

**UNDER** the Resource Management Act 1991 ("**RMA**")  
**IN THE MATTER** of Proposed Waikato District Plan (Stage 1): Hearing 10 –  
Residential Zones

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**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA-HOMES AND  
COMMUNITIES (749, FS1269)**

**HEARING 10 – Residential Zones**

**20 February 2020**

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**MAY IT PLEASE THE HEARINGS PANEL:**

**1. INTRODUCTION**

1.1 These legal submissions are presented on behalf of Kāinga Ora-Homes and Communities (“**Kāinga Ora**”) in relation to the submissions<sup>1</sup> lodged by Housing New Zealand Corporation (“**HNZC**”) on the Proposed Waikato District Plan (“**the Plan**” or “**PDP**”) provisions to be addressed in Hearing 10 – Residential Zones.

1.2 These submissions are structured as follows:

- (a) The evidence to be called on behalf of Kāinga Ora.
- (b) Background information regarding Kāinga Ora.
- (c) Relief sought by Kāinga Ora, focusing on key matters being:
  - (i) Lack of alignment between higher level policy and lower order provisions and rules within the Plan.
  - (ii) The appropriateness of the proposed Medium Density Residential zone and the proposal by Council’s reporting planner with respect to the drafting of a revised set of Medium Density Residential zone provisions.
  - (iii) Building setbacks from the rail corridor and state highway network.

**2. WITNESSES ON BEHALF OF KĀINGA ORA**

2.1 Kāinga Ora will be calling the following experts in support of its case:

- (a) *Philip Osborne* – Mr Osborne is a consultant economist at Property Economics Ltd. With reference to the higher order directions and objectives of the PDP, he identifies the importance of enabling a competitive environment in which the market to provide intensified housing to enable urban consolidation outcomes to be achieved. In his view, the Medium Density Residential zone is more likely than the Residential zone to

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<sup>1</sup> Submission No. 749 and Further Submission No. FS1269.

achieve this. He concludes that the provisions as proposed by Kāinga Ora would better meet the objectives of the PDP from an economic perspective.

(b) *Cameron Wallace* – Mr Wallace is an Associate (Urban Designer) at Barker & Associates. While Mr Wallace supports the overall strategic direction of the PDP, he concludes that in practice the provisions of the Residential Zone will perpetuate a status quo approach to managing growth in a manner that is inconsistent with good urban design practice and the strategic direction of the PDP. In his view, the provisions as proposed by Kāinga Ora would better meet the objectives of the PDP from an urban design perspective.

(c) *Philip Stickney* – Mr Stickney is a Senior Associate (Planner) at Beca Ltd. Mr Stickney's evidence identifies a misalignment between the strategic directions and associated objectives which are "forward looking" in the outcomes they seek, and the zone-specific policy framework and provisions which essentially seek retention of the status quo. In this context, he considers the introduction of a Medium Density Residential zone to be appropriate, necessary and entirely consistent with the higher order planning documents and to be supported from a s32 perspective. Mr Stickney's evidence also provides a detailed overview of the relief sought in respect of the specific zone provisions. He concludes that the provisions as proposed by Kāinga Ora would better meet the objectives of the PDP from a planning perspective.

2.2 Kāinga Ora says that the evidence presented on its behalf demonstrates that the relief it seeks will ensure better alignment with higher order planning documents and deliver better urban outcomes in terms of compact and efficient urban redevelopment over time than implementation of the Plan as notified.

2.3 Unless the relief sought by Kāinga Ora is granted, the residential zones will continue to deliver primarily single storey (expensive) stand-alone homes on large sections and development will continue to occur in an ad hoc manner or through peripheral or greenfield development.

### **3. BACKGROUND TO KĀINGA ORA**

3.1 Kāinga Ora has appeared before the Hearing Panel on several occasions. It has provided details of its origin, the statutory framework it operates within and the scope of its role and interest in planning processes. Kāinga Ora has summarised that information in **Annexure B** to these legal submissions.

### **4. RELIEF SOUGHT**

4.1 The relief sought by Kāinga Ora is addressed in detail in the evidence of Mr Stickney. Where appropriate and relevant to Kāinga Ora's submission, its witnesses have addressed the content of the Council's rebuttal evidence within the summaries prepared for this hearing.

4.2 These legal submissions do not repeat Kāinga Ora's position in respect of each of its submission points. but instead focus on the key issues arising. These are:

- (a) Providing for growth – including the relevance of the NPS-UDC and recent non-statutory documents in resolving the lack of vertical alignment that exists between higher level policy and lower order provisions and rules within the PDP.
- (b) The appropriateness of the proposed Medium Density Residential zone sought by Kāinga Ora.
- (c) Building setbacks from rail and state highway infrastructure.

4.3 Annexure 1 to Mr Stickney's evidence sets out the relief sought by Kāinga Ora to Chapter 16. In addition and to assist the hearing panel, **Annexure A** to this evidence provides a table which identifies the relief sought by Kāinga Ora and its updated position with respect to that relief following the evidence exchange process.

### **5. PROVIDING FOR GROWTH**

#### ***Effect of NPS-UDC***

5.1 At Hearing 9 – Business Zones, Kāinga Ora presented legal submissions in respect of the requirements of the National Policy Statement: Urban

Development Capacity 2016 (“**NPS-UDC**”). In particular, it referred the panel to consistent themes within the document, including:

- (1) Urban environments are expected to change over time.<sup>2</sup>
- (2) Provision of housing capacity and choice:<sup>3</sup>
- (3) Integration of land use and infrastructure development.<sup>4</sup>

5.2 In summary, the provisions are forward-looking. They anticipate a dynamic urban environment that is expected to intensify, and hence alter, over time. That is contrary to the historic approach in much of New Zealand, through which planning was concerned to maintain and avoid effects on historic forms and densities of development, and on the status quo. That position was recently confirmed by the Environment Court in *Summerset Villages (St Johns) Limited v Auckland Council* [2019] NZEnvC 173. We have included the Court’s analysis of the NPS-UDC at **Annexure C** to these legal submissions, as a reference for the Hearing Panel if required.

