BEFORE HEARING COMMISSIONERS DELEGATED BY FAR NORTH DISTRICT COUNCIL / TE KAUNIHERA O TE TAI TOKERAU KI TE RAKI AT OMAPERE

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on the Proposed Far North District Plan

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STATEMENT OF EVIDENCE OF ROCHELLE ASHLEY JACOBS (PLANNING) FOR WAITANGI LIMITED (SUBMITTER 503)

HEARING FOUR (NATURAL ENVIRONMENT VALUES & COASTAL ENVIRONMENT)

22 July 2024

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1. INTRODUCTION

1.1 My name is Rochelle Ashley Jacobs. I am a Director and Senior Planner at Northland Planning & Development 2020 Limited.

1.2 My evidence is given on behalf of Waitangi Limited (Submitter 503) in relation to the Proposed Far North District Plan (**Proposed Plan**).

1.3 Waitangi Limited's submission relates solely to the Waitangi National Trust Estate (**Estate**) that contains the historic Waitangi Treaty Grounds / Te Pitowhenua (**Treaty Grounds**). It is responsible for managing the day-to-day operations at the Estate.

2. QUALIFICATIONS AND EXPERIENCE

2.1 I have the following qualifications and experience relevant to the evidence I shall give:

(a) I hold a Bachelor of Resource and Environmental Planning from Massey University.

(b) I am an Intermediate Member of the New Zealand Planning Institute.

(c) I have more than 15 years' experience as a planner in New Zealand with the majority of my planning career being in the Far North.

(d) In 2020, I joined Northland Planning and Development 2020 Limited as a part owner. In this role, I regularly advise and assist corporate and private individuals with the preparation of resource consent applications under the Resource Management Act 1991 (**RMA**), including subdivision applications, land use resource consents, and coastal permits in the coastal marine area.

(e) Throughout my planning career, I have processed resource consent applications on behalf of the Far North District Council for activities on the Estate, and have also complied resource consent applications for proposed activities at the Estate on behalf of Waitangi Limited. As a result of my experiences, I have a good understanding of the planning issues that exist in respect of the Estate.

(f) As I have been working with Waitangi Limited for a number of years, I am also well aware of the range of activities, including everyday operations and maintenance activities, that occur on the Estate.

3. CODE OF CONDUCT

3.1 While this hearing is not before the Environment Court, I acknowledge that I have read the Environment Court's Code of Conduct for Expert Witnesses (contained in the 2023 Practice Note) and agree to comply with it. Except where I rely on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

4. BACKGROUND AND ROLE

4.1 I am the consultant planner for Waitangi Limited. I work closely with and advise Waitangi's Chief Transformation Officer (Ralph Johnson) and Head of Operations and Infrastructure Officer (Nicole Wihongi) on planning related matters, including proposed changes to the Operative Far North District Plan (**Operative Plan**) and how these proposals are likely to impact the Estate. I have been advising Waitangi Limited on the Far North District Council's (**Council**) plan review since 2022.

4.2 In particular, I have:

(a) advised Waitangi Limited of the changes proposed by the Council through its review of its Operative Plan;

(b) prepared a submission on behalf of Waitangi Limited on the Proposed Plan (as notified);

(c) prepared analysis and carried out initial work drafting provisions for a special purpose zone (within the meaning of the National Planning Standards (November 2019)) for the Estate; and

(d) liaising with other consultants in respect of this work.

5. SCOPE OF EVIDENCE

5.1 The purpose of my evidence is to:

(a) provide an overview of the Estate;

(b) provide an overview of the provisions of the Proposed Plan that apply to the Estate;

(c) explain why I consider that a special purpose zone should be created for the Estate; and

(d) provide commentary on Waitangi Limited's secondary 'fall-back' relief in respect of the parts of the (notified) Proposed Plan that apply to the Estate and are being considered at this hearing.

5.2 I confirm that in preparing my evidence, I have read in draft the evidence of Mr Ben Dalton, chief executive of Waitangi Limited, and Mr Simon Cocker, expert landscape architect, for Waitangi Limited.

6. EXECUTIVE SUMMARY

6.1 Waitangi Limited is seeking the application of a special purpose zoning to the Estate. This is sought as an alternative to the general land use zones and spatial overlays in the Proposed Plan. The circumstances of the Estate strongly support special purpose zoning, in line with guidance provided in the National Planning Standards, for the reasons explained in my evidence.

6.2 The Estate is a unique 506-hectare area of land at Waitangi and includes the historic Treaty Grounds where Te Tiriti o Waitangi / the Treaty of Waitangi (**Te Tiriti**) was first signed between Māori and the British Crown on 6 February 1840. The Treaty Grounds are of national significance and are considered by many to be New Zealand's pre-eminent historic site.

6.3 Waitangi Limited manages the operations of the Estate on behalf of the Waitangi National Trust Board (**Trust Board**), and in line with its governing legislation, the Waitangi National Trust Board Act 1932 (**Trust Board Act**).

6.4 The lands comprising the Estate were gifted to the people of New Zealand by the then Governor-General Lord Bledisloe, and his wife, Lady Bledisloe, under the Trust Board Act as "*a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand.*"[1] The Estate is managed in accordance with this purpose.

6.5 Today, the Estate accommodates a variety of activities in addition to the Treaty Grounds themselves, including pastoral farm land and indigenous vegetation, a hotel, a golf club and other sports facilities, a concert venue, a

[1] Trust Board Act, preamble.

public boat ramp, and a wharf. The Estate is a unique and complex environment that combines very special historical and cultural significance (for the whole nation and all New Zealanders) with recreational and tourism values, productive uses, and coastal, estuarine, and other natural values. These circumstances warrant a bespoke planning response.

6.6 Of concern to the Estate's governing bodies is the extent that the proposed provisions (as notified) do not appropriately reflect the national significance and special nature of the Estate and its many uses, and are misaligned with the legislative scheme relating to the Estate.

6.7 This is complicated by the eleven zones and overlays that are proposed to apply throughout the Estate. As there are so many applicable overlays, planning assessments are difficult, and rules that enable development or specific activities to occur can be undermined by more stringent rules that apply to other overlays. This is likely to result in perverse outcomes.

6.8 Under the Proposed Plan, the majority of the Estate has been mapped as Rural Production zone (shown in mid green in Figure 3 below). The purpose of the Rural Production zone does not align with that of the Treaty Grounds or wider Estate. This misalignment is most obvious in relation to the Treaty Grounds, but also extends to the remainder of the Estate. Put simply, the Estate, including but not only the Treaty Grounds, is not a rural environment.

6.9 While a high number of overlays is to be expected for a nationally significant site, because there are so many, even the most basic activities may require resource consents under the RMA. This is because, under the Proposed Plan, no overlay provision is considered more important than another, meaning that the rules in every overlay will apply to each activity at the site. As a result, basic maintenance activities proposed at the Treaty Grounds, including repair and upkeep and minor activities, are likely to require resource consents as restricted discretionary activities, discretionary activities, and non-complying activities. Examples of such activities include footpath upgrades to improve disability access to buildings, planting trees for members of the Royal family and incumbent dignitaries, the expansion of existing carparks, and installing bench seating to provide a rest area for visitors walking around the Treaty Grounds.

6.10 The prevailing Rural Production zone and the accompanying overlay provisions do not enable Waitangi Limited to easily carry out the day-to-day

activities required to protect and manage the Treaty Grounds, associated nationally historic heritage resources, and the surrounding Estate.

6.11 For the reasons set out in my evidence, I consider that special purpose zoning is the most practical option for managing the Estate.

6.12 My evidence provides:

(a) that creating a special purpose zone for the Estate is the most practical outcome in terms of protecting nationally significant heritage at the Estate while, at the same time, enabling operations and maintenance and other minor activities to be undertaken at the Estate in accordance with the Trust Board Act; and

(b) that a special purpose zone for the Estate is able to achieve the tests for a special purpose zone prescribed by the National Planning Standards.

6.13 A special purpose zoning for the Estate could provide a practical management approach for activities proposed at the Estate. Such an approach would enable tailored rules, objectives, and policies to be developed that provide the site with the mana and acknowledgement it deserves. These tailored rules and framework ensure future development need not be considered through the lens of a production zone, which is impractical for this Estate. It also ensures that the issues highlighted through the barrage of spatial layers applying to the Treaty Grounds can be resolved, while at the same time ensuring the matters that those spatial layers seek to protect are provided for.

