

**Before the Far North District Council
Independent Hearing Panel**

UNDER The Resource Management Act 1991 (RMA)

IN THE MATTER of the submissions and further submission made by Bentzen Farm Limited, Setar Thirty Six Limited, The Shooting Box Limited, Matauri Trustee Limited, P S Yates Family Trust, and Mataka Residents Association Incorporated on the Proposed Far North District Plan

AND

IN THE MATTER Hearing One: Strategic Direction and Part 1 /General / Miscellaneous Topics

Legal Submissions on behalf of Bentzen Farm Limited, Setar Thirty Six Limited, the Shooting Box Limited, Matauri Trustee Limited, P S Yates Family Trust, and Mataka Residents Association Incorporated

Dated: 24 May 2024

Presented for filing by:

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. These legal submissions are presented on behalf of Bentzen Farm Limited,¹ Setar Thirty Six Limited,² The Shooting Box Limited,³ Matauri Trustee Limited,⁴ P S Yates Family Trust,⁵ and Mataka Station Residents Association Incorporated⁶ (together "**the Submitters**").
2. The Submitters own rural coastal land in, or north of, the Bay of Islands proposed that is proposed to be zoned Rural Production under the Proposed Far North District Plan (**PDP**). The Submitters' properties all have a low density coastal, rural residential lifestyle component to their land use. These developments have been sensitively designed to be sympathetic of the natural environment with an emphasis on environmental conservation and restoration. While some of the properties include working farms, the properties are not all necessarily highly suitable for primary production.
3. The Submitters generally support the approach taken by Far North District Council (**Council**) and the strategic direction in the notified PDP. However, the Submitters are concerned that the PDP and officers' responses to their submissions in the s 42A Reports⁷ do not properly recognise that non-primary production activities are a strategically important land use in rural environments. The Submitters seek for the PDP to create a strategic policy framework that sufficiently recognises the benefits of coastal rural-residential development, particularly that which delivers conservation outcomes.
4. The Submitters seek amendments to:
 - (a) Introduce a new strategic objective in the Strategic Direction Chapter - Rural Environment to recognise and provide for the importance of non-primary production activities in the rural environment and the contribution they make to the wellbeing of the district.

¹ Submission 167, Further Submissions 066, 376 and 578.

² Submission 168, Further Submissions 069 and 377.

³ Submission 187, Further Submissions 067, 383 and 579.

⁴ Submission 243, Further Submission 582.

⁵ Submission 333, Further Submission 068, 384 and 580.

⁶ Submission 230, Further Submission 143 and 581.

⁷ Strategic Direction Section 42A Report (**Strategic s 42A Report**) and Part 1 and General Miscellaneous Section 42A Report (**General s 42A Report**).

- (b) Recognise the importance of *restoration* as well as protection of natural character and natural landscapes and features in the natural environment in the Strategic Direction Chapter – Natural Environment.
 - (c) Clarify that overlays (and their provisions) only apply to the parts of properties where such overlays are mapped.
5. It is submitted that the amendments sought by the Submitters are required to better give effect to the sustainable management purpose of Part 2 of the Resource Management Act 1991 (**RMA**), the statutory tests for district plan making under the RMA, the applicable national policy guidance in the New Zealand Coastal Policy Statement (**NZCPS**), the regional planning framework, and the 80 year vision for the district’s environment as articulated in Far North 2100.⁸
6. The Submitters intend to call one witnesses, Mr Peter Hall, planner, in support of their Hearing One case. Mr Hall’s has particular expertise in rural-residential development in sensitive coastal environments. His evidence introduces the submitters and the particular attributes of their landholdings, outlines the topics and hearings that the Submitters expect to present at during the course of the PDP review hearings, and explains the planning rationale for the amendments sought by the Submitters.

MATTERS ADDRESSED IN LEGAL SUBMISSIONS

7. The planning rationale for the proposed amendments has been addressed in the submissions, further submissions and the planning evidence on behalf of the Submitters. Accordingly, these legal submission focus on the matters raised by the Submitters on the Hearing One topics that I expect will be of most assistance to the Panel, namely:
- (a) The Submitters’ interests and position.
 - (b) The legislative framework for district plan making, inclusion of strategic directions, and the application of overlays.
 - (c) The statutory and policy reasons supporting the amendments sought by the Submitters.

