

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**

17 February 2026

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MAY IT PLEASE THE PANEL

- 1 As directed by Minute 41, this memorandum responds to Far North District Council's (**Council**) memorandum on the new/amended national direction that came into force on 15 January 2026.
- 2 Kiwi Fresh Orange Company Limited (**KFO**) agrees with the legal position set out by the Council that the Panel must "give effect to" the new or amended national policy statements (**NPS**).¹ However, its ability to do so through recommendations on the Proposed Far North District Plan (**PDP**), are limited to where:²
 - (a) scope exists in a submission on the PDP; and
 - (b) that change would help the PDP to give effect to the new or amended NPS.
- 3 This approach balances natural justice for submitters with the practicalities of decision-making amidst evolving higher-order policy.
- 4 This memorandum considers how new and updated NPS affect KFO's submission on the PDP.

Amendments to the NPS-HPL

- 5 The amendments to the National Policy Statement for Highly Productive Land (**NPS-HPL**), which came into force on 15 January 2026, narrow restrictions on urban rezoning of Land Use Capability Class (**LUC**) 3 land. New clause 3.6(6) of the NPS-HPL removes the restriction on the urban rezoning of LUC 3 land in clause 3.6(4).³
- 6 According to the farm scale LUC assessment by Hanmore Land Management,⁴ 162.7 ha of the western portion is LUC 3, 4 and 6 soil. 36.1 ha of the eastern portion of the site is LUC 2w-2/3w-2 soil. Figure 6

¹ Memorandum of counsel for the Far North District Council in response to minute 40 dated 30 January 2026, at [3.6].

² Memorandum of counsel for the Far North District Council in response to minute 40 dated 30 January 2026, at [3.7].

³ Clause 3.6(6) provides that clauses 3.6(1), 3.6(2), 3.6(3) and 3.6(4) do not apply to urban rezoning of LUC 3 land. This means that clause 3.6(5) will be the only relevant subclause of clause 3.6.

⁴ Kerikeri-Waipapa Development NPS-HPL Assessment, June 2025, Darlow and Hunt at section 4.3. See the Statement of Evidence of Jeremy Hunt on behalf of Kiwi Fresh Orange Company Limited – Rural Productivity dated 16 June 2025 at page 31 and Figure 6 in particular.

of Mr Hunt's NPS-HPL assessment is included in Appendix A for reference.

- 7 In relation to land that is LUC 3, clause 3.6(4) of the NPS-HPL is no longer at issue. Therefore, the following issues do not need to be resolved:
 - (a) Whether the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land. Capacity requirements under the NPS-UD remain at issue, as are the efficiency and effectiveness of providing different levels of development capacity, however the Panel is now not precluded from rezoning KFO's land under clause 3.4(a) if it finds the PDP-R provides sufficient development capacity.
 - (b) Whether there are other reasonably practicable and feasible options for providing development capacity.
 - (c) The costs and benefits of rezoning, including the extent of the loss of the land for primary production.
- 8 In the reporting officer's opinion, KFO's proposal did not meet the tests in clause 3.6(4)(a) or (b) of the NPS-HPL.⁵ Paragraphs 477 to 483 of the s 42A report, which address the NPS-HPL and relies heavily on clause 3.6, should be disregarded by the Panel in making its decision on KFO's Proposal in relation to LUC 3 land.
- 9 For land that is identified LUC 2w-2/3w-2, the tests in clause 3.6(4) continue to apply – given the LUC 2 and LUC 3 soils in this area are not delineated the more conservative assessment should be applied. The evidence given by KFO, namely Jeremy Hunt and Adam Thompson, remains relevant and supports the rezoning proposal.
- 10 There are no concerns as to scope or natural justice that prevent the Panel from giving effect to the NPS-HPL. The changes to the NPS-HPL simply remove one barrier for the Panel in recommending the submission be adopted, and KFO continues to seek the rezoning sought in its submission.