6.14 Clear objectives and policies could be accompanied by bespoke sub-zone overlays and provisions to better reflect the varying land uses and environs throughout the Estate. Rules could also be developed for each sub-zone that would enable basic operation and maintenance activities to be undertaken without triggering the need for resource consent under the RMA, but at the same time they could prescribe a more conservative approach in areas where further restrictions may be necessary.

6.15 Such an approach would better enable focused management of the historic, cultural, recreational, and natural and landscape values of the Estate that have local and national significance. In my view, site-specific objectives and policies that are directed at the protection and ongoing management of

the Estate will better achieve the purpose of the RMA and the wider interests of New Zealanders as envisaged by the Trust Board Act.

6.16 I have undertaken work to establish what a special purpose zone for the Estate could look like. Given the vast array of activities on the Estate and the varying degrees of planning issues highlighted through the overlays in the Proposed Plan, I identified that the establishment of sub-zones, similar to the Kauri Cliffs zone (referred to below), could provide a suitable methodology. That method allows more stringent standards to be applied to particular areas, such as the Treaty Grounds, while still having overarching objectives and policies for the whole Estate.

6.17 As this work is now in a reasonably advanced state, engagement with the Council and others has been initiated. It is intended that, through this process, a fully formed proposal can be put to the Hearings Panel.

6.18 While the matter of special purpose zoning is 'topic specific' and has been set down to be heard by the Hearing Panel at Hearing 19 in August next year, as Waitangi Limited's primary relief, it is necessary for the special purpose zone concept to be explained in my evidence. Adopting the special zoning approach will have flow on effects on those matters being discussed as part of this hearing.

6.19 I address Waitangi Limited's secondary 'fall-back' relief relating to Hearing Four topics in section 11 of my evidence below.

7. OVERVIEW OF THE WAITANGI ESTATE

7.1 The Estate is a large 506-hectare landholding located north of the township of Paihia at Waitangi (shown in **Figure 1** below).[2] The Estate contains the historic Treaty Grounds that were the location of the first signing of Te Tiriti between Māori and the British Crown on 6 February 1840.

[2] Lots 1, 2 & 3 DP 326610, Lots 1 & 2 DP 152502, Lot 3 DP 51155, Sec 6 – 11, 15 & 16 SO 338905.

Figure 1 - Location of the Estate

7.2 Historically, missionary settlers purchased the land comprising the Estate from local iwi and established it as a farm prior to it being acquired by Lord and Lady Bledisloe who gifted the land to resident New Zealanders in 1932 as "*a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand*".[3] The Estate as it exists today also includes adjacent lands that have been added to the original Estate over time.

7.3 Today the Estate accommodates a variety of activities in addition to the Treaty Grounds themselves, including pastoral farm land and indigenous vegetation, a hotel, a golf club and other sports facilities, a concert venue, a public boat ramp, and a wharf. The Estate is a unique and complex environment that combines very special historical and cultural significance (for the whole nation / all New Zealanders) with recreational and tourism values, productive uses, and coastal, estuarine, and other natural values. Its landscape values are described in the evidence of Mr Cocker.

7.4 The Estate contains a number of heritage features associated with the signing of Te Tiriti, as detailed in the evidence of Mr Dalton. These are located on the upper Waitangi Treaty Grounds and include the flagpole, James Busby's house (renamed at Lord Bledisloe's request the 'Treaty

[3] Trust Board Act, preamble.

House' in 1932), Te Whare Runanga, and Hobson's memorial. These are scheduled historic items in both the Operative Plan and the Heritage New Zealand Heritage List (Rārangi Kōrero). These heritage buildings are objects are shown by just one purple pentagon in **Figure 2**. The Treaty Grounds is a National Historical Landmark Site and Category 1 Historic Place under the Heritage New Zealand Pouhere Taonga Act 2014.

7.5 The Estate is strongly influenced by the coastal environment, that frames its southern, eastern and northern boundaries. Coastal estuarine inlets extend far into the site that are densely vegetated with established mangroves. There are also several large inland wetlands on the site. As the original Estate was a pastoral farm, it was largely devoid of any kind of vegetation. Over time, indigenous vegetation, along with notable planted exotic species, has regenerated on the site and currently forms a vegetated background to the upper Treaty Grounds and a screened location for the main Waitangi visitor, administration and museum buildings. This vegetation has now been identified in the Regional Policy Statement for Northland (**NRPS**) and the Proposed Plan as having 'high natural character' (**HNC**) (as shown as hatched green with HNC descriptors in **Figure 2**).

Figure 2 - Areas of High Natural character, Outstanding Natural Features and Outstanding Landscape

7.6 Two outstanding natural features (**ONF**) are mapped on the Estate (shown in brown with dots in **Figure 2**). These are a volcanic rocky outcrop located to the north of the flagpole, and Haruru Falls is on the western periphery of the site.

7.7 The Treaty Grounds is mapped as an outstanding natural landscape (**ONL**) in the NRPS and the Proposed Plan and there are seven distinct areas of HNC mapped across the Estate. The ONL is shown in dark green with 3 dots in triangle formation in **Figure 2**.

7.8 The Estate also contains eight different soil classifications. Three areas are considered to contain highly productive land, as defined by the National Policy Statement for Highly Productive Land.

7.9 The Treaty Grounds and the wider Estate have high cultural significance, not only from the signing of Te Tiriti, but also as a seasonal location for various hapū of Ngapuhi accessing the coast. Archaeological surveys of the Estate indicate more than 100 recorded sites predominantly along the coast and near Hutia Creek. Many sites are shell middens, but some are identified as wāhi tapu, and there is evidence of a pā on the site of the Waitangi golf course.

7.10 In his evidence, Mr Dalton explains the special legislative regime that applies to the Estate, including under the Trust Board Act. Overall, I consider that the Estate is a unique environment that warrants a bespoke planning response.

8. THE EFFECT OF THE PROPOSED PLAN AND NEED FOR A SPECIAL PURPOSE ZONE FOR THE ESTATE

8.1 The Proposed Plan provisions (as notified) do not appropriately reflect the national significance and special nature of the Estate and its many uses (as described above), and are misaligned with the legislative scheme that applies to the Estate. This is complicated by the number of zones and overlays that are proposed to apply to the Estate.

8.2 The Proposed Plan seeks to establish the following eleven zones and overlays over the Estate:

(a) Rural Production Zone;

(b) Mixed Use Zone;

(c) Sport and Active Recreation Zone;

(d) Coastal Environment Overlay;

(e) Outstanding Natural Landscape Overlay;

(f) Outstanding Natural Feature Overlay;

(g) High Natural Character Overlay;

(h) Sites and Areas of Significance to Māori Overlay;

(i) Heritage Items Overlay;

(j) River Flood Hazard Overlay; and

(k) Coastal Flood Hazard Overlay.

Figure 3 - Proposed District Plan Zone Map

8.3 Under the Proposed Plan, the majority of the Estate has been mapped as Rural Production Zone (shown in mid green in **Figure 3**), with the exception of one golf course allotment (Sport and Active Recreation Zone) shown in light green, and the Copthorne (Mixed Use Zone) shown in pink.

8.4 The whole Estate, with the exception of Lot 3 DP 51155, Sections 15 & 16 SO 338905 and part of Section 6 SP 338905, will be overlain by the Coastal Environment overlay, as shown in **Figure 4** below. The excluded areas are circled in red, and the overlay area is filled with blue vertical lines.

