Before the Hearings Panel

In the matter	of the Resource Management Act 1991 (**RMA**)
And	
In the matter	of the Proposed Far North District Plan, a proposed plan under Part 1 of Schedule 1 to the RMA

MEMORANDUM OF COUNSEL FOR THE FAR NORTH DISTRICT COUNCIL IN RELATION TO HEARING 15B

15 December 2025

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TO THE HEARINGS PANEL:

1. INTRODUCTION

1.1 My opening legal submissions dated 3 October 2025 addressed 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 Those previous submissions are not repeated here although some cross-references are made. This memorandum focusses on matters arising through the hearing process and other legal matters arising from legal submissions made on behalf of Kiwi Fresh Orange Limited (**KFO**).

1.3 Like my opening submissions and the s 42A report and supporting evidence, this memorandum continues to refer to the Proposed District Plan – Recommendations (**PDP-R**) version. It should be remembered that this is simply a convenient way of referring to a package of s 42A recommendations made by Ms Trinder in response to submissions. It is not a separate statutory document under the RMA. Ms Trinder's recommendations were made to give effect to the National Policy Statement on Urban Development (**NPS-UD**) and are supported by the s 42A report and technical evidence.

1.4 The issues addressed in this memorandum are as follows:

(a) Scope for the PDP-R and fairness issues

(b) Relevance of Te Pātukurea – Kerikeri Waipapa Spatial Plan (**Spatial Plan**) to scope

(c) Implications of "plan stop" amendments for future planning processes to implement the Spatial Plan

(d) Legal constraints on the use of comprehensive development plans

(e) Changes to existing national directions

(f) KFO's submissions

(g) Minute 37 of the Hearings Panel

2. SCOPE FOR THE PDP-R AND FAIRNESS ISSUES

2.1 The submissions on behalf of KFO acknowledge that "there is technically scope in Kainga Ora's submission for the reporting officers to recommend the PDP-R scenario". However, the submissions go on to comment that:

> 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.
>
> 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.

2.2 KFO's submissions, at footnote 35, state that *Clearwater Resort Ltd v Christchurch City Council*[1] and *Palmerston North City Council v Motor Machinists Limited*[2] are the leading authorities on scope. However, those cases set out the test for whether a submission or recommendation is "on" *a proposed plan change or variation* for the purposes of cl 6 of Schedule 1 to the RMA. That test and the principles identified in the cases referred to by KFO are not directly applicable to a full plan review.[3]

1 HC Christchurch AP34/02, 14 March 2003, at [66]
2 [2013] NZHC 1290 at [74]-[83].
3 *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [129].

2.3 The principles for determining whether an amendment is within the scope of a submission were usefully summarised in *Albany North Landowners v Auckland Council*[4] as follows:

(a) A council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is "reasonably and fairly raised" in submissions on the proposed plan or plan change.[5]

(b) 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.[6]

(c) 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.[7]

(d) It is sufficient if the changes made can fairly be said to be foreseeable consequences of any changes directly proposed in the submission.[8]

2.4 KFO does not appear to dispute that the principles above have been satisfied in relation to the PDP-R. However, KFO seeks to characterise the PDP-R scenario as the reporting officers' proposal, rather than Kainga Ora's. While nothing turns on it, that position is contradictory given KFO's acknowledgement that the PDP-R is within the scope of Kainga Ora's submission. Kainga Ora is entitled to not produce evidence if it chooses. However, its decision to not call evidence does not have any bearing on scope; that is determined by what is sought in submissions rather than the evidence produced at the hearing.

2.5 KFO suggests that fairness issues arise as a result of the s 42A team accepting the Kainga Ora submission (in part) and supporting that position with technical evidence. I consider that procedural fairness and natural justice are inherent in the

4 [2017] NZHC 138.
5 *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC).
6 *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd* [2012] NZHC 2156, [2012] NZRMA 552.
7 *Shaw v Selwyn District Council* [2001] 2 NZLR 277, at [31].
8 *Westfield (New Zealand) Limited v Hamilton City Council* [2004] NZRMA 556 (HC), at [73]-[74].

