” of the PDP-R is through cost pressures and affordability constraints.¹⁸

36 There are a number of flaws with this approach:

- (a) First, the NPS-UD does not demand intensification of Tier 3 local authorities. Only Tier 1 and 2 local authorities have intensification directives. Instead, the NPS-UD requires that planning decisions be responsive to the diverse and changing needs of people and communities (Objective 4),¹⁹ and support competitive land and development markets to improve housing affordability (Objective 2). A well-functioning environment is one that “meets the needs, in terms of type, price, and location, of different households” (Policy 1).
- (b) The PDP does not set an intensification directive. While the Strategic Direction objective SD-UFD-O2 seeks to consolidate development and achieve a compact urban form, that is not the same as the intensification imperative that the reporting officers are pursuing. Development in Kerikeri-Waipapa has been characterised by rural-residential sprawl and on-site servicing. Achieving detached dwellings on “standard” residential site sizes between Kerikeri and Waipapa would equally (if not better) achieve SD-UFD-O2.
- (c) We have looked at the original s 32 analysis for the urban environment, and there is no mention of an intensification imperative under SD-UFD-O2.²⁰ Rather, the aim of SD-UFD-O2 is consolidation, the avoidance of urban sprawl and efficient infrastructure provision. At page 9 of the section 32 report:

A lack of consolidated and coordinated development has resulted in inefficient use of existing infrastructure and has compromised the affordability of future infrastructure provision

¹⁷ Statement of Evidence of Lawrence McIlrath at [4.5].

¹⁸ Statement of Evidence of Lawrence McIlrath at [4.6].

¹⁹ In our submission the “diverse and changing needs of people, communities, and future generations” from Objective 4 is disjunctive in that people’s needs can be diverse, changing, or diverse and changing.

²⁰ Section 32 Report: Urban Environment and Section 32 Report: Overview.

- (d) In our submission, SD-UFD-O2 is a means of enabling more development in and around Kerikeri and Waipapa as a means of avoiding the types of rural-residential housing prevalent in the market.
- (e) The s42A report on strategic direction suggests that the use of the word 'consolidation', as opposed to 'intensification' is material. At paragraph 174:

It is also important to note here that SFD-UD-O2 includes the term "urban consolidation". The direction here is that the urban footprint is contained **around** centres and existing and planned infrastructure, **intensification is considered a subset of consolidation, as intensification is a means of achieving consolidation.**
- (f) Accordingly, 'intensification at any cost' is not an end that either NPS-UD or the PDP is pursuing, particularly where that intensification impedes another aspect of SD-UFD-O2: 'affordability'.
- (g) KFO's evidence will demonstrate that consolidation supporting a compact urban form, affordability and providing for a mix of typologies will be achieved by its Proposal. This will help reduce the rural-residential development that the PDP-R scenario risks perpetuating.
- (h) The NPS-UD strives for a well-functioning urban environment which meets the needs of the community. SD-UFD-O1 puts the well-being of people who live in and visit the towns of the Far North first. What makes a well-functioning urban environment and puts the wellbeing of the people first must be context-dependent: while intensification may be desirable in Kingsland, Auckland, it is not desirable in Kerikeri village, where the community wants to maintain its "village feel", while also having affordable housing.²¹

37 The evidence before the Panel demonstrates that the overwhelming market preference in Kerikeri-Waipapa is for detached dwellings. This is not a matter of speculation, but a matter of fact, supported by on-the-ground evidence from Mr Corbett and expert analysis from

²¹ Te Pātukurea Spatial Plan at page 40: "While Waipapa was strongly favoured as a focus for future urban change, the community expressed a clear desire to ensure that Kerikeri is not overlooked and retains its village feel and character." See also at page 50: "Develop unique identities for Kerikeri and Waipapa which build on their distinctive local character and celebrate their differences"; "Strengthen the small-town village character and charm of Kerikeri."

Mr Thompson. Even beyond that evidence of demand, the history of supply clearly illustrates the point – no “market” terrace houses or apartments have been delivered in Kerikeri, despite dense development being enabled under the Operative District Plan since 2009. The reporting officers’ evidence has not seriously contested the market demand.

- 38 The PDP-R scenario, by relying almost exclusively on infill and attached typologies, is fundamentally misaligned with this demand. The result is a theoretical sufficiency of capacity that is unlikely to be realised in practice, and which risks perpetuating housing unaffordability and more rural-residential development.
- 39 KFO’s Proposal provides a prudent, low-risk pathway that ensures Kerikeri-Waipapa is not left exposed to the risk of relying on the overly optimistic assumptions supporting the PDP-R scenario. Mr Thompson’s evidence weighs the costs and benefits of over- and undersupplying land, which the Panel can rely on in assessing the risk of acting or not acting.
- 40 KFO’s evidence across the range of topics demonstrates that its Proposal is underpinned by robust expert analysis. The Proposal incorporates sensible staging to manage potential transport effects, infrastructure solutions for roads and three waters, a means of appropriately managing flood risk, and leverages natural features of the Site for public assets. The Precinct Provisions will ensure that growth is both sustainable and responsive to community preferences. That is a well-functioning urban environment.
- 41 It is also important to note that the NPS-UD does not require the Panel to choose between intensification and greenfield development as mutually exclusive options. Unlike the reporting officer, who rules out the KFO scenario and the Hybrid Scenario,²² KFO considers that the Panel is entitled to adopt a hybrid approach, enabling both infill and greenfield capacity, provided that the statutory tests are met.
- 42 Should the Panel prefer a Hybrid Scenario, KFO is available to engage with the Council and submitters about what that Hybrid Scenario looks like (perhaps through expert caucusing or a further hearing process).

²² Section 42A Report at [504] and [505].

PART 2: THE PDP PROCESS

KFO's involvement in the PDP, the Spatial Plan, and the origin of the PDP-R scenario

- 43 KFO has maintained a consistent position throughout the PDP process that its Proposal is needed for the PDP to give effect to the NPS-UD. KFO's submission in October 2022 identified that Kerikeri-Waipapa was an urban environment under the NPS-UD and that greenfields development was needed to meet demand for housing capacity and provide affordable housing at scale.²³
- 44 Instead of rezoning new greenfield land to provide development capacity, the notified PDP had consolidated residential zones into one General Residential Zone (**GRZ**).²⁴ The position was that Kerikeri-Waipapa was not an urban environment, but that the notified PDP would nevertheless provide sufficient development capacity.²⁵
- 45 The section 32 authors had also considered that a more intensive zone should be introduced in Kerikeri. As set out in the Section 32 Urban Environment Report, that option was ruled out:²⁶

The option of introducing a Medium Density Residential Zone has been considered. Given the shortfall of asset information, development contributions **and that it can be demonstrated that sufficient land for housing can be provided through the zoning proposed in the PDP**, it is considered prudent to retain one residential zoning. It is noted that a multi-unit residential unit has been introduced in the PDP to provide for a mix of housing typologies and assist with affordability.

(our emphasis)

- 46 KFO was a key submitter during Hearing 1 in May 2024. It was the main party advocating for guidance that Kerikeri-Waipapa be recognised as

²³ Submission by Kiwi Fresh Orange Company Limited (Form 5) dated 21 October 2022 at [19] and Appendix C at page 4.

²⁴ Section 32 Report: Urban Environment, page 1. <https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18080/section-32-urban-environment.pdf>

²⁵ According to FNDC's section 32 report, the PDP would provide sufficient plan enabled development capacity to meet expected demand in the short, medium and long term under both medium and high growth scenarios using the General Residential, Mixed Use, and Rural Residential zones. Section 32 Report 'Overview' May 2022, section 5.16 at page 31. <https://www.fndc.govt.nz/__data/assets/pdf_file/0020/18065/section-32-overview.pdf>

²⁶ At page 16.

- an urban environment under the NPS-UD.²⁷ The reporting officer for Hearing 1, Ms Tammy Wooster, opposed KFO's submission.²⁸
- 47 Separate from the PDP, the Council reignited development of the Spatial Plan. The Spatial Plan adopted a hybrid of Scenarios D and E, which involved greenfield development of land south of Kerikeri and east of Waipapa, along with infill development through intensification.
- 48 A Housing and Business Assessment²⁹ was prepared as part of the Spatial Plan process and found that there was a shortage of capacity for detached dwellings in Kerikeri-Waipapa in the short-term, worsening through the long-term.³⁰ The Council argued that the Spatial Plan would solve this capacity shortage for detached dwellings by adding a development capacity mix of 75% greenfield development, 20% infill, and 5% rural residential.³¹
- 49 The Spatial Plan's confirmation presented a problem. The PDP had no scope for the rezoning aspects of the Spatial Plan to be implemented.
- 50 In response to this predicament, reporting officers have sought to use the scope provided by Kainga Ora's submission to upzone Kerikeri from a General Residential Zone to a mix of Medium Density Residential Zone (**MDRZ**) and Town Centre Zone (**TCZ**) – the PDP-R scenario.
- 51 The first notion of the PDP-R was in June 2025 when the reporting officer for Hearing 14, Ms Sarah Trinder, recommended modified versions of the MDRZ and TCZ be inserted into the PDP.³² The Council also formally recognised Kerikeri-Waipapa as an urban environment in the PDP process in Hearing 14.³³ The PDP-R scenario then crystallised

27 Legal Submissions on behalf of Kiwi Fresh Orange Company Limited on Hearing 1 dated 27 May 2024. < https://www.fndc.govt.nz/__data/assets/pdf_file/0020/28316/Tuesday-28-May-1315-Hearing-1-Legal-Submissions-Kiwi-Fresh-Orange-Company-Limited.pdf>

28 Section 42A Report: Strategic Direction at [52]. < https://www.fndc.govt.nz/__data/assets/pdf_file/0020/27731/S42A-Report-Strategic-Direction.pdf>

29 Housing and Business Development Capacity Assessment, July 2024, Market Economics, Lawrence McIlraith (**HBA**).

30 HBA at page 46, tables 4-8. See also Statement of Evidence of Lawrence McIlraith at [3.3] and Statement of Evidence of Adam Thompson at [52]-[54].

