BEFORE A HEARINGS PANEL
OF THE FAR NORTH DISTRICT COUNCIL

I MUA NGĀ KAIKŌMIHANA MOTUHAKE O TE HIKU O TE IKA

Under the	Resource Management Act 1991 (**RMA**)
In the matter	of a request for rezoning of land in the Kerikei-Waipapa area under the proposed Far North District Plan

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LEGAL SUBMISSIONS FOR THE FAR NORTH DISTRICT COUNCIL

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1. INTRODUCTION

1.1 This hearing relates to requests for the urban rezoning of land in the Kerikei-Waipapa area under the proposed District Plan (**PDP**) of the Far North District Council (**Council**).

1.2 The s 42A report has been prepared in part by Ms Trinder and in part by Mr Wyeth. Ms Trinder addressed all rezoning requests except a request by Kiwi Fresh Orange Company Limited (**KFO**) seeking rezoning of approximately 197 ha of land between Kerikeri and Waipapa from Rural Production zone to urban zoning (General Residential zone, Mixed Use zone and Natural Open Space zone). This is addressed by Mr Wyeth.

1.3 Collectively, the rezoning requests raise very important issues about the future urban form of Kerikeri and Waipapa, the impacts of urban development, the quality of urban environments and outcomes that will be enabled and the efficient planning, funding and delivery of infrastructure. These issues have been recently considered by the Council in preparing and adopting Te Pātukurea – Kerikeri–Waipapa Spatial Plan (**Spatial Plan**).

1.4 The need for a district plan which enables greater development capacity than the notified version of the PDP is acknowledged in the s 42A report. However, the key matter for the Hearings Panel to consider is where and how that additional development capacity should be provided. Integration between land use planning and infrastructure planning and funding is a central consideration.

1.5 The planning merits of the respective rezoning requests are addressed in the s 42A report and are not repeated here. Rather, these submissions are focussed on the legal framework and specific legal issues.

1.6 These submissions have been prepared without seeing the legal submissions on behalf of submitters. It is therefore anticipated that some issues raised in those submissions may need to be addressed in reply.

2. OUTLINE OF SUBMISSIONS

2.1 These submissions are structured as follows:

(a) Section 42A report and supporting evidence;

(b) Statutory framework;

(c) Relevant higher order planning documents;

(d) Potential changes to national directions;

(e) Pausing of significant natural areas under the National Policy Statement for Indigenous Biodiversity (**NPS-IB**);

(f) National Policy Statement for Urban Development (**NPS-UD**) – location of development capacity;

(g) National Policy Statement for Highly Productive Land (**NPS-HPL**) – availability of exceptions;

(h) Relevance and weighting of the Spatial Plan;

(i) Funding and provision of infrastructure; and

(j) Conclusion.

3. SECTION 42A REPORT AND SUPPORTING EVIDENCE

3.1 The section 42A report summarises and evaluates submissions on the notified PDP and makes recommendations as to whether there should be any amendments in response to those submissions.

3.2 The s 42A report has been prepared by:

(a) Sarah Trinder – who addresses all rezoning requests except the rezoning request by KFO; and

(b) Jerome Wyeth – who addresses the KFO rezoning request.

3.3 The following witnesses have produced evidence in support of the s 42A report:

(a) Mr Azman Reuben – Spatial Plan;

(b) Mr Lawrence McIlrath – economics;

(c) Mr Mat Collins – transport;

(d) Mr Vic Hensley – infrastructure;

(e) Mr Ken McDonald – Council finances and infrastructure funding;

(f) Mr Mathew Lindenberg – planning (NPS-UD);

(g) Ms Jane Rennie – urban design;

(h) Mr Jon Rix – flooding;

(i) Ms Phoebe Andrews – ecology; and

(j) Dr Reece Hill – rural productivity.

3.4 The s 42A authors have also relied on other expert reports which are referred to in the s 42A report. The Hearings Panel will first hear an overview from Ms Trinder, followed by an overview from Mr Wyeth. The witnesses set out above will then be called.

3.5 As noted above, the need for a district plan which enables greater development capacity than the notified version of the PDP is acknowledged in the s 42A report. However, the difference between the s 42A authors and some submitters relates to where and how that additional development capacity should be provided in the context of Kerikeri-Waipapa.

3.6 Ms Trinder recommends a package of changes which she describes as the Proposed District Plan – Recommendations Version (**PDP-R**). The PDP-R includes the following:

(a) Medium Density Residential zone over parts of the existing General Residential zoned land;

(b) Town Centre zone over parts of the existing Mixed Use zoned land;

(c) Upzoning of 23 Aranga Road from Rural Residential to General Residential zone;

(d) Rezoning 7.7 ha of land at 126 Kerikeri Road (and associated land holdings) from General Residential to Mixed Use zone; and

(e) Introduction of a minor residential unit as a permitted activity and minor provision changes recommended through Hearing 14.

3.7 This is primarily a package that provides for greater intensification through application of the Medium Density Residential zone and the Town Centre zone with associated policy and rule frameworks.