Schedule 1 process. That is, procedural fairness and natural justice will be served by properly following the Schedule 1 process, provided that all amendments made through the Council's decisions are within the scope of submissions. The rules relating to the scope of submissions are founded on the principles of natural justice and fairness. This includes the requirements for amendments to be "fairly and reasonably raised" in submissions[9] and to be foreseeable consequences of any changes directly proposed in submissions.[10]

2.6 Amendments sought in submissions must be included in the summary of decisions requested under cl 7 of Schedule 1 to the RMA and may be supported or opposed in a further submission under cl 8 of Schedule 1 to the RMA. Changes recommended by the reporting planner are included in a pre-circulated s 42A report, and there is an opportunity for rebuttal evidence and further comment at the hearing.

2.7 Interested persons therefore had the *opportunity* to be heard through the Schedule 1 process and concerns about procedural fairness and natural justice do not arise. As noted above, procedural fairness and natural justice are served by properly following the Schedule 1 process.

3. RELEVANCE OF THE SPATIAL PLAN TO SCOPE

3.1 During the s 42A team's right of reply, the Chair questioned the implications of the Spatial Plan in terms of scope to make amendments to the PDP.

3.2 As noted above, the Hearings Panel's jurisdiction to recommend changes to the PDP is determined by the relief requested in submissions. The relevant principles are set out above. The Spatial Plan is not relevant to those principles and does not provide scope for changes to the PDP.

3.3 As set out in Section 10 of my opening legal submissions, the Spatial Plan is a relevant consideration which must be "had regard to" by the Hearings Panel when determining submissions (under s 74(2)(b)(i) of the RMA). "Have regard to" means

9 *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC).
10 *Westfield (New Zealand) Limited v Hamilton City Council* [2004] NZRMA 556 (HC).

to give genuine attention and thought to the matter.[11] The weight to be given to the Spatial Plan is a matter for the Hearings Panel and my opening submissions referred to a number of cases which support "substantial respect and weight" being given to the Spatial Plan (because it followed the special consultative procedure with public submissions and hearings, and was informed by numerous technical reports).

3.4 During my opening submissions, the Chair enquired about the relevance of the High Court's decision in *Malory Corporation Limited v Rodney District Council*[12]. That decision related to the grounds for rejecting a private plan change request under cl 25(4)(b) of Schedule 1 to the RMA, which allows a private plan change request to be rejected if, within the last 2 years, the substance of the request or part of the request has been considered by the local authority or the Environment Court. In *Malory*, the Court considered whether a non-statutory process (the Waimauku Structure Plan) would fall within the ambit of the clause, finding that will ultimately depend on the context of the cl 21 request being considered by a local authority (and in that case it was considered appropriate to consider the Waimauku Structure Plan).[13] While the Court's decision arguably supports consideration of a spatial plan in RMA processes, the decisions referred to in Section 10 of my opening submissions are more directly relevant (because they relate to plan-making rather than a private plan change request).

3.5 Turning back to the case presented on behalf of KFO, its submission that very little weight should be placed on the Spatial Plan[14] is not supported by the caselaw referred to in Section 10 of my opening submissions. KFO's submission that it "would be an error of law to elevate the Spatial Plan to be a touchstone for the outcome of zoning submissions"[15] is not clear. Whatever may be intended, I consider that the relevance of the Spatial Plan is correctly summarised in the paragraphs above.

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11 *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.

12 [2010] NZRMA 392.

13 At [79]-[82].

14 Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 71.

15 Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 72.

3.6 If a submission seeks rezoning which is consistent with the strategic direction in the Spatial Plan, the Spatial Plan may support acceptance of that submission. Conversely, if a submission seeks rezoning which is not consistent with the strategic direction, the Spatial Plan may support rejection of that submission. However, the Hearings Panel cannot recommend rezoning solely because it is consistent with the strategic direction in the Spatial Plan; there must first be a submission which creates jurisdiction for rezoning. The Spatial Plan must then be "had regard to" as set out earlier.

3.7 To put it another way, the Spatial Plan can only be implemented through the PDP zoning framework to the extent that amendments are sought in submissions. It follows that amendments that are outside the scope of submissions must be implemented through a future planning process (see the following section). That includes any urban expansion to the north of Waipapa and the South of Kerikeri which may be consistent with the Spatial Plan but was not sought in submissions on the PDP.