31 Statement of Rebuttal Evidence of Adam Thompson at [16].

32 Section 42A Report: Urban Zones at [109]. < https://www.fndc.govt.nz/__data/assets/pdf_file/0025/42478/S42A-Report-Urban-Zones-V2.pdf>

33 At [292].

in terms of the spatial extent in August 2025 in the s 42A report for Hearing 15D.³⁴

52 While there is technically scope in Kainga Ora's submission for the reporting officers to recommend the PDP-R scenario,³⁵ the approach warrants comment:

- (a) Kainga Ora has not given evidence in support of its submission. To support their position to accept Kainga Ora's submission, section 42A reporting officers engaged their own experts to prepare technical evidence. The PDP-R scenario is not Kainga Ora's proposal; it is the reporting officers' proposal.
- (b) This creates fairness issues for the community. KFO submits that there is a conceptual difference between a submitter pursuing a rezoning proposal to upzone Kerikeri and the Council notifying a proposed district plan upzoning Kerikeri. The latter scenario would inevitably garner significant public interest, particularly from those persons whose land would be rezoned or who adjoin that land. Mr Corbett has given evidence of the public's limited knowledge PDP-R scenario. We understand that other submitters will voice their concern at the hearing.
- (c) The evidence the Council has filed in support of the PDP-R is limited. The evidence includes:
 - (i) Urban design evidence from Jane Rennie regarding the MDRZ and the TCZ.
 - (ii) Lawrence McIlraith – Economics;
 - (iii) Matthew Lindenburg – NPS-UD;
 - (iv) George Hensley – Infrastructure; and

³⁴ Section 42A Report: Rezoning Kerikeri-Waipapa.

³⁵ *Clearwater Resort Ltd v Christchurch City Council HC Christchurch AP34/02*, 14 March 2003 at [66] and *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [74]-[83] are the leading authorities on scope. The bipartite test from these decisions requires consideration of whether:

- (a) The submission addresses the change to the status quo advanced by the proposed plan change (i.e., the extension/variation should already have been adequately assessed in the s 32 evaluation); and
 - (b) There is a real risk that persons potentially affected by such a plan change have been denied an effective opportunity to participate in the plan change process.
- Kainga Ora's submission provides scope under the first limb of the bipartite test.

- (v) Reece Hill – Rural Productivity (a few paragraphs).
 - (d) The Council has not modelled the transport effects of the PDP-R scenario, considered whether all of the existing infrastructure for wastewater and water servicing has the capacity to accommodate the additional development, and has given no evidence on the consultation or engagement it has undertaken with the community or mana whenua.
 - (e) KFO submits that there is a real risk that persons potentially affected by the PDP-R scenario have been denied an effective opportunity to participate in the planning process.
 - (f) We reiterate our earlier concern that reporting officers appear to advance the PDP-R scenario as a default position that other parties must rebut. That is not the case. The PDP-R scenario is based on submission as any other that must withstand scrutiny under the ordinary statutory tests. We encourage the Panel to carefully scrutinise the evidence filed in support of PDP-R and consider whether the evidence in support of it is being held to the same standard that other rezoning proposals are.
- 53 The reporting officers' approach raises substantive flags as well. Given the various positions taken by reporting officers and their technical experts about the sufficiency of development capacity throughout the PDP process, we would invite the Panel to apply a critical lens to the evidence filed in support of the PDP-R scenario. Throughout the PDP process, reporting officers have:
- (a) Asserted that the PDP would provide sufficient development capacity without infill development under a Medium Density Residential Zone.³⁶
 - (b) Indicated through the Spatial Plan that greenfield development is needed to provide development capacity and tackle the problem of providing affordable housing.³⁷

³⁶ Section 32 Report: Urban Environment at page 1. <
https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18080/section-32-urban-environment.pdf>

³⁷ HBA at page 46, tables 4-8. See also Statement of Evidence of Lawrence McIlrath at [3.3] and Statement of Evidence of Adam Thompson at [52]-[54].

(c) Then, in the absence of scope for greenfield development (apart from the KFO scenario, which they oppose), they concluded that no greenfield development is needed in order to provide sufficient development capacity in the short and medium term.³⁸

54 KFO has argued, and its expert team have consistently held the position, that the Proposal is needed to meet demand for affordable housing, is efficient and effective, and ensures the PDP gives effect to the NPS-UD.

³⁸ Statement of Evidence of Lawrence McIlrath.

PART 3: PRELIMINARY ISSUES

What information is required for a planning proposal as opposed to a resource consent application?

- 55 An issue raised in the Council's evidence is whether further information is required on certain matters, including the flood spillway and ecological assessment.
- 56 The risk of acting or not acting is a relevant consideration in evaluating the appropriateness of a submission in accordance with section 32(2)(c) of the RMA. However, the RMA does not prescribe an evidential threshold that rezoning submissions must meet. The level of detail should correspond to the scale and significance of the anticipated effects of the proposal, and omitted analysis requires appropriate justification.³⁹
- 57 Residual uncertainty is often acceptable if it goes to a periphery design detail that can be managed at the consent stage, or if the hanging risk is proportionate to the environmental harm at stake.⁴⁰ In this way, the evidential standard is lower than at the resource consent stage.
- 58 The RMA is not a 'no risk' statute⁴¹ and Panels do not have the luxury to forestall decision making to know 'all there is to know' before making decisions.⁴² It is well established that fears as to uncertainty should only be given weight if they are reasonably based on a real risk of whether those fears are substantiated.⁴³ A decision-maker should not be influenced by a mere perception of risk that is not grounded in fact.
- 59 In *Omaha Park Ltd v Rodney District Council*, the Court acknowledged that although infrastructure aspects of the proposal had not advanced to a stage where the risk could be assessed, the Court was not required to assess the risk beyond a broad discussion of the intentions in relation to

³⁹ *Lindis Catchment Group Incorporated v Otago Regional Council* [2019] NZEnvC 166 at [438].

⁴⁰ See generally *Omaha Park Ltd v Rodney District Council* [2010] NZEnvC 265 and *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155.

⁴¹ *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 (ENC) at [106]. See also *Friends of Conical Hill Inc v Hurunui District Council* [2024] NZEnvC 324 at [64].

⁴² *Day v Manuwaitau-Whanganui Regional Council* [2013] NZEnvC 44 at [17].

⁴³ *Shirley Primary School* at [193]: "In the end we find all the expert psychological evidence unhelpful. We had direct evidence about people's fears of exposure to RFR from enough parents and teachers to be sure that a significant part of the school community is genuinely concerned about, even fearful of, the effects. But whether it is expert evidence or direct evidence of such fears, we have found that such fears can only be given weight if they are reasonably based on real risk."

them, because those risks would be moderated by consents required from the Council.⁴⁴

60 Similarly, in *Save the Maitai Inc v Nelson City Council*, the Court found that erosion and sediment control modelling did not need to be carried out at the plan change stage because the structure plan for that plan change had been developed incorporating a risk-based approach to the determination of appropriate zoning and overlays. The provisions placed the onus of managing the details of erosion and sediment control risk on the resource consenting process. It was appropriate to do so given the approach to the structure plan and that regard had been given to the potential effects.⁴⁵

61 KFO has put forward comprehensive evidence to show that the rezoning would not have significant adverse effects and achieve the purpose of the RMA. Residual uncertainties and/or risks are proportionate and can appropriately be managed by plan provisions, national standards, and national policy statements, which govern future resource consenting.

62 In the words of the Environment Court:⁴⁶

In deciding on the better plan provisions, [the decision-maker] must account for such risks in a realistic and robust way. However, that conclusion is in the end a value judgment based upon the Act, superior documents and Proposed Plan Objectives and Policies.

63 A suspicion of an adverse effect must be supported by at least a scintilla of evidence (not a theory) sufficient to support a prognosis of an adverse effect on the environment.⁴⁷ If a scintilla of evidence is relied on, it must be probative evidence.⁴⁸

64 Against the settled law described above, it will be shown that many of the uncertainties complained of in the Councils' s 42A are unfounded and/or do not require answers at the planning stage. For example:

- (a) *Ecology*:⁴⁹ Site-specific concerns with ecological effects and the effect of the proposed floodway on aquatic habitats and natural inland wetlands are generically expressed and invoke a 'sum of all

⁴⁴ *Omaha Park* at [259].

⁴⁵ *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155 at [89].

⁴⁶ *Omaha Park* at [261].

⁴⁷ *Shirley Primary School* at [142].

⁴⁸ *Ngati Maru Iwi Authority v Auckland City Council HC Auckland AP 18/02*, 7 June 2002 at 25.

⁴⁹ Statement of Evidence of Phoebe Andrews at [3.1].

fears' scenario. Consistent with the Site's current zoning, these are all effects and uncertainties that can be assessed and addressed at the consent application stage.⁵⁰

- (b) *Flood hazards*:⁵¹ Residual uncertainty about the appropriate level of service/design of the proposed flood mitigation is a peripheral design detail that can be addressed at the consent stage and is mitigated against by the Precinct Plan. This equally applies to secure ongoing operational and maintenance requirements.
- (c) *Transport*:⁵² Uncertainty around how transport infrastructure will be funded can be addressed at the consent stage using the tools available to the Council.
- (d) *Infrastructure servicing, funding and financing*:⁵³ While KFO has made a commitment⁵⁴ to fund the infrastructure it benefits from, KFO is not required to make binding commitments to pay for infrastructure now: the Council has tools to ensure that it is not burdened with the costs of infrastructure.
- (e) *Urban design*:⁵⁵ the proposed Urban Design provisions in the Precinct Chapter and Plan are appropriate to ensure that positive urban design outcomes will be achieved.

65 Challenges associated with land development do not prevent the Panel from considering a zoning submission.⁵⁶ Regarding uncertainty over the funding and liability for infrastructure in *Omaha Park Ltd*, the Environment Court held:⁵⁷

[A]s the [Rodney District Council] has opposed the proposed rezoning, it would have been difficult for Omaha Park to have pursued in any meaningful way discussions with the RDC on the alternative of the council taking over responsibility for the operation and maintenance of the completed facilities. Nevertheless, it seems to us that for the size and complexity of the proposed OPSZ development, a council-provided service would be preferable and in the best interests of the property owners. In the event, *this is not for us to decide and our*

⁵⁰ Noting that the Site is not subject to special zoning that would prevent this approach.