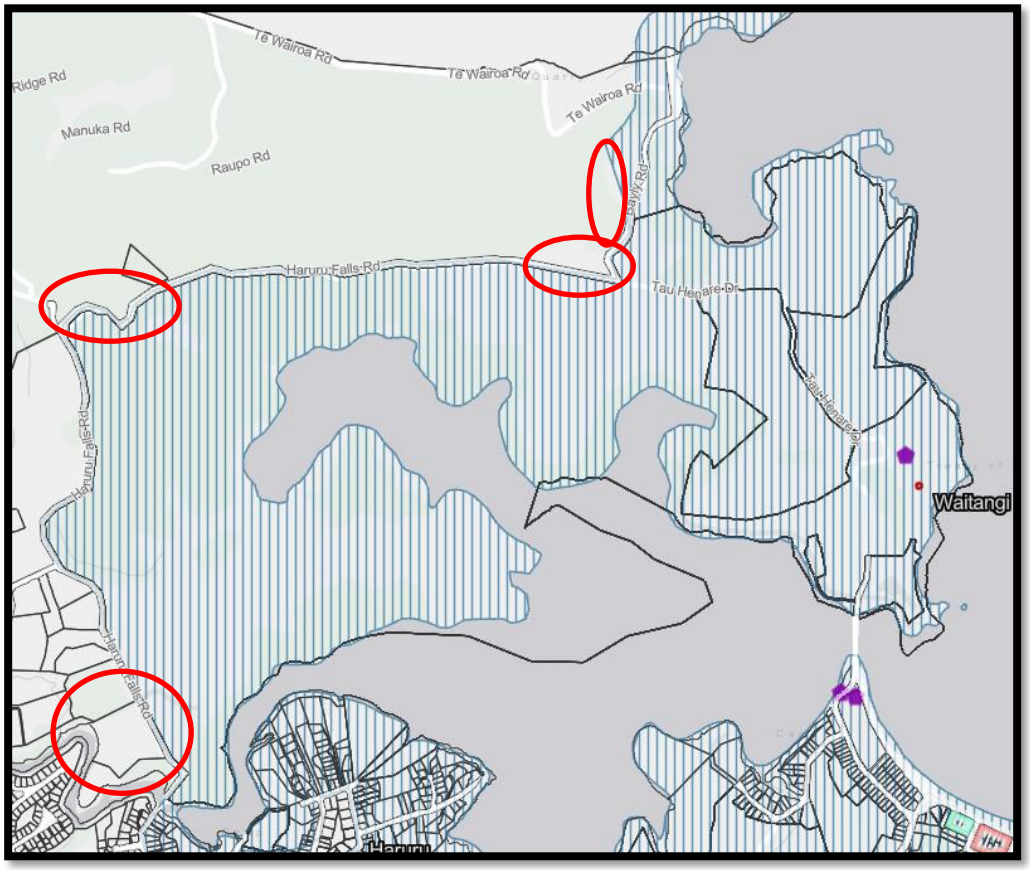


Figure 4 - Area of the Estate overlain by the Coastal Environment overlay (excluding the four sites circled in red).

8.5 The purpose of the Rural Production zone does not align with that of the Treaty Grounds or wider Estate. The zone's purpose is to:[4]

> "… *provide for primary production activities including non-commercial quarrying, farming, intensive indoor primary production, plantation forestry activities, and horticulture. The Rural Production zone also provides for other activities that support primary production and have a functional need to be located in a rural environment, such as processing of timber, horticulture, apiculture and dairy products. There is also a need to accommodate recreational and tourism activities that may occur in the rural environment, subject to them being complementary to*

[4] Proposed Plan, Rural Production Zone Overview.

the function, character and amenity values of the surrounding environment."

8.6 The Rural Environment Strategic direction in the Proposed Plan seeks to enable primary production activities that can contribute to the economic and social well-being of the district, and protect highly productive land from inappropriate development.

8.7 As mentioned, the purpose of the Rural Production zone does not align with the existing land uses and activities undertaken at the Estate (including the Treaty Grounds), and does not align with the purposes under the Trust Board Act. The Trust Board Act seeks to enable development that aligns with the purpose for which the land is held, namely "*as a place of historic interest, recreation, enjoyment, and benefit for the people of the Dominion of New Zealand.*"[5] That is quite different to the Rural Production zone that seeks to protect the land from development and encourage primary production activities.

8.8 While the Rural Production zone does seek to accommodate recreation and rural tourism activities, 'rural tourism activity' is defined to mean "*the use of land or buildings for people to visit and experience the rural environment*".

8.9 The misalignment between the proposed Rural Production zone is most obvious in relation to the Treaty Grounds, but also extends to the remainder of the Estate. Put simply, the Estate, including but not only the Treaty Grounds, is not a rural environment.

8.10 The Estate has connections to Council infrastructure including wastewater and water supply, akin to a more urbanised environment. The Treaty Grounds accommodate hundreds and sometimes thousands of people a day as part of their tourism/cultural attraction. There are a number of commercial activities undertaken within the Treaty Grounds, including the operation of a café/restaurant, multiple event spaces, two museums, an art exhibition, educational facilities, a souvenir shop, and back of house offices. The Treaty Grounds and the surrounding Estate hosts Waitangi Day celebrations every year that attract up to 60,000 people. The Treaty Grounds also host Members of Parliament in the lead up to annual Waitangi celebrations, where they discuss pressing matters impacting upon Māori.

[5] Section 13 of the Trust Board Act.

8.11 A fundamental issue for Waitangi Limited (and the Trust Board) is that the prevailing Rural Production zone and the accompanying overlay provisions will not enable it to readily carry out day-to-day activities to protect and manage the Treaty Grounds, associated nationally historic heritage resources (listed above and discussed in the evidence of Mr Dalton), and the surrounding Estate. The Proposed Plan zone and overlay rules are very restrictive and would require resource consent to be obtained under the RMA for even maintenance-type activities.

8.12 While a high number of overlays is to be expected for a nationally significant site, because there are so many, even the most basic activities may require resource consents under the RMA. This is because, under the Proposed Plan, no overlay provision is considered more important than another, meaning that the rules in every overlay will apply to each activity at the site. As a result, basic maintenance activities proposed at the Treaty Grounds, including repair and upkeep, and minor activities, are likely to require resource consents.

8.13 General triggers include:

(a) the broad definition of 'earthworks', which captures almost all ground disturbance, with the exception of gardening, cultivation, and disturbance associated with fence posts;

(b) the broad definition of 'structure', which appears to include items such as footpaths and car parking areas;

(c) the location of the works in proximity to the coast, a boundary, a wetland, or a historic building or object; and

(d) works either not being sought by the requesting party (Heritage New Zealand Pouhere Taonga (**HNZPT**)) or not specified in the rules of the Site and Areas of Significance to Māori chapter.

8.14 The resulting activity statuses range from restricted discretionary through to non-complying activities.

8.15 Examples of activities likely to require resource consent because of this rule framework include:

(a) footpath upgrades to improve disability access to buildings, and improvements to general public access across the Treaty Grounds;

(b) planting trees for members of the royal family or dignitaries;

(c) digging trenches for services;

(d) installing new or maintaining existing drainage on site;

(e) maintaining or inspecting underground infrastructure where pipes need to be unearthed;

(f) installing any new underground infrastructure;

(g) the expansion of existing car parks, and upgrading or forming a sealed surface;

(h) installing bench seating to provide a rest area for visitors walking around the Treaty Grounds;

(i) establishing new gardens;

(j) installing new bollards;

(k) tree felling for health and safety;

(l) replacing board walk posts;

(m) track maintenance; and

(n) the maintenance and repair of historic buildings.

8.16 The zones proposed to apply to the Estate are standardised and apply to all equivalent areas throughout the Far North District. As such, the relevant zones in the Proposed Plan fail to recognise and provide for the special nature of the Estate. No zones in the Proposed Plan (as notified) will achieve the purpose of the Estate. Conversely, a special purpose zone could be tailored to the Estate to provide for necessary day-to-day activities, while also ensuring the protection of historic heritage and the values of the Estate.

8.17 A special purpose zone approach would enable rules to be drafted that enable basic operation and maintenance activities to be undertaken without triggering the need for a resource consent, but at the same time, can also prescribe a more conservative approach in areas where further restrictions may be necessary. For example, while each of the zones include policies to require the potential effects of land use and subdivision on historic heritage to be considered, the existing policy wording in the Proposed Plan

means that development could potentially occur with only some consideration to the potential impacts on the Treaty Grounds.[6] These location specific issues would be better addressed by tailored provisions that provide for appropriate uses and protections in respect of the Estate. This would also make it clearer to those using the Proposed Plan to understand the framework that applies to the Estate, rather than requiring a complex review of each of the eleven proposed zonings and overlays, and their related rules.