5.3 Kāinga Ora says that the Environment Court’s analysis in *Summerset* is consistent with the thrust of its submission in respect of the provisions of the residential zones (and spatial extent of zoning to be considered at a later hearing). The changes to the PDP advocated for by Kāinga Ora would be more directly enabling of development to meet the needs of future generations, and would better reflect the future-oriented, outcome focused approach that is now required by this higher-level planning instrument.

***Relevant non-statutory documents – proposed NPS-UD and Waikato 2070***

5.4 Likewise, it is apparent from the proposed NPS-UD that, over time, expectations regarding the density of development and the range of housing typologies will alter in regional centres, as is currently occurring in major cities.

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<sup>2</sup> Refer, for example, NPSUDC Preamble page 3 (first bullet point), page 9, Objective OA3.

<sup>3</sup> Refer, for example, Objective OA2, Policy PA1, Policy PA3, Policy PC1.

<sup>4</sup> Objective OD1, Policy PA3, Policy PA2.

5.5 Consistent with this is the recently notified draft Growth Strategy, Waikato 2070, which identifies development of up to four floors in and around town centres (in an indicative timeframe of 3-10 years).

5.6 As conveyed to the Panel in earlier hearings, it is important and appropriate for the Panel to anticipate this and give due consideration to the themes of the Proposed NPS-UD and the Draft Waikato Growth Strategy 2070 to ensure that the USPC will appropriately give effect to national policy direction (proposed NPS-UD), and to have regard to a relevant strategy prepared under another Act (Waikato 2070) given they are likely to be in place at the time decisions are made on the PDP.

***Lack of vertical alignment within PDP***

5.7 Kāinga Ora's expert witnesses identify a lack of alignment between the outcomes sought by the higher-level provisions of the Plan and the lower order provisions including the rules that primarily govern activities that can be undertaken in the zones.

5.8 In Kāinga Ora's submission:

(a) The Strategic directions and objectives in Chapters 1 and 4 are appropriately forward-looking. If implemented through the lower order provisions, they would appropriately achieve the purpose of the RMA and superior planning instruments including the NPS-UDC and Waikato Regional Policy Statement ("**RPS**"). They would also be more consistent with the NPS-UD and the Council's own Waikato 2070, both of which may be mandatory considerations at the time this Panel makes its decisions.

(b) The policy direction set in the Strategic directions and objectives creates a clear expectation that the character of existing urban areas will change over time, and that future growth will be located in a manner that promotes a consolidated urban form and which enables a variety of built forms to be provided. These outcomes, in Kāinga Ora's submission, are also consistent with higher order planning instruments, and will better achieve the purpose of the RMA than continued ad hoc and peripheral greenfield expansion that Kāinga Ora's witnesses say would be the outcome of the PDP as notified.

- (c) In many cases, however, the lower order policies and rules of the Plan do not implement, and in many cases actually conflict with, the higher order. As discussed in the evidence of Kāinga Ora's witnesses, the effect of the provisions will be maintenance of the status quo in terms of the delivery of built form outcomes. Kāinga Ora says that is an inappropriate outcome, that will not achieve the purpose of the RMA or give effect to the higher order planning instruments such as the NPS-UDC and RPS.

## **6. REQUEST FOR MEDIUM DENSITY RESIDENTIAL ZONE**

- 6.1 One of Kāinga Ora's key concerns with the PDP as notified is that it fails to provide sufficiently for housing choice and variety in built form, and will not provide for a compact urban form and consolidation objectives as sought by the strategic objectives of the PDP. The evidence of Kāinga Ora's experts is that, in effect, the residential provisions of the PDP as notified promote an outcome of primarily single level detached dwellings<sup>5</sup> and direct growth towards greenfield subdivision at the periphery of existing towns and villages<sup>6</sup>. In their view, this is inconsistent with the compact and consolidated urban form objectives of the PDP and RPS and comes with attendant costs (for example extent of infrastructure required<sup>7</sup>, and poor urban design outcomes<sup>8</sup>).
- 6.2 Kāinga Ora's submission seeks the introduction of a new 'Medium Density Residential zone', which would be applied around key centres and urban settlements. The proposed zone would enable the development of low-rise apartment, terrace housing and multi-unit developments.
- 6.3 The evidence of Kāinga Ora's experts is that the relief sought is more appropriate that those provisions notified, or as proposed to be amended by the s42A author. Providing for a Medium Density Residential zone is (when compared with the GRZ) likely to provide greater impetus for residential development of a greater density in a consolidated manner<sup>9</sup>, will lead to good urban design outcomes and is consistent with good urban

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<sup>5</sup> EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.13.

<sup>6</sup> EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.15; EIC, Philip Osborne (Economics) for Kāinga Ora at para 4.3.

<sup>7</sup> EIC, Philip Osborne (Economics) for Kāinga Ora at para 4.14-4.15

<sup>8</sup> EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.16-3.17.

<sup>9</sup> EIC, Philip Osborne (Economics) for Kāinga Ora at para 6.16-6.17.

design practice<sup>10</sup> and will achieve a more robust planning framework which strengthens key outcomes sought by the PDP<sup>11</sup>. In that regard:

- (a) The Medium Density Residential zone will give effect to the NPS-UDC and the RPS,<sup>12</sup> and is consistent with draft documents such as the draft NPS-UD and the Waikato 2070<sup>13</sup> which are likely to be mandatory considerations at the time decisions are made on the PDP.
- (b) The objectives of the PDP clearly direct that higher density housing be located within proximity to commercial centres, community facilities, public transport, the transport network and open space.<sup>14</sup>
- (c) The economic evidence is that the Medium Density Residential zone is more likely than the Residential zone provisions to achieve that. Specifically providing for medium density residential development within a defined area provides greater certainty to the market and ultimately greater impetus for residential development in and around centres and transport routes because it clearly demarcates where higher intensity development is enabled (as opposed to determining that on an ad hoc basis, which increases perceived consenting risk)<sup>15</sup>. In addition, the Medium Density Residential zone is likely to improve development feasibility through the provisions of the zone itself<sup>16</sup>. This will reduce the risk that the future development potential of the land is undermined by underdevelopment of the land in the interim, and that greenfield land is developed for residential use at a faster rate than anticipated or desired (with attendant costs in terms of infrastructure, or missed opportunities for investment).