⁵¹ Statement of Evidence of Jon Rix.

⁵² Statement of Evidence of Mat Collins

⁵³ Statement of Evidence of Vic Hensley.

⁵⁴ Statement of Evidence and Statement of Rebuttal Evidence of Stephen Brownlie.

⁵⁵ Statement of Evidence of Jane Rennie at [3.3].

⁵⁶ *Omaha Park* at [259].

⁵⁷ At [156].

decision has not been influenced to any degree as to who might eventually provide this service if the OPSZ was to be approved.

[Emphasis added].

- 66 Uncertainty is a common feature of large projects that take time for detailed design and funding to be completed. It is common for zoning proposals to ensure sequencing to coordinate with transport, water supply, and wastewater infrastructure to ensure adequate servicing and effects management.⁵⁸
- 67 The flexibility, adaptability, and staging of development of the KFO Site is a benefit of the Proposal. A degree of compromise as to “certainty” is inevitable and, for all the reasons above, acceptable.

What is the relevance of the Spatial Plan?

- 68 The Spatial Plan was confirmed on 18 June 2025 and finalised a hybrid of growth scenarios D and E as the planning response to urban change pressures forecasted over the next 30 years.
- 69 The Council now seeks to retrofit the PDP to meet the Spatial Plan outcomes.
- 70 KFO accepts that the Spatial Plan is a relevant consideration that the Panel may have regard to in making its decision on submissions. However, at best, it is a consideration to be weighed against others – it is not a planning document that must be “given effect to”.
- 71 However, we submit that very little weight should be placed on the Spatial Plan in determining the rezoning submissions before the Panel. Appendix B to these submissions summarise the shortcomings of the Spatial Plan in further detail. In summary, it is clear from the evidentiary record that the ‘hybrid’ growth scenario ultimately endorsed was not assessed in detail nor consulted on by the Council in good faith. The process and evaluation that underpinned the emergence of the preferred scenario is deeply flawed and undeserving of public confidence.
- 72 The preparation of the Spatial Plan did not have the same rigour as a s32 analysis, and the process undertaken meant outcomes were skewed towards confirming the recommendation notified for

⁵⁸ See for example *Auckland Transport v Auckland Council* [2024] NZEnvC 307 at [82] and *Kainga Ora – Homes and Communities v Auckland Council* [2022] NZEnvC 218.

consultation. Even Mayor Moko Tepania spoke to his concerns about the process and the feeling that the Council was being lobbied by officers.⁵⁹ We say that would be an error of law to elevate the Spatial Plan to be a touchstone for the outcome of zoning submissions.

- 73 The Council has adopted a Spatial Plan that recognises the KFO Site. It has, however, made it conditional. In our submission, these conditions do not bind the Panel in terms of RMA decision-making.⁶⁰ In any event, KFO's evidence addresses them and shows that they have been satisfied.

The National Policy Statement on Urban Development 2020

Long-term demand signalled in planning documents

- 74 Mr McIlrath considers that rezoning land identified Spatial Plan will provide long-term development capacity for detached dwellings. In a footnote, he states this approach is appropriate based on clause 3.4(1)(c) of the NPS-UD.
- 75 Clause 3.4(1)(c) of the NPS-UD provides that a plan enabled in the long term means either:
- (a) It is zoned for housing or business land in a proposed district plan; or
 - (b) It is identified for future urban use, any other relevant plan or strategy if the local authority is not required to have a Future Development Strategy.
- 76 Because FNDC is not required to have an FDS, Mr McIlrath suggests that it is sufficient for the long-term detached capacity that greenfields land be identified in the Spatial Plan.
- 77 We do not disagree with this interpretation of the NPS-UD. However, for reasons that we discuss in our analysis of the economic evidence, the pillars upon which Mr McIlrath's evidence is built do not stand up to Mr Thompson's scrutiny.
- 78 The consequence is that while there is technical sufficiency under Mr McIlrath's assessment, that sufficiency is built on a house of cards that

⁵⁹ Far North District Council "Extraordinary Council Meeting (18 June 2025)" at 2:15:36. <<https://www.youtube.com/live/Zqa-56-d2xc>>.

⁶⁰ The applicable principles being helpfully summarised in *Save the Maitai* at [14].

risks undersupplying development capacity in Kerikeri if the assumptions are wrong and the cards fall.

79 We also note that long-term supply can be provided for by zoning it in a proposed district plan pursuant to clause 3.4(1). In our submission, that is the more appropriate outcome of this PDP and a more efficient and effective way of achieving its objectives.⁶¹ The reasons include:

- (a) The risks of undersupplying capacity under the PDP-R scenario. From a s 32 perspective, the risk of acting and not acting falls in favour of oversupplying land than undersupplying it.
- (b) Uncertainty about when (or indeed if) the Spatial Plan will be implemented. In the short term, a statutory “plan stop” is in place, preventing the Council from initiating a plan change or variation to rezone the Spatial Plan land.⁶² In the long term, there is simply no guarantee that the Spatial Plan will be implemented – neither the Panel nor the Council can bind a future Council to implement a plan change.

Sufficiency and the risks of undersupply

80 In our submission, a well-functioning environment is not one in which the housing and business land market merely provides just enough housing to meet demand, or technical sufficiency. The NPS-UD requires that planning decisions support competitive land and development markets.⁶³ This is because competition and choice are recognised as key drivers of improved housing affordability (Objective 2). Local authorities are therefore required to provide “at least” sufficient development capacity.⁶⁴

81 Mr Thompson’s evidence is that planning should err on the side of providing more land, rather than less, because the costs to individuals and the wider community of under-enabling capacity are far more severe than any costs associated with over-enabling.⁶⁵

82 In contrast, the technical sufficiency offered by the PDP-R disregards the issue of affordability. Mr McIlrath’s capacity assessment estimates that

⁶¹ Such as SD-UFD-O1: The wellbeing of people who live in and visit towns in the Far North is considered first when it comes to planning places and spaces.

⁶² Resource Management Act 1991, s 58JA.

⁶³ Objective 2 and Policy 1(a)(d).

⁶⁴ Policy 2.

⁶⁵ Statement of Evidence of Adam Thompson at [18(c)].

new standalone dwellings under the PDP-R will cost \$1.28 million, rising to \$1.68 million by 2035.⁶⁶ While Mr McIlrath asserts that the PDP-R will support an improvement in dwelling affordability, he appears to accept that the affordability challenges identified in the Housing and Business Assessment (HBA) for the short and medium terms will persist under the PDP-R scenario.⁶⁷ According to Mr McIlrath, any improvement in affordability will only materialise in the long term, which, notably, coincides with the greenfields zoning anticipated by the Spatial Plan.

- 83 Furthermore, technical sufficiency under the PDP-R fails to account for market realities and the principle of price elasticity of demand. Mr Thompson's evidence is that insufficient land supply will suppress growth, whereas genuinely sufficient land supply (including that enabled by the KFO scenario) will facilitate growth. As we understand it, land supply can create either a vicious or virtuous cycle: if there is an undersupply of housing typologies at prices that people can afford, there is a risk of suppressing population and therefore economic growth; conversely, if housing is supplied at affordable price points, people will take up those opportunities, relocate, and contribute to the vitality of the community.
- 84 The PDP-R scenario fails in providing sufficient affordable housing in accordance with market preferences. The 'do as little as possible' approach enabled by the PDP-R will not create a well-functioning urban environment.

Gardon Trust v Auckland Council

- 85 The Environment Court decision in *Gardon Trust v Auckland Council*⁶⁸ contains relevant guidance about the use of market preferences in understanding the sufficiency of development capacity.
- 86 Central to *Gardon Trust* were questions about the sufficiency of development capacity and how development capacity should be provided in Waiuku, a township of 10,000 people. Like this case, the options presented were infill housing (which was presented as a

⁶⁶ Statement of Rebuttal Evidence of Adam Thompson at [13].

⁶⁷ Statement of Evidence of Lawrence McIlrath at [3.22].

⁶⁸ *Gardon Trust v Auckland Council* [2025] NZEnvC 58.

complete answer for sufficiency)⁶⁹ and rezoning land for greenfield development.

87 In *Gardon Trust*:

- (a) While there were parts of infill development, it was not dominant throughout Waiuku.⁷⁰
- (b) The Court heard and accepted evidence from witnesses that this limited infill was probably because people live in Waiuku as a lifestyle choice and because of the larger sections, especially with the older homes.⁷¹
- (c) There was strong demand for recent greenfields development.⁷²
- (d) The Court heard evidence from a range of people, including builders and developers, who indicated that the existing potential within Waiuku is significantly reduced, and that infill development is not appropriate or cost-effective in such a place.⁷³
- (e) The Court heard evidence about the housing industry in Waiuku. At [225]:

Evidence was given by several people involved in the housing industry as to the limited attractiveness of single house development and subdivision, and it seems the prospects of large lots of land being available for multiple subdivision are relatively rare now, most of that land having been utilised over the last 35 years.

- (f) The Court accepted that the unavailability of greenfields sites had artificially suppressed the housing market in Waiuku. At [228]:

We also agree with the witnesses for the Appellants that the housing market in Waiuku has been artificially suppressed by virtue of the unavailability of appropriate greenfield sites to allow the town to grow naturally. We also agree that the addition of these 750 sites over a period of time will naturally contribute to the availability of a range and choice of housing style for the people of Waiuku. It is likely to create a better and competitive market for the development of other sites and enable continued growth of a well-functioning urban environment, rather than the villages that are disconnected from fundamental facilities elsewhere in the subregion.

⁶⁹ At [224].

⁷⁰ At [25].

⁷¹ At [26].

⁷² At [28] and [29].

⁷³ At [56].

- 88 It is submitted that many of these factors that influenced the Court's decision in *Gardon Trust* are present in Kerikeri-Waipapa, and in the evidence of KFO's experts and the evidence of Dennis Corbett.