⁸ *Far North 2100 – An 80 Year Strategy for the District.*

THE SUBMITTERS' INTERESTS AND POSITION

Submitters' properties

8. The Submitters' landholdings are in coastal (or island) locations in the Bay of Islands (or to north of the Bay of Island in the case of the Mautauri Trustee Limited property at Opounui in Matauri Bay).
9. The Submitters' properties are all zoned Rural Production under the PDP and are subject to various coastal or conservation overlays (e.g. coastal environment, natural character and / or natural features and landscape) over all or parts of the properties.
10. The Submitters' properties successfully combine spectacular coastal landscapes, natural character, beaches, farmland, conservation reserves, and wildlife with private homes that have been carefully designed to integrate with the natural environment. Ōmarino and Mataka Station and have a proven track record in delivering exceptional quality rural residential development in sensitive coastal locations in the district.
11. Larger properties⁹ such as Mataka Station and Ōmarino have been master-planned to international standards, enabling owners to enjoy private homes and the natural beauty of large properties with beaches, farmland and conservation land. For example, the conservation estate at Mataka Station has been extensively fenced and planted in native vegetation providing a home for one of the most significant kiwi populations in New Zealand. At Bentzen Farm there has been an extensive programme of riparian planting and fencing. Significant revegetation has occurred at Ōmarino. Quality development is ensured by covenants requiring compliance to Design Guidelines at both Mataka and Ōmarino. Mautauri Trustee Limited's Opounui Farm has been the subject of extensive conservation work, including pest and predator control, wetland and bush fencing, and native bush restoration.
12. Across all of the Submitters' properties there is a strong kaitiaki or stewardship ethos. New homes and buildings have been designed to maintain high standards and a degree of design integrity that is sympathetic to the landscape and the character of the land as a whole. The focus of the Submitters' coastal rural-

⁹ For context the larger properties are Bentzen Farm (561ha), Ōmarino (141ha), Mataka Station (1,150ha), Mautauri Trustee Limited's Opounui Farm (339ha). The smaller properties are Setar Thirty Six – Moturua Island (5.3ha), The Shooting Box (4.2ha and 9,715m²), P S Yates Family Trust - Kokinga Point Headland (7.99ha and 4.36ha).

residential developments has been on integrating limited development sensitively with the natural environment and on preserving the quality of natural assets and the conservation experience.

The Submitters' position

13. Although the properties are zoned Rural Production under the PDP, farming activities are either undertaken in conjunction with rural-residential development (in the case of the larger properties), or not at all in the case of the smaller properties where the size and extensive native vegetation cover means that farming activities are unviable. Even for the larger properties, the extensive native vegetation cover (along with other site-specific factors) means that the farming activities could not really meet the level of economically viable primary productive use. For Mataka and Ōmarino it has been the rural-residential development that has enabled the conservation and restoration works at the Properties.
14. Against this background, the zoning, provisions, overlays and other planning tools that are proposed to apply to each property are matters that will be discussed at later hearings.¹⁰ However, the Submitters' overall position is that while the PDP is generally supported, amendments are required to ensure that the PDP adequately provides for coastal rural-residential development, including in the case of Ōmarino and Mataka, development that has already been approved.
15. In relation to this strategic directions hearing, the Submitters say that the amendments that they have sought¹¹ are required to establish an appropriate high level policy framework.

LEGISLATIVE FRAMEWORK

District plan making principles

16. The Overview Section 32 Report¹² provides detail of the relevant statutory considerations applicable to the PDP and has largely been adopted by the s 42A Report.¹³ These summaries are generally accepted.

¹⁰ Attachment 2 to Mr Hall's evidence gives an indication of the hearings that the Submitters expect to attend and the key issues to be addressed at each hearing.

¹¹ As set out in Attachment 4 to Mr Hall's evidence.

¹² Overview s 32 Report – May 2022, section [4].