3.8 Mr Wyeth considers this to be the most appropriate way of providing sufficient development capacity for Kerikeri-Waipapa. He recommends that the KFO proposal be rejected for a number of reasons which are set out in his part of the s 42A report.

4. STATUTORY FRAMEWORK

4.1 The relevant statutory considerations when determining the contents of a district plan are set out in at ss 31, 32, 32AA and 72 – 77E of the RMA.

4.2 Minute 14 of the Hearings Panel sets out general criteria for evaluating rezoning submissions. These criteria provide a convenient way of framing the statutory considerations in the context of rezoning requests and have been followed by s 42A authors. However, the full range of statutory considerations are summarised below.

4.3 In summary, the key statutory considerations include whether the proposed provisions:

(a) Are designed to accord with and assist the Council to carry out its functions[1] in order to achieve the purpose of the RMA[2];

(b) Are in accordance with any regulations (including national environmental standards);[3]

(c) Give effect to a national policy statement, the New Zealand coastal policy statement, a national planning standard and any regional policy statement;[4]

(d) Are not inconsistent with a water conservation order or an operative regional plan for any matter specified in section 30(1)[5] and have regard to any proposed regional policy statement or regional plan on any matter of regional significance[6];

(e) Have regard to any relevant management plans and strategies under other Acts, any relevant entry in the New Zealand Heritage List to the

1 RMA, ss 31 and 74(1).
2 RMA, ss 72 and 74(1).
3 RMA, s 74(1).
4 RMA, s 75(3)(a), (b), (ba) and (c).
5 RMA, s 75(4).
6 RMA, s 74(2).

extent their content has a bearing on the resource management issues of the region;[7]

(f) Have regard to the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities;[8]

(g) Have regard to any emissions reduction plan or national adaptation plan made in accordance with the Climate Change Response Act 2002;[9]

(h) Take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district;[10] and

(i) Have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect when making a rule.[11]

4.4 Section 32 of the RMA requires an evaluation of a number of matters when determining plan provisions. Under s 32 the key questions include whether:

(a) The objectives are the most appropriate way to achieve the purpose of the RMA; and

(b) The other provisions are the most appropriate way to achieve the objectives, including by identifying other reasonably practicable options[12] and assessing the efficiency and effectiveness of the provisions in achieving the objectives[13]:

(i) By identifying and assessing[14] and, if practicable, quantifying[15] the benefits and costs of the environmental, economic, social,

7 RMA, s 74(2)(b).
8 RMA, s 74(2)(c).
9 RMA, s 74(2)((d) and (e).
10 RMA, s 74(2A).
11 RMA, s 76(3).
12 RMA, s 32(1)(b)(i)
13 RMA, s 32(1)(b)(ii).
14 RMA, s 32(2)(a).
15 RMA, s 32(2)(b).

and cultural effects that are anticipated (including opportunities for economic growth and employment); and

(ii) Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.[16]

4.5 Under s 32AA, a further evaluation is required only for any changes that have been made to, or are proposed for, the proposal since the s 32 evaluation report for the proposal was completed. This further evaluation must be undertaken in accordance with s 32.

The requirement to "give effect to"

4.1 As mentioned above, s 75(3) of the RMA requires the Court to give effect to any national policy statements and the regional policy statement. The decision of the Supreme Court in *Environmental Defence Society v New Zealand King Salmon*[17] found that.

> "Give effect to" simply means "implement". On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it.[18]

4.2 The Supreme Court went on to say:

> [91] We acknowledge that the scheme of the RMA does give subordinate decision-makers considerable flexibility and scope for choice. This is reflected in the NZCPS, which is formulated in a way that allows regional councils flexibility in implementing its objectives and policies in their regional coastal policy statements and plans. Many of the policies are framed in terms that provide flexibility and, apart from that, the specific methods and rules to implement the objectives and policies of the NZCPS in particular regions must be determined by regional councils. But the fact that the RMA and the NZCPS allow regional and district councils scope for choice does not mean, of course, that the scope is infinite. The requirement to "give effect to" the NZCPS is intended to constrain decision-makers.

4.3 The Supreme Court also found that the requirement to give effect to a policy which is framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of

16 RMA, s 32(2)(c).
17 *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, (2014) 17 ELRNZ 442.
18 *King Salmon,* n 17, at [77].

abstraction.[19] Where policies are expressed in clearly directive terms, a decision-maker may have no option but to implement them.[20]

4.4 Having made those findings, the Supreme Court proceeded to interpret the NZCPS, paying particular attention to the way policies are expressed to resolve "apparent conflict".[21] While the Supreme Court acknowledged the possibility of conflict between different provisions within a plan, it found that there must be a "thoroughgoing attempt to find a way to reconcile them"[22] before a Court will come to this conclusion.