Decisions about the integration of development with infrastructure

- 89 The debate about the relationship between urban growth and infrastructure is an old one. In our submission, the through-line in the relevant authority is that the principles are contextual to the facts at hand.
- 90 Counsel for the reporting officers may cite cases like *Foreworld Developments Ltd v Napier City Council* and *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 10929, which cites *Foreworld*. The proposition in these cases is that it is bad management practice to zone land for development where the necessary infrastructure to allow the activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.
- 91 Other decisions take a different view. In *High Quality Ltd v Auckland Council*⁷⁴ the Environment Court decided that infrastructure provisions should not determine whether the consent application should be granted in the face of a "Mexican standoff" between zoning and infrastructure. At [32]:

This is a situation not unfamiliar to the Court and it is clear that a number of the planning decisions and zones, including Future Urban Zoning in Auckland, are subject to this very constraint. While the ability to provide infrastructure to any area may properly justify it being rezoned, it is difficult to see inability to provide the infrastructure as a full and complete basis to refuse to rezone land which is identified as future urban land.

- 92 In *Landco Mt Wellington v Auckland City Council*⁷⁵, where opponents to the Stonefields proposal argued that the plan change should not be approved until the wider traffic infrastructure, already under pressure, had been upgraded sufficiently to absorb its projected output. Judge Thompson effectively said that it was not the role of the plan change proponent to solve the wider transport demands of Auckland. At [18]:

We are certainly not sanguine about the traffic situation, but then nobody is" The best that can be said about it is that the expert evidence is that the traffic effects within and immediately surrounding Stonefields can be managed effectively" It is for the Council and the

⁷⁴ *High Quality Ltd v Auckland Council* [2022] NZEnvC 117.

⁷⁵ *Landco Mt Wellington Ltd v Auckland City Council* [2009] NZRMA 132 (ENC).

other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth, wherever in the region that might occur.

- 93 In our submission, Judge Harland’s statement in *Laidlaw College Inc v Auckland Council*⁷⁶ (which cites the *Landco* decision) speaks to the contextual approach:

Whilst we agree with the general principle that an applicant is not required to resolve existing infrastructure problems, neither should it add significantly to them. The question is always one of degree depending on the facts of each case. The focus must be on the effects which arise from a particular proposal in the context of the particular environment into which it is sought to be transposed.

- 94 Messrs Brown and Hughes will give evidence about how the transport effects of the proposal have been evaluated and will be managed. Mr Ehlers will give evidence about the provision of three waters infrastructure.

⁷⁶ *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248 [38].

PART 4: POLICY AND EFFECTS ASSESSMENT

Economics

The issues, evidence, and approach to this section

- 95 No party disputes that the PDP must give effect to the NPS-UD.⁷⁷ The questions for the Panel are:
- (a) How does the PDP give effect to the NPS-UD in the context of Kerikeri and Waipapa?
 - (b) How does the PDP provide sufficient development capacity to meet expected demand across a range of typologies⁷⁸ and timeframes⁷⁹ (Policy 2), contribute to a well-functioning urban environment (Objective 1 and Policy 1) and improve housing affordability (Objective 2)?
- 96 The economic evidence is also relevant to the NPS-HPL, and whether the sufficiency test for rezoning highly productive land is met under section 3.6(4). We return to the NPS-HPL under the heading 'Land Productivity', however, as will be evident from this section, KFO submits that the sufficiency test is met.
- 97 The technical evidence before the Panel is from Messrs Thompson and Corbett for KFO, and Mr McIlrath for the reporting officers. There is also planning evidence from Ms O'Connor, Mr Lindenburgh, and the reporting officers, Ms Trinder and Mr Wyeth.
- 98 The intent of this section is to explain the various housing capacity assessments produced over time, including the evidence for Hearing 15D, and then demonstrate that the PDP-R scenario overestimates the sufficiency of capacity required to meet expected demand.
- 99 In summary, KFO submits that the PDP-R scenario is fundamentally flawed as a solution to Kerikeri-Waipapa's housing needs. To support it, Mr McIlrath uses an overly conservative demand projection and highly optimistic capacity modelling to conclude that there is sufficient capacity.
- 100 The capacity assessment relies almost exclusively on infill and high-density redevelopment within the existing urban footprint, despite

⁷⁷ The Council now agrees that Kerikeri-Waipapa are an urban environment.

⁷⁸ Standalone (detached) dwellings and attached dwellings.

⁷⁹ Short term, medium term, long term.

overwhelming evidence that the local market overwhelmingly prefers stand-alone, larger-lot homes. The PDP-R scenario's capacity assessment is artificially inflated by assuming strong uptake of terrace houses and apartments, typologies that have seen virtually no market-driven demand in Kerikeri-Waipapa or comparable rural towns.

The Housing and Business Development Capacity Assessment

- 101 In July 2024, Market Economics prepared the Housing and Business Development Capacity Assessment (**HBA**). As we noted earlier, the Council's prior assessment was that the notified PDP provided sufficient development capacity.
- 102 The HBA found that there would be a shortfall in detached housing supply in the short term (300 dwellings), medium term (320 dwellings), and long term (435 dwellings).⁸⁰ Overall surpluses in housing were only achieved by providing a supply of attached dwellings, although there remained a shortfall in the medium term. The HBA was based on a 30-year demand in Kerikeri-Waipapa for 3,260 dwellings.⁸¹
- 103 The HBA also found that there would be a shortfall in affordable price points. It showed no feasible capacity below \$1 million for detached dwellings in the short-term and no feasible capacity below \$1 million for detached or attached dwellings in the medium and long terms.⁸²
- 104 The notified PDP would not give effect to the NPS-UD, not only because of the shortfall but also because houses would not be affordable across the range of typologies.

The Spatial Plan

- 105 The HBA lays the foundation for the Spatial Plan process.
- 106 The Spatial Plan assumed a Blue Sky growth scenario of 4,690 additional dwellings. The logic of using a higher growth rate to manage uncertainty was explained in the Spatial Plan itself:⁸³

While projections indicate steady growth over the next decade, followed by a slower rate in the following two decades, **Kerikeri-Waipapa has historically experienced population surges that have exceeded forecasts. To account for this uncertainty, council**

⁸⁰ HBA, tables 4-8.

⁸¹ Statement of Evidence of Adam Thompson at [53].

⁸² HBA, tables 4-6. See also Statement of Evidence of Adam Thompson at [52].

⁸³ Spatial Plan at page 14.

is planning for higher than-projected growth. Therefore, Te Pātukurea has adopted an ambitious “Blue Sky” growth projection, assuming a faster growth rate and a larger share of the Far North District’s growth occurring in Kerikeri-Waipapa. Under this scenario, the population is expected to exceed 25,000 by 2054, requiring 4,690 additional dwellings—1,430 more than the HBA baseline

- 107 The Spatial Plan recognised that additional land needed to be rezoned to meet demand under the Blue Sky scenario. To meet that demand, the Spatial Plan recommended 75% of future growth be met by greenfield, 20% as infill, and 5% as rural lifestyle.⁸⁴ The greenfields components of the Spatial Plan cannot be rezoned under the PDP.

The PDP-R scenario

- 108 The PDP-R relies entirely on infill housing to provide sufficient development capacity to meet future demand over the short and medium terms.⁸⁵ Long-term demand for detached dwellings will not be met under the PDP-R,⁸⁶ however, Mr McIlrath considers that the capacity provided by the Spatial Plan can be included in the sufficiency calculation pursuant to clause 3.4(1)(c).
- 109 The Council’s reversal from requiring greenfields land in the Spatial Plan to no longer requiring greenfields land in the PDP-R is interesting to say the least. As we understand it, it is a product of two factors:
- (a) To revert to the expected demand of 3,260 dwellings over the long-term rather than the Blue Sky growth. i.e., the demand estimate.
 - (b) The assessment of how the PDP-R delivers development capacity. i.e., the capacity assessment.
- 110 The next sections consider the evidence about demand estimates and capacity assessments.

⁸⁴ Statement of Rebuttal Evidence of Adam Thompson at [9]. Derived from Table 3, page 44 of the Spatial Plan.

⁸⁵ Statement of Rebuttal Evidence of Adam Thompson at [9].

⁸⁶ A deficit of 365. Statement of Evidence of Lawrence McIlwrath at [3.7].

Demand estimates - the Panel should adopt Adam Thompson's demand estimates over Lawrence McIlrath's demand estimates

111 There are three demand estimates before the Panel:

	McIlrath	Spatial Plan	Thompson
Population growth⁸⁷	8,150	11,730	15,000
Additional dwellings⁸⁸	3,260	4,690	6,000
Dwellings per annum	128	160	200

112 Mr Thompson estimates demand for 6,000 additional dwellings based on expected population growth of 15,000 over the long-term.⁸⁹ This equates to 220 dwellings per annum.

113 Mr Thompson's demand estimate should be preferred because:

- (a) It accounts for the high rate of internal migration. Mr Thompson states that Northland experienced the highest proportion of internal migration-driven growth among all regions in New Zealand (59%).⁹⁰
- (b) New Zealand's population has grown at the Statistics NZ 97.5th percentile projection (very high forecast rate) due to international migration since 2016.⁹¹
- (c) Master planned or medium-large greenfields developments catalyse growth and attract new residents.⁹² Mr Thompson's evidence draws on case studies from comparable lifestyle towns, showing that actual growth has often exceeded conservative projections once greenfield land is enabled. He demonstrates that "each new greenfield development entering a town results in an immediate increase in construction and growth,"⁹³ and in response to Mr McIlrath, that "the counterfactual is the period prior to the

⁸⁷ Long term.

⁸⁸ Long term.

⁸⁹ Statement of Evidence of Adam Thompson at [12].

⁹⁰ Statement of Evidence of Adam Thompson at [49]. Further information was supplied in the Rebuttal Evidence of Adam Thompson at [53].

⁹¹ Statement of Evidence of Adam Thompson (Hearing 1) at [21].

⁹² Statement of Evidence of Adam Thompson at [47].