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<sup>10</sup> EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.3

<sup>11</sup> EIC, Philip Stickney (Planning) for Kāinga Ora at 3.2.

<sup>12</sup> EIC, Philip Stickney (Planning) for Kāinga Ora at section 4.

<sup>13</sup> EIC, Philip Stickney (Planning) for Kāinga Ora at section 5.

<sup>14</sup> See for example Policies 4.1.5(a) and 4.2.16(b)

<sup>15</sup> EIC, Philip Osborne (Economics) for Kāinga Ora at paras 2.6 and 4.7-4.8.

<sup>16</sup> EIC, Philip Osborne (Economics) for Kāinga Ora at para 2.7.



- (d) Providing for increased density in proximity to centres will support the vitality and function of those centres, as outlined in Kāinga Ora's evidence for Hearing 9.
- (e) The provisions of the Medium Density Residential zone will provide for variety in housing choice because it does not constrain the built form outcomes in the same manner as the Residential zone. By comparison, Mr Wallace's assessment is that the development standards for the multi-unit development rule in the residential zone, depending on the site context, could effectively limit 'compliant' multi unit development in the form of an apartment building to a single storey.
- (f) Providing for a graduated stepping down in built form is supported from an urban design perspective (i.e. the 11m height limit proposed from the Medium Density Residential zone provides for a transition in built form between the 12m height limit in the Business zones to the 8m proposed in the Residential zone).<sup>17</sup>

6.4 While both the section 32 and section 42a reports identified the merits of providing for a higher density zone, it was recommended that the relief be rejected on the basis of time and cost involved in assessing the proposal<sup>18</sup> and because no specific s32 analysis had been undertaken.<sup>19</sup> In light of the evidence of Mr Stickney and others, the Council's reporting planner now acknowledges (through rebuttal) the merits of a Medium Density Residential zone and concurs with many of the specific provisions that Kāinga Ora seeks be introduced as part of that zone.

6.5 Accordingly, he has recommended that a further process be directed which would allow the Council, Kāinga Ora and interested submitters to work through the provisions and the additional analysis the Council says is required.

6.6 Notwithstanding the fact that Kāinga Ora considers that the analysis undertaken in the s32 report<sup>20</sup> combined with the evidence presented by

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<sup>17</sup> EIC, Hearing 10, Cam Wallace (Urban Design) for Kāinga Ora at para .

<sup>18</sup> Section 32 Report – Residential Zones at page 77.

<sup>19</sup> Section 42a Report at para 178.

<sup>20</sup> See analysis of the s32 report in EIC, Hearing 10, Philip Stickney (Planning) for Kāinga Ora at paras 6.18-6.35; and EIC, Hearing 10, Philip Osborne (Economics) for Kāinga Ora at paras 4.1-4.8.

Kāinga Ora, means that the information is before the Panel to make the required assessment in terms of s32AA of the RMA, Kāinga Ora would welcome the opportunity to engage with the Council and other relevant submitters regarding the appropriate form of the zone provisions and their location prior to the zone extent hearing in October 2020. Kāinga Ora does query the merits and practicalities of the proposed approach outlined by the reporting planner in paragraph 60, particularly steps (a) and (b)..

6.7 At a high level, Kāinga Ora is concerned that the methodology outlined conflicts with central government direction towards consistency and rationalisation of zones. In that regard, the First Set of National Planning Standards clearly envisage a standard approach to zones, with area specific variation introduced through other layers i.e. not an approach of drafting “*the Medium density residential zone, not as a blanket zone, but one that recognises the different characteristics of each town*”<sup>21</sup>. To that end, a more appropriate approach is to:

- (a) Identify what a best practice Medium Density Residential zone suite of provisions looks like, having regard to (at a high level) the Waikato District context;
- (b) Identify the locations in the District where such a zone should most appropriately be applied, with reference to good practice urban design considerations/practise);
- (c) Apply additional planning controls/mechanisms to address any significant local considerations that can be identified, and which require management (ie, a precinct/overlay approach).

6.8 With respect to Mr Matheson’s suggestion that a further community engagement process is undertaken, Kāinga Ora says this would be duplicative. The issue of provision for multi-unit development has been considered through the plan development process. The current process is a a Schedule 1 RMA process on a full plan review. Kāinga Ora’s submission very clearly raises the issue of the content and spatial application of a Medium Density Residential zone. In our submission, for

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<sup>21</sup> S42a Rebuttal, Topic 10 at para 60.

these reasons, an additional community engagement process is not required.

- 6.9 If the Panel is not minded to grant the relief sought with respect to the Medium Density Residential zone, or direct a conferencing process at outlined above, Kāinga Ora requests that the 'alternative relief' outlined in the evidence of Mr Stickney is adopted for the reasons set out at section 8 of that evidence.

## **7. BUILDING SETBACKS**

### ***Setback from the Rail Corridor***

- 7.1 KiwiRail have lodged submissions seeking a minimum setback of 5m for all buildings (new or altered) within 5m of the rail corridor. This is in addition to the notified yard rule requiring that new or altered buildings for sensitive activities must be setback at least 5m from the designated boundary of the rail corridor<sup>22</sup> (which Kāinga Ora also opposes).
- 7.2 To the extent that these provisions seek to manage reverse sensitivity effects, Kāinga Ora relies on evidence<sup>23</sup> and submissions<sup>24</sup> it has previously filed outlining the reasons for its opposition to the proposed setback (and summarised below in relation to State Highway Network setback).
- 7.3 In terms of the issue of safety effects raised by KiwiRail, Kāinga Ora does not disagree with the concept of providing a suitable buffer to ensure that the health and safety of people living and working adjacent to the rail corridor, and those persons working and travelling within the corridor, are protected. However, Kāinga Ora raises issue with the extent of the setback control proposed and the attendant issues of equity and natural justice. In that regard:
- (a) Applying a setback restriction on the use of land adjoining the corridor, without KiwiRail providing an equivalent setback or buffer within the rail corridor, is not a balanced or equitable approach.