4. IMPLICATIONS OF "PLAN STOP" AMENDMENTS FOR FUTURE PLANNING PROCESSES TO IMPLEMENT THE SPATIAL PLAN

4.1 During the s 42A team's verbal right of reply, the Hearings Panel specifically asked about the implications of the "plan stop" amendments to the RMA, in the context of future planning processes to implement the Spatial Plan. The "plan stop" is implemented in Part 5, Subpart 5B, of the RMA, which was inserted on 21 August 2025 by s 26 of the Resource Management (Consenting and Other System Changes) Amendment Act 2025.

4.2 An important preliminary point is that full implementation of the Spatial Plan is not necessary at this point in time. The Spatial Plan is a 30-year document for future planning and investment by the Council. The NPS-UD does not require 30 years of development capacity to be included in the PDP. Under cl 3.4(1)(c) of the NPS-UD, the Spatial Plan is a "relevant plan or strategy" that may be relied upon by the Council for long term plan-enabled capacity. It is also clear from the Spatial Plan

itself that it is to be implemented over time (including through successive changes to the district plan) rather than fully implemented at the outset.

4.3 As set out in the s 42A report and supporting evidence, the PDP-R provides sufficient medium term development capacity for Kerikeri-Waipapa (primarily via 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). The PDP-R provides a reasonably practicable option which Mr Lindenberg and the s 42A authors consider will give effect to the NPS-UD. Long term capacity is provided by the Spatial Plan. A further planning process is therefore not required at this stage.

4.4 However, because the matter was raised by the Hearings Panel, I address the implications of the "plan stop" amendments to the RMA in the following paragraphs.

4.5 The "plan stop" amendments include a prohibition on notifying "draft planning instruments" (defined to mean a proposed planning instrument before it is notified) and requirements for the withdrawal of proposed planning instruments (meaning, relevantly, a notified plan, variation, or change that had not yet been heard, in whole or in part, before the commencement date i.e. 21 August 2025). The withdrawal provisions are not relevant here because the PDP had been heard in part by 21 August 2025.

4.6 The effect of s 80P of the RMA is that the Council cannot notify a variation or (once the PDP is operative) a plan change unless:

(a) An automatic exemption applies under s 80U; or

(b) The Minister grants an exemption under s 80V.

4.7 These amendments are intended to prevent councils from expending resources unnecessarily, by stopping some plan-making processes between the commencement date (21 August 2025) and the time when legislation to replace

the RMA is intended to come into force. Two Bills to replace the RMA, the Natural Environment Bill and the Planning Bill, were introduced to Parliament on 9 December 2025. The Government aims to pass them into law in 2026.[16] The Planning Bill proposes to extend the "plan stop" from 31 December 2027 until the end of the period for transitioning from the RMA to the new planning system (the specific date is to be determined by the Minister when they are satisfied that the plans making up the combined plan for each region have been notified for all or some regions).[17]

4.8 The Council would therefore need to establish one of the exemptions before it is able to notify a variation or plan change to fully implement the Spatial Plan. As noted above, exemptions are either automatic or by application to the Minister by the Council.

Automatic exemptions

4.9 Under s 80U, the following instruments are automatically exempt from the prohibition against notification:

(a) a draft planning instrument, including a listed planning instrument as defined in s 80B, using the streamlined planning process (see Part 5 of Schedule 1);

(b) a draft planning instrument using the intensification streamlined planning process (see Part 6 of Schedule 1);

(c) a draft planning instrument that implements the requirements of a national policy statement published after the commencement date, if the national policy statement requires that it be implemented before 31 December 2027, and wholly or in part by a draft planning instrument;

16 https://www.beehive.govt.nz/release/new-system-make-planning-easier-everyone.
17 Schedule 11.

(d) a draft planning instrument using the freshwater planning process to give effect to the National Policy Statement for Freshwater Management 2020 (see s 80A, Part 4 of Schedule 1, and cl 42 of Schedule 12);

(e) a draft planning instrument directed by the Minister under s 25A or 25B, or called in by the Minister under Part 6AA as a proposal of national significance;

(f) a draft planning instrument which relates to natural hazards;

(g) a draft planning instrument used to change or vary the regional coastal plan for the Kermadec and Subantarctic Islands; and

(h) a draft planning instrument that gives effect to any obligation in or under a Treaty of Waitangi settlement or deed, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and the Marine and Coastal (Takutai Moana) Act 2011.