⁹³ Statement of Evidence of Adam Thompson at [47].

introduction of the greenfield development in each town, when growth is depressed.”⁹⁴

- (d) Mr Thompson’s estimate incorporates the economic principle of price elasticity of demand: as more affordable housing is supplied, more households will choose to move to or remain in Kerikeri-Waipapa. He says that “the higher growth rates are, in my opinion, achievable if there is greater supply, and in particular if there are one or several medium-large-scale greenfield developments enabled.”⁹⁵ This is a more dynamic and market-responsive approach than static, trend-based projections.
- (e) It is more closely benchmarked against the Spatial Plan Blue Sky scenario.
- (f) It is grounded in a prudent, risk-averse approach that avoids the social and economic harms of housing shortages and unaffordability.⁹⁶

114 In comparison, Mr McIlrath’s demand projection is a step back from the Spatial Plan Blue Sky scenario. The level of growth assumed for the Spatial Plan stands in marked contradistinction to Mr McIlrath’s evidence. Mr McIlrath says the Blue Sky scenario was aspirational and deliberately set ambitiously,⁹⁷ however, this statement ostensibly contradicts the reasons described in the Spatial Plan – to account for the “uncertainty” of surges in population growth historically experienced in Kerikeri-Waipapa.⁹⁸

115 We are unsure from Mr McIlrath’s evidence why he has reverted from an optimistic, cautious, belts and braces approach to estimating demand.

116 In summary, Mr Thompson’s demand projections should be preferred because they are robust and ensure planning is not caught short if higher population growth materialises.

⁹⁴ Statement of Rebuttal Evidence of Adam Thompson at [57].

⁹⁵ Statement of Rebuttal Evidence of Adam Thompson at [51].

⁹⁶ Statement of Evidence of Adam Thompson at [18(c)].

⁹⁷ Statement of Evidence of Lawrence McIlrath at [4.11].

⁹⁸ Spatial Plan at page 14.

Capacity assessment - Mr McIlrath's capacity assessment for the PDP-R scenario overestimates sufficiency of development capacity for housing

- 117 The PDP-R capacity assessment makes unrealistic assumptions about market demand for high-density housing:
- (a) Mr Thompson considers that Mr McIlrath has modelled a “very intensive form of housing” that is more consistent with urban centres by assuming future housing demand for attached dwellings will be on small lots (as small as 120–200m²).
 - (b) Mr Thompson’s evidence points out that, historically, there has been almost no market-driven uptake of such housing in Kerikeri-Waipapa or similar rural towns.⁹⁹ The only examples of small-lot, high-density housing have been social housing projects (e.g., Kāinga Ora, Habitat for Humanity), not market-based developments.¹⁰⁰
 - (c) Market preference in Kerikeri-Waipapa is overwhelmingly for stand-alone, larger-lot homes.¹⁰¹ The assessment’s reliance on high-density typologies is therefore not supported by actual demand patterns. This is supported by Mr Corbett’s evidence about the demand for housing in Kerikeri and Waipapa based on his 20 years’ experience as a real estate agent in Kerikeri and Waipapa.
- 118 The PDP-R scenario capacity assessment uses overly optimistic feasibility modelling.
- (a) The PDP-R capacity model adjusts for future changes in costs and revenues, such as assuming that house prices will rise faster than build costs, or that construction costs will stabilise or fall.¹⁰²
 - (b) Mr Thompson notes that the NPS-UD requires feasibility to be assessed on present-day costs and revenues for the short- and medium-term, not on speculative future increases.¹⁰³ By factoring in these optimistic future changes, the model inflates the number

⁹⁹ Statement of Rebuttal Evidence of Adam Thompson at [23].

¹⁰⁰ Statement of Rebuttal Evidence of Adam Thompson at [23].

¹⁰¹ Statement of Rebuttal Evidence of Dennis Corbett at [22]-[24].

¹⁰² Statement of Rebuttal Evidence of Adam Thompson at [24].

¹⁰³ Statement of Rebuttal Evidence of Adam Thompson at [24].

of dwellings that appear “feasible” to build, even though they may not be viable under current market conditions.

- (c) Mr Thompson considers that the “significant increases” in detached capacity found in the PDP-R scenario (when compared to the PDP scenario) are a result of these cost and revenue adjustments, which he describes as “significant”.¹⁰⁴ Mr Thompson does not endorse relying on a model based on bullish cost and revenue change assumptions.¹⁰⁵

119 The PDP-R capacity model ignores price elasticity and affordability constraints:

- (a) The PDP-R assessment counts the quantity of houses as “capacity,” regardless of whether they can be delivered at price points the market can afford.
- (b) Mr McIlrath’s evidence does not estimate the price of houses across the range of dwelling types (attached and detached) other than to describe them as being lower than the PDP scenario, although he appears to accept that affordability changes remain under the PDP-R.¹⁰⁶

The HBA identified sufficiency challenges in the short and medium terms due to affordability. The PDP-R changes the price points (lower), but affordability challenges remain evident. The PDP-R will support an improvement in dwelling affordability, but the timeline associated with this process is over the long term.

- (c) In comparison, the HBA had estimated the prices of houses across each range by dwelling type. Mr Thompson requested a similar table for the PDP-R scenario and was advised by McIlrath that this work had not been completed.¹⁰⁷
- (d) It is submitted that the PDP-R cannot be advanced as a credible solution for giving effect to Objective 2¹⁰⁸ of the NPS-UD if it is unclear what priced houses the PDP-R scenario can actually deliver.

¹⁰⁴ Statement of Rebuttal Evidence of Adam Thompson at [26].

¹⁰⁵ Statement of Rebuttal Evidence of Adam Thompson at [26].

¹⁰⁶ Statement of Evidence of Lawrence McIlrath at [3.22].

¹⁰⁷ Statement of Rebuttal Evidence of Adam Thompson at [30].

¹⁰⁸ “Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.”

120 The PDP-R scenario overestimates uptake of infill and redevelopment:

- (a) The PDP-R assumes a high rate of infill uptake, which is not supported by past trends or current market preferences.
- (b) In rebuttal, Mr Thompson looked at historical infill development and found that, despite infill and redevelopment being enabled under the Operative District Plan (ODP) for years, only 4% of new dwellings have been infill since 2010.¹⁰⁹
- (c) The HBA recognised the historical preference for detached dwellings too:¹¹⁰

In terms of demand for dwelling types (detached vs. attached), projected demand is expected to remain skewed towards detached dwellings.
- (d) Mr McIlrath appears to disregard the historical preference for detached dwellings and how that will drive buyer preferences regardless of what is enabled. Instead, he expects the historical split between detached (90%) and attached (10%) dwellings to “shift over time towards more attached typology with affordability and housing preferences shifts [sic] the change.”¹¹¹ In other words, Mr McIlrath believes that housing unaffordability (\$1.28 m for a detached house) will drive buyers towards attached dwellings (\$840,000 for a terrace house), as observed in larger markets such as Auckland.¹¹²
- (e) Kerikeri is not Auckland. Mr Corbett’s evidence identifies the types of prospective buyers in Kerikeri.¹¹³ None of these buyer preferences are met by the attached terrace housing that Mr Thompson expects would be delivered for Mr McIlrath’s estimated \$840,000 sale price.¹¹⁴
- (f) Unless buyers obtain a noticeable discount to forgo their market preferences,¹¹⁵ the shift towards attached housing at this scale is

¹⁰⁹ Statement of Rebuttal Evidence of Adam Thompson at [9].

¹¹⁰ HBA at page 20.

¹¹¹ Statement of Evidence of Lawrence McIlrath at [4.4].

¹¹² Statement of Evidence of Lawrence McIlrath at [4.6].

¹¹³ Statement of Evidence of Dennis Corbett at [35] and Statement of Rebuttal Evidence at [15].

¹¹⁴ Statement of Rebuttal Evidence of Adam Thompson at [39] and [42].

¹¹⁵ Statement of Rebuttal Evidence of Dennis Corbett at [19].

not going to occur. Instead, buyers will continue to look for rural-residential lifestyle properties and other towns. If their work remains in Kerikeri-Waipapa, this only adds to commutes and vehicle reliance.

(g) In terms of the NPS-UD:

- (i) The PDP-R is not responsive to the diverse and changing needs of people, communities, and future generations (Objective 4). By ignoring the KFO scenario and leaving affordability issues unaddressed, it will be the driver of changing market preferences, not responsive to it.
- (ii) The PDP-R does not contribute to a well-functioning environment by enabling a variety of homes that meet the needs, in terms of type, price, and location, of different households (Policy 1(a)).

121 The PDP-R scenario is a theoretical exercise divorced from market reality. It overstates capacity, underdelivers on affordability, and risks perpetuating the very housing shortages and price pressures it purports to solve. It is not a credible or effective response to Kerikeri-Waipapa's housing needs and should not be relied upon as the basis for future growth planning.

The KFO scenario is the least-risk approach to giving effect to the NPS-UD

122 The KFO scenario is essential to providing needed development capacity for Kerikeri-Waipapa and managing the real risk that the PDP-R scenario fails.

123 The PDP-R scenario increases infill density from the ODP and PDP, and the ease of delivering infill by making more intensive development a permitted activity. However, the economic evidence downplays the fact that there is little to no demand for the housing typology the PDP-R scenario supplies.

124 In contrast, the KFO Site is the only large, contiguous greenfield opportunity available in the short-to-medium term under the PDP. It can deliver affordable new homes for typologies that are desirable, ensuring the townships are not left exposed to the risks of under-supply.

- 125 Housing affordability is the most acute and urgent issue facing Kerikeri-Waipapa. Objective 2 of the NPS-UD requires planning decisions to improve housing affordability. The PDP-R scenario enables new stand-alone homes at price points at an average of \$1.28m, which are unattainable for most local families and first-home buyers. The KFO scenario, by virtue of its scale, lower raw land costs, and master-planned efficiencies, can deliver stand-alone homes at approximately \$670,000 – nearly half the price of those enabled under the PDP-R.¹¹⁶ This is the only scenario that can realistically provide affordable, market-based housing at the scale required. Without the KFO Site, the district will continue to see affordability worsen.
- 126 A well-functioning urban environment requires a genuine mix of housing types, price points, and locations that reflect actual market demand and community preferences.¹¹⁷
- 127 The KFO scenario enables a master-planned community with a diversity of housing, integrated infrastructure, local amenities, and employment opportunities. It supports compact, efficient growth adjacent to existing centres, rather than perpetuating inefficient, fragmented rural lifestyle development by providing for the types of homes people actually want and can afford.