4.5 The Supreme Court decision of *Port Otago Ltd v Environmental Defence Society Incorporated*[23] revisited the issue of conflict between "enabling" and "avoidance" policies. It held that reconciliation of any conflict between the NZCPS avoidance policies and an "enabling" policy should be dealt with at the regional policy statement and plan level as far as possible.[24]

4.6 While the potential conflict in *King Salmon* was internal (i.e. within the NZCPS) rather than between two different national policy statements, the High Court has confirmed that the *King Salmon* approach could apply to conflicts between different national policy statements.[25]

4.7 The Supreme Court found that Part 2 of the RMA cannot be used to override higher order planning instruments. Because those higher order documents necessarily "give substance to" Part 2 of the RMA, there is no need for decision-makers to refer back to Part 2 when determining plan provisions[26] (unless one of three exceptions applies[27]).

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19 *King Salmon,* n 17, at [80] and [128]-[130].
20 *King Salmon*, n 17, at [129].
21 *King Salmon*, n 17, at [129].
22 *King Salmon*, n 17, at [131].
23 *Port Otago Ltd v Environmental Defence Society Incorporated* [2023] NZSC 112.
24 *Port Otago Ltd*, above n 23, at [72].
25 *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* [2019] NZRMA 1, at [75]–[76].
26 *King Salmon,* n 17, at [85].
27 *King Salmon,* n 17, at [88]. In summary, the exceptions are invalidity of the higher order document or any part of it, instances where the higher order document does not "cover the field" and uncertainty as to the meaning of particular policies within the higher order document.

Mandatory and directive language

4.8 The NPS-HPL uses some mandatory and directive words which have been interpreted by the Courts. This includes Objective 2.1 (highly productive land is *protected* for use in land-based primary production), Policy 5 (the urban rezoning of highly productive land is *avoided*) and Policy 8 (highly productive land is *protected* from *inappropriate* use and development).

4.9 In *Save the Maitai Incorporated v Nelson City Council*[28] the Environment stated that "these provisions set a very high bar to meet the statutory obligation in ss 75(3) … to give effect to the NPS-HPL".

Meaning of "avoid"

4.10 In *King Salmon*, the Supreme Court held that the word "avoid" in the context of Policy 15(a) of the NZCPS has its ordinary meaning of "not allow" or "prevent occurrence of".[29] The use of the word "avoid" in an objective or policy is a strong directive which, as mentioned above, imports a firm obligation on decision-makers to implement.

4.11 More recently, the Supreme Court considered the meaning of "avoid" in Policy 11 of the NZCPS in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* (the East West Link).[30] The effect of that decision is that even if directive policies requiring avoidance of adverse effects are applicable, there may be room for "deserving exceptions"[31] provided the relevant policies "are not subverted" and the proposed provisions are consistent with Part 2 of the RMA.[32] However, exceptions to the "avoid" policies should be "carefully circumscribed and narrow".

28 [2024] NZEnvC 155, at [103]
29 *King Salmon*, n 17, at [96].
30 *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, (2024) 25 ELRNZ 915.
31 Specifically, "public good" infrastructure.
32 *Royal Forest and Bird Protection Society of New Zealand Inc*, n 30, at [99] and [105].

Meaning of "protect"

4.12 In *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council*,[33] the Environment Court examined the meaning of "protection" in the context of section 6(c) "protection of indigenous flora and habitat". The Court noted that while the RMA does not define the word "protected", the meaning "to keep safe from harm, injury or damage"[34] was consistent with the interpretation previously adopted by the Court.

Meaning of "inappropriate"

4.13 The Supreme Court found that the words “appropriate” and “inappropriate” are "of course, heavily affected by context"[35]. Where the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, the Supreme Court found that the natural meaning is that “inappropriateness” should be assessed by reference to what it is that is sought to be protected.[36]

5. RELEVANT HIGHER ORDER PLANNING DOCUMENTS

5.1 The relevant higher order documents include:

(a) National Policy Statement for Urban Development;

(b) National Policy Statement for Highly Productive Land;

(c) National Policy Statement for Indigenous Biodiversity;

(d) National Policy Statement for Freshwater Management (**NPS-FM**);

(e) National Planning Standards; and

(f) Northland Regional Policy Statement (**RPS**).

33 *Royal Forest and Bird Protection Society of NZ Inc v New Plymouth District Council* [2015] NZEnvC 219; (2015) 19 ELRNZ 122.
34 *Royal Forest and Bird Protection Society of NZ Inc*, n 33, at [63].
35 *King Salmon*, n 17, at [100].
36 *King Salmon*, n 17, at [101]

5.2 As noted above, each of these documents must be given effect to, which requires a careful analysis of each of the relevant provisions, and reconciliation between them to determine what is required to implement or give effect to them. This exercise is undertaken in the s 42A report of Ms Trinder and Mr Wyeth and is not repeated here.

5.3 At a broad level, the relevant higher order documents include both "protective" and "enabling" themes. For example, matters requiring protection relate to highly productive land, wetland extent and values, and natural hazard risk. The enabling theme is reflected in provisions such as those providing for urban growth and ensuring sufficient development capacity.

5.4 In *Gardon Trust v Auckland Council*[37], the Environment Court noted the *potential* for conflict between the NPS-UD and the NPS-HPL. It noted that, in the first instance, decision-makers should seek to find a way in which both policy statements can be met, with a decision required where they are incompatible. In the present circumstances, I am not aware of any obvious conflicts which cannot be reconciled by interpreting the documents.