4.10 Paragraphs (a), (b), (d) and (e) are process exemptions, while the remaining matters relate to substance.

4.11 The criterion which is most relevant to a potential variation or plan change to fully implement the Spatial Plan is paragraph (a) which allows notification using the streamlined planning process under Part 5 of Schedule 1. To use the streamlined planning process, a council must apply to the Minister under s 80C and Part 5 of Schedule 1 (if the change is not already a listed planning instrument or a freshwater planning instrument).

4.12 The criteria for applying to use the streamlined planning process are that:

(a) the proposed planning instrument will implement a national direction;

(b) as a matter of public policy, the preparation of a planning instrument is urgent;

(c) the proposed planning instrument is required to meet a significant community need;

(d) a plan or policy statement raises an issue that has resulted in unintended consequences;

(e) the proposed planning instrument will combine several policy statements or plans to develop a combined document prepared under s 80;

(f) the proposed planning instrument will remove or enable the removal of heritage protection (other than that provided by a heritage order) from buildings or structures that are listed in a heritage list in a plan; and

(g) the expeditious preparation of a planning instrument is required in any circumstance comparable to, or relevant to, those set out above.

4.13 Therefore, under the applicable legislation as it currently stands, obtaining approval from the Minister to use the streamlined planning process under one or more of the criteria above could provide a pathway through the "plan stop" amendments. There is also an exemptions pathway (by application) that is addressed in the following section.

Exemptions by application

4.14 Under s 80W, a council may apply in writing to the Minister for an exemption from the prohibition against notifying a draft planning instrument under s 80P. This would enable the usual Schedule 1 process to be used (rather than the streamlined planning process).

4.15 If the Minister is satisfied that a proposed planning instrument or draft planning instrument, or a relevant part of it, meets the criteria set out in s 80W, the Minister

may grant the council an exemption. If the Minister is not satisfied, they may decline the application in whole or in part.[18]

4.16 Under s 80W, the criteria are that an exemption would:

(a) better enable the council to provide, operate, or maintain municipal drinking water, stormwater, or wastewater in accordance with the Water Services Act 2021;

(b) rectify any provisions in a plan or policy statement that have had unintended consequences, are unworkable, or have led to inefficient outcomes;

(c) respond to changes made to the RMA;

(d) better enable climate change to be managed;

(e) support the transition of high risk land so as to better manage the risk of erosion;

(f) better enable any relevant Treaty of Waitangi settlement Act or deed of settlement, and the Crown's obligations under that settlement, to be upheld;

(g) enable a response to be made to a recommendation from the Environment Court; or

(h) enable work to be progressed that, for any other reason, the Minister considers appropriate.

4.17 The criterion which is likely to be most relevant to a variation or plan change to fully implement the Spatial Plan is paragraph (h) which confers upon the Minister a catch-all discretion to enable work to be progressed that, for any reason not listed

18 RMA, s 80V(6).

in the other criteria, the Minister considers appropriate. This exemption pathway is subject to an application process which is administered by the Ministry for the Environment.

Conclusion

4.18 In summary, under the current legislation there are two potential pathways to progress a variation or plan change to more fully implement the Spatial Plan, although both are subject to Ministerial discretion.

4.19 First, an automatic exemption could potentially be obtained by applying to the Minister under s 80C and Part 5 of Schedule 1 to use the streamlined planning process.

4.20 Second, the Council could apply for an exemption under s 80V(6) of the RMA, most likely relying on the catch-all criterion in paragraph (h) which enables work to be progressed that the Minister considers appropriate for any reason not listed in the other criteria.

4.21 Finally, given that the PDP-R provides sufficient development capacity for Kerikeri-Waipapa for more than 10 years, it may be efficient to fully implement the Spatial Plan through future planning processes under the new legalisation which is proposed to replace the RMA. As the legislative process has only just commenced, there is some uncertainty with this approach. However, the Planning Bill as currently drafted includes proposed timeframes for issuing national policy directions and national standards, notifying and deciding a regional spatial plan, and notifying land use plans for each district and natural environment plans for each region (in that order).[19] It should be emphasised that this is not yet law and there is considerable uncertainty about the final form of the legislation which is intended to replace the RMA.

19 Schedule 1, cl 5.

5. LEGAL CONSTRAINTS ON THE USE OF COMPREHENSIVE DEVELOPMENT PLANS

5.1 As noted in the verbal right of reply, the law in relation to comprehensive development plans was set out in my memorandum for Hearing 15B dated 29 August 2025. This was noted in response to comments from counsel for KFO about comprehensive development plans being considered "naughty" in previous Court decisions.