Land Productivity

- 128 KFO's Site is located on land mapped as LUC 3 soil under the NZLRI land use classification and is therefore highly productive land under the NPS-HPL. The question for this Panel is whether this urban rezoning is permitted by the exception in clause 3.6(4).
- 129 There are three elements to the exception:
- (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district (the "sufficiency test");
 - (b) there are no other reasonably practicable and feasible options for providing the required development capacity (the "alternatives test");

¹¹⁶ Statement of Rebuttal Evidence of Adam Thompson at [59].

¹¹⁷ NPS-UD, Policy 1 and section 3.2(1).

- (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 (the “cost-benefit test”).

Sufficiency test

- 130 The reporting officers’ position is that the sufficiency test is not met. For the reasons discussed in the economics section above, and in the evidence of Mr Thompson and Mr Corbett, KFO submit that the sufficiency test is met.

The alternatives test

- 131 Mr Hunt has identified and compared the KFO Site against alternative options. In his opinion, the Site has a lower relative capacity compared with the alternative options for urban development.¹¹⁸
- 132 Mr Hunt assesses productive capacity based on a range of factors, not just land use classification (which is one factor). He looks at the size and growth and expansion opportunity, current land use and the highest and best use, surrounding land uses, any constraints, and any potential economic baseline.¹¹⁹
- 133 This broader analysis is important for clause 3.6(4) of the NPS-HPL, which looks at the broader costs and benefits associated with the loss of highly productive land for land-based primary production. This is not just a function of land use classification.
- 134 Mr Hill identified two other alternatives. The first alternative is the PDP-R itself. While we accept that the PDP-R scenario would avoid the loss of productive capacity, Mr Hill disregards the sufficiency test. Our point is that alternatives must be considered if the sufficiency test is met. In this case, the economic evidence demonstrates that the PDP-R test will be insufficient, and therefore, other reasonable alternatives must be considered.

¹¹⁸ Statement of Evidence of Jeremy Hunt at [18].

¹¹⁹ Statement of Evidence of Jeremy Hunt at [43].

- 135 The second alternative is a southeastern site.¹²⁰ Mr Hunt has considered this site and accepts that it has a similar productive capacity to the KFO Site and, while it does not have a flooding overlay, it contains soils that have greater limitations and slope constraints.¹²¹
- 136 It is submitted that the southeastern site is not a reasonably practicable and feasible option for urbanisation. Firstly, Ms O'Connor evaluated it in rebuttal evidence and identified it as separated from the established area of Kerikeri, lacking clear natural or other defensible boundaries, and there is no assessment supporting it in terms of delivering the benefits associated with the KFO Site. Secondly, the site is not within the scope of this plan process. If the Panel find that urban zoning is required, then it is plainly not available as an alternative.

The cost-benefit test

- 137 Mr Hunt's evidence considers the costs of losing the KFO Site from land-based primary production. He considers that the highest and best use of the Site is dry stock grazing. At the hearing, he will explain the limitations of the Site's productivity for land-based primary production, which he attributes to soil constraints, access to water, and infrastructure. He will also speak to the ability (or lack thereof) of horticulture investors to derive an economic return from the Site.
- 138 Ms O'Connor, taking that information, along with the various benefits of the Proposal from other technical experts, has evaluated the costs and benefits and concluded that the benefits outweigh the costs.¹²² In doing so, Ms O'Connor factored in the costs and benefits of oversupplying and undersupplying land explained by Mr Thompson.
- 139 Mr Thompson, Mr Niell, and Ms O'Connor will speak to the benefits of the Proposal at the hearing.

Flood Mitigation

- 140 The reporting officers express concern about the level of confidence that the risk from flood hazards within the Site can be adequately

¹²⁰ Statement of Rebuttal Evidence of Burnette O'Connor at [53] for an image of the southeastern site.

¹²¹ Statement of Rebuttal Evidence of Jeremy Hunt at [45] and [46].

¹²² Statement of Evidence of Burnette O'Connor at [46]-[53]. Statement of Rebuttal Evidence of Burnette O'Connor at [55].

mitigated.¹²³ In their view, while certain design details are best addressed through any future consenting processes, a higher level of certainty is required to demonstrate that flood hazard risk can be appropriately addressed.¹²⁴

- 141 Mr Kuta has given evidence and will speak to the various work that has been done by NRC and e2 to model and understand the flood risk of the Site. In his opinion, the concept design floodway is supported by sufficient information to understand the risk of flooding and what is required to work within its limitations.¹²⁵
- 142 The Council's concern about the presence and reliance on stopbanks is misplaced. The floodway uses a flood path on the Site to channel water. It does not depend on engineer stopbanks for protection,¹²⁶ aligning the floodway with Policy 7.2.2 or the RPS.¹²⁷
- 143 Mr Kuta will give evidence that flooding is more than just blue images on a map. Velocity and depth matter, and floodway works with the existing flood pattern, ensuring that the peripherals (where velocity and depth is lower) are reduced.
- 144 Mr Kuta accepts that bedrock may be a constraint. However, he considers that unlikely to prevent the floodway's creation because his assessment shows that the required recess into the surrounding topography would require much less than the recorded and estimated bedrock depths in the area of 2-4m. All that is required is 0.8m of recessed land. The estimate is that bedrock is 2 – 4m deep and will not be a factor.
- 145 In terms of stormwater, as with any use and development, the developer would need to show that discharges from the subdivision have a negligible effect on flood hazards.¹²⁸ Mr Kuta accepts that land may be required for stormwater management. His view is that this is an ordinary and usual part of land development

¹²³ Section 42A Report at [361].

¹²⁴ Statement of Evidence of Jon Rix.

¹²⁵ Statement of Evidence of Laddie Kuta at [68]. Statement of Rebuttal Evidence of Laddie Kuta at [6].

¹²⁶ Statement of Evidence of Laddie Kuta at [51].

¹²⁷ Statement of Evidence of Laddie Kuta at [55]-[57].

¹²⁸ Statement of Evidence of Laddie Kuta at [52].

Ecology

- 146 Ms Barnett's evidence is that there is nothing from her site visit or ecosystem assessments that suggests the Site is unsuitable for urban zoning.
- 147 The majority of the Site is in pastoral use, and the particular areas that have been identified will already be protected by the PDP. For example, the Kerikeri River runs through riparian margins and the large areas of indigenous vegetation in the gully to the east through Open Space zoning and SEA mapping.
- 148 When evaluating the section 42A report and supporting technical evidence, KFO asks the Panel to consider whether the provision or information that is sought by the section 42A report officer:
- (a) duplicates a provision of the PDP, regional plan, or national environmental standard or requires information that will be provided through a consent process under the PDP, regional plan, or national environmental standard; and
 - (b) is necessary over and above provisions in the PDP, regional plan, or national environmental standard and information that would be required under the PDP, regional plan, or national environmental standard?
- 149 There are significant protections for flora and fauna that will need to be assessed at the consent stage. If lizards, bats, and fish are found, the effects on those species will be managed as they always will. It is standard practice.

Infrastructure and three waters

- 150 The starting point is that Mr Wyeth accepts that it "may be feasible to adequately service the Site from a three-waters perspective and that the details of this could be developed further through future consenting processes."¹²⁹
- 151 Mr Ehlers' evidence in chief discusses three waters servicing, which we do not repeat. The brief point is that the three-waters assessment prepared by Beca for the Spatial Plan demonstrates that the public water

¹²⁹ Section 42A Report at [419].

supply and wastewater systems can be upgraded to support residential and commercial development on the Site. If required, onsite wastewater can be provided and connected to the public wastewater system when required.

152 The issues are instead related to:

- (a) The efficiency of infrastructure servicing, including costs; and
- (b) Funding.

153 The evidence before the commissioner on these topics is from Messrs Brownlie and Ehlers for KFO, and Messrs Hensley and McDonald for the reporting officers. Mr Thompson's economic evidence for KFO regarding the affordability of KFO's development is also relevant.

The efficiency of infrastructure servicing and cost

154 Mr Hensley's evidence discusses various aspects of KFO's wastewater proposal that he does not consider feasible or efficient. What Mr Hensley has ignored is that the issues in respect of capacity for water supply and wastewater treatment arise under all scenarios where growth is involved.¹³⁰ The only difference between those scenarios is how the development connects to the treatment facilities – i.e. the pipes and pump stations.

155 The KFO scenario has the added benefit of providing a potential interim wastewater solution, which the Council's own Capacity Assessment for the Spatial Plan contemplated as an option.¹³¹

156 Mr Hensley's evidence refers to various costings, including a combined costing of the PDP-R and KFO scenario of \$279m to \$482m.¹³² This appears to be a simple addition of the costings for the two scenarios.¹³³ Mr Hensley's calculation is misleading in that it presents a potential cost that will not occur in the real world.¹³⁴ As Mr Ehlers points out, this cost assumes there is a treatment plant for each scenario, which just would not happen.

¹³⁰ Statement of Rebuttal Evidence of Johan Ehlers at [28].

¹³¹ Statement of Rebuttal Evidence of Johan Ehlers at [20].

¹³² Statement of Evidence of Vic Hensley at [6.2].

¹³³ Statement of Rebuttal Evidence of Johan Ehlers at [32].