⁵ Section 42A Report for Hearing 15D: Rezoning Submissions - Kerikeri-Waipapa at [477]-[482].

New NPS-NH

- 11 The National Policy Statement for Natural Hazards (**NPS-NH**) came into force on 15 January 2026 and provides a balanced way for councils to manage natural hazard risks in new developments based on the risk involved. The NPS-NH applies to specified natural hazards, including flooding.⁶
- 12 KFO agrees with the Council that giving effect to the entirety of the NPS-NH at this stage of the PDP would be difficult as the risk matrix approach in the NPS-NH is reliant on information that is not all currently available. Changes to the Council's approach to managing natural hazard risk at this stage of the PDP would present scope and natural justice issues.⁷
- 13 The NPS-NH will, however, be relevant to future resource consent applications including those relating to KFO's proposal going forward. To that extent, the NPS-NH may provide the decision-makers comfort that resource consents will be scrutinised from a natural hazard perspective.
- 14 To the extent that the NPS-NH provisions are relevant to future consenting processes:
 - (a) Policies 2 and 4 provide for proportionate responses to natural hazard risk (see also clause 3.3).⁸ Mr Kuta's evidence for KFO adopted a conservative approach to assessing the risk of flood for the Proposal, finding that a rarer event such as a 0.1% AEP flood would only require approximately an additional one metre of floodway depth or equivalent increase in height to manage the extra flow.⁹ Conservative design for rarer events can therefore be catered for through floodway design at the consenting stage in proportion to the level of natural hazard risk determined by a risk-based assessment.
 - (b) Policy 4 requires downstream natural hazard risks to be avoided or mitigated. Mr Kuta gave evidence that this could be achieved

⁶ NPS-NH, cl 1.3(1)(a).

⁷ Memorandum of counsel for the Far North District Council in response to minute 40 dated 30 January 2026, page 2 of Attachment 1.

⁸ NPS-NH, cl 2.2, Policies 2 and 4.

⁹ Statement of Rebuttal Evidence of Laddie Kuta at [8].

through detailed design when resource consenting.¹⁰ It is not a matter that will be ignored.

- (c) Clause 3.2(2) states that, when assessing natural hazard risk, decision-makers must consider existing and proposed mitigation measures.¹¹ It would be wrong to take the position that a flood mitigation strategy is inherently inappropriate or unacceptable, as resource consent applications for use and development, assessed via a risk-based approach under the NPS-ND, can properly consider proposed mitigation measures.

- 15 Overall, the provisions of the NPS-NH can be met at the resource consent stage. Nothing in the NPS-NH restricts the Panel's ability to grant the Proposal as part of the PDP.

NPS-UD unchanged

- 16 The National Policy Statement for Urban Development (**NPS-UD**) has not been amended by the recent changes to national direction under the RMA (which came into force on 15 January 2026). KFO continues to rely on the NPS-UD as a matter in favour of granting the Proposal. KFO's economic evidence remains relevant to tests under the NPS-UD even though the NPS-HPL issues (which required economic evidence) are resolved.
- 17 While KFO does not now need to prove that the PDP-R scenario will not provide sufficient development capacity under clause 3.4(a) to be rezoned, it maintains the position that the PDP-R remains a fundamentally flawed proposal. The Proposal is needed to meet

¹⁰ Statement of Rebuttal Evidence of Laddie Kuta discusses more detailed design to address natural hazard risk at the resource consent stage throughout, see for example, at [7]-[9], [19], [21]-[22] and [26].

demand for affordable housing, is efficient and effective, and ensures the PDP gives effect to the NPS-UD.¹²

Dated this 17th day of February 2026



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Mike Doesburg
Counsel for Kiwi Fresh Orange Company Limited

¹² Legal submission on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D dated 3 October 2025 at [54].