6. POTENTIAL CHANGES TO NATIONAL DIRECTIONS

6.1 The Government is proposing four new pieces of national direction and amendments to 12 others. The reforms have been grouped into four packages: “Infrastructure and development”; “Primary sector”; “Freshwater”; and “Going for Housing Growth”.

6.2 Consultation on the first three packages closed on 27 July 2025, and under the new “streamlined” process the amendments are expected to be in effect by the end of 2025.

6.3 The Freshwater package includes replacement of the NPS-FM objective and changes to the NPS-FM and NES-F in relation to wetland management (especially

37 [2025] NZEnvC 58, at [140].

treatment of artificial wetlands, provision for farming activities and wetland construction).

6.4 The "Going for Housing Growth" package is being progressed separately. A discussion document was released on 18 June 2025 and consultation closed on 17 August 2025. The proposals in the discussion document would change the approach in the NPS-UD but it is not yet clear exactly how. This will be determined as part of developing the new resource management system, informed by feedback on the discussion document. The proposed changes are therefore not relevant to this PDP process.

6.5 The most relevant changes are those relating to the NPS-HPL. The NPS-HPL came into effect on 17 October 2022 to protect highly productive land for use in land-based primary production.

6.6 There appears to be no dispute that the KFO site includes 163.1 ha of highly productive land in accordance with the transitional definition under clause 3.5(7) of the NPS-HPL.[38] The current transitional definition applies to land that is classed as LUC 1, 2, and 3. However, the Government's discussion document proposes to remove LUC 3 land from the definition of highly productive land (and consequentially the NPS-HPL restrictions), with immediate effect. The Government intends that the amendments to the NPS-HPL will be drafted after the consultation phase.[39]

6.7 There is nothing in the RMA that directs decision-makers to consider discussion documents. In *Mainpower NZ Limited v Hurunui District Council*[40] the Environment considered draft national policy statements for context but did not place any weight on them as they were subject to change. That approach is also applicable to discussion documents.

38 Application of the transitional definition has been considered in cases such as *Blue Grass Ltd v Dunedin City Council* [2024] NZEnvC 83 and *Balmoral Developments (Outram) Ltd v Dunedin City Council* [2023] NZEnvC 59 (corrected judgment [2023] NZEnvC 60). I have not addressed this in any detail as highly productive land status does not appear to be in dispute.

39 Package 2 (Primary Sector) Discussion Document, Attachment 2.4: Proposed provisions – Amendments to the National Policy Statement for Highly Productive Land 2022.

40 [2011] NZEnvC 384, at [27].

6.8 If amendments to the national directions come into force before the Hearings Panel makes its recommendations, the effect of those amendments must be considered by the Hearings Panel. This is required by s 55(2B), (2C) and (2D) of the RMA which together provide that local authorities must, using the Schedule 1 process, make amendments to a proposed plan that are required to give effect to any relevant provision in a national policy statement as soon as practicable, or as and when directed by the national policy statement.

6.9 The current NPS-HPL must be given effect to unless and until any amendments come into force. Because the final form of any amendments to national directions is not yet known, and it is unclear what the transitional arrangements will be, it is premature to comment on how potential amendments to the NPS-HPL would affect the PDP decision-making process. If the NPS-HPL is amended prior to the Hearings Panel's recommendations, the Hearings Panel may consider seeking submissions from the parties.

7. PAUSING OF SIGNIFICANT NATURAL AREAS UNDER THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

7.1 The PDP process was "mid-flight" when the NPS-IB came into force on 4 August 2023. Because the PDP was notified prior to this date, it did not fully give effect to the NPS-IB including the provisions relating to identification of new significant natural areas (**SNAs**).

7.2 The Resource Management (Freshwater and Other Matters) Amendment Act 2024 (**Amendment Act**) subsequently came into force on 25 October 2024. It was passed to implement the Government's announcement that requirements for identification of new SNAs will be suspended for a period of three years.

7.3 The Amendment Act inserted a new s 78 into the RMA to disapply NPS-IB requirements for the identification of SNAs in district plans[41] and to disapply the clause 4.1 requirement to give effect to the SNA provisions as soon as reasonably

41 Policy 6, clause 3.8(1), (6), and (8), clause 3.9(1) and clause 3.9(3).

practicable.[42] These provisions are proposed to be disapplied for a 3-year period ending on 25 October 2027.