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<sup>22</sup> 16.3.9.1.2 (P1)(a)(i).

<sup>23</sup> EIC, Hearing 2, Matt Lindenberg (Planning) for Kāinga Ora dated 23 September 2019 at paras 5.10-5.15

<sup>24</sup> Kāinga Ora Legal Submissions on Hearing 2 dated 9 October 2019 at section 5.

- (b) Any additional buffer required as a result of increased use of the rail corridor should be achieved by way of the designation process rather than through imposing additional limitations on adjacent landowners using the PDP. In that way, property owners adjacent to the railway corridor would receive appropriate compensation for any additional restrictions that are placed on the use of their land through the taking of land and injurious affection provisions of the Public Works Act 1981 (which by virtue of s 85(1) RMA does not apply in the context of a change to a District Plan).
- (c) If an alteration to the designation were sought, landowners would be entitled to compensation: either through conditions on the designation (to avoid, remedy or mitigate adverse effects) or through the provisions of the Public Works Act 1981.
- (d) By utilising the District Plan process to obtain a setback requirement for new or altered buildings, landowners lose their lawful right to compensation under the Public Works Act 1981 which Kāinga Ora says is a breach of natural justice and principles of administrative law.

7.4 Kāinga Ora says that the appropriate planning approach in this case would be to apply an equal setback on both sides of the boundary, reflective of the fact that an equitable planning approach would be that KiwiRail include some of the land required to buffer adjacent landowners from the adverse effects of operating the rail corridor on the land designated for rail purposes.

7.5 Kāinga Ora further says that if additional land is required by KiwiRail for its future operations or to buffer the adverse effects of future operations, this land should be acquired in the normal way by KiwiRail under the Public Works Act. This is in circumstances where the Courts have upheld the statutory practice to confer fair compensation where land is taken or injuriously affected for public purposes.<sup>25</sup>

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<sup>25</sup> *Estate Homes Limited v Waitakere City Council* [2006] 2 NZLR 619 at [128]-[130], [140],[147], [188]; *Green & McCahill Holdings v Auckland Council* [2013] NZHC 507 at [52]-[55].

### ***Setback from the State Highway Network***

7.6 Kāinga Ora refers to and relies upon its evidence and legal submissions at Hearing 2 which addressed building setbacks for sensitive uses.<sup>26</sup>

Namely that:

- (a) The Council has failed to undertake a sufficient analysis of the provisions in s32 terms in that it does not identify how many properties are affected by such provisions, nor the costs to the District in terms of loss of development potential of land affected.
- (b) Residential activities and land transport infrastructure have existed side by side for many years. In some cases transport infrastructure predates residential development, in other cases new transport infrastructure has been established (or intensified) to better serve existing areas of development.
- (c) As addressed above, it is not always appropriate for the sensitive use to bear the cost of managing the potential adverse effects of the transport network. Rather, the management of the effects generated from such activities needs to be fair and balanced (e.g. the application of a setback buffer within the transport corridor / designation itself to account for the effects generated by the primary activity undertaken within the transport corridor / designation).
- (d) In particular, Kāinga Ora is concerned with the application of the proposed setback rules to extensions of existing sensitive uses. In contrast to the situations covered by existing case law<sup>27</sup>, the sensitive land uses, have not necessarily come to the reverse sensitivity, but were either lawfully established in their current locations prior to the establishment of the adjoining transport infrastructure.<sup>28</sup>

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<sup>26</sup> EIC, Hearing 2, Matt Lindenberg (Planning) for Kāinga Ora dated 23 September 2019 at paras 5.10-5.15; Kāinga Ora Legal Submissions on Hearing 2 dated 9 October 2019 at section 5.

<sup>27</sup> Refer for example *Gateway Funeral Services v Whakatane DC* EnvC W005/08 which defines reverse sensitivity as the legal vulnerability of an established activity to complaint from a new land use.

<sup>28</sup> See *Winstone Aggregates v Matamata Piako District Council* W55/2004 for the general principle that activities should internalise their adverse effects as far as reasonably possible. If that cannot be achieved, controls on the use of land beyond the emitting site boundary may be appropriate in the form of a discretionary or restricted discretionary activity.

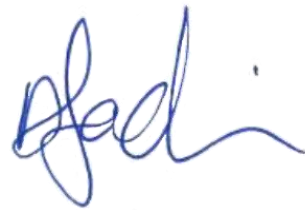
- (e) Mr Lindenberg's view, was that the most appropriate method for managing any potential adverse effects associated with transport infrastructure is through the application of noise insulation and ventilation standards, which could be set out within a dedicated Noise chapter of the PDP.<sup>29</sup>

7.7 To that end, Kāinga Ora concurs with the reporting planner's conclusion at section 11 of his rebuttal that it is important to consider the relationship between the existing residential zones and the Waikato Expressway/SH1. In Kāinga Ora's view, the matters listed at (a) to (d) of paragraph 39 are particularly pertinent to the question of whether or not a reverse sensitivity effect can even exist (having regard to the matters discussed above).

## 8. CONCLUSION

8.1 For the reasons given in the evidence that the Panel will hear from Kāinga Ora's witnesses today, we say that the relief sought in Kāinga Ora's submission is more appropriate than the provisions of the notified Plan, and will better achieve the higher level planning documents and the Council's stated goal of supporting the vitality and viability of existing commercial centres and compact form of urban development into the future. We ask that the Panel grant the relief sought, amended in accordance with the evidence Kāinga Ora's witnesses.

**DATED** this 20<sup>th</sup> day of February 2020



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**Daniel Sadlier / Alex Devine**

Counsel for Kāinga Ora-Homes and Communities

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<sup>29</sup> Paragraph 5.15. Refer *Wellington International Airport Ltd v Wellington City Council* W102/97, where the Court considered in the context of Wellington Airport, that the appropriate way of dealing with the effects of airport noise in the case of existing residential dwellings, was the noise insulation provisions, extensive monitoring of noise events and the assessment criteria – not through an effective prohibition on any further residential development.

