

**BEFORE THE INDEPENDENT HEARINGS PANEL
FAR NORTH DISTRICT COUNCIL**

UNDER

the Resource Management Act 1991

IN THE MATTER

of the Proposed Far North District Plan

**LEGAL SUBMISSIONS ON BEHALF OF
AUDREY CAMPBELL-FREAR**

RURAL HEARING

29 November 2024


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INTRODUCTION

- 1.1 Audrey Campbell-Frear is primary submitter #209 and further submitter #172 on the Proposed District Plan (PDP).
- 1.2 Ms Campbell-Frear's primary submission addresses four themes:
- Delete the proposed Horticulture Zone
 - Review commercial zones (hierarchy of centres)
 - Rezone Kerikeri fringe to enable commercial activities
 - Review Rural Residential zoning west of Kerikeri Road
- 1.3 It is the first of these themes – to delete the proposed Horticulture Zone - that is relevant to this Rural hearing.
- 1.4 The following expert evidence has been filed on behalf of Ms Campbell-Frear for this hearing:
- Ian Hanmore – Soils (appearing online)
 - Derek Foy – Economics (appearing online)
 - Melissa McGrath – Planning (appearing in person)

WHAT IS SOUGHT (AND WHAT IS NOT)

- 1.5 Ms Campbell-Frear and her experts agree that highly productive land must and should be protected.
- 1.6 The submission and evidence is that the Council's creation of the proposed Horticulture Zone is not an appropriate planning mechanism to protect highly productive land - the Rural Production Zone is.

NATIONAL PLANNING FRAMEWORK

- 1.7 The Council must prepare the PDP "in accordance with" with the NPS HPL, the Standards, and its s32 obligations¹. The PDP must "give effect to" the NPS HPL, the Standards, and the RPS.²

¹ RMA section 74(1)

² RMA section 75(3)

- 1.8 To “give effect to” means to “implement” and is a strong directive creating a firm obligation.³ “Must” is highly directive (mandatory).

Purpose

- 1.9 The purpose of the NPS HPL is stated in its single objective: “Highly productive land is protected for use in land-based primary production, both now and for future generations.”⁴
- 1.10 The purpose of the Standards is to improve the efficiency and effectiveness of the planning system by providing nationally consistent structure, format and definitions for policy statements and plans.⁵

Definitions

- 1.11 The NPS HPL defines⁶ “highly productive land” (prior to regional mapping) as LUC classes 1, 2 and 3.⁷
- 1.12 The Standards definition of “primary production”⁸ and the NPS HPL definition of “land-based primary production”⁹ both include horticulture.

Zoning and Horticulture

- 1.13 A district plan must only contain the zones listed in the Standards consistent with the description of those zones (or a special purpose zone).¹⁰
- 1.14 The Standards direct the use of the Rural Production Zone for “Areas used predominantly for primary production activities [including horticulture] that rely on the productive nature of the land...”

³ *Environmental Defence Society Inc v The King Salmon Co Ltd* [2014] NZSC 38 at [77]

⁴ NPS HPL objective 1

⁵ Standards – 1. Foundation standard

⁶ Currently – the government has committed to removing LUC 3 from the definition with effect from mid 2025.

⁷ NPS HPL interim definition of HPL clause 3.5(7)

⁸ Standards definition: “primary production” means (a) any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities ...

⁹ NPS HPL definition “land-based primary production means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land”

¹⁰ Standards – 8. Zone Framework Standard 1

- 1.15 The Standards direct that a 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.”¹¹*
- 1.16 The evidence of Mr Foy and Ms McGrath is that none of the three mandatory criteria for a special purpose zone are met for the proposed Horticulture Zone.

Zoning and HPL

- 1.17 The NPS HPL *interim* definition of highly productive land is land that is zoned general rural or rural production, and LUC 1, 2, or 3.¹²
- 1.18 The regional council’s obligation under the NPS HPL to map highly productive land applies to land that is in a general rural zone or rural production zone, and predominantly LUC 1, 2, or 3 land, and forms a large and geographically cohesive area.¹³
- 1.19 The NPS HPL defines “zone” as the zones in the Standards.¹⁴

What does this mean for the proposed Horticulture Zone?