8.18 The Proposed Plan currently uses a framework of zoning and overlays to seek to achieve the purpose of the RMA. In addition to standardized zoning, the Proposed Plan includes the following ten established special purpose zones:

(a) Airport Zone;

(b) Carrington Estate;

(c) Horticulture;

(d) Horticulture Processing Facilities;

(e) Hospital;

(f) Kauri cliffs;

(g) Kororareka Russell Township;

(h) Maori Purpose;

(i) Moturoa Island Zone;

(j) Ngawha Innovation and Enterprise Park;

(k) Orongo Bay; and

(l) Quail Ridge.

8.19 This demonstrates that the Council does not have a fundamental issue with the use of special purpose zones in its district plan. I note that the Kauri cliffs zone includes a sub-zone structure that applies bespoke provisions to different areas of the special purpose zone. Given the vast array of activities on the Estate and the varying degrees of planning issues

[6] See RPROZ-P7 (and similar worded policies MUZ-P8 & SARZ-P4).

highlighted through the overlays in the Proposed Plan, I consider that the establishment of sub-zones could be beneficial for a Waitangi special purpose zone. I address this further below.

8.20 In accordance with the *National Planning Standards (November 2019)*[7] *and the Guidance for 12. District Spatial Layers Standard and 8. Zone Framework Standard*, special purpose zones may be developed to allow for site specific exceptional uses that cannot be managed through existing framework zones or spatial planning tools. Special purpose zones can only be created if the following criteria are met:

> *An additional special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:*
>
> *a) are significant to the district, region or country*
>
> *b) are impractical to be managed through another zone*
>
> *c) are impractical to be managed through a combination of spatial layers*

8.21 I consider that all of the above special purpose zone criteria can be met in respect of the Estate:

a) The proposed land use activities and outcomes ***are significant to the district, region or country***

(a) As detailed in my evidence and the evidence of Mr Dalton, the Treaty Grounds and wider Estate are considered by many to be the pre-eminent historical site in New Zealand. The Estate is administered by the Trust and Waitangi Limited as a taonga and a place of belonging, a Tūrangawaewae, for all New Zealanders. It is considered the birthplace of our nation, which makes all activities undertaken within the site significant.

(b) The Estate comprises a specified area (described above) that is not found anywhere else. The Estate is a site like no other in the district or the country.

[7] Direction 3 in Standard 8: Zone Framework Standard (page 36 of the Standards).

b) The proposed land use activities and outcomes ***are impractical to be managed through another zone***

(c) As outlined above, the Estate is unique and requires a specific planning framework to manage the effects of and operation of activities at the site. The complexities of the areas comprising the Estate are so highly specific that it is not practicable to rely on general zoning and rule frameworks.

(d) Given the high historical importance of the Estate, it has a number of proposed overlays that apply to the site. In my view, if the underlying zone and general overlays were to remain, rule assessments for activities at the site would be complicated to undertake from a planning perspective, and difficult to reconcile. The framework will not be accessible to the general public.

(e) Because each overlay stipulates that the most restrictive / stringent rules apply to proposed activities in the relevant location, very minor activities are likely to require resource consent under the RMA. This is considered to be a perverse outcome and would significantly constrain the ability of Waitangi Limited and the Trust to manage the Treaty Grounds and wider Estate in accordance with statute.

(f) The creation of a special purpose zone would provide an opportunity to tailor rules for the Estate to help give effect to the Trust Board Act purpose. I consider that a special purpose zone that includes a planning framework specific to the Estate is the most practical option.

c) The proposed land use activities and outcomes ***are impractical to be managed through a combination of spatial layers***

(a) I consider that a special purpose zone can provide a practical management approach for activities proposed to be undertaken at the Estate. The site is currently proposed to be subject to a number of zones and overlays (set out above). As there are so many applicable overlays, planning assessments are difficult, and rules that enable development or specific activities to occur can be undermined by more stringent rules that apply to other overlays. This is likely to result in perverse outcomes.

(b) Precincts are another option and can be applied to areas that require management via additional place-based provisions to modify or refine outcomes anticipated in the underlying zones. This means that the underlying zone rules are generally applied to the site, with some specific changes that are either more restrictive or more enabling. I have assessed the possibility of a precinct for the Estate, but this would just introduce a further overlay of rules to apply to the Estate. This would likely to make the planning framework for the Estate even more complex. While precinct rules can override rules in other zones (such as what the Council is planning to do with the colour scheme standards for historic buildings), there will still be all of the other overlays to contend with. I consider that having one zone for the entire area would be clearer than requiring individual changes to each underlying zone.

(c) As detailed above, the existing Rural Production zone that applies to the majority of the Estate, conflicts with the purpose for which the land is held. No other zones have been identified in the Proposed Plan as being appropriate to manage the complexities of the site, and any further spatial layers (such as a precinct) would cause undue confusion and perverse outcomes in terms of the activities that they may inadvertently capture, as is already the case under the Proposed Plan.

(d) While generally Waitangi has existing use rights for its current operations, buildings on the Estate are getting older, meaning they require more maintenance. Various standards are increasing, such as for disabled access and the means of escape in the event of a fire, which means that additional works are now required to bring pathways, buildings and other structures up to standard. This all requires revenue, and Waitangi Limited relies on the proceeds of its commercial operations and public funding applications to subsidize these works. There is a limit to what can reasonably be charged for access to visit this historic place. If other activities were able to be established on the wider Estate, revenue may be able to be accumulated to provide much-needed funds to service the Treaty Grounds. This is a Waitangi-specific issue.

(e) For these and other reasons set out in my evidence, I consider that the use of a special purpose zone is the most practical option for managing the Estate.

8.22 In my view, a special purpose zone for the Estate that includes tailored objectives, policies and rules will better reflect its national significance and special nature, and provide for its effective management in accordance with statute. The Estate requires long term master planning and site-specific controls to ensure that the purpose for which the land is held can continue to be met.

9. PROPOSED WAITANGI SPECIAL PURPOSE ZONE

9.1 After identifying a number of Waitangi-specific issues with the Proposed Plan, I prepared initial analysis under section 32 of the RMA. That analysis confirmed that an area-specific special purpose zone would be the best outcome for the Estate. Based on that finding, I have undertaken work to establish what a special purpose zone for the Estate could look like. Given the vast array of activities on the Estate, and the varying degrees of planning issues highlighted through the overlays in the Proposed Plan, I identified that the establishment of sub-zones, similar to the Kauri Cliffs zone (referred to above), could be a suitable methodology. That method allows more stringent standards to be applied to areas such as the Treaty Grounds, while still having overarching objectives and policies for the whole Estate. Building on this, I have prepared a structure for a draft 'Waitangi Special Zone chapter' as well as some applicable rules. As this work is now in a reasonably advanced state, engagement with the Council and others has been initiated. It is intended that, through this process, a fully formed proposal can be put to the Hearings Panel.

9.2 The area-specific special purpose zone to be applied to the Estate is intended to replace the proposed general zoning (Rural Production, Sport and Active Recreation, and Mixed Use) in the Proposed Plan. It is proposed that a special purpose zone could have clear objectives and policies and be accompanied by bespoke sub-zone overlays and provisions to better reflect the varying land uses and environs throughout the Estate.

9.3 I set out some draft objectives and policies that could apply to a special zone below. These are indicative and subject to change.

Objectives	
WSZ-O1	The Waitangi Estate zone is protected for the historic interest, recreation, enjoyment and benefit of all New Zealanders.
WSZ-O2	Historic heritage within the Waitangi Estate zone is protected from inappropriate subdivision, use and development.
WSZ-O3	The relationship of Māori and their culture and traditions associated with the Waitangi Estate, adjacent coastal waters, sites, waahi tapu, and other taonga is recognised and provided for.
WSZ-O4	The natural characteristics and landscape values that contribute to conservation and environmental values in the Waitangi Estate Zone are protected from inappropriate land use and subdivision activities that do not support the purpose of the Waitangi Estate zone.
WSZ-O5	A variety of land use activities within the Waitangi Estate zone is enabled to support the ongoing maintenance, operation and promotion of historic heritage and culture within the Treaty Grounds / Te Pitowhenua sub-zone.