5.2 That memorandum is not repeated here. However, in summary, a district plan cannot:

(a) require resource consent for a plan about the future use of land, as opposed to the use of land in a manner that contravenes a rule;

(b) determine activity status according to whether a master plan or precinct plan has been consented; or

(c) include standards or rules that require compliance with a consented master plan or precinct plan.

5.3 While the precinct provisions proposed by KFO do not necessarily contravene these principles, the principles constrain amendments which may be contemplated to rectify deficiencies in the proposed provisions.

6. CHANGES TO EXISTING NATIONAL DIRECTIONS

6.1 At the time of finalising this memorandum, the Government's proposed changes to existing national directions have not progressed from the situation outlined in Section 6 of my opening submissions. The position set out in paragraphs 6.8 and 6.9 is therefore preserved.

6.2 In summary, the current National Policy Statement for Highly Productive Land (**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 wish to consider the implications for the PDP process.

7. KFO'S SUBMISSIONS

7.1 This part addresses some of KFO's submissions which raise particular legal issues. It should be read alongside the reporting planners' written right of reply and is not intended as a full response to all matters addressed in KFO's submissions. If there are any matters that are not responded to, that should not be taken as acceptance of those matters.

Characterisation of evidence

7.2 Much of KFO's legal submissions are directed at evidential matters. This memorandum does not respond to those submissions in detail. As noted above, that should not be taken as acceptance of KFO's submissions and characterisation of the evidence.

7.3 The s 42A team continues to rely on the evidence as lodged with the Hearings Panel. That evidence speaks for itself and should be preferred over KFO's characterisation of the evidence in submissions.

7.4 Mr Wyeth's s 42A report is an example of evidence which has been misconstrued by KFO. KFO submits that "it seems to us that Mr Wyeth accepts that KFO's Proposal would give effect to the NPS-UD." This appears to rely on Mr Wyeth's statement that he considers "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…"

7.5 However, that statement by Mr Wyeth relates only to NPS-UD provisions relating to competitive land markets and development capacity, rather than the NPS-UD as

a whole. In the s 42A report, Mr Wyeth makes it clear that he considers the KFO proposal does not give effect to the NPS-UD provisions in relating to:

(a) well-functioning urban environments;[20]

(b) intensification in appropriate locations;[21]

(c) integration between urban development and infrastructure planning and funding;[22] and

(d) reduction in emissions and resilience to climate change.[23]

7.6 This matter is being raised only as an example, to illustrate that some caution may be required in relation to KFO's interpretation of the evidence as set out in its legal submissions.

Leaving information to the resource consent stage

7.7 Part 3 of the KFO submissions address, as a preliminary issue, the information "required for a planning proposal as opposed to a resource consent application". Paragraphs 57-63 of KFO's submissions refer to a number of cases which are intended to support the approach of assessing and managing effects at the resource consent stage.

7.8 The level of information that should be provided to support a rezoning request is addressed in s 32 of the RMA. Section 32(1)(b) requires an assessment of whether the provisions in the proposal are the most appropriate way to achieve the objectives by identifying other reasonably practicable options for achieving the objectives and assessing the efficiency and effectiveness of the provisions in achieving the objectives (including identifying and assessing the benefits and costs of the proposal).

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20 Section 42A report, para 472.
21 Section 42A report, para 473.
22 Section 42A report, para 474.
23 Section 42A report, para 475.

7.9 As identified in KFO's submissions, s 32(1)(c) of the RMA requires a s 32 evaluation to "contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal". Under s 32(2)(c) of the RMA, a s 32 evaluation must "assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions".

7.10 The KFO submissions refer to examples of matters the Environment Court was comfortable leaving to be managed at the resource consent stage, including peripheral design details[24], infrastructure proposals that had not advanced to a stage where the risk could be assessed[25] and erosion and sediment modelling and control[26].

7.11 These findings are all specific to the facts at hand. Ultimately, it is a matter of planning judgement for the Hearings Panel to determine whether KFO's proposal is in accordance with s 32, based on the facts and evidence heard in *this* hearing. That is, whether KFO's proposed provisions are the most appropriate way to achieve the objectives (including by assessing the efficiency and effectiveness of the provisions in achieving the objectives). This requires an assessment of the risks of proceeding with rezoning if there is uncertain or insufficient information about the proposal. It is also for the Hearings Panel to determine whether the supporting information includes a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the rezoning.