7.4 The Amendment Act provided that:

(a) Clause 4.1 (which requires local authorities to give effect to the NPS-IB as soon as reasonably practicable) continues to apply in relation to the other provisions of the NPS-IB;[43]

(b) The changes do not affect any function or requirement under other provisions of the RMA relating to indigenous biological diversity, areas of significant indigenous vegetation, or areas of significant habitats of indigenous fauna;[44] and

(c) The changes do not affect any obligations of decision-makers under the RMA to give effect to provisions in policy statements and plans relating to indigenous biological diversity;[45] and

(d) If, during the 3-year period from commencement, a new area of significant indigenous vegetation or significant habitat of indigenous fauna is included in a proposed plan, the area is not an NPS-IB SNA regardless of how it is described in that document and the NPS-IB does not apply to the new area.[46]

7.5 The proposed changes therefore do not remove the Council's obligations:

(a) To give effect to NPS-IB provisions which are unrelated to identification of SNAs;

(b) To maintain indigenous biodiversity under s 31(1)(b)(iii) of the RMA;

(c) To recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance under s 6(c) of the RMA;

42 RMA, s 78(2) and (3).
43 RMA, s 78(3)(b).
44 RMA, s 78(4)(a).
45 RMA, s 78(4)(b).
46 RMA, s 78(5).

(d) To have particular regard to the intrinsic values of ecosystems under s 7(d) of the RMA; or

(e) To give effect to the RPS.

7.6 The changes described above were addressed in the s 42A report for Hearing 4 – Natural Environment Values and Coastal Environment. At that stage, the Resource Management (Freshwater and Other Matters) Amendment Bill had not yet passed, but the s 42A report was cognisant of the potential effect of the Bill. The s 42A report recommended that the Indigenous Biodiversity Chapter be amended to remove all references to SNAs (which were to be mapped voluntarily) and replace them with the defined term "significant indigenous vegetation or significant habitat of indigenous fauna", based on s 6(c) of the RMA and the criteria in Appendix 5 of the RPS.

7.7 The RMA requirements described above remain relevant to consideration of the KFO proposal. There continues to be strong recognition of indigenous biodiversity under the RMA, despite the pause on mapping of SNAs. The potential ecology effects of the KFO proposal are addressed in the evidence of Ms Andrews and in Mr Wyeth's s 42A report.

8. NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT – LOCATION OF DEVELOPMENT CAPACITY

8.1 The NPS-UD is a national policy statement which provides direction to decision-makers under the RMA in relation to development capacity for both housing and business. The NPS-UD is directive and prescribes a range of relatively complex planning, monitoring and decision-making obligations for local authorities.

8.2 The requirement for sufficient development capacity (to improve housing affordability and support competitive land and development markets) is one aspect of the NPS-UD. However, the NPS-UD is also directed more broadly at achieving good planning outcomes such as well-functioning urban environments. The NPS-UD must be given effect to as a whole, meaning that a proposal to provide

development capacity must still be tested against the outcomes sought by the wider provisions.

8.3 The NPS-UD takes a tiered approach to planning for urban growth, with "tier 1 local authorities" being subject to additional and more onerous requirements compared to "tier 2 local authorities" and "tier 3 local authorities", which are subject to the fewest and least onerous requirements.

8.4 Tier 1 and 2 local authorities are listed in the Appendix to the NPS-UD. The Council is not one of the local authorities listed. "Tier 3 local authority" is defined as follows:

> **tier 3 local authority** means a local authority that has all or part of an urban environment within its region or district, but is not a tier 1 or 2 local authority, and **tier 3 regional council** and **tier 3 territorial authority** have corresponding meanings

8.5 "Urban environment" is defined as follows:

> urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
>
> (a) is, or is intended to be, predominantly urban in character; and
>
> (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

8.6 Tier 1 and 2 urban environments are listed in the Appendix to the NPS-UD (which do not include the Far North District) and tier 3 urban environment means an urban environment that is not listed in the Appendix.

8.7 As set out in the s 42A report for Topic 14, with adoption of the Spatial Plan, the Kerikeri-Waipapa area should be treated as an urban environment because it is intended to be urban in character and is, or is intended to be, part of a housing and labour market of at least 10,000 people.

8.8 Because the Council is a tier 3 local authority, a number of NPS-UD provisions do not strictly apply. However, clause 1.5 provides for implementation by tier 3 local authorities as follows:

> Tier 3 local authorities are strongly encouraged to do the things that tier 1 or 2 local authorities are obliged to do under Parts 2 and 3 of this National Policy Statement, adopting whatever modifications to the National Policy Statement are necessary or helpful to enable them to do so.

8.9 As a tier 3 local authority, the Council is not required to prepare a Housing and Business Development Capacity Assessment (**HBA**) under the NPS-UD. However, it elected to commission an HBA from Market Economics Consulting (dated July 2024), as encouraged by clause 1.5 of the NPS-UD. The HBA follows the general structure of the NPS-UD, but the approach has been tailored to suit the Far North District.

8.10 The HBA assessed development capacity *under the notified PDP*, by estimating current and future demand and capacity for residential and business activities and evaluating the overall sufficiency in the short, medium, and long terms.

8.11 The HBA concluded that, under the notified PDP, there is sufficient business land, assuming a portion of growth will occur through redevelopment of existing sites and more intensive use of land resources. The HBA showed sufficient plan-enabled capacity at both a district-wide and Kerikeri-Waipapa level (for both housing and business land).

8.12 However, due to feasibility constraints and assumed uptake rates, the HBA predicted capacity deficits for detached dwellings in both Kerikeri-Waipapa and the wider district.