Policies	
WSZ-P1	Provide for the use and development of the Waitangi Estate zone where it is consistent with the purpose administered under Schedule 1 of the Waitangi National Trust Board Act 1932.
WSZ-P2	Recognise the Waitangi Treaty Grounds as the central historic and cultural focus of the Waitangi Estate zone.
WSZ-P3	Significant adverse effects are avoided, and other adverse effects of land use activities and subdivision on the natural character characteristics and landscape qualities associated with Waitangi Estate zone and the coastal environment located are avoided, remedied or mitigated.
WSZ-P4	Manage land use and subdivision to address the effects activities requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application: a. adverse effects on areas with historic heritage and cultural values; b. adverse effects on natural features and landscapes, natural character or indigenous biodiversity; c. any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6 d. consistency with the scale, design and character of the historic built environment and purpose of the zone; e. the location, scale and design of buildings and structures; f. the positive effects resulting from the economic, social and cultural wellbeing provided by the proposed activity; g. the adequacy and capacity of available or planned infrastructure to accommodate existing and proposed activities; or the capacity of the site to cater for on-site infrastructure associated with the proposed activity; h. the adequacy of roading infrastructure and carparking to service the proposed activity; i. managing natural hazards; and j. any loss of highly productive land.
WSZ-P5	Provide for existing visitor and staff accommodation activities and the appropriate extension of those activities where adverse effects can be avoided, remedied or mitigated.
WSZ-P6	Provide for recreation activity in the Waitangi Recreation sub-zone.
WSZ-P7	Ensure that the siting of buildings and structures in the Waitangi Estate zone is undertaken in manner which minimises the visual impact of activities and development in the coastal environment, including the provision for adequate infrastructure servicing.

9.4 Proposed sub-zones for the Estate could include:

(a) A Treaty Grounds / Te Pitowhenua sub-zone to apply to the Treaty Grounds. HNZPT has mapped the extent of Te Pitowhenua, acknowledging that it is one of New Zealand's greatest national symbols. The NRPS has also mapped the Treaty Grounds as an ONL. Both of those layers have been imposed due to the historic significance of the site, but they differ slightly in terms of the areas they cover. A Treaty Grounds sub-zone could extend beyond the boundaries of the mapped extents of both HNZPT and the Northland Regional Council and align with existing site/lease boundaries. This area would capture all historic buildings and objects and provide one set of rules that takes account of all planning overlays.

(b) A Tourism sub-zone that incorporates existing built development and public amenities.

(c) A Recreation sub-zone that covers the whole golf course.

(d) Finally, a Rural sub-zone that applies to the remaining land.

9.5 In my view, these alternative provisions (accompanied by a complementary rule framework) will would better achieve the purpose of the RMA by incorporating objectives and policies that relate back to the main purpose of the Trust Board Act. The proposed draft objectives and policies seek to ensure that future activities at the Estate protect nationally significant historic heritage resources and natural environment values from inappropriate subdivision, use and development, while also enabling the day-to-day management of the Estate in a manner that is centred on the social, economic and cultural wellbeing of people and communities.

9.6 Overall, I consider that a special purpose zone is the most practical option for the site. A special purpose zone with sub-zones, as detailed above, would enable more restrictive provisions to be placed on the Treaty Grounds to account for its prominence in the Bay of Islands and its historic significance, while providing less restrictive provisions in other sub-zones.

9.7 If the site is subject to a special purpose zone, provisions can be specially drafted to ensure that the essence of the many overlay provisions is realised while at the same time allowing for minor activities to occur at the Estate without triggering the need for unnecessary land use resource consents. Less restrictive provisions could be developed that apply to more

developed areas located outside of the Treaty Grounds, while overarching objectives and policies for the Estate will ensure that the prominence of the Treaty Grounds remains at the forefront of decision making throughout entire zone, thus ensuring the future protection of this site. Outside of the more developed areas, a Rural sub-zone could be developed that has the same overarching objectives and policies as the wider Estate, but is tailored to enable land use and activities of a 'rural' nature that also align with the Trust Board Act.

10. PROCESS FROM HERE

10.1 The acceptance of a special purpose zoning for the Estate remains Waitangi Limited's primary objective. A hearing has been set down for the rezoning topic between 25 and 28 August 2025 (Hearing 19).

10.2 Work will continue to prepare a section 32 report in preparation for Hearing 19. In drafting provisions for a special purpose zone, it will be important to ensure that the proposal achieves consistency and cohesiveness with the wider plan. Accordingly, we will be following the various section 42A reports and the recommendations being made.

10.3 Consultation with iwi and HNZPT will continue during this period, as their input will assist in finalising the section 32 report. Waitangi Limited would also appreciate the opportunity to engage with the Council planning experts to discuss the special zone proposal, including to consider and progress the drafting of provisions. If expert conferencing would assist, I would be happy to participate. Waitangi Limited and the Council would ideally be well aligned on the appropriate approach, well in advance of Hearing 19, to ensure a good planning outcome is achieved for this nationally significant site.

10.4 A special purpose zoning for the Estate would provide a robust planning framework for one of New Zealand’s most historically significant sites. It will include tailored rules, objectives and policies that provide the site with the mana and acknowledgement it deserves. These tailored rules and framework ensure future development need not be considered through the lens of a production zone, which is impractical for this Estate. It also ensures that the issues highlighted through the barrage of spatial layers applying to the Treaty Grounds can be resolved, while at the same time ensuring the matters that those spatial layers seek to protect are provided for.

11. MATTERS SPECIFIC TO HEARING FOUR

11.1 Waitangi Limited has made a submission where its primary relief seeks to establish a special purpose zone over the Estate. In my opinion, that is the appropriate planning treatment for the Estate.

11.2 However, Waitangi Limited has also asked for secondary relief as a fall back in the event the special zoning is not accepted by the Hearings Panel. While this fallback position is deficient, given that the issues regarding the Proposed Plan would still remain, it will provide some relief for future activities located outside of the Treaty Grounds.

11.3 In this section, I respond to matters relating to Waitangi Limited's secondary 'fall-back' relief as it relates to this hearing, including responding to Council reports prepared under section 42A of the RMA. I also provide some commentary as to how these matters could be addressed through a special purpose zone.

11.4 In total 40 secondary relief submissions were made to proposed rules, with an additional seven secondary relief points sought in regard to definitions. The following relief points applicable to Hearing 4 are discussed by topic as follows:

<u>Natural Character</u>

11.5 Rename the Natural Character Chapter to Wetlands, Lakes and River Margins (S503.043).

(a) The Council officer has recommended that this be rejected as the name is prescribed by the National Planning Standards (refer to section 6.2.1 of the Council's section 42A report (natural character)). I accept this decision.

11.6 Seek additions to the list within rule NATC-R2 Repair and Maintenance (S503.044).

(a) The Council officer has accepted the additional insertions but has ultimately decided that the rule should be deleted as they consider that a greater level of constraint is being put on the listed items within the rule (refer to section 6.2.18 of the Council's section 42A report (natural character)). I accept this decision.

(b) Deleting the rule has a consequential effect on rule NATC-R3 Earthworks or indigenous vegetation clearance currently has a reference to the activities that Waitangi Limited sought to add, being carparking areas, boardwalks, boat ramps and buildings or structures. The section 42A report writer has accepted the inclusion of boardwalks and boat ramps, but has recommended that carparking areas be changed to formed carparks (which I agree with) and the inclusion of buildings and structures be rejected. In terms of buildings and structures it is noted that repair or maintenance works would fall under PER-2 which I consider is acceptable.

(c) I accept the section 42A report writer's recommended NATC-R3. The rule now reads:

NATC-R3 Earthworks or indigenous vegetation clearance

PER-1

The earthworks or indigenous vegetation clearance within wetland, lake and river margins and is the minimum necessary is:

1. for the operation, repair or maintenance of existing lawfully established:

a. fences

b. network utilities

c. tracks, driveways, roads and access ways,

d. formed carparks,

e. board walks,

f. boat ramps, or

2. required to provide for safe and reasonable clearance for existing overhead power lines.; or

3. to address an immediate a risk to the health and safety of the public, or

4. clearance for the control pests for biosecurity reasons, or

5. for the sustainable non-commercial harvest of plant material for rongoā Māori., or

6. to maintain firebreaks to manage fire risk; or

7. to remove vegetation as directed by Fire and Emergency New Zealand due to fire risk, or

8.to maintain a 20m setback from a building used for a vulnerable activity (excluding accessory buildings) to the edge of the indigenous vegetation area, or

9.for the upgrading of existing above ground network utilities permitted by NATC-R1, or

10.for establishing, operating, maintaining and repairing infrastructure in a road corridor.