7.12 Mr Wyeth's position on this is clearly summarised at paragraph 12(c) of the s 42A report:

> In my view, there are a range of uncertainties associated with the KFO proposal, which means it is unclear whether the land is, or can be, suitable for urban development. There is a general assumption within the KFO evidence that these issues and uncertainties can be addressed through future consenting processes. However, in my view, there are some critical issues and information gaps that need to be addressed at the rezoning stage. These issues and information gaps are detailed throughout this report and primarily relate to ecology, flood hazards, infrastructure, transport and urban design. Collectively, I consider that these

24 Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 57.
25 Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 59.
26 Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 60.

> uncertainties mean the risk of acting by rezoning the KFO Site for urban development are potentially significant.

7.13 There is a fundamental difference between Mr Wyeth's position as summarised in the paragraph above and KFO's position that the uncertainties identified by Mr Wyeth can be dealt with at the resource consent stage. However, it should be noted that Mr Wyeth's position is not "unfounded"[27] and is supported by expert evidence. The concerns in paragraphs 58, 63 and 64 of the KFO submissions therefore do not apply.

7.14 In summary, this issue is ultimately a matter of planning judgement for the Hearings Panel when assessing the efficiency and effectiveness of KFO's proposed provisions, the risk of acting or not acting and sufficiency of the information provided in support of KFO's proposal. That needs to be determined based on the facts and evidence *in this case*.

Relevance of the Spatial Plan

7.15 Paragraphs 68-73 of KFO's submissions address the relevance of the Spatial Plan. That has been addressed above.

Gardon Trust v Auckland Council

7.16 Part 3 of the KFO submissions also address, as a preliminary issue, the NPS-UD. The general comments above, relating to KFO's characterisation of the evidence, are equally applicable here.

7.17 Paragraphs 85-88 of the KFO submissions include a section on the Environment Court's decision in *Gardon Trust v Auckland Council*[28]. KFO submits that this case provides relevant guidance about the use of market preferences in understanding the sufficiency of development capacity.

27 As implied in the Legal submissions on behalf of Kiwi Fresh Orange Company Limited – Hearing 15D, 3 October 2025, para 64.

28 [2025] NZEnvC 58.

7.18 At paragraph 87, KFO lists some findings of the Court. Paragraph 88 submits that many of those factors are present in Kerikeri-Waipapa. The Court's findings listed in paragraph 87 are factual findings based on the evidence in that case. The Court's findings in relation to Waiuku (including existing development typologies, relative demand for infill and greenfield opportunities, development costs and availability of greenfield sites) do not have any bearing on the Kerikeri-Waipapa area. Rather, these matters need to be assessed in relation to Kerikeri-Waipapa on the evidence produced through *this* hearing process. Different evidence is likely to produce different outcomes.

Infrastructure

7.19 Paragraphs 89-94 of KFO's submissions address Court decisions relating to integration of development with infrastructure. Some similar matters are also addressed in paragraphs 64(d) and 65-66.

7.20 Section 11 of my opening submissions referred to caselaw raising concerns about providing for development when the necessary infrastructure does not exist and there is no commitment by a council to provide it.[29] The Environment Court considered that approach to be "bad resource management practice and contrary to the purpose of the RMA".

7.21 The KFO submissions suggest that "Other decisions take a different view". KFO specifically refers to the Environment Court's decision in *High Quality Ltd v Auckland Council*[30] which states that "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".

7.22 While KFO's reliance on this case is not clear, I consider that it supports the position summarised in paragraphs 11.1-11.3 of my opening submissions, namely that infrastructure servicing ability is part of the matrix of factors which determine the most appropriate planning method. Infrastructure constraints need to be considered on the facts and in accordance with the usual statutory considerations

29 *Foreworld Developments Limited v Napier City Council* Decision No. W 008/2005, at [20].
30 [2022] NZEnvC 117.

including s 32, the NPS-UD, the RPS and Part 2 of the RMA. Importantly, integration between land use planning and infrastructure planning and funding decisions is relevant to a number of the statutory considerations.

7.23 In that sense, the absence of planned and funded infrastructure may not be a "full and complete" basis to refuse KFO's request, but it is an important and central consideration. That position also does not diminish the Environment Court's previous findings that providing for development (through the rezoning of land) when the necessary infrastructure does not exist, and there is no council commitment to provide it, is bad resource management practice and contrary to the purpose of the RMA.