- 1.20 The government has through the NPS HPL and the Standards established an efficient and effective management regime for highly productive land and for horticulture: the Rural Production Zone.
- 1.21 The NPS HPL and the Standards are both highly directive about the methods that the Council must use in the PDP to zone land for primary production activities (including horticulture): the Rural Production Zone.

¹¹ Standards – 8. Zone Framework Standard 3

¹² NPS HPL interim definition of HPL clause 3.5(7)

¹³ NPS HPL clause 3.4(1)

¹⁴ NPS HPL clause 1.3(4) definitions (noting that “nearest equivalent zone” only applies where a plan has not implemented the Standards – but the PDP is implementing the Standards)

- 1.22 The Standards are highly directive about the mandatory criteria that must all be met before a special purpose zone can be used. None of those criteria are met for the proposed Horticulture Zone.
- 1.23 The NPS HPL anticipates that highly productive land will be zoned Rural Production Zone.¹⁵ Arguably, if LUC 1, 2 or 3 land is not in the Rural Production Zone, it will be ineligible to be treated as highly productive land under the interim definition and ineligible to be mapped by NRC as highly productive land in regional mapping. The NPS HPL is the highly directive national instrument specifically cast to protect highly productive land for land-based primary production – including horticulture – and it does not anticipate a special purpose zone for horticulture.
- 1.24 For all of these reasons, I submit that the proposed Horticulture Zone does not give effect to the NPS HPL and the Standards and is therefore not compliant with sections 74 and 75.

EVIDENCE

- 1.25 The evidence of Mr Hanmore, Mr Foy and Ms McGrath is that:
- The proposed Horticulture Zone fails section 32:
 - the objectives do not achieve Part 2 of the Act;
 - the proposed Horticulture Zone provisions are not appropriate, and other practicable options (the RPROZ provisions) are the most appropriate, to achieve the SD and RPROZ objectives;
 - the proposed Horticulture Zone provisions are inefficient and ineffective as they:
 - duplicate the RPROZ provisions;
 - restrict the zone to the Kerikeri / Waipapa area by a policy, which does not implement the objectives (even of the proposed zone);

¹⁵ (or the General Rural Zone)

- apply a Horticulture Zone to a spatial area where 90% of uses are not horticulture;
 - apply a zone purporting to manage land fragmentation to an area where 93-94% of lots are already of a size below what the s32 and s42A reports say is required to enable horticulture.
- The proposed Horticulture Zone fails to meet any of the three mandatory Standards criteria for a special purpose zone:
 - Horticulture in Kerikeri/Waipapa is not significant to the district;
 - The Kerikeri Irrigation Scheme is not significant to the district or region, is not unique in the district, and is subject to unacknowledged constraints;
 - Highly productive land, horticultural activities and reverse sensitivity can be practically managed by the Rural Production Zone (or a spatial layer).
 - LUC 4 land is not defined by the NPS HPL as highly productive land, is not defined by the RPS as versatile soils, by its own definition has severe physical limitations to arable use, and within the proposed Horticulture Zone could not sustainably lift production through irrigation due to the risk of erosion and slope steepness.
 - The Council has not recognised the costs of restrictively zoning land subject to “avoid” policies as a “holding pattern” when NRC is not progressing mapping of highly productive land, and FNDC has no plan to review the restrictive zoning for land that is not mapped as highly productive land.

1.26 The evidence of Mr Foy (economics) and Mr Hanmore (soils) is uncontested as neither the Council nor NRC have called economics or soils expert evidence to support the creation of the special purpose zone.

CONCLUSION

- 1.27 The proposed Horticulture Zone does not give effect to the mandatory and directive NPS HPL and Standards and does not pass section 32.
- 1.28 The Rural Production Zone is mandated by national direction as the appropriate zone for the protection of highly productive land and horticulture.
- 1.29 Ms McGrath has prepared a markup of the RPROZ provisions to demonstrate that it is practical for the Rural Production Zone to manage horticulture.
- 1.30 The proposed Horticulture Zone should be deleted and the Rural Production Zone applied in its place (subject to future zoning hearings).
- 1.31 Given the government's commitment to removing LUC 3 from the definition highly productive land to take effect from mid 2025, and in accordance with Counsel's obligations to inform the Panel of any law changes before a decision issues, updating submissions will be filed at that time.



Sarah Shaw

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29 November 2024