PER-2

Earthworks or indigenous vegetation clearance not provided for within NATC-R3 PER-1 but it complies with standard NATC-S2 Earthworks or indigenous vegetation clearance.

(d) In the event a special purpose zone is accepted for the Estate, a similar rule could be included with reference to a standard with different volume and area thresholds. Similar wording to this rule, including the exemptions in PER-1 would provide cohesiveness throughout the plan.

11.7 Amend the reference to point number 5 and change to point 4.

(a) The Council officer has accepted in part the recommendation to amend the reference to point 5 noting that it is indeed an error. However, they do not agree that it should be changed to reference point 4 (refer to section 6.2.18 of the Council's section 42A report (natural character)). I accept this decision.

11.8 Amend the note within NATC-S2 (S503.045).

(a) The Council officer has accepted in part the rewording of the note, however, has chosen to recommend that it be deleted instead (refer to section 6.2.20 of the Council's section 42A report (natural character)). I accept this decision.

(b) In addition, I accept the section 42A report writer's recommended amendments to NATC-S2. The standard now reads:

> ***1. Any earthworks on a site within a wetland, lake and river margins must:***
>
> ***a. not exceed a total area of 50m2 within any calendar year***
>
> ***b. not exceed a cut height or fill depth of 1m;***
>
> ***c. screen exposed faces visible from public places;***
>
> ***2. Any vegetation clearance on a site within a wetland, lake and river margins must exceed a total area of 400m2 within any 10 year period.***

(c) In the event that a special purpose zone is accepted for the Estate, a similar standard could apply, however, more restrictive standards will likely need to apply to the Treaty Grounds.

<u>Natural Features and Landscapes</u>

11.9 Rule NFL-R1 and buildings that are ancillary to farming (S503.020).

(a) The way the rule was drafted meant that unless the building being sought was ancillary to farming it would trigger a resource consent. In relation to the Estate, the ONL is the Treaty Grounds. Section 6.2.17 of the section 42A report (natural features and landscapes) has recommended that the permitted size of the building be increased to 50m^2 (within the coastal environment) and that it not be used for a residential activity.

(b) The Treaty Grounds has an outstanding landscape classification because of its historic significance, but also because of its coastal location and prominence. For the Treaty Grounds, Waitangi Limited are seeking a more restrictive control of buildings of 30m^2. Given the sites national significance and prominent location within the Bay of Islands, a more restrictive permitted standard is considered to be a better outcome.

(c) Despite this, other sites at the Estate that do not have the same historical significance as the Treaty Grounds need not be treated with as much scrutiny. For these reasons, I am accepting of a lesser standard (50m^2) within all other outstanding landscapes. I again

reiterate that the inclusion of a special purpose zone could achieve this outcome.

(d) The Estate includes two ONFs. One is located to the north of the flagpole and the other at Haruru Falls. I note that both ONFs are category B meaning that the 25m^2 requirement would apply. While this is the case, both ONFs would be almost impossible to build on, given one is a waterfall and the other is generally within the coastal marine area. The 30m^2 requirement within the Treaty Grounds would provide adequate control. The inclusion of a sensitivity restriction within a special purpose zone would also enable adequate controls, as detailed in Mr Cocker's evidence.

(e) I accept the section 42A report writer's recommended amendments to NFL-R1. The rule now reads:

> ***NFL-R1 New buildings or structures, and extensions or alterations to existing buildings or structures***
>
> ***PER-1***
>
> ***Any new building or structure if it is:***
>
> ***1.not used for a residential activity, and***
>
> ***2. complies with NFL-S1 and NFL-S2, and***
>
> ***3.no greater than:***
>
> ***a. 50m2 in ONL in the coastal environment, and***
>
> ***b. 100m2 in ONL outside the coastal environment, and***
>
> ***c. 50m2 in category 'A' ONF in the coastal environment, and***
>
> ***d. 100m2 in category 'A' ONF outside the coastal environment***
>
> ***e. 25m2 in ONF (excluding category 'A' ONF).***
>
> ***PER-2***
>
> ***Any extension or alteration to a lawfully established building or structure:***

1. is no greater than 20% of the GFA of the existing lawfully established building or structure, and

2.complies with NFL-S1.

PER-3

Any new building or structure, and extension or alteration to an existing building or structure not provided for by PER-1 or PER-2 and is:

1. a stock fence, or

2. infrastructure less than 10m high within a road corridor provided any pole:

a. is a single pole (monopole), and

b. is not a pi-pole or a steel-lattice tower, or,

3.an upgrade of existing electricity network utilities:

a. outside the coastal environment,

b. in a ONL or category 'A' ONF,

c. no greater than 10m high or the height of the existing structure

d. no greater than 20% of the GFA of the existing lawfully established building or structure, and

e. not replacing a pole with a pi pole.

11.10 Should a special purpose zone be accepted for the Estate, bespoke provisions would be needed for different sub-zones within the Estate.

11.11 Seek additions to the list within rule NFL-R2 Repair and Maintenance (S503.021):

(a) The Council officer has accepted Waitangi Limited's additional proposed insertions but has ultimately decided that the rule should be deleted as they consider that a greater level of constraint is being put on the listed items within the rule (refer to section 6.2.18 of the Council's section 42A report (natural features and landscapes)). I accept this decision.

11.12 Delete NFL-R6 (S503.022):

(a) The rule has an unnecessary restriction on farming activities. The Council officer has recommended the deletion of this rule (refer to section 6.2.21 of the relevant section 42A report). I accept this decision.

11.13 Colour scheme requirements NFL-S2 (S503.023):

(a) The proposed standard requires both buildings and structures to be painted in a Resene BS5252 colour palette. The section 42A report writer has agreed with the issues raised and has recommended changes to the standard (refer to section 6.2.23 of the section 42A report). I generally accept the proposed changes; however, I have concerns that the rule could be interpreted to mean that natural materials must achieve 30% reflectivity. The section 42A report is silent on this matter. It is noted that there are natural wood products that technically would not comply with the 30% reflectivity standard, such as cedar. If the Hearings Panel would like to exempt products of this nature from this standard, I have provided some amended wording below.

(b) The section 42A report writer's recommended amendments to NFL-S2 are:

> ***NFL-S2 Colours and Materials***
> ***The exterior surfaces of new buildings shall:***
> ***i. be constructed of natural[50] materials and/or finished to achieve a reflectance value no greater than 30%.***
> ***ii. ii. if the exterior surface is painted,[51] have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette in Appendix X.[52]***
>
> ***This standard does not apply to: the: Kohukohu, Mangonui, Paihia, Rawene and Russell / Kororāreka Heritage Area Overlays***

(c) The following changes are sought based on my comments above:

> ***NFL-S2 Colours and Materials***
>
> ***The exterior surfaces of new buildings or structures shall:***
>
> ***1. be constructed of natural materials; ~~and/~~or***

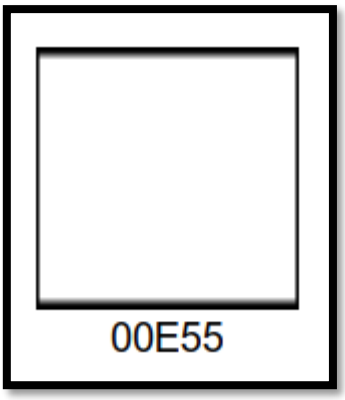
2. ~~finished to achieve~~ be constructed with materials that have a finish achieving a reflectance value no greater than 30%; and

3. if the exterior surface is painted, have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette or equivalent.

(d) In terms of the BS5252 colour palette, I refer to the evidence of Mr Cocker in terms of using the wording "*or equivalent*" to capture those products that might fall outside the prescribed BS5252 colour range.

(e) It is anticipated that, if a special purpose zone was to be accepted for the Estate, similar wording would be utilised.

(f) I also note that that there may be an error with one of the colours in the BS5252 colour chart at Appendix D to the MAL report (see the snip below).



11.14 Earthworks NFL-S3 (S503.024).

(a) A very restrictive earthworks standard has been imposed throughout the development of the Proposed Plan. The standard was not only restrictive but also problematic when monitoring for compliance. The section 42A report writer has recommended that earthworks within an ONL be increased to 50m^2 per year, and vegetation clearance restricted to 50m^2 over 10 years (see section 6.2.23 of the section 42A report). These recommendations have been accepted.

