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26 September 2025

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Tēnā koe Keringawai

Submissions by Lucklaw Farm Ltd (S551.001), the Trustees of the Taranaki Trust (S552.001), and Grace Sturgess (S553.001) – scope, natural justice and consultation issues

1. I understand that you have been provided with an opportunity to speak to the Marae Trust's position on the above two submissions seeking rezoning of a large area of land at Rangiputa and Puwheke (the "**Site**"), in support of further submissions made by Michael Morse (FS98) and Ross Morey (FS286).

2. The purpose of this letter is to record my significant concerns regarding the scope for the relief now sought in the rebuttal evidence of Marcus Langman, on behalf of the submitters, and to raise natural justice concerns regarding the way in which that proposal has been developed.

3. I also note the complete lack of engagement between mana whenua (including Te Whānau Moana me Te Rorohuri) and the submitters, which is an issue I return to below.

4. I understand that you may wish to present this letter as part of the presentation on 30 September 2025. Out of fairness, I will also provide a copy to the Far North District Council so that it can be distributed to the Panel and submitters in accordance with the timetable for legal submissions.

5. I note that the points I raise below are in the nature of legal submissions. However, because the Marae Trust does not have a submission point relating to the Site, and because I am unable to attend next week's hearing, I will seek that this information is tabled as part of your presentation.

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There is no scope for the proposed relief

6. It is a fundamental tenet of resource management processes that the ability to make changes through the Schedule 1 process is constrained by the scope of submissions.

7. For a finding to be made that there is scope to consider relief, that relief must be reasonably and fairly raised by the submitters' submissions.[1]

8. As Whata J put the matter in *Albany North Landowners*:[2]

> …To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution. The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety. The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions. It is sufficient if the changes made can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.
>
> [116] As Wylie J noted in *General Distributors Ltd v Waipa District Council* the underlying purpose of the notification and submission process is to ensure that all are sufficiently informed about what is proposed, otherwise "the plan could end up in a form which could not reasonably have been anticipated resulting in potential unfairness".
>
> (citations omitted)

9. The key, as identified above, is to consider matters:

   a. in a realistic, workable fashion, rather than from the perspective of legal nicety;

   b. taking into account the whole relief package detailed in the submission; and

   c. that are foreseeable consequences of any changes directly proposed in the reference (that is, could they be said to be consequential on other relief sought)?

10. Any relief at first instance sought must fall fairly and reasonably within the general scope of an original submission; the plan as notified; or somewhere in between.[3]

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[1] *Re Vivid Holdings Ltd* [1999] NZRMA 467 at [19] and *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) HC Wellington AP 214/93, 13 February 1996, at 41 as applied in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

[2] *Albany North Landowners*, above n 1 at [115].

[3] *Gock v Auckland Council* [2019] NZHC 276 at [45], citing *In re Vivid Holdings* (1999) 5 ELRNZ 264 (EnvC) at 271.

11. The original submissions by all submitters sought (relevantly) the following relief:

    a. Amend the zoning to a mixture of Rural Residential, Mixed Use, Rural Production and Rural Lifestyle zoning, subject to masterplanning.[4]

    b. Any further necessary or consequential amendments to objectives, policies and provisions required to achieve the above.[5]

    c. To amend the objectives, policies and provisions which relate to zoning for the land identified in Schedule 2, consistent with the zoning outcomes sought.[6]

12. The Council, in its section 42A report, rightly identified issues of scope from the original request, to what was then shown in the preliminary spatial strategy ("**PSS**") attached to the evidence of Ms Gilbert (at paragraph 285(d)). The disconnect between the proposed spatial strategy, which, although referred to as a masterplan, is not provided at the level of detail that one would ordinarily expect, and the original rezoning request is significant.

13. The distance between the original rezoning request and what is now proposed, which would involve the creation of an entirely new Development Area, with two objectives, seven policies, and five new rules, is even greater.

14. On an ordinary reading of the submissions, the request sought rezoning to identified zones, by reference to clearly delineated areas. The reference "subject to masterplanning" in the submission for Lucklaw Farm Ltd ought to be read as being a prior condition to the rezoning sought – in other words, that a rezoning request was appropriate, because these were large parcels of land that are capable of being masterplanned and developed in a cohesive manner, and that such evidence could be provided to support the rezoning in the original submissions.

15. It does not, in my opinion, open the door for a new chapter of the Proposed District Plan to be effectively inserted, based on a high-level spatial planning exercise which, as noted by the s 42A report writer, is already inconsistent with the zoning outcomes sought.

16. I concur with the reporting officer's conclusion at paragraph 285(d) that it is unlikely that the wider Rangiputa community could have been fully aware of what is now being

[4] S551.01; S552.01and S553.01 (noting that there was no reference to masterplanning in the submissions by the trustees of the Taranaki Trust and Ms Sturgess).
[5] S551, para 27(d). See also S552.001 (para 4) and S553.001 (para 4).
[6] S552.01 and S553.01.

proposed, or that a reasonable person reading the original submissions would have anticipated the evolution of the proposal from the initial areas to the proposed PSS.

17. Nor do I consider that the amendments to objectives, policies and rules are within scope. All of the submissions tied any changes to provisions to the rezoning required. That is something altogether different than a "precinct" or "Development Area" approach, which, if proffered, ought to have been signalled clearly in the submissions.

18. In my view, the proposal (as it now stands, and as included in the PSS) was not reasonably and fairly raised in the submissions. The submitters (and the Panel) are therefore limited to their original rezoning request.