8.13 The NPS-UD therefore requires the Council to change the notified PDP to provide sufficient housing development capacity as soon as practicable (including through the submissions process if there is scope). The PDP-R was devised and modelled to demonstrate sufficient development capacity (in combination with the Spatial Plan) as set out in the s 42A evaluation and the evidence of Mr McIlrath and Mr Lindenberg.[47]

47 Noting some uncertainties as to exactly when this "plan-enabled" capacity will be "infrastructure ready" in the medium and long-term.

8.14 The requirements for sufficient development capacity are set out in clause 3.2 of the NPS-UD. Mr Lindenberg steps through that provision and his evidence is not repeated here. However, it is worth noting that the first requirement for sufficient development capacity is that it be "plan-enabled" in the short term, medium term, and long term. Under implementation clause 3.4(1)(c), if the Council is not required to have a future development strategy (as is the case for tier 3 local authorities), "any other relevant plan or strategy" may be relied upon. The Spatial Plan may therefore be relied upon by the Council for long term plan-enabled development capacity. The NPS-UD does not require 30 years of development capacity to be included in the PDP.

8.15 While the NPS-UD includes strong requirements for councils to provide sufficient development capacity to meet expected demand for housing, it leaves decision-makers with scope to determine the most appropriate location for additional development capacity. As noted above, the location and manner in which additional development capacity is provided must be appropriate in terms of the wider NPS-UD. For example, it should achieve well-functioning urban environments and enable heights and density of urban form commensurate with public transport accessibility and locational demand.

8.16 It therefore does not follow from a shortage of development capacity in the notified PDP that the KFO rezoning must be accepted. The PDP-R provides a reasonably practicable option which Mr Lindenberg and the s 42A authors consider will give effect to the NPS-UD. The inability to demonstrate infrastructure readiness in terms of clause 3.4 of the NPS-UD also means that rezoning the KFO land could not fully satisfy the requirements of the NPS-UD for sufficient development capacity.

8.17 The most appropriate location for additional housing development capacity needs to be assessed having regard to all the usual statutory considerations. This would include the broader provisions of the NPS-UD, including those which seek well-functioning urban environments, other relevant national policy statements and the RPS.

9. NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND – AVAILABILITY OF EXCEPTIONS

9.1 As noted above, Policy 5 of the NPS-HPL provides that:

> The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

9.2 Clause 3.6(4) states that territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:

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

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

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

9.3 Clause 3.6 is the only pathway for rezoning the KFO land. The provisions are mandatory and directive, meaning that they must be applied strictly[48] and the Council may only allow the rezoning of highly productive land if each of the requirements in (4)(a)-(c) are met.

9.4 The conjunctive nature of the sub-clauses was highlighted in *Drinnan v Selwyn District Council*[49] (in relation to the equivalent clause 3.6(1) which applies to tier 1 territorial authorities):

> Our overall finding on the capacity/demand equation with respect to cl 3.6(1)(a) of the NPS-HPL is that there is already adequate feasible plan enabled development capacity to meet Prebbleton's short-medium term housing demand by some margin. There is, therefore, no requirement under this clause of the NPS-HPL to

48 Gardon Trust v Auckland Council [2025] NZEnvC 58, at [13].

49 [2023] NZEnvC 180, at [66]. See also *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155, at [97].

include the Drinnan land to PC72. Having failed at the first hurdle, we have not assessed sub-clauses (1)(b) and (c) as the requirements of cl 3.6(1) are conjunctive.

9.5 As was the case in *Drinnan*, Mr Wyeth also considers that the KFO proposal fails at this first hurdle, because the urban rezoning is not required to provide sufficient development capacity to meet expected demand for housing or business land in the district.

10. RELEVANCE AND WEIGHTING OF THE SPATIAL PLAN

10.1 The PDP was notified on 27 July 2022. The Council has progressed the Spatial Plan in parallel with the PDP process, using the special consultative procedure under the Local Government Act 2002 (**LGA02**).

10.2 The purpose, background and development of the Spatial Plan is explained in the evidence of Mr Reuben.

Legal relevance

10.3 As noted above, s 74 of the RMA sets out certain matters that territorial authorities must "have regard to" when preparing a district plan, including management plans or strategies prepared under other Acts – s 74(2)(b)(i). This includes a spatial plan prepared under the LGA02.[50]

10.4 "Have regard to" means to give genuine attention and thought to the matter.[51] This requirement to have regard to the Spatial Plan must be considered in the context of the other statutory considerations summarised above.

50 See *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139 where the Environment Court considered the Wanaka Structure Plan 2007 as a matter that must be had regard to under s 74(2) of the RMA, being a document prepared under the LGA02. It should also be noted that the list in s 74(2) of the RMA is not exhaustive and other matters not listed may be relevant: see *Foodstuffs (Otago Southland) Properties Limited v Dunedin City Council* (1993) 2 NZRMA 497 (PT).

51 *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at pp 17, 24, 30 and *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483.

Weighting

10.5 The weight to be given to the Spatial Plan is a matter for the Hearings Panel.

10.6 The Environment Court has issued a number of decisions that consider the nature and extent of the consultation process when determining the relevance of, and weight to be given to, non-RMA documents.