(b) I note that the category references for category A ONFs in the Operative Plan have not been carried over to the new Schedule 6 of the Proposed Plan. If these references were to be introduced to

the rule, I seek that an additional category be added to Schedule 6 of the Proposed Plan so that reference to the ONF categories can be easily found.

(c) I accept the section 42A report writer's recommended amendments to NFL-S3. The standard now reads:

> ***1. Any earthworks must (where relevant) not exceed:***
> ***a. in a ONL a total area of:***
> ***i. 50m2 in the coastal environment within any calendar year:***
> ***ii. 100m2 outside the coastal environment within any calendar year:***
> ***b. in a category 'A' ONF outside the coastal environment a total area of 50m2 within any calendar year***
> ***c. in a ONF (excluding category 'A' ONF outside the coastal environment) 50m2 within any 10 year period, and***
> ***d. not exceed a cut height or fill depth of 1m:***
> ***i. 1m in ONL within the coastal environment***
> ***ii. 1.5m in ONL outside the coastal environment***
> ***iii. 1m in ONF unless it is a category 'A' ONF outside the coastal environment***
> ***iv. 1.5m in category 'A' ONF outside the coastal environment***
> ***d. screen any exposed faces visible from a public place.***
>
> ***2. Any indigenous vegetation clearance must not exceed a total area of:***
> ***i. 50m2 in ONL within any 10 year period***
> ***ii. 100m2 in ONF within any calendar year[58]***

(d) If a special purpose zone were to be accepted for the Estate, bespoke earthworks and vegetation clearance standards would likely apply across the different sub-zones. In particular, special consideration would be needed for a Treaty Ground sub-zone as it includes a small area of a category B ONF.

<u>Coastal Environment</u>

11.15 Rule CE-R1 PER-2 (S503.014).

(a) Waitangi Limited has sought relief to increase the size of buildings on the Estate where they are ancillary to farming, and provide for buildings that are not. Section 5.2.10 of the section 42A report (Coastal Environment) has recommended that PER-2 a) be

amended to include, "*is not used for a residential activity*" which assists with this distinction. I accept this change.

(b) The section 42A report also recommends that the m^2 restriction be separated into categories: ONCs, HNCs and other areas of the Coastal Environment. The Estate has HNC areas, being areas of native bush where a $50m^2$ restriction is proposed to be imposed. Other areas across the Estate (which are not impacted by other overlays) would be subject to a $100m^2$ restriction. I refer to the evidence of Mr Cocker in relation to the $100m^2$ blanket restriction, as he has completed an in-depth assessment of buildings based on sensitivity ratings.

(c) Should a special purpose zone not be accepted, I accept the section 42A report writer's recommended amendments to CE-R1. The rule now reads:

> ***CE-R1 New Buildings or structures, and extensions or alterations to existing buildings or structures***
>
> ***Where:***
>
> ***PER-1***
>
> ***If a new building or structure is located in the General Residential Zone, Mixed Use Zone, Light Industrial Zone, Russell / Kororareka Special Purpose Zone, Māori Purpose Zone – Urban, Oronga Bay Zone, Hospital Zone, or Kauri Cliff SPZ - Golf Living Sub-Zone, it:***
>
> ***1. is no greater than 300m2;***
>
> ***2. is located outside high or outstanding natural character areas; and***
>
> ***3. complies with:***
> ***a. CE-S1 Maximum height;***
> ***b. CE-S2 Colour and materials; and***
> ***c. CE-S4 Setbacks from MHWS.***
>
> ***PER-1(1) does not apply to: the Mixed-Use Zone, Light Industrial Zone, Māori Purpose Zone – Urban and Hospital Zone within the***

following settlements: Coopers Beach, Mangonui, Opua, Paihia and Waitangi, Rawene, and Russell / Kororareka.

PER-2
If a new building or structure is not located within any of the zones referred to in PER-1 it:
a. is not used for a residential activity;
b. is no greater than:
a. 25m2 within an outstanding natural character area;
b. 50m2 within a high natural character area; and
c. 100m2 in all other areas of the coastal environment; and
d. complies with:
a. CE-S1 Maximum height;
b. CE-S2 Colour and materials; and
c. CE-S4 Setbacks from MHWS.

PER-3
Any extension or alternation to a lawfully established building or structure is:
1. no greater than 20% of the GFA of the existing lawfully established building or structure; and
2. complies with CE-S1 Maximum height.

PER-4
Any new building or structure or an extension or alteration to an existing building or structure not provided for by PER-1, PER-2 or PER-3, where it is:
a. fencing for the purposes of stock exclusion;
b. an upgrade of an existing network utility where this is:
i. outside high or outstanding natural character areas;

ii. permitted by I-R3;

iii. no greater than 10m high or the height of the existing structure (whichever is the greatest);
iv. no greater than 20% of the GFA of the existing lawfully established building or structure; and
v. not replacing a pole with a pi pole.

11.16 Seek additions to the list within rule CE-R2 Repair and Maintenance (S503.015).

(a) The section 42A report writer has decided that the rule should be deleted as they consider that a greater level of constraint is being put on the listed items within the rule (refer to section 5.2.13 of the section 42A report). I accept this decision.

11.17 CE-S1 Height restrictions for buildings or structures (S503.016).

(a) Waitangi Limited sought relief to increase the height restriction of buildings and structures on the Estate from 5m to 8m, and in the event the 8m height restriction was not adopted, secondary relief was sought for a 6m maximum height. The section 42A report writer has recommended that the height restriction should not apply to sites zoned as mixed use (refer to section 5.2.11 of the section 42A report). This would include the Copthorne site. Elsewhere, the section 42A report writer relies on the recommendations of Melene Absolum Landscape (**MAL**) to justify retaining a 5m height restriction. As explained in the evidence of Mr Cocker, different maximum height restrictions could be applied to different areas of the Estate based on specific landscape values and sensitivities.

(b) A 5m height restriction is considered appropriate where an area has been identified as having high or moderate sensitivity. However, outside of these areas, Mr Cocker has recommended that an 8m height restriction would be more appropriate. A special zoning could enable each area of the Estate to be carefully reviewed and bespoke provisions developed to address the uniqueness of its different areas.

(c) The section 42A report writer's recommended amendments to CE-S1 are:

> ***CE-S1 Maximum Height***
>
> ***1. The maximum height of any new building or structure above ground level is 5m; and***
> ***2. Any extension to a building or structure must not exceed the height of the existing building above ground level.***
>
> ***This standard does not apply to:***
> ***i. Telecommunication facilities;***
> ***ii. The Orongo Bay zone and the Kororāreka Russell***

Township zone.
iii.The Mixed-Use Zone, Light Industrial Zone, Māori Purpose Zone – Urban, and Hospital Zone within the following settlements:
a. Coopers Beach;
b. Mangonui;
c. Opua;
d. Paihia & Waitangi; and
e. Rawene.

11.18 Colour scheme requirements CE-S2 (S503.017).

(a) I refer to my comments above in respect of NFL-S2 that address the colour scheme requirements for the natural features and landscape chapter of the Proposed Plan.

(b) In summary:

(i) Recommended standards CE-S2 and NFL-S2 are drafted using the same language. Each standard applies to different provisions of the Proposed Plan.

(ii) I generally accept the section 42A report writers proposed changes to CE-S2 and NFL-S2, however, I have concerns that the standards could be interpreted in a way that requires natural materials to achieve the 30% reflectivity. This is not practical.

(iii) I have therefore proposed some amended wording that exempts products, such as natural wood, that technically would not comply with the 30% reflectivity standard (such as cedar). My recommended amendments to this standard are the same as though recommended for NFL-S2 above. I have prepared these recommendations in consultation with Mr Cocker.

(iv) In addition, I have also identified an error with colour OOE55 of the BS52S2 colour chart that was appended to the MAL report.

(v) A special purpose zone could appropriately provide for these matters throughout the Estate.

11.19 Earthworks and Indigenous Vegetation Clearance CE-S3 (S503.018).

(a) As described above, a very restrictive earthworks standard was proposed by the Council over a 10 year period for both earthworks and vegetation clearance. It is not only restrictive, but also problematic when monitoring for compliance. The section 42A report writer has recommended, at section 5.2.14, that earthworks be restricted to 50m^2 if in an ONC area or an area of HNC. Outside of those areas, a 100m^2 restriction will apply. Cut heights are proposed to remain at 1m. I generally accept this recommendation where it applies to the wider district.