7.24 KFO's submissions refer to *Landco Mt Wellington v Auckland City Council*[31] and *Laidlaw College Inc v Auckland Council*[32]. These decisions hold that a resource consent applicant is not required to resolve existing infrastructure problems and nor should it add to them. It is not clear how this is considered to be relevant as there has been no suggestion from the s 42A team that KFO should be required to resolve any existing infrastructure problems. The s 42A team has raised concerns about the effects KFO proposal itself.

Transport modelling

7.25 Paragraph 172 of KFO's legal submissions raise issues about the absence of traffic modelling for the PDP-R scenario. This is addressed in the following section in relation to the Hearings Panel's Minute 37.

8. MINUTE 37 OF THE HEARINGS PANEL

8.1 Minute 37 of the Hearings Panel:

(a) requested that the Council respond to KFO's assertion (in its memorandum dated 22 October 2025) that Mr Collins has introduced

31 [2009] NZRMA 132.
32 [2011] NZEnvC 248, at [38].

new material relating to the transport effects of the PDP-R after the filing of s 42A reports; and

(b) invited Mr McIlrath to provide the price breakdown for the feasible capacity for the PDP-R scenario in the s 42A officers' written reply as requested by KFO.

Transport modelling for the PDP-R

8.2 At the outset, I note that the concern raised by KFO in its memorandum dated 22 October 2025 is not that Mr Collins *has* inappropriately introduced new material in relation to transport modelling, but rather that Spatial Plan modelling or PDP-R modelling should not be allowed to be produced as part of the s 42A team's written right of reply. I return to this later.

8.3 Mr Collins gave evidence that transport modelling was carried out for the PDP and the Spatial Plan hybrid scenario, but not specifically the PDP-R. He stated that, from that modelling, the Council understands the transport infrastructure upgrades that are needed to support the Spatial Plan. He considers that the PDP-R sits within the envelope of effects assessed by the Spatial Plan transport modelling (because the PDP-R sits within the Spatial Plan extent). He also noted that the PDP-R enables intensification close to retail, employment and community attractors and does not fundamentally change the land use patterns of the PDP (in contrast to KFO's proposal, which is a fundamental shift from the modelled Spatial Plan scenario).[33]

8.4 That background explains the reasons for greater expectations on KFO to model the transport effects of its proposal, and it may provide some comfort to the Hearings Panel in relation to the transport effects of the PDP-R. Mr Collins considers this to be a reasonable approach.

8.5 Mr Collins' verbal evidence was provided in reply to KFO's submissions that reporting officers have not assessed the effects of the PDP-R proposal on the

33 Proposed District Plan - Hearing 15D - Day 3 - Afternoon session (08 Oct 2025) at approximately 1:12 to 1:14. < https://www.youtube.com/watch?v=uFw_HQdNvEE>.

transport network. KFO's memorandum does not appear to object to that verbal evidence (as far as it goes) – which is appropriate because the evidence was produced in reply to a matter raised by KFO through the hearing process. However, KFO states that:

> If the intention is to produce the Spatial Plan modelling or PDP-R modelling in written rebuttal evidence to support the PDP-R scenario, that should not be countenanced by the Panel. To allow the production of new material after the filing of s 42A reports, evidence and hearing would essentially be allowing post-facto justification in rebuttal. Natural justice would require submitters to respond to this new material, if it is to be accepted. This approach is consistent with the Panel's approach in Minute 35.

8.6 Therefore, the concern raised by KFO is that further transport modelling could be produced by the s 42A team through its written reply. While the evidence given by Mr Collins through the verbal right of reply is relied upon, the s 42A team has not sought to produce the Spatial Plan modelling or PDP-R modelling through its written right of reply. The natural justice concerns raised by KFO therefore do not arise and the Hearings Panel may determine the matter based on the evidence provided through the hearing process.

Price breakdown for the feasible capacity for the PDP-R scenario

8.7 As set out above, Minute 37 invited Mr McIlrath to provide the price breakdown for the feasible capacity for the PDP-R scenario in the s 42A officers' written reply as requested by KFO.

8.8 This has been provided by Mr McIlrath.

DATED this 15th day of December 2025

T R Fischer