**ANNEXURE A – SCHEDULE OF RELIEF SOUGHT**

**Attachment 1 – SUMMARY TABLE OF KAINGA ORA POSITION IN RESPECT OF RELIEF SOUGHT**

**KEY – Agreement** between Council and Kāinga Ora, **Agreement in Part** between Council and Kāinga Ora, **Disagreement** between Council and Kāinga Ora

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
<b>Chapter 4: Urban Environment</b>					
749.107	4.2 Residential Zone	Insert a new chapter with relevant objectives and policies for 'Medium Density Residential Zone' into the Proposed WDP, as outlined in Attachment 2.	Accept in part	<p>Recommends Panel instruct caucusing process to develop / analyse MDRZ provisions.</p> <p>Concurs many of the changes suggested should be incorporated into MDRZ e.g. max height of 11m, building coverage, living court dimensions.</p> <p>Amendments required to Objectives 4.2A.1 – <i>Residential character</i> and 4.2A.11 – <i>Housing options</i> so application of MDRZ is not confined to town centres.</p> <p>Analysis of MDRZ provisions should consider with reference to where it will be applied.<sup>1</sup></p>	<p>Agree that caucusing process should take place.</p> <p>Do not agree amendments to objectives are required and concern raised with methodology proposed.<sup>2</sup></p>
749.108	4.2 Residential Zone	Amend the objectives and policies of the Residential Zone to clearly state the outcome sought.	Reject	-	-
749.1	4.2.8 Policy – Excessive building scale	Amend Policy hearing as follows: “ <b>Excessive building scale</b> ”	Accept	Recommend amendment sought by Kāinga Ora	Support Council recommendation <sup>3</sup>
749.2	4.2.12 Policy – Outdoor living court – Multi-unit development	Delete Policy 4.2.12 (Outdoor living court – Multi unit development) and amend Policy 4.2.18 (Multi-unit development) to incorporate matters from Policy 4.2.12.	Accept in part	Delete Policy 4.2.12 and include content in 4.2.18.	<p>Support Council recommendation to delete Policy 4.2.12.</p> <p>Pursue amendments to Policy 4.2.18(a)<sup>4</sup> (see below)</p>
749.3	4.2.18 Policy – Multi-unit development	Amend Policy to delete reference to developments promoting the outcome of the urban design guidelines, delete reference to design “responding to the immediate urban and built form” and make other more minor amendments to the specific matters.	Reject	<p>Retain reference to urban design guide on basis that directing consent applications to relevant specific provisions of the Urban Design guide is helpful and provides link to specific matters of discretion that follow.</p> <p>Matter (i) should not be deleted as “responding to the immediate urban and built form” is a matter to consider to assist with the integration of multi-units into existing residential environments. The other changes are not required as the deletion of Appendix 3.4 is not agreed with.</p>	<p>Disagree with Council's recommendation. The intent in relation to the outcomes the policy is seeking can still be achieved without specific reference to design guidelines themselves. Suggest alternative wording (set out in evidence) to address Council's concerns.<sup>5</sup></p> <p>See also general comments regarding design guidelines at Sub Point 749.151 below.</p>
749.5	4.4 Residential and Village Zones – Noise, lighting, outdoor storage, signs and odour	<i>Retain provisions as proposed</i>	Accept	<p>Retain the objective as notified, except for a minor amendment to include the word “safety” to align it with section 5(2) of the RMA.</p> <p>Retain policies as notified except for minor amendments to Policy 4.4.7 in response to NZTA's submission.</p>	Support Council recommendations. <sup>6</sup>
<b>Chapter 13: Definitions</b>					
749.44	Definition of “duplex”	Amend definition of 'Duplex' as follows: Means two attached residential units, <del>including</del>	Accept	Accept Kāinga Ora's submission point to clarify the definition and accept Waikato District Council's submission to exclude	Support Council's recommendation. <sup>7</sup>

<sup>1</sup> Council s42a Rebuttal Evidence, Topic 10 at paras 55-61.

<sup>2</sup> Phil Stickney Hearing 10 Summary Statement

<sup>3</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.1-2.2.

<sup>4</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 1.1-1.3

<sup>5</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 4.10-4.11.

<sup>6</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 8.1-8.5.

<sup>7</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 10.1-10.2



Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
		<del>two units</del> connected by a common wall and/or an accessory building, such as a garage or a carport.		'minor dwellings' from the definition.	
749.65	Definition of "Visually permeable"	Retain definition as proposed	Accept	Retain definition	Support Council's recommendation. <sup>8</sup>
<b>Chapter 16: Residential Zone</b>					
749.79	16.1.2 Permitted Activities	Provide for boarding houses as a permitted activity where there is a maximum of 10 people at the site.	Reject	No amendment required on basis that the definition of 'Residential Activity' would apply to a 'boarding house'	Support Council's recommendation. <sup>9</sup>
749.80	16.1.3 Restricted Discretionary Activities – RD1 (Multi-unit development)	Increase max height to 11m.	Reject	Retain 8m height limit	Support Council's position (including height limit on basis the MDRZ is adopted) <sup>10</sup>
		Delete the minimum lot size of 300m2.	Accept	Delete all conditions of 16.1.3 (with the exception of the requirement to connect to the public wastewater and water reticulation) on basis that non-compliance would result in discretionary activity status and requiring compliance with such conditions will not encourage innovative and clever ways to provide for multi-unit development.	
		Delete the reference to design and construction being in accordance with Appendix 1 (Acoustic Insulation)	Accept		
		Decrease minimum outdoor living space area / minimum dimensions as follows: <ul style="list-style-type: none"> <li>Duplex: studio or 1 bed from 30m2 to 16m2; 2 or more beds from 10m2 to 30m2</li> <li>Apartment building – ground floor: studio unit or 1 bed from 20m2 to 16m2</li> <li>Apartment building – upper levels: studio or 1 bed from 2m to 1.5m; 2 or more bed from 2m to 1.5m</li> </ul>	Reject in part		
		Insert less restrictive recession plane of 3m + 45 degrees along side and rear boundaries	Reject in part		
		Add alternative height in relation to boundary controls	Reject		
Amendments to the matters of discretion to refer to "intensity" rather than density of development, delete reference to design guide, delete reference to "the visual quality and interest created through design such as the separation of buildings, variety in built form and architectural detailing, glazing, materials and colour, delete reference to "energy efficiency measures" and delete reference to "site design and layout" in terms of amenity values for occupants and neighbours.	Reject	Retain design guidelines as a matter of discretion (see sub point 749.151 below for reasons). Additional matter of discretion relating to identification of space around each unit and common areas (in the context of amenity values for occupants and neighbours).	Continue to oppose inclusion of urban design guidelines as a matter of discretion (see sub point 749.151 below for reasons). <sup>11</sup>		
749.81	16.1.4 Discretionary Activities	Delete the default Discretionary activity rule for activities which do not comply with standards and replace it with a Restricted Discretionary activity rule.	Accept in part	Delete rule but do not replace the rule with a default Restricted Discretionary activity rule on the basis that rather than taking a 'blanket' approach to this matter, submissions in relation to each activity should be used to determine the relevant default status <sup>12</sup> .	Support the recommendation of Council on the basis that non-compliance with the individual activity rules in section 16.2 and 16.3 default to a mixture of restricted discretionary, discretionary and non-complying rules and Kāinga Ora has addressed those rules where a change in activity status is considered to be appropriate. <sup>13</sup>
749.82	16.1.5 Non-complying Activities	Amend the default activity status rule so that activities not provided for are a discretionary activity rather than a non-complying activity.	Reject	Retain default category of a non-complying activity. Appropriate in this situation as Chapter 16 has been drafted to provide for and enable activities which should be located	Support Council recommendation. <sup>15</sup>