10.7 In *Johns Road Horticulture Limited v Christchurch Council*[52] the Environment Court placed "very little" weight on a non-RMA document where there was uncertainty about how rigorous and careful the consultation was, and no submission and hearing process.[53]

10.8 In *Longview Estuary Estate Limited v Whangarei District Council*[54] the Environment Court agreed that a structure plan should be given weight because it represented commitments made between the Council and the community and reflected significant consultation and investment by the Council in terms of spatial planning. However, the Court concluded that, "to the somewhat limited extent that we place weight on the structure plan, the thrust of it should be interpreted in light of the theme of urban consolidation in the statutory instruments as already discussed."[55]

10.9 In *Middle Hill Limited v Auckland Council*[56] the Environment Court found:

> [70] He submitted that, while the Structure Plan is relevant to our determination of the appeal, little weight should be placed on it because it had not been put through the special consultative procedure as noted in the Commissioners' decision. Ms Hartley submitted that the approach taken by the Commissioners should not be followed because the Council undertook consultation on the Structure Plan in accordance with the principles in s 82 of the Local Government Act 2002 and was not required to use the special consultative procedure in s 83. We accept the Council's submission and determine that the Structure Plan is a document to which we must have regard.
>
> [71] Mr Fuller also argued that the Structure Plan should be given little weight because it is not a document to which Plan Change 25 must give effect, contrasting with the NPS-UD and the Regional Policy Statement. He also observed that there are no objection and appeal rights in a structure planning exercise.

52 [2011] NZEnvC 185.
53 *Johns Road Horticulture Limited v Christchurch Council* [2011] NZEnvC 185, at 24.
54 [2012] NZEnvC 172.
55 *Longview Estuary Estate Limited v Whangarei District Council* [2012] NZEnvC 172, at [115].
56 [2022] NZEnvC 162.

> [72] **We find that the Structure Plan is a document which had the benefit of comprehensive public consultation and community engagement. It is also informed by numerous technical reports. It provides a strategic vision to guide future development in Warkworth. It is a document that is relevant to our determination of the appeal.**

10.10 In *Mapara Valley Preservation Society v Taupo District Council*[57], an Environment Court decision on a resource consent appeal, the Court considered the weighting that should be given to variations to the proposed Taupo District Plan that were introduced to implement a strategic document under the LGA02 called "Taupo District 2050". The Court held:

> In our view, Variations 19 and 21 are based on, and informed by, a comprehensive growth strategy which the Council has carried out for its district. We acknowledge it is not a statutory document. However, it is based upon professional reports the Council has received, including an extensive landscape study referred to by Ms Maresca in her evidence. **The TD2050 was publicly notified for consultation in conjunction with the 2006-16 long-term Council community plan using the special consultative procedures under the Local Government Act 2002. We thus find that the Variations should be given substantial respect and weight.**

10.11 In the cases above, the Court was most explicit in relation to a non-RMA document which followed the special consultative procedure and was informed by technical reports i.e. it warranted "substantial respect and weight" being given to the implementing variations.[58] A process which was informed by technical reports and involved "comprehensive consultation and community engagement" in accordance with s 82 of the LGA02, but did not follow the special consultative procedure was confirmed as relevant, although there was no specific comment on weight.[59] Where it was uncertain how rigorous and careful the consultation was, and there was no submission and hearing process, a non-RMA document was given "very little" weight.

10.12 The Spatial Plan process is at the upper end of this spectrum, because it followed the special consultative procedure with public submissions and hearings, and was informed by numerous technical reports. These matters are relevant to the Hearings Panel's assessment of the weight that should be given to the Spatial Plan.

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57 Decision No. A83/2007.

58 *Mapara Valley Preservation Society v Taupo District Council* Decision A83/2007.

59 *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162.

Preferred scenario

10.13 As explained by Mr Reuben, the Spatial Plan is a Council-adopted document that sets out the strategic direction for urban growth within the Far North District over a 30-year period.

10.14 The Spatial Plan was adopted by the Council on 18 June 2025. The Spatial Plan process considered and evaluated a range of growth scenarios (A to F). A hybrid scenario combining Scenarios D and E was selected as the preferred growth strategy. This directs growth to within and immediately adjacent (north of Waipapa and south of Kerikeri) the existing built-up environments of Kerikeri and Waipapa and away from rural areas. It provides for 20-40% of residential growth through intensification by enabling medium-density development within established centres in Kerikeri and Waipapa.

10.15 The KFO proposal was considered as Scenario F. The Council decided to adopt the Spatial Plan based on the hybrid growth scenario but acknowledged submissions in support of Scenario F by resolving that Scenario F should be added to the Spatial Plan as a "Contingent Future Growth Area", subject to conditions. The Spatial Plan states that:

> Inclusion of scenario F in this way does not change the adopted growth scenario or the infrastructure planning basis of the Spatial Plan at this time, and any formal incorporation of this area will be subject to further consultation and/or plan review if required.
>
> Scenario F is a conditional, developer-led Contingent Future Growth Area, shown on the map (see overleaf) using a dashed grey outline.