¹³⁴ Statement of Rebuttal Evidence of Johan Ehlers at [32]

- 157 If the Commissioners are concerned about infrastructure cost, we would invite them to look at the Beca Three Waters Capacity and Modelling Assessment and the comparative water and wastewater network upgrade costs for the Spatial Plan scenarios depicted in Table 22 and Table 23.¹³⁵ The cost difference between the scenarios – the pipes and the pump stations – is not what Mr Hensley and Mr McDonald make them out to be.
- 158 Moreover, Mr Thompson’s rebuttal evidence directly looks at the question of developing a greenfield site like KFO’s. Mr Thompson estimates subdivision costs at \$150,000 per dwelling, equating to \$275 million available for the residential components and in the order of \$400 million including the commercial development. Mr Thompson considers this is sufficient to cover the cost of developing the KFO Site – including flood protection and upgrades to transportation and other infrastructure.¹³⁶

Funding

- 159 Mr Hensley opines that KFO “has not” provided binding commitments or evidence confirming responsibility for funding infrastructure.¹³⁷ Mr Hensley may have missed Mr Brownlie’s confirmation to fund infrastructure.¹³⁸ For the avoidance of doubt, Mr Brownlie confirmed in rebuttal KFO’s commitment to pay for the infrastructure that it creates demand for and which it is the beneficiary of.¹³⁹
- 160 To the extent that Mr Hensley is seeking a binding commitment from KFO, that is not required. The Precinct provisions deal with infrastructure through the CDP, requiring information about the proposed staging of development and how that aligns with the delivery of the required infrastructure and details of the funding and delivery of required infrastructure to service the development. The policies – which the Council will presumably consider when consenting the CDP – require

¹³⁵ Three Waters Capacity and Modelling Assessment, Beca, at page 46. Source <https://www.fndc.govt.nz/_data/assets/pdf_file/0024/38643/3394841bcd07707031cd431dd4a12487f7bc039b.pdf>

¹³⁶ Statement of Rebuttal Evidence of Adam Thompson at [59]-[66].

¹³⁷ Statement of Evidence of Vic Hensley at [3.6].

¹³⁸ Statement of Evidence of Stephen Brownlie at [16].

¹³⁹ Statement of Rebuttal Evidence of Stephen Brownlie.

coordination with infrastructure provision and staged release of land supported by sufficient infrastructure.

- 161 The zoning of land does not obligate the Council to pay for the infrastructure on that land. In relation to connection to reticulated systems, KFO would need the Council's approval to connect to the treated water supply system¹⁴⁰ and the public sewer.¹⁴¹
- 162 In terms of recovering costs for upgrades or new infrastructure, the Council has tools available to it under the Local Government Act, such as developer agreements and development contributions.
- 163 The Council notified a draft Development Contributions Policy 2025. While the KFO Site is outside the catchment area in that Policy, development of KFO's Site would be captured per clause 56.2:

For avoidance of doubt, development occurring outside of the Catchment areas, but which is able to connect to a water or wastewater network that is predominantly located within the mapped Catchment areas, will also be liable for development contributions for the relevant Activity.

- 164 Mr Hensley's and Mr McDonald's fears that costs will be foisted on the Council are unfounded when examined against the terms of the DC Policy, such as clause 35:

Council's rationale for using development contributions is underpinned by statutory requirements and best practice:

35.1. Growth communities should bear a proportionate share of capital costs for infrastructure needed due to development, protecting existing ratepayers from unsustainable increases and supporting fair, sustainable growth (s101(3) and s106(2)(c) LGA).

- 165 KFO's commitments are consistent with this rationale.

Transport

- 166 The reporting officers identify what they consider to be "several key uncertainties associated with the transport effects anticipated from the KFO Proposal and a number of adverse effects are expected to arise".¹⁴²
- 167 The issues between the experts generally relate to the modelling inputs and management of effects through staging. We will largely leave these points to be discussed by Mr Brown and Mr Hughes, including how staging will allow potential transport effects to be managed through time.

¹⁴⁰ Treated Water Supply Bylaw 2018.

¹⁴¹ Wastewater Drainage Bylaw 2018.

¹⁴² Section 42A Report at [408].

However, we wish to make several observations about the reporting officers' position.

- 168 The first is that Mr Collins' concerns with the modelling assumptions appear to be nitpicks. It cannot be ignored that KFO used the Council's model and the Council's modellers to do the modelling. The Council's modellers, Flow, did not raise any issue with the inputs when it accepted the inputs for modelling.
- 169 The second is that the modelling inputs were the same for all the comparative scenarios modelled. This means that the models are at the very least useful for a comparative exercise between the KFO scenario and the PDP scenario.
- 170 The model results show that the KFO scenario works well with both two and three accesses. In many cases, it is better than the PDP scenario. What must not be forgotten is that the KFO scenario was modelled to deliver twice the housing as the PDP scenario for the same level of effect on the traffic network in the medium-term scenario - 860 new households under the PDP medium-term scenario compared to 1,600 new households under the KFO medium-term scenario.¹⁴³
- 171 Mr Hughes gives evidence that this output "demonstrates that the transport network has greater capacity to support a greenfield development like KFO's than it does for infill development under the PDP scenario."¹⁴⁴
- 172 This leads into our third point, which is that the reporting officers have not modelled the PDP-R scenario. Despite the various critiques levied at KFO's experts and modelling, the reporting officers themselves do not understand the traffic effects of their own PDP-R scenario.
- 173 Section 76(3) of the RMA provides:
- In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.
- 174 The reporting officers have not considered the potential traffic effects of the PDP-R scenario. This not only casts doubt about the MDRZ's and

¹⁴³ Statement of Rebuttal Evidence of Daryl Hughes at [30].

¹⁴⁴ Statement of Rebuttal Evidence of Daryl Hughes at [30].

TCZs' consistency with s 76(3), but also on the reporting officers' s 32 analysis of the PDP-R proposal.

Urban Design

- 175 The urban design evidence, insofar as it relates to KFO's Proposal, is provided by two experts:
- (a) Jane Maree Rennie (supporting the Section 42A report)
 - (b) Grant Neill (on behalf of Kiwi Fresh Orange Company Limited, supporting the rezoning proposal)
- 176 Both experts acknowledge the need for additional housing and business land to support the growth of Kerikeri and Waipapa. Both stress the importance of achieving well-functioning urban environments and good urban design.
- 177 The experts disagree on the preferred urban form for Kerikeri-Waipapa, connectivity and integration, how housing diversity and density are to be provided, urban design controls and certainty, and the impact on existing centres.
- 178 We do not touch on all these issues, but wish to make note of the urban design controls under the KFO Proposal versus those in the PDP-R scenario.
- 179 Ms Rennie criticises the KFO Proposal for a lack of urban design controls in the Precinct provision, and insufficient requirements for urban design assessment at the consenting stage.¹⁴⁵ She considers it unclear how the Structure Plan and Precinct Plan inform decision-making.
- 180 Mr Neill has responded to Ms Rennie's criticism in rebuttal evidence. He considers that the CDP is a mechanism by which high-quality urban design outcomes will be achieved, along with Precinct Provisions that seek to secure a quality urban environment and require development in general accordance with the Precinct Plan and Structure Plan.¹⁴⁶
- 181 In rebuttal, Mr Neill recommended that the Council be able to request an urban design assessment to assist its evaluation of the CPD. This has been added to the most recent version of the Precinct Provisions.

¹⁴⁵ Statement of Evidence of Jane Rennie at [3.2].

¹⁴⁶ Statement of Rebuttal Evidence of Grant Neill at [9]-[17].

- 182 Ms Rennie’s criticism of KFO’s Proposal is ironic, given that there are no controls in the PDP-R scenario to secure positive design outcomes when development is enabled as a permitted activity, and there is no urban design framework in place.¹⁴⁷
- 183 Mr Neill’s evidence is that “densification of the residential area of [Kerikeri] will cause a profound and unmanaged change in the character to the town”. If the development is taken up (which is contested per KFO’s economic evidence), it will change the character of the township to that of a large city suburb.¹⁴⁸
- 184 The purpose of highlighting this difference is not to oppose the PDP-R scenario on urban design grounds but rather to contextualise the criticism that Ms Rennie has levied against KFO’s Proposal as compared to the PDP-R scenario. In our submission, it belies what appears to be an ideological position of Ms Rennie that intensification is the only and best urban design outcome.
- 185 Mr Neill’s evidence is more credible when considered for the Kerikeri-Waipapa. It does not just bring across urban design principles from Auckland, but rather it looks at urban design as a means of placemaking. This includes maintaining the village feel of Kerikeri, designing in a way that is unique to the Northland context and where there is demand for housing, and creating something that people actually want to live in and is therefore viable as a commercial product.

¹⁴⁷ Statement of Rebuttal Evidence of Grant Neill at [18]-[25].

¹⁴⁸ Statement of Rebuttal Evidence of Grant Neill at [44].

PART 5: CONCLUSION

- 186 The evidence presented on behalf of KFO demonstrates that the proposed rezoning of the KFO Site is both necessary and appropriate to ensure the PDP gives effect to the NPS-UD by providing affordable housing that is responsive to the market's preference for detached housing.
- 187 The current PDP-R scenario, as advanced by the reporting officers, is fundamentally misaligned with market demand and community preferences in Kerikeri-Waipapa. It relies heavily on infill and attached typologies, which have historically seen little uptake, and fails to provide for affordable, detached housing at the scale required.
- 188 The KFO Proposal, by contrast, offers a planned, greenfield development that can deliver a genuine mix of housing types and price points, directly addressing affordability challenges and supporting a well-functioning urban environment.
- 189 Concerns raised by the reporting officers regarding flood risk, ecological effects, and infrastructure funding have been robustly addressed through expert evidence, demonstrating that any residual uncertainties are proportionate and can be managed through the consenting process and the proposed precinct provisions. The KFO Proposal also satisfies the requirements of the NPS-HPL, with the benefits of rezoning outweighing the costs associated with the loss of highly productive land, particularly given the Site's limited productive capacity and the pressing need for affordable housing.
- 190 Ultimately, the KFO Proposal represents a prudent and responsive approach to urban growth in Kerikeri-Waipapa. It aligns with the objectives of the PDP, supports the well-being of the community, and provides the flexibility and capacity needed to accommodate future growth.