<sup>8</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 10.3-10.4. See also Cam Wallace Hearing 10 EIC at 3.7.

<sup>9</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.3-2.5. See also Cam Wallace Hearing 10 EIC at 3.6(b).

<sup>10</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 1.4-1.12 and 3.1-3.12.

<sup>11</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 4.7-4.13 (urban design guidelines).

<sup>12</sup> s42A report (Hearing 10). Paragraph 432, Pg. 171

<sup>13</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.1-6.3

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
				within the Residential Zone, and restrict activities which are generally considered problematic or cause the most disturbance, or should be subject to more rigorous assessment <sup>14</sup> . The notified objective and policy framework associated with the Residential Zone is specifically set up to facilitate this approach <sup>14</sup> .	
749.83	16.2.4.1 Earthworks General –	Increase the permitted activity volume and area thresholds as follows: <ul style="list-style-type: none"> <li>Increasing the maximum volume (from 250m<sup>3</sup> to 1000m<sup>3</sup>) and area (from 1000m<sup>2</sup> to 1ha) for earthworks generally.</li> <li>Increasing the maximum volume (from 20m<sup>3</sup> to 50m<sup>3</sup>) and depth (from 1m to 1.5m) for earthworks using imported fill.</li> </ul>	<i>Reject</i>	Reject relief sought by Kāinga Ora on the basis that no analysis, research or information to justify the changes sought was provided. Most developments would occur during the subdivision stage of a project and therefore subject to the regional earthwork provisions in addition to the district plan provision and therefore the notified earthwork provisions are considered suitable for a Residential-zoned site <sup>16</sup> .	Disagree with Council recommendation. Volumes can be increased while still achieving good environmental outcomes through appropriate controls. Regardless of the permitted earthworks thresholds within the Residential Zone, these thresholds will be overridden by the more prescriptive earthworks thresholds in overlays, as and where they apply, and the suite of assessment matters relevant to earthworks in that overlay.  Consider permitted earthwork volume threshold could be increased to 500m <sup>3</sup> , and the permitted earthwork area threshold be deleted to align the PDP with the Hamilton District Plan with regards to undertaking earthworks within a Residential Zone <sup>17</sup>
		Remove the 1.5m earthworks setback requirement from boundaries.	<i>Reject</i>		Disagree with Council recommendation. Rule is trying to manage the potential for earthworks to result in the instability of land or structures on adjoining sites. If the standard is retained, any earthworks within 1.5m of a boundary will require consent regardless of the scale and nature of the works. Large scale earthworks at least 1.5m from the boundary could result in the instability of land or structures on adjoining sites however could be undertaken as a permitted activity if the other permitted activity standards are met.  Consider rule should be deleted and replaced with the following "Earthworks must not result in any instability of land or structures at or beyond the boundary of the site where the land disturbance occurs" <sup>18</sup>
		Remove "protection of the Hauraki Gulf Catchment Area" as a matter of discretion.	<i>Reject</i>		Pursue deletion of matter of discretion.
749.84	16.2.4.1 Earthworks General –	Insert word 'any' before matters of discretion.	<i>Reject</i>	-	Disagree with Council recommendation. Inclusion of "Any" will make it clear not matters need to be met (as only some will be relevant).
749.85	16.2.7.1 Signs general –	Increase the permitted dimensions of a sign from .25m <sup>2</sup> to 1m <sup>2</sup> and provide clarity as to how 'sign height' is measured.	Accept in part	Reject the increase in the permitted area of a sign.  Amend rule to add reference to 'height'. As notified the Rule is unclear as to whether it is restricting the height of the actual sign or the height of the sign above ground level.	Support Council's recommendation. <sup>19</sup>
749.86	16.2.7.2 Signs effects on traffic –	Change the activity status for non-compliance with this rule from discretionary to restricted discretionary.	Accept	Accepting change in activity status for non-compliance with this rule.	Support Council's recommendation. <sup>20</sup>
749.87	16.3.1 Dwelling	Increase the permitted number of dwellings per site from one to three.	Accept in part	Amend rule so that: <ul style="list-style-type: none"> <li>up to two dwellings per site are a permitted activity;</li> <li>three or more dwellings are a multi-unit development,</li> </ul>	Support Council's recommendation <sup>22</sup>