¹³ Strategic s 42A Report, section 4.1.

17. It is submitted that the most relevant statutory provisions and legal principles to the Submitters' case for Hearing One are ss 30 to 32 and ss 72 to 77 of the RMA, which provide the legal framework for district plan making.

Functions and purpose

18. A territorial authority is required to prepare its district plan in accordance with its functions under s 31, the provisions of Part 2, its obligations under s 32 of the RMA, relevant national policy statements, national planning standards or regulations.¹⁴
19. The purpose of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.¹⁵ Relevant functions of territorial councils under s 31 of the RMA include achieving integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district and the maintenance of indigenous biodiversity.¹⁶
20. The sustainable management purpose in Part 2 requires territorial authorities to manage the use, development or protection of natural physical resources in a way or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while (amongst other things) avoiding remedying or mitigating any adverse effect of activities on the environment.
21. The preservation of the natural character of the coastal environment (including the coastal marine area), and its protection from inappropriate subdivision, use, and development; the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development; and the protection of areas of significant indigenous vegetation are relevant matters of national importance that must be recognised and provided for under s 6 of the RMA.¹⁷
- (a) "Recognise and provide for" is not protection of the things listed in themselves, but insofar as they have a natural character.¹⁸ What is to be protected are those values that qualify the natural character or landscape as outstanding.

¹⁴ RMA, s 74(1).

¹⁵ RMA, s 72.

¹⁶ RMA, s 31(1)(b)(iii).

¹⁷ RMA, s6(a)-(c).

¹⁸ [NZ Rail Ltd v Marlborough District Council \[1994\] NZRMA 70 at \[p18\]](#).

- (b) In relation to assessing landscape values, the Court of Appeal has held that the correct approach is to first ask whether the land has attributes sufficient to make it an outstanding landscape, which requires a factual assessment based on the inherent qualities of the landscape itself. Questions as to what restrictions apply to land identified as an outstanding natural landscape arise once the outstanding natural landscape has been identified.¹⁹
22. Decision makers are required to have particular regard to kaitiakitanga, the ethic of stewardship, the maintenance and enhancement of amenity values, the intrinsic values of ecosystems and the maintenance and enhancement of the quality of the environment are relevant matters.²⁰

Evaluation assessment

23. In relation to the Panel's ss 32 and s32AA evaluation:
- (a) This hearing relates to the strategic direction and objectives (with the policies and provisions in other chapters of the PDP a matter to be considered at subsequent hearings). Therefore, the key issue is whether the objectives as notified or the amendments proposed by the Submitters are the most appropriate way to achieve the purpose of the RMA.²¹
- (b) Section 32 requires a value judgment as to what on balance is the most appropriate when measured against the relevant objectives. "Appropriate" means suitable and does not need to be the superior method.²² The Court does not start with any presumption as to the appropriate zone, rule policy or objective and seeks to obtain the optimum planning solution based on the scope of the appeal and totality of the evidence.²³ In preparing a plan a council is required to start with a clean sheet and focus on the purpose of the RMA. A plan must be forward looking, but it must also be based on the existing environment such that it is never "zero based".²⁴

¹⁹ [Man O'War Station Ltd v Auckland Council \[2017\] NZCA 24 \(CA\) at \[62-63\]](#).

²⁰ RMA, s7(b) and (d).

²¹ RMA s32(1)(b).

²² [Rational Transport Society Inc v New Zealand Transport Agency \[2011\] NZHC 1776 at \[45\]](#).

²³ [Briggs v Christchurch City Council \[2008\] NZEnvC 113 at \[26\]](#).

²⁴ [Golf \(2012\) Ltd v Thames Coromandel District Council \[2019\] NZEnvC 112 at \[132\]](#).

Contents of district plans

24. A district plan *must* state, objectives, policies and rules (if any) for the district.²⁵ A district plan *may* state (among other things) the significant resource management issues for the district and any other information required for the purpose of the territorial authority's functions, duties or powers.²⁶
25. Section 75(3) requires that a district plan must give effect to a relevant national policy statement, and any regional policy statement. The Supreme Court's guidance is that "to give effect to" these higher order planning documents simply means "implement". This is a strong directive, creating a firm obligation on the part of those subject to it.²⁷ Policy documents should be given effect to as a whole and where there are conflicts between directive policies within a document these should be resolved at the planning instrument level if possible.²⁸
26. In addition, a territorial authority is required to have regard to any management plans and strategies prepared under other Acts²⁹ where these documents are relevant to the resource management issues of a district.³⁰

National Planning Standards and strategic directions

27. Among other relevant considerations, the PDP must be prepared in accordance with National Planning Standards 2019 (**Standards**), and once approved, it must give effect to those Standards.³¹ The purpose of the Standards is to improve the efficiency and effectiveness of the planning system.³²
28. The Standards require the inclusion of a "strategic directions" section within a district plan. The relevant matters that, *if addressed*, must be located in that mandatory section include an outline of the key strategic or significant resource management matters for the district, and objectives that address key strategic or significant resource management matters for the district and guide decision making at a strategic level.³³ The Standards are not the authority for including strategic objectives. Rather they prescribe the proper location of such provisions. The

²⁵ RMA, s 75(1).

²⁶ RMA, s 75(2).

²⁷ [King Salmon at \[77\]](#).

²⁸ [Port Otago Limited v Environmental Defence Society \[2023\] NZSC 112 at \[60\] and \[72\]](#).

²⁹ RMA, s 74(2)(b)(i).

³⁰ See for example [Kiwi Property Holdings Ltd v Christchurch City Council \[2012\] NZEnvC 92](#).

³¹ RMA, s 58I.

³² Standards, 1 Foundation Standard, Purpose.

³³ Standards, District Wide Matters Standard, clause 7(1).

legislative authority for Council to include strategic directions, and to determine their content and how they will apply, resides in the district plan making requirement provisions of the RMA discussed above.

29. In addition, given that district plans are to be interpreted as a whole, the Environment Court has recognised the need for strategic direction provisions to address the intended relationship with other chapters in the plan.³⁴ Where the strategic directions chapter of a district plan is expressed as having primacy over the other objectives and policies in the Plan then those provisions must be expressed and achieved in a manner that is consistent with the strategic directions.³⁵

REASONS FOR RELIEF SOUGHT

New strategic objective to recognise non-primary production activities

30. The Submitters are seeking to have a new strategic objective added as SD-RE-02 to the Strategic Direction Chapter - Rural Environment, to specifically recognise and provide for the importance of non-primary production activities.
31. It is submitted that the inclusion of the new strategic objective will better fulfil the Council's statutory plan making obligations because:
- (a) Recognising the diversity of existing and potential land uses at a strategic level better enables the development or protection of natural and physical land uses in a way that it enables social, economic well-being. Acknowledging these land uses at a strategic level provides a more realistic and workable framework for the other chapters in the PDP when considering the positive and negative effects of non-primary production activities.
 - (b) The district's rural environments are key settings for matters of national importance including the coastal environment, ONFL's and areas of significant indigenous areas. In my submission, acknowledging at a strategic level that non-primary productive land uses occur in rural zones, and have the potential to both benefit and affect these environmental values, is an essential first step to recognising and providing for these matters of national importance.
 - (c) Without the proposed strategic objective the PDP's strategic direction would fail to recognise a land use that is occurring in rural environments. Such land uses

³⁴ [Darby Planning Limited Partnership v Queenstown Lakes District Council \[2020\] NZEnvC 40 at \[29\].](#)

³⁵ [Yaldhurst Quarries Joint Action Group v Christchurch City Council \[2017\] NZEnvC 165 at \[29\]-\[30\].](#)

are realistically expected to continue and to deliver environmental and economic benefits to the district. Without acknowledging this at a strategic level there is a lacuna in the PDP's strategic direction. It is difficult to see how the PDP would appropriately support Council to achieve integrated management in its district if recognition of an important land use is absent from the PDP at a strategic level.