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Mike Doesburg | Elliot Maassen
Counsel for Kiwi Fresh Orange Company Limited

APPENDIX A: GENERAL GUIDANCE CRITERIA FOR REZONING SUBMISSIONS¹⁴⁹

Criteria	Matters to be addressed	Evidence ¹⁵⁰
<i>Strategic direction</i>	How the rezoning request is consistent with the PDP strategic direction (refer Hearing 1)	Statement of Evidence of Burnette O'Connor (Planning) at [60]-[67] and Statement of Rebuttal Evidence at [62] and [90].
<i>Alignment with zone outcomes</i>	When rezoning request relates to existing PDP zone, an assessment of how the proposal is aligned with the objectives, policies and intended outcomes for the zone	Statement of Evidence of Burnette O'Connor (Planning) at [68]-[73]. Statement of Evidence of Grant Neil (Urban Design) at [25]-[28] and [34]-[53].
<i>Higher order direction</i>	How the request "gives effect to" higher order documents in accordance with section 75(3) of the RMA? Consideration of all relevant national policy statements, the national planning standards, and the Northland Regional Policy Statement.	Statement of Evidence of Burnette O'Connor (Planning) at [25]-[26]; [37]-[59] and Statement of Rebuttal Evidence at [62]-[71]. Statement of Evidence of Grant Neil (Urban Design) at [54]-[63]. Statement of Evidence of Adam Thompson (Economics and Property Market) at [81]-[88]. Statement of Evidence of Jeremy Hunt (Rural Productivity) generally, and Appendix A – NPS-HPL Productivity Assessment. Statement of Rebuttal Evidence of Jeremy Hunt (Rural Productivity) generally. Statement of Evidence of Teffery Barnette (Ecology) at [42]-[48] and [67].

¹⁴⁹ As per Minute 14 dated 2 December 2024 at [7].

¹⁵⁰ Non-exhaustive.

Criteria	Matters to be addressed	Evidence ¹⁵⁰
<i>Reasons for the request</i>	The reasons for the rezoning request, including an assessment of why the notified zoning is not appropriate for the subject land.	<p>Statement of Evidence of Burnette O'Connor (Planning) at [74]-[78].</p> <p>Statement of Rebuttal Evidence of Burnette O'Connor (Planning) at [27]-[37] and [50]-[55].</p> <p>Statement of Evidence of Stephen Brownlie (Corporate) at [6]-[8].</p> <p>Statement of Evidence of Jeremy Hunt (Rural Productivity) at [26]-[35].</p> <p>Statement of Rebuttal Evidence of Jeremy Hunt (Rural Productivity) at [10]-[24].</p> <p>Statement of Evidence and Rebuttal Evidence of Adam Thompson (Economics and Property Market) generally.</p>
<i>Assessment of site suitability and potential effects of rezoning</i>	<p>Assessment of the suitability of the land for rezoning, including an assessment of:</p> <ul style="list-style-type: none"> ○ The risks from natural hazards (refer Part 2 – District Wide Matters and the Northland Regional Policy Statement) ○ Effects on any natural environment values, historic heritage, coastal environment, or other PDP overlay (refer Part 2 – District Wide Matters) ○ Effects on surrounding sites, including compatibility of the rezoning with surrounding land-uses and potential reverse sensitivity effects. 	<p>Statement of Evidence of Burnette O'Connor (Planning) at [79]-[82]; [91]-[107].</p> <p>Statement of Rebuttal Evidence of Burnette O'Connor (Planning) at [38]-[44], [56]-[61] and [81]-[88].</p> <p>Statement of Evidence of Grant Neil (Urban Design) at [18]-[28] and Statement of Rebuttal Evidence generally.</p> <p>Statement of Evidence and Rebuttal Evidence of Laddie Kuta (Flood Mitigation) generally.</p> <p>Statement of Evidence and Rebuttal Evidence of Treffery Barnett (Ecology) generally.</p>

Criteria	Matters to be addressed	Evidence ¹⁵⁰
		Statement of Evidence of Jeremy Hunt (Rural Productivity) at [36]-[49] and generally, and Statement of Rebuttal Evidence generally.
<i>Infrastructure (three waters) servicing</i>	<p>How the rezoning request (including subdivision and development potential enabled by the request) will be supported by adequate infrastructure servicing. This assessment should set out, as applicable:</p> <ul style="list-style-type: none"> Any proposed connections to existing infrastructure systems. Any outcomes of discussions with infrastructure providers and any assumptions about infrastructure servicing/sequencing or capacity, including demands from other plan-enabled development. Any on-site provision of infrastructure. 	<p>Statement of Evidence of Burnette O'Connor (Planning) at [83]-[85].</p> <p>Statement of Evidence and Rebuttal Evidence of Johan Ehlers (Infrastructure) generally.</p> <p>Statement of Evidence of Adam Thompson (Economics and Property Market) at [25] and [65]-[75], and Statement of Rebuttal Evidence at [62]-[74].</p> <p>Statement of Evidence of Stephen Brownlie (Corporate) at [15]-[17].</p> <p>Statement of Rebuttal Evidence of Stephen Brownlie (Corporate) at [4]-[9].</p>
<i>Transport infrastructure</i>	How the rezoning request will be supported by existing or proposed transport infrastructure, including how new or upgraded transport infrastructure is required.	<p>Statement of Evidence of Burnette O'Connor (Planning) at [86]-[90].</p> <p>Statement of Evidence of Philip Brown (Transport).</p> <p>Statement of Rebuttal Evidence of Daryl Hughes (Transport).</p>
<i>Consultation and further submissions</i>	<p>Any consultation undertaken with key stakeholders or tangata whenua in relation to the rezoning request.</p> <p>A list of any further submissions on the rezoning request and a response to those further submissions</p>	<p>Statement of Evidence of Burnette O'Connor (Planning) at [108]-[113].</p> <p>Statement of Rebuttal Evidence of Burnette O'Connor (Planning) at [72]-[77].</p> <p>Statement of Evidence of Grant Neil (Urban Design) at [29]-[31].</p>

Criteria	Matters to be addressed	Evidence ¹⁵⁰
		<p>Statement of Evidence and Rebuttal Evidence of Dennis Corbett (Corporate – Community Liaison and Market) generally.</p> <p>Statement of Rebuttal Evidence of Stephen Brownlie (Corporate) at [10]-[12].</p>
<i>Section 32AA evaluation</i>	How the rezoning request is a more appropriate, effective and efficient way to achieve the PDP objectives (compared to the notified zoning) in accordance with section 32AA of the RMA	<p>Statement of Evidence of Burnette O'Connor (Planning) at [114]-[123].</p> <p>Rebuttal Evidence of Burnette O'Connor.</p>

APPENDIX B – SHORTCOMINGS OF THE SPATIAL PLAN

The Spatial Plan is not the communities' preferred outcome:

- The community was asked, “Do you support the draft spatial plan, yes / no and why”. The results were:
 - 152 submitters said yes (84 of these were rangatahi).
 - 165 submitters said no (5 were rangatahi).
 - 62 submitters said they did not know (41 of these were rangatahi).
 - 11 did not state either way (left blank / or was not clear from their submission) (2 were rangatahi).
 - 2 submissions could not be categorised.
- Most people who responded, in fact, opposed the draft spatial plan (Hybrid D and E).

The Hybrid Scenario was advanced with limited assessment.

- Other than for three waters, no separate assessment of the combination of Scenarios D & E appears to have been undertaken (i.e., what the impacts of the “whole” are, compared to the impacts of its “parts”).
- The Hybrid Scenario was not tested against the multi-criteria analysis used to evaluate the other scenarios in the Growth Scenarios Evaluation Report.
- The Hybrid Scenario does not deliver sufficient land supply to meet demand, at least not without assuming that unrealistic development density will occur. The suggestion that residents of Kerikeri and Waipapa will want to live in walk-up apartments or townhouses on small sites ignores the reality of housing demand in Kerikeri and Waipapa, as well as the needs of its aging population.
- Little regard has been paid to one of the main drivers of housing affordability – land value. The land identified by the Hybrid Scenario is some of the most expensive in the area.
- The practicalities of achieving growth over fragmented landholdings, let alone finding the infrastructure for that growth have not been considered. The draft implementation plan that accompanied the Spatial

Plan simply kicks those important considerations down the road, to be the problem of future Councils and communities.

The Growth Scenario Evaluation relied on uncomprehensive, inconsistent and inaccurate information and assumptions.

- The Growth Scenario Evaluation was an important document as its findings dictated the outcome of the draft Spatial Plan, which was then consulted on.
- There are multiple instances where scoring under the Multi-Criteria Analysis was unconnected to the technical information available. Scenario F was mischaracterised, and much of the information supplied by KFO was not taken into account. This resulted in skewed findings and assumptions with respect to biodiversity, rural production, urban form and density, market feasibility, and deliverability, infrastructure, flood hazard risk and impact on soils.
- By way of example:
 - Scenario F was scored a '-2' in relation to rural production compared to a '+1' for Scenario D, despite the fact that Scenario D (Kerikeri South Focussed Expansion) is located on LUC Class 2 soils with irrigation infrastructure, whereas Scenario F is located on LUC 3 and 4 mapped soils.
 - Scenario F was scored a '-1' on Market feasibility and deliverability compared to a '+2' for Scenario D. It will be evident from Mr Thompson's economic evidence why this rating is unsustainable.
- The Multi-Criteria Analysis contained no method of weighing the criteria. The criteria were not prioritised based on their relative importance, meaning that more critical factors did not have a greater influence on the final decision.

Consultation shortcomings

- The Growth Scenario Evaluation included one-month of community engagement on the growth scenarios. We say that it cannot be held out that a certain scenario was preferred by the community when there is such marginal difference on the feedback. By way of example, the difference in score between Scenario F and Scenario D was 3 points.

- In response to combined scenarios, four respondents said F and D and two said D and E (the option chosen).
- The Hybrid Scenario arose after consultation on the draft Spatial Plan in response to assessment of individual Scenarios and community feedback on those Scenarios.
- As the Hybrid Scenario did not exist when first consulted on, the community's views on it could not have been known at the time the preferred option was chosen. The response, as set out in paragraph 1, was that the majority of people opposed it.

The Consultation Summary Report and Deliberations Report are misleading.

- The incomplete and incorrect information provided to subject matter experts was subsequently relied on by the Hapu Ropu to inform its preferred scenario at a hui in December 2024. The independent conclusions of the Hapu Ropu were modified following a briefing from Council officers. The PowerPoint presentation used lacked objectivity, employing a strategic and misleading framing of feedback to create a strong push towards the Council's preferred 'hybrid' scenario.
- Ngāti Rēhia presented in support of Scenario F at the spatial plan hearing.