<sup>15</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 9.1-9.3

<sup>14</sup> s42A report (Hearing 10). Paragraph 434, Pg. 171

<sup>16</sup> s42A report (Hearing 10), Paragraph 186. Pg. 68-69

<sup>17</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 8.10-8.11

<sup>18</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 8.12-8.13

<sup>19</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 8.14-8.16

<sup>20</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
		Change activity status for four or more dwellings from Discretionary to Restricted Discretionary.		being a restricted discretionary activity. <sup>21</sup>	
749.88	16.3.2 Minor dwelling	Remove minimum site size requirement of 900m2 for minor dwellings.	Accept	Remove the minimum site size on the basis that a 70m2 dwelling can be accommodated on smaller sized sections subject to compliance with the relevant standards, without consequences for built form. While infrastructure requirements may be greater, that is consequence of providing for greater housing capacity. <sup>23</sup>	Support Council's recommendation <sup>24</sup>
		Change the activity status for non-compliance with this rule from discretionary to restricted discretionary.	Accept	Amend activity status for non-compliance from discretionary to restricted discretionary.	Support Council's recommendation <sup>25</sup>
749.89	16.3.3 Height	Increase maximum permitted height from 7.5m to 8m.	Accept	Increase maximum permitted height to 8m.	Support Council's recommendation <sup>26</sup>
		Amend the activity status for an infringement of the maximum building height from Discretionary to Restricted Discretionary.	Accept	Amend activity status for infringements from Discretionary to Restricted Discretionary. Add additional matters of discretion. <sup>27</sup>	Support Council's recommendation <sup>28</sup>
749.90	16.3.4 Fences or walls – Road boundaries and Reserve Zone boundaries	Increase the maximum permitted solid fence height from 1.2m to 1.5m.	Reject	No change to max fence height recommended on the basis that it is important to provide a degree of passive surveillance along reserves and implement CPTED principles. <sup>29</sup>	Disagree with Council's recommendation. It is appropriate to adopt a more permissive fence height e.g. the Hamilton City District Plan adopts a 1.8m permitted fence height and this is not distinguished based on adjoining zone. <sup>30</sup>
749.109	16.3.5 Daylight admission	Amend recession plane from 2.5m + 37 degrees to 2.5m + 45 degrees.	Accept	Increase the height recession plane from 37 degrees to 45 degrees as it is an easier dimension to measure and generally aligns with common roof pitches. <sup>31</sup>	Support Council's recommendation. <sup>32</sup>
		Amend matters of discretion to remove replace reference to "another" with "adjoining" in the context of privacy and "effects on amenity values and residential character" as a matter of discretion.	Reject in part	Retains reference to "another" as consideration of effects shouldn't be restricted to "adjoining" sites and for clarity and consistency with other zones.  Retain clause (g) on the basis that residential amenity and character are important factors to be considered. <sup>33</sup>	Disagree with Council's recommendation. Council's discretion is appropriately restricted to adjoining activities and there shouldn't be scope to consider effects on the wider residential neighbourhood given the discrete and known nature of potential adverse effects associated with breach of this standard (i.e. shadowing) <sup>34</sup>
749.110	16.3.6 Building coverage	Amend the activity status for an infringement of the maximum building coverage from Discretionary to Restricted Discretionary.	Accept	Accept change in activity status for non-compliance with this rule.	Support Council's recommendation. <sup>35</sup>
749.111	16.3.7 Living court	Reduce the minimum permitted area of outdoor living courts as follows:  <ul style="list-style-type: none"> <li>Dwelling (ground floor) – reduction in the minimum area from 80m2 to 30m2</li> <li>Apartments (above ground) – reduction in the minimum area from 15m2 to: 5m2 for studio and one-beds; and 8m2 for two or</li> </ul>	Accept in part	Retain minimum areas as notified on the basis that they are appropriate for their likely reduced occupancy while still providing on site residential amenity.	Disagree with Council's recommendation. Minimum areas are too large to encourage practical and effective use of a site for residential development and are unlikely to result in compliant multi-unit development. Amendments are required to better enable development at different scales and typologies and encourage use of multi-unit development tool. <sup>36</sup>

<sup>22</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

<sup>21</sup> Council s42a Rebuttal, Hearing 10 at section 9.

<sup>23</sup> Council, s42a Rebuttal, Hearing 10 at section 10.

<sup>24</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.10-2.13, 6.4-6.6

<sup>25</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.10-2.13, 6.4-6.6

<sup>26</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.14-2.16 and 6.4-6.6.

<sup>27</sup> S42a report at para 476.

<sup>28</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.14-2.16 and 6.4-6.6.

<sup>29</sup> S42a report at para 502.

<sup>30</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.23-2.25

<sup>31</sup> S42a report at paras 134-135.

<sup>32</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.17-2.22

<sup>33</sup> S42a report at para 502.