- (d) The proposed strategic objective would make this section of the PDP more coherent. It would be consistent with the Strategic Directions Overview which provides that Strategic Directions are intended to demonstrate "*Integrated management through the grouping of environmental considerations which combine to achieve strategic outcomes; and avoiding strategic objectives becoming isolated within various chapters of the District Plan*".³⁶
- (e) The Overview section to the Strategic Direction Chapter records that "*this chapter sets out the overarching direction for the District Plan*", helps to achieve and aligns with the community outcomes set out in Far North 2100, and that:

For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these Strategic Directions.

There is no hierarchy between the stated Objectives (i.e. no one Strategic Objective has primacy over another Strategic Objective, and the Strategic Objectives should be read as a whole).

32. In my submission, having opted to include a Strategic Directions chapter in the PDP on the basis that all other chapters are to be interpreted in light of and read consistent with the strategic directions, the strategic directions need to be complete and meet the statutory requirements for plan making.
33. In terms of the Panel's section 32 / s32AA assessment, there is no presumption that Council's notified version of the PDP is most appropriate.
34. The Regional Policy Statement for Northland (**NRPS**) does not provide any clear guidance on this matter so there is no issue in including the amendment sought by

³⁶ Strategic Directions, at [3].

the Submitters in terms of the requirement to give effect to higher order policy documents.³⁷

35. In terms of the requirement to have regard for management plans and strategies prepared under other Acts, it is submitted that the most relevant document to the district's stated resource management issues is Far North 2100:
- (a) Far North 2100 is the district strategy that describes how the Far North may look in 80 years time, based on the vision for the district: "*He Whenua Rangatira – a district of sustainable prosperity and wellbeing*". It takes on board the things that will influence the district's future from a global, national, and local perspective and considers its place in New Zealand and the challenges that must be overcome.³⁸
 - (b) Far North 2100 identifies Stewardship – Environmental Prosperity as one of five key drivers of focus, meaning that the "people who make up the communities of the Far North nurture their natural resources and ecosystems. There is a culture of stewardship in the community that promotes biodiversity and environmental sustainability. The social, cultural, and economic activities in the Far North are aligned with our expectations for the environment.
 - (c) The Strategic Directions Overview records that the strategic directions are intended to demonstrate "*alignment with Council's aspirations for the development and environmental quality of the district as expressed through Far North 2100 - an 80 year strategy for the district.*"³⁹
 - (d) The Submitters say that given the potential environmental and economic benefits of non-primary productive land uses, recognising these uses at a strategic direction level of the PDP better aligns with the long-term aspirations for the district in Far North 2100 that envisage a district of sustainable prosperity and wellbeing. Further, the opportunities for environmental enhancement and conservation restoration associated with these non-primary production land uses would provide better alignment with the vision for a "*culture of stewardship in the community that promotes biodiversity and environmental sustainability*".

³⁷ The relevant NPRS guidance for rural environments is limited to Objective 3.6 and Policy 5.1.3 regarding reverse sensitivity and Policy 5.5.1(e) regarding not having incompatible land uses and not materially reducing the potential for soil-based primary production on highly versatile soils.

³⁸ Overview s 32 Report at [4.8.1].

³⁹ Strategic Directions Chapter Overview.

Amendment to strategic objectives to recognise the importance of restoration

36. The Submitters are seeking that that SD-NE-05⁴⁰ be amended to recognise the strategic importance of *restoration* of natural environments in addition to their *protection*.
37. The reporting officers do not consider that the amendment is necessary because they take the view that:
- (a) the strategic objectives directives are not intended to address all matters of national importance as these chapters are only intended to identify and respond to resource management issues considered to be of particular importance in the district;⁴¹ and
 - (b) the reference in SD-EP-05 to ensuring the long-term protection for future generation is sufficient to “link the policy back” to the NZCPS.
38. The Submitters disagree with both of these reasons.
39. In this case, while the list of Significant Resource Management Issues does not specifically promote restoration of the natural environment, the Description of the District contained in that chapter does record that land use change (among other things) represents significant challenges to the maintenance *and enhancement* of the district’s natural environment and ecosystems.⁴² In my submission this does recognise the need to enhance the natural environment as an important issue for the district and the inclusion of *restoration* in SSD-EP-05 would be entirely consistent with this approach.
40. Further, Council has a firm obligation under s75(3) of the RMA to give effect to or implement the NZCPS as a whole. It is submitted that an oblique reference to “*long-term protection for future generations*” on the basis that this is sufficient to “*link back to the NZCPS*”, is not sufficient to give effect to the NZCPS, which has clear directives to provide for restoration. In that regard:
- (a) Objective 2 of the NZCPS recognises the value of encouraging restoration:

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

⁴⁰ Strategic Direction Chapter – Natural Environment, Natural Environment (Environmental Prosperity) Objective Table.

⁴¹ Section 42A Report Strategic Direction at [253].

⁴² Contained in the Description of the District Chapter.

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- **encouraging restoration** of the coastal environment.

(Emphasis added)

(b) Policies 13 and 15 of the NZCPS deal with the identification of and the preservation and protection of natural character and natural features and landscapes respectively. However, it is Policy 14 that separately deals with restoration. It provides:

*Promote **restoration** or rehabilitation of the natural character of the coastal environment, including by:*

- (a) *identifying areas and opportunities for **restoration** or rehabilitation;*
- (b) *providing policies, rules and other methods directed at **restoration** or rehabilitation in regional policy statements, and plans;*
- (c) *where practicable, imposing or reviewing **restoration** or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require **restoration** or rehabilitation ...*

(Emphasis added)

41. The NRPS also includes directions to “*maintain or improve outstanding landscape and natural character values*”, to “*where possible enhance indigenous biological diversity*”⁴³ and, in relation to considering the effects of proposals on natural character and natural features and landscape values in the coastal environment, requires having regard to restoration and enhancements.⁴⁴
42. In my submission, not specifically including the restoration element in the strategic objectives for the natural environment would ignore that restoration is identified as a separate concept in the objectives and policies of the NZCPS and would not properly give effect to the NZCPS nor the NRPS.

⁴³ NRPS Appendix 2 Regional Development and Design Guidelines at [l] and [m].

⁴⁴ NRPS, Policy 4.6.1

Overlays

43. The Submitters are seeking an amendment to the General Approach Chapter of the PDP to clarify the effect of overlays being applied to part of a site as follows:

Where a rule for an overlay, zone or precinct controls an activity by reference to a proportion or percentage of the site, the control will be limited to that part of the site to which the overlay or zone applies. Where an overlay is shown on the Planning Maps, the overlay provisions only apply to the portion of a site covered by the overlay.

44. In relation to the Submitters' properties there are various overlays that apply only a portion of the site. Any subdivision and development proposals would need to be carefully designed to be sympathetic to the environmental values identified in the overlays and consistent with the provisions of each overlay. As explained in Mr Hall's evidence, the proposed amendment would give greater certainty and clarity to plan users and therefore make the PDP more workable.⁴⁵
45. In terms of Council's district plan making requirements discussed above, the first step in the protection and preservation of natural character and natural features and landscapes is correctly identifying where there are environmental values that warrant protection (and then the planning response to those values is to be considered). In my submission, ensuring that the PDP is clear about where overlays apply is consistent with the approach of first accurately identifying where such environmental values exist.

CONCLUSION AND OUTCOME SOUGHT

46. The Submitters say that the amendments sought will improve the clarity and coherency of the PDP and better fulfil the statutory district plan making requirements.
47. The amendments sought provide the most appropriate way to achieve the purpose of the RMA for the reasons discussed above. Including the amendments sought acknowledges the existing range of activities occurring in rural environments and better enables the PDP to be forward looking to future land uses.

⁴⁵ Statement of Evidence of Mr Hall at [7.1] to [7.2].

48. The Submitters ask the Panel to approve the amendments sought by the Submitters as set out in Attachment 4 to Mr Hall's evidence.

Handwritten signature in blue ink that reads "JL Beresford".

JL Beresford, Counsel for:
Bentzen Farm Limited
Setar Thirty Six Limited
The Shooting Box Limited
Matauri Trustee Limited
P S Yates Family Trust
Mataka Station Residents Association Incorporated