Natural justice concerns

19. I also have concerns regarding the way in which the proposal has developed, since the "opt-in" timetable for this matter was adopted.

20. The original proposal, which included the PSS, but not the new proposed Development Area, was included in the evidence filed by the submitters on 9 June 2025.

21. Further submitters opposing the rezoning submission were required to file evidence approximately one month later, on 7 July 2025.

22. The most recent proposal, advanced in rebuttal evidence and filed on 15 September 2025, involves a complete re-draft of the original proposal. There is no opportunity for further submitters to respond to that proposal in writing (other than through hearing presentations).

23. The purpose of the "opt-in" process was intended to achieve a more collaborative, and overall efficient, approach to the consideration of requests.

24. In my view, it was incumbent upon the submitters to put their best foot forward in evidence, especially given the extent of pre-hearing meetings between the submitters and Far North District Council. In my view, it would be open to the Panel to decline to grant the relief now sought on the basis that it infringes the ability of further submitters to review and test the proposal.

25. Rebuttal evidence is intended to respond to matters raised in the evidence of other parties. It should not contain a complete volte-face from a submitter, which leaves the Panel in the invidious position of having significant pre-circulated evidence (including from further submitters) which does not reflect the proposal as it now stands.

26. The way that this proposal has been developed is entirely back-to-front. The rights of further submitters (and the Marae Trust) to natural justice are enshrined by s 27(1) of the New Zealand Bill of Rights Act 1990. Those same principles sit behind the theme of public participation which runs through the Schedule 1 process.

27. If the submitters wish to advance a proposal which is different, not only to their original rezoning request, but also to the evidence they lodged in support of the proposal, then the appropriate avenue is to either seek a variation to the Proposed District Plan, or to seek a private plan change (noting the Council's discretion to reject the request under cl 25(4) of Schedule 1).

28. Either approach would allow for the interests of potential parties in opposition to be fully ventilated, and not subject to trial by ambush.

Lack of consultation with mana whenua

29. I note that the reporting officer raises a range of issues with the proposal, including infrastructure, transport, landscape and visual, and other effects. I do not comment on those matters here.

30. However, I do wish to note the reporting officer's concern regarding the level of engagement with iwi/hapū groups, given the scale of rezoning proposed, and the lack of any attempt in the evidence to engage with tangata whenua.

31. It is, with respect, illusory to suggest that these are a product of the Schedule 1 planning process. Nor is it appropriate, as Mr Langman suggests, to defer consideration and consultation with mana whenua to the consenting stage, to *"enable incorporation of mātauranga Māori into design"*. Mr Langman does not suggest that there has been any effort to engage with tangata whenua. I note Ms Gilbert records the "*rich cultural landscape*" in which the proposal sits.[7]

32. While it is accepted that there is no legal obligation on any submitter (or applicant) to consult with tangata whenua, it remains best practice to do so. As Whata J held in *Lysaght v Whakatane District Council:*[8]

> [106]…iwi authorities have a special status under the RMA, and their involvement at all levels of the resource management process is expressly envisaged, whether formally via joint management agreements or informally as a matter of sound and responsible resource management practice.

[7] With all due respect to Ms Gilbert, it is difficult to see how her assessment of cultural landscape values complies with Te Tangi a te Manu when the assessment of those values amounts to less than three paragraphs, two of which focus on recorded archaeological sites, and otherwise defer to Mr Langman's advice regarding the risk of acting on the request to rezone.

[8] *Lysaght v Whakatane District Council* [20201] NZHC 68, [2021] NZRMA 423.

33. Respectfully, the same ought to apply to hapū and marae, where they are easily identifiable, known, and have clear customary interests in the area.

34. Consultation with tangata whenua informs, inter alia, effects on ss 6(e), 7(a) and 8 matters, all of which are required to be considered as part of a submission on a district plan review. To engage in an assessment in the absence of that information, on the basis that mana whenua (if concerned) ought to have filed a submission, or on the basis that those matters can be addressed at the consenting stage, is to treat Māori the same as any other participant in the resource management process. That is plainly inconsistent with both the terms and tenor of the RMA.

35. My understanding is that hapū (represented through the Marae Trust) are steadfastly opposed to the proposal. The lack of any consultation leaves this Panel in an invidious position, whereby it is having to receive information on effects on mana whenua values via another party's submission, on the basis that no prior efforts were made to engage.

36. In my respectful submission, it would be open to the Panel to decline the submission request on the basis of inadequate information to support the conclusions reached in the evidence of Mr Langman and Ms Gilbert (in particular) that effects on mana whenua values can be addressed through the provisions proposed.

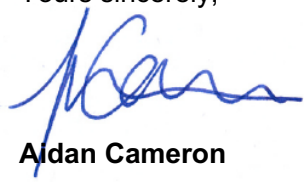
Conclusion

37. In summary, it is my opinion that the submitters' proposal is fundamentally flawed. That is before any consideration is given to the broader propriety of the proposed changes, from an infrastructure, transport, landscape and visual and other perspectives.

38. The appropriate course of action is to reject the submission points seeking rezoning. If the submitters wish to pursue that relief, they would be better placed commencing the process afresh, and beginning by engaging in meaningful consultation with mana whenua.

39. Finally, I apologise to members of the Panel that I am not able to present these submissions in person. I was retained very recently by the Marae Trust to provide assistance, and am in a High Court hearing for the entirety of next week. I seek that these submissions be tabled in support of the Marae Trust's position.

Yours sincerely,



Aidan Cameron
Barrister