<sup>34</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.17-2.22

<sup>35</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

<sup>36</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.29-2.30

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
		<p>more bedrooms. Reducing the minimum dimension from 2m to 1.5m.</p> <ul style="list-style-type: none"> <li>Minor dwellings (ground floor) – reducing minimum area from 40m<sup>2</sup> to 5m<sup>2</sup> for studio and one-beds and 8m<sup>2</sup> for two or more bedrooms. Reducing minimum dimension from 4m to 1.5m</li> <li>Minor dwelling (above ground) – reducing minimum area from 15m<sup>2</sup> to 5m<sup>2</sup> for studio and one-beds and 8m<sup>2</sup> for two or more bedrooms. Reducing minimum dimension from 2m to 1.5m</li> </ul>			
		Amend the activity status for non-compliance with the standard from discretionary to restricted discretionary.	Accept in part	Change the activity status for non-compliance with this rule from discretionary to restricted discretionary.	Support Council's recommendation. <sup>37</sup>
749.112	16.3.8. Service court	Reduce the minimum permitted area of outdoor living courts and service courts from 15m <sup>2</sup> to 8m <sup>2</sup> .	Accept	Alter the minimum service court areas dimensions because the manner in which service court requirements are delivered in modern dwellings has changed with some of the service court functions being provided with garages and clotheslines being attached to a wall. Accordingly, Council recommends that the two functions (storage of bins and washing lines) be separated and the dimensions be made specific to each function.	Support Council's recommendation to delete the minimum service court area and replace it with two separate minimum service court areas that, either as two separate areas or one combined area, equate to 8m <sup>2</sup> . <sup>38</sup>
		Amend the activity status for non-compliance with the standards from discretionary to restricted discretionary.	Accept	Change the activity status for non-compliance with this rule from discretionary to restricted discretionary.	Support Council's recommendation. <sup>39</sup>
749.113	16.3.9 Building setbacks	Reduce the proposed setback distances from all boundaries other than the road boundary (from 1.5m to 1m), from the edge of an indicative road (from 13m to 3m) and delete the setback requirements from vehicle accesses to another site and from road boundaries for non-habitable buildings.	Reject	Retain building setback distances as notified, subject to minor amendments for clarity. No justification, reason or analysis provided for the proposed amendments sought.	<p>Disagree with Council's recommendation. Proposed setback distances onerous for the potential adverse amenity effects the rule is seeking to manage. Building dominance and shadowing, for example, are largely controlled through height and height in relation to boundary controls. Compare with similar rule in the Hamilton District Plan.</p> <p>The proposed 13m minimum setback from the edge of an indicative road onerous and should be reduced to 3m.</p> <p>Not opposed to retention of setback from all boundary other than a road boundary or for vehicle access to another site.<sup>40</sup></p>
		Remove "reverse sensitivity effects" as a matter of discretion.	Reject	No change recommended.	Pursue relief.
749.114	16.3.9.2. Building setback for sensitive land use	Delete the rule for building setback for sensitive land use.	Reject	Retain as notified, subject to minor amendments for clarity. This rule "manages reverse sensitivity between land uses that create on-going effects and the Residential Zone" <sup>41</sup> .	Disagree with Council's recommendation. While reverse sensitivity effects require addressing, the approach proposed by Council to manage the potential adverse amenity effects resulting from incompatible land uses in proximity to one is not achieved by way of a blanket setback rule for all activities and all zones. <sup>42</sup>
749.116	16.3.9.3. Building setback – water bodies	Amend the distance setback from margin of any lake and wetland from 23m to 20m.	Reject	Retain as notified with minor amendments. Dimensions seek to protect natural character of lakes, wetlands, rivers and their margins.	Pursue relief.

<sup>37</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

<sup>38</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.31.

<sup>39</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

<sup>40</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.35-2.37

<sup>41</sup> s42A Report (Hearing 10), Paragraph 85, Pg. 33

<sup>42</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 2.39

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
749.118	16.4.1 Subdivision - General	Restrict the application of the Rule 16.4.1 to 'vacant' lots,	Reject	Reject approach of restricting rule to vacant lots on the basis that only providing for subdivision of vacant lots would make the subdivision of lots with existing buildings and activities a discretionary activity – which is not logical <sup>43</sup> .	Disagree with Council's recommendation. Kāinga Ora's submission sought to include reference to a new activity for subdivision in accordance with an approved land use resource consent. Therefore, the subdivision of lots with existing building and activities will default to a Restricted Discretionary Activity if suggested relief is adopted. <sup>44</sup>
		Reduce the minimum net site area from 450m <sup>2</sup> for proposed lots to 200m <sup>2</sup> for vacant lots	Reject	Retain minimum net site area for proposed lots at 450m <sup>2</sup> on the basis that this has been arrived at through a consideration of enabling the subdivision of existing '1/4 acre' lots into two, a general lot size suitable for the Residential Zone, with smaller lots sizes enabled in accordance with the objective and policy direction – particularly for subdivision of multi-unit development <sup>45</sup> .	Disagree with Council's recommendation. If suggested relief is adopted, subdivision around existing buildings and activities will be assessed as a separate Restricted Discretionary Activity. Therefore, the minimum lot size will only apply to "vacant" lots for which a minimum net site area of 200m <sup>2</sup> is considered appropriate. <sup>46</sup>
		Require subdivision to 'generally' follow a grid pattern (rather than 'must' follow a grid pattern)	Accept	Delete the condition in its entirety and including reference to 'grid layout' within the associated Matters of Discretion, on the basis that the 'grid layout' can be considered through the resource consent process.	Support recommendation of Council insofar as it removes the absolute requirement for roads to follow a grid layout. <sup>47</sup>
		Remove 'consistency with' the design guides as a matter of discretion	Reject	Reject. See reasons set out in relation to sub point 749.151 below.	Disagree with Council's recommendation. See reasons set out in relation to sub point 749.151 below.
		Enable the subdivision of approved land uses as a controlled activity.	Reject	Retain Discretionary activity status. Approach of Controlled activity status is problematic as although the resource consent has been approved, it may not be implemented <sup>48</sup> . Further, Council considers that there is no guarantee as to how long the activity will be in place and, therefore, it would be preferable for this matter to be considered through the discretionary subdivision resource consent process <sup>48</sup> .	Disagree with Council's recommendation in part. Agree with recommendation to reject a Controlled activity status for subdivision in accordance with an approved land use resource consent, but do not agree it should be considered as a discretionary activity.  Restricted Discretionary Activity status is appropriate for subdivision in accordance with an approved land use resource consent. The introduction of subdivision in accordance with an approved land use consent is appropriate in the context of the "vacant" lot subdivision.
749.119	16.4.4. Subdivision – Multi unit development	Amend matters of discretion, including removal references to multi-unit development urban design guidelines	Reject	Retain urban design guidelines as a matter of discretion (see discussion on sub point 749.151 below for reasons).	Continue to oppose inclusion of urban design guidelines as a matter of discretion (see discussion on sub point 749.151 below for reasons). <sup>49</sup>
		Delete minimum lot size for subdivision of multi-unit development	Accept	Delete minimum lot size on the basis as subdivision is a restricted discretionary activity. <sup>50</sup>	Support deletion of minimum lot sizes. <sup>51</sup>
		Reduce minimum unit sizes from 60m <sup>2</sup> to 30m <sup>2</sup> for studio or 1 bed and from 80m <sup>2</sup> to 45m <sