

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

**MEMORANDUM OF COUNSEL FOR KIWI FRESH ORANGE COMPANY
LIMITED**

19 December 2025

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MAY IT PLEASE THE PANEL

- 1 This memorandum addresses the Council's written reply for Hearing 15D and draws the Panel's attention to updates to national direction under the Resource Management Act 1991 (**RMA**). These matters are relevant to the Panel's decision-making on the Proposed District Plan (**PDP**).

Mr McIlrath's written reply

- 2 KFO has maintained throughout Hearing 15D that housing affordability and typology are a key benchmark by which rezoning submissions should be assessed in accordance with the National Policy Statement on Urban Development (**NPS-UD**). Under Policy 1 of the NPS-UD, planning decisions are required to contribute to well-functioning urban environments, including enabling a variety of homes that meet the needs of different households, including on price.
- 3 While there seemed to be common ground as to the nature of demand (with 90% of demand being for detached housing), different conclusions were reached by KFO and the Council's respective economic experts on whether the PDP-R scenario will provide affordable housing to meet that demand.¹
- 4 By Minute 37, the Panel invited Mr McIlrath to provide a price breakdown for the feasible capacity of housing under the PDP-R scenario. Mr McIlrath's written reply memorandum provides this information in its Appendix 1.
- 5 Mr McIlrath has produced a table of the market-led approach on capacity by value band. The first table in Mr McIlrath's Appendix 1 confirms KFO's position that the PDP-R scenario will not provide affordable, short-, medium- or long-term capacity. Specifically, Mr McIlrath's market-led approach indicates that the PDP-R scenario will not provide detached dwellings under \$1.2m in the short-term and, more concerningly, that there will be no detached dwellings valued under \$1.5m in ten years' time. The long-term trajectory is even more bleak.

¹ [4.7] of Mr McIlrath's evidence in chief confirmed that 90% of demand is for detached housing. The demand figures in his Table 2 are based on existing housing preference, with around 10% of demand associated with attached dwellings.

- 6 KFO takes no issue with the first table in Appendix 1 being provided in reply, being within the scope of the Panel's request for clarification. However, Mr McIlrath goes on to provide what he himself describes as "additional information" on the range of houses that can be expected to be built, if developers do not follow the market led "highest profit" approach ('intermediate').
- 7 This additional information is outside scope of the Panel's direction. Even if appropriate to be included in reply, its value is questionable. It is not anchored to any clear methodology, and it distracts from the key point confirmed in of McIlrath's Appendix 1: that the PDP-R scenario will provide no capacity for detached dwellings for less than \$1.2 million in any scenario.
- 8 KFO is concerned that what has been produced is a raw count of potential development that ignores market realities (such as other development potential of each site). It misrepresents what the PDP-R scenario will *actually* be able to provide. In the HBA prepared for Council, Mr McIlrath concluded that market-led development capacity is the most probable outcome. It is not clear why he is now suggesting that other improbable outcomes should be considered. If it is to be considered, the "additional information" provided by Mr McIlrath needs to be treated with significant caution.

New national direction

- 9 On 18 December 2025, the Government today introduced three new instruments and amended seven existing ones under the RMA which will take effect on 15 January 2026.
- 10 From KFO's initial review, the changes are relevant to the Panel's assessment. Most notably, amendments have been made to the National Policy Statement for Highly Productive Land (**NPS-HPL**) that amend the relevant test for urban zoning of highly productive land classified as LUC-3.
- 11 Given these changes will come into force before the Panel is expected to make its decision on the PDP, the Panel is required by section 75 of the RMA to give effect to the most recent form of these national policy statements and standards.

- 12 The amendments to the NPS-HPL are directly relevant to KFO's rezoning submission. For example, subclause 3.6(6) excludes certain considerations territorial authorities were previously required to have regard to when assessing an application for urban rezoning of LUC-3 land. Just one of the implications appears to be that a territorial authority's decision is no longer contingent on being satisfied that urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district.
- 13 KFO respectfully suggests that the Panel would benefit from targeted legal submissions on the relevance of the Government's changes and amendments to the Panel's decision-making.

Request for directions

- 14 The Government's changes are not only relevant to Hearing topic 15D. The Panel may wish to ask the Council reporting team to provide a report or submissions on how the changes to national direction affect the Panel's decisions relating to the PDP, and that submitters are afforded an opportunity to respond.
- 15 For the purpose of timetabling, Council officers will have a view on when they are able to provide submissions. KFO respectfully asks that submitters be afforded an appropriate timeframe (in the order of 10 working days) to respond to the Council's submissions.

DATED 19 December 2025



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