(b) Vegetation clearance has been split from the earthworks standards and will remain at 50m^2 in a HNC area and 400m^2 outside of these areas. I generally accept this decision where it applies to the wider district.

(c) The section 42A report writer's recommended amendments to CE-S3. The standard now reads:

> ***CE-S3 Earthworks or indigenous vegetation clearance***
>
> ***1. Any earthworks must (where relevant):***
> ***a. not occur in outstanding natural character areas; and***
> ***b. not exceed a total area of:***
> ***i. 50m2 within a calendar year in an area of high natural character; or***
> ***ii. 100m2 within a calendar year in an area outside high or outstanding natural character areas; and***
> ***c. not exceed a cut height or fill depth of 1m; and***
> ***d. screen any exposed faces visible from a public place.***
> ***2. Any indigenous vegetation clearance must:***
> ***a. not occur in outstanding natural character areas;***
> ***b. not exceed a total area of:***
> ***i. 50m2 within any 10-year period in an area of high natural character;***
> ***ii. 400m2 within any 10-year period outside high or outstanding natural character areas.***

(d) While I accept the application of this standard to the wider district, Mr Cocker proposes that earthworks standards be modified and vary across the different parts of the Estate. For example:

(i) Standards applying to the Estate could be more restrictive for the Treaty Grounds, given the overlays for Outstanding Landscape, Coastal Environment, Sites of Cultural Significance to Māori and the various heritage buildings.

(ii) The earthworks standards would be modified to acknowledge the archaeology features within the golf course and the Outstanding Natural Feature at Haruru Falls.

(iii) Outside of these areas, lessor restrictions can apply.

(e) I note that as there are no areas of ONC mapped within the Estate. These rules (and their related standards) will be relevant to Hearing 6. This includes exemptions to activities and m^3 requirements for proposed zones.

11.20 RPROZ-S4 and MUZ-S4 enabling certain buildings or structures to be established within the permitted setback from MHWS (S503.035 & 036).

(a) Waitangi Limited's submission requested the following items be exempt from compliance with the 30m and 26m setback standard for buildings and structures from the mean height water springs (**MHWS**). The reason for this was for consistency with the Natural Character setback rule. The section 42A report writer has commented that there was not sufficient reasoning as to why the list of requested activities have a functional or operational need to be located in close proximity to the MHWS, or that adverse effects would be appropriate. The recommendation was that the relief be rejected. The following assessment addresses these concerns.

(b) Restoration and enhancement purposes: Structures associated with restoration and enhancement purposes would include predator fencing and potentially traps if they are affixed to land. These small-scale structures are for the benefit of wildlife and are generally funded by local community groups. They have a functional need to be established in these areas to eradicate pests. If resource consent is to be required to establish or maintain structures, upkeep of such structures may not be financially viable, to the detriment of local wildlife. If the terms 'restoration' and 'enhancement' are considered to be too broad, I would not be opposed to restricting this to the types of structures mentioned above.

(c) Natural hazard mitigation undertaken by, or on behalf of, the local authority: Natural hazard mitigation works involving structures will in almost all cases require regional resource consents. Examples include hard protection structures such as seawalls or retaining walls that are located partly within the coastal marine area and partly on land. As a result, all consideration of the appropriateness of the structure within the setback from MHWS (described above) will need to be assessed by the regional council. Including this rule in the Proposed Plan will result in a double up of consenting requirements. In its submission, Waitangi Limited sought that this exemption only apply to works being undertaken by a local authority. The reason for this is that local authorities usually complete works for the good of the wider public or as emergency works. However, given that private persons also seek consent for hard protection structures from the regional council and will therefore be subject to this double up, I suggest that the words "*by, or on behalf of, the local authority*" be removed and instead the words "*where consent has been obtained by the Northland Regional Council*" be added. This ensures that so long as regional consent has been obtained, this exclusion can apply.

(d) A post and wire fence for the purpose of protection from farm stock: Under the Operative Plan, fences that are less than 2m in height are not considered a 'building' and therefore do not trigger the need for resource consent under the Proposed Plan. As fences will be defined as a 'structure', the setback rules will be applicable. Much of the Estate's coastal environment is farmed. Some older farms have riparian rights and others do not. Council roads and esplanade reserves are generally at least 20m in width meaning that to fence along the boundary of these areas in the Rural zone requires structures to be setback 30m from MHWS. The Estate does not include any esplanade reserves as the site extends right up to the coastal marine area. To ensure that animals are contained and do not wander, post and wire fences are utilised by farmers. Fencing off bodies of water from animals also ensures they are not being contaminated by excrement and remain safe for members of the public to enjoy. This same sentiment applies to rivers and streams where fencing is encouraged by organisations such as the Northland Regional Council and Dairy New Zealand. Establishing

fencing will result in the positive outcomes identified above. There is therefore a functional need for them to be established. Requiring resource consent to establish these fences will likely discourage farmers from fencing these areas, or these works will likely be undertaken without the Council's knowledge. While it is likely that most fencing has already been established, there could be a change of use on the farm, for example, a conversion from beef farming to sheep farming where the type of fencing may need to change, or there may be a need to reconfigure paddocks where additional fence lines are required to be placed within the 30m setback. As these changes would not have existing use rights, and resource consents may be required.

(e) Lighting poles by, or on behalf of, the local authority and footpaths and or paving no greater than 2m in width: Generally within coastal areas there are roads or footpaths or other council infrastructure which is constructed along the coastal marine area. This helps to beautify, provide accessibility, and provide for the safety of users, including at night. Generally, these areas are within designated road corridors or reserves. Where the works are within a designated road, the works detailed in the designation purpose can be undertaken without the requirement for a resource consent. The current designation purpose for council legal road is "*covers all 2500 km of road network within the district for which the Council is responsible for maintaining*". As the term ‘road network’ is used, it appears that the designation only covers the road and not associated infrastructure. Therefore, structures such as lighting, footpaths and paving that are generally established adjacent to roads would be captured under the definition of ‘structure’ and would trigger the need for resource consents under the Proposed Plan.

While it would be possible to amend the designation to include road network and associated infrastructure, resource consents may still be required in respect of reserves owned by Council to establish and maintain this infrastructure. I note that paving has not been specified as an activity that must be undertaken by or on behalf of the local authority. For example, Waitangi Limited recently sought and obtained resource consent to extend a footpath from the Waitangi jetty along the road to provide connectivity between the

Far North Holdings infrastructure and Te Kauwhata Parade (which is a council road). The works are of public benefit and meet the purposes of the Trust Board Act by providing for recreation, and the enjoyment of the Estate. If a special purpose zone was established, works of this nature that provide a public benefit to the community could be enabled across the Estate.

(f) Boundary fences or walls no more than 2m in height above ground level: Under the Operative Plan fences that are less than 2m in height are not considered a building and therefore do not require resource consent. As fences will be defined as a 'structure' in the Proposed Plan, the setback rules will apply. Where coastal properties are not being farmed, generally they are within residential areas. Under the RMA, when a subdivision is created along the coastline, a 20m wide esplanade reserve is set aside by the Council. This 20m width is essentially the same width as the Queens chain that applied to older developments along rivers and the coastline. In all zones, the setback from the MHWS is larger than 20m, meaning that the establishment of boundary fences will likely require resource consent. Boundary fences have a functional need to be established along a boundary to ensure that owners are able to keep animals within the site boundary, and delineate the boundary so members of the public know which is public land and which is private.

(g) The section 42A report writer's recommended amendments to NFL-S3. The standard now reads:

> ***CE-S4 Setbacks from MHWS***
>
> ***New buildings and structures and or extension or alteration to an existing building or structure must be setback at least:***
> ***a. 30m from MHWS in the Rural Production, Rural Lifestyle, Rural***
> ***Residential, Horticulture and Horticulture Processing Facilities***
> ***zones; or***
> ***b. 26m in all other zones.***
> ***This standard does not apply: where there is a legally formed and maintained road between the property and MHWS.***

(h) Should a special purpose zone be created, setbacks would be tailored to each area of the Estate.

Ecosystems and Indigenous Biodiversity

11.21 No submissions were made on behalf of Waitangi Limited in regard to this topic.

Rochelle Jacobs

22 July 2024