APPENDIX A

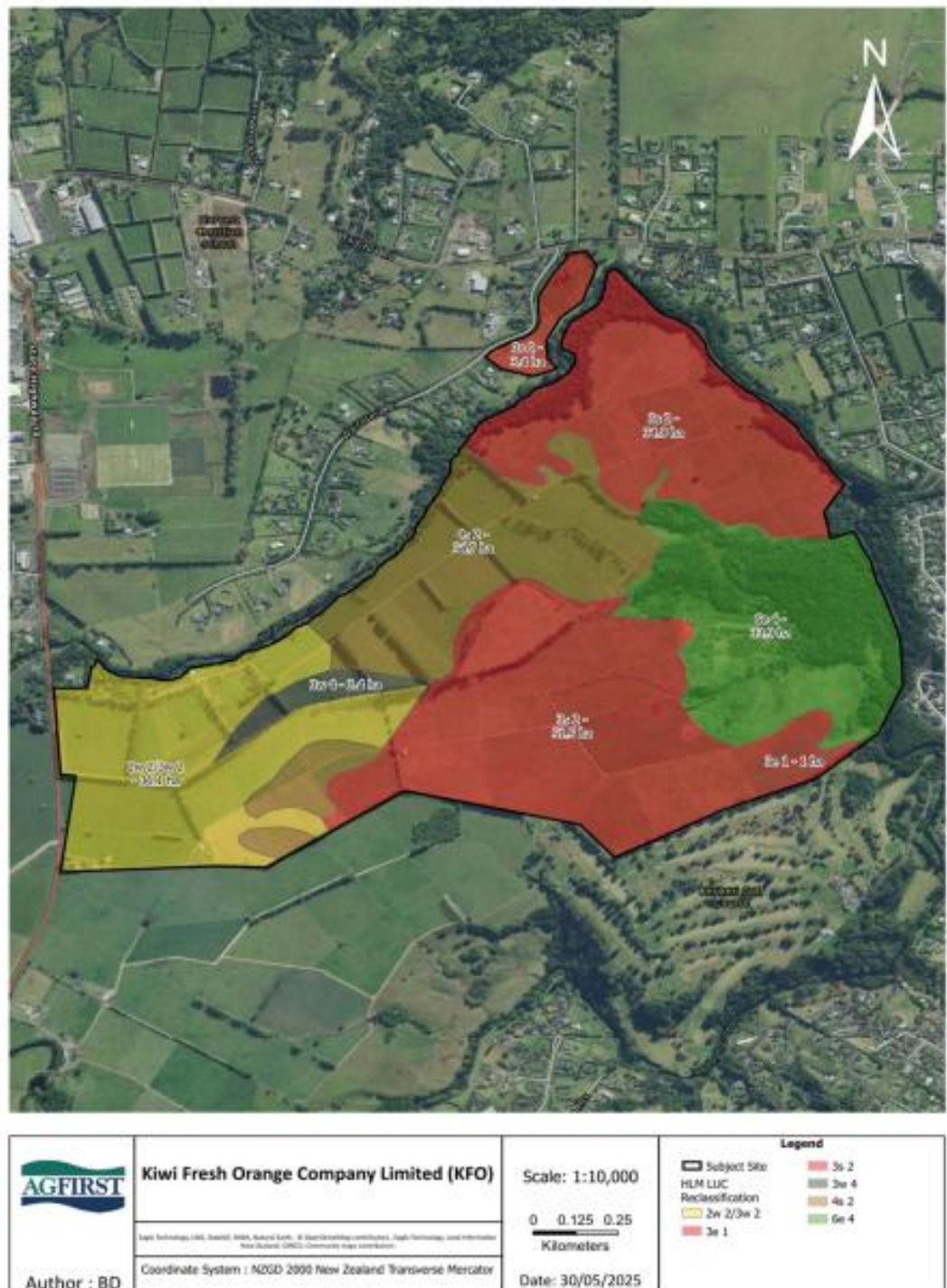


Figure 6: Farm Scale LUC assessment by HLM