10.16 The KFO proposal is therefore not preferred or adopted by the Spatial Plan. It is however open for further consideration if the conditions can be met (i.e. progress through appropriate statutory processes, flood mitigation designed and funded by the developer, necessary infrastructure provided at no cost to the Council, engagement and alignment with mana whenua, alignment with regional planning and community aspirations, and achieving support from the neighbouring Golf Club).

10.17 Mr Reuben and Mr Wyeth consider that the relevant conditions have not been met. They also note that the "Contingent Future Growth Area" anticipates a future planning process.

Implementation of the Spatial Plan through the PDP

10.18 The Spatial Plan can only be implemented through the PDP to the extent that any amendments are within the scope of submissions. It follows that amendments that are outside the scope of submissions must be implemented through a future planning process.

10.19 As set out in the s 42A report, the intensification aspects of the preferred growth scenario can be implemented through the PDP-R. However, urban expansion to the north of Waipapa and the South of Kerikeri which has not been sought in submissions would need a future planning process.

11. FUNDING AND PROVISION OF INFRASTRUCTURE

11.1 In the context of any proposal which enables development (either immediately or on a deferred basis), the funding and provision of infrastructure should be central to the s 32 evaluation (which requires consideration of whether a proposal as the most appropriate way to achieve the objectives of the PDP). The most appropriate planning method is driven by a matrix of factors which include infrastructure servicing ability.[60]

11.2 Other statutory considerations which are relevant to infrastructure include:

(a) The requirement to give effect to the NPS-UD as a whole;

(b) The requirement to give effect to the RPS;[61] and

60 *Foreworld Developments Limited v Napier City Council* Decision No. W 008/2005, at [122].

61 There are policies in Section 5, which relate to regional form and infrastructure. Policy 5.1.1 requires subdivision, use and development should be located, designed and built in a planned and co-ordinated manner by reference to the "Regional Form and Development Guidelines" in Appendix 2 and a number of other policy aims. These provisions require consideration of infrastructure and other potential constraints.

(c) Part 2 of the RMA.[62]

11.3 Importantly, integration between land use planning and infrastructure planning and funding decisions is relevant to a number of the statutory considerations, including Part 2 of the RMA (to the extent it is relevant and appropriate to refer to), the functions of a territorial authority under s 31, the matters to be evaluated under s 32, and the requirements to give effect to the NPS-UD and the RPS under s 75(3). In particular, Objective 6 of the NPS-UD expressly requires local authority decisions on urban development to be integrated with infrastructure planning and funding decisions.

11.4 In *Foreworld Developments Limited v Napier City Council*[63] the Environment Court considered certainty of infrastructure funding in the context of a deferred zoning proposal. The Court stated (our emphasis):

> [15] **It is bad resource management practice and contrary to the purpose of the Resource Management Act – to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.** In *McIntyre v Tasman District Council* (W 83/94) the Court said:
>
> > We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a co-ordinated progression. We hold that if developments proceed on an *ad hoc* basis they cannot be sustainably managed by the Council- an aspect which is not commensurate with section 5 of the Act.
>
> There are similar comments in decisions such as *Prospectus Nominees v Queenstown-Lakes District Council* (C 74/97), *Bell v Central Otago District Council* (C 4/97) and confirmation that the approach is correct in the High Court decision of *Coleman v Tasman District Council* [1999] NZRMA 39.

11.5 The underlying concern of the Environment Court was that:

> Unmeetable expectations are raised and the Council is put under pressure to spend money it has decided, as a matter of managing the City in an integrated fashion, to commit elsewhere. That is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA.[64]

62 In *Foreworld Developments Limited v Napier City Council* Decision No. W 008/2005 the Environment Court treated the integration between zoning and provision of infrastructure as being relevant to achieving the purpose of the RMA.

63 Decision No. W 008/2005.

64 *Foreworld Developments Limited v Napier City Council* Decision No. W 008/2005, at [20].

11.6 The Court considered that providing for (deferred) development in the absence of a funding commitment from the council had "the distinct potential to pre-empt analysis that is still to be done."[65]

11.7 These matters are addressed in the evidence of Mr Macdonald and Mr Hensley.

11.8 The decision on whether to accept or reject a rezoning proposal (in the absence of planned and funded infrastructure) is ultimately fact-specific and needs to be determined in accordance with the statutory considerations as summarised above. Mr Wyeth's view is that the absence of planned and funded infrastructure is one of the reasons why is it not appropriate to include the KFO rezoning proposal in the PDP.

12. CONCLUSION

12.1 The decision on rezoning requests is ultimately a matter of planning judgement for the Hearings Panel. This decision should be made in accordance with the statutory considerations and principles set out above. The planning merits are addressed by Ms Trinder and Mr Wyeth in the s 42A report, with support from the relevant experts.

DATED at Auckland this 3rd day of October 2025

T R Fischer

65 *Foreworld Developments Limited v Napier City Council* Decision No. W 008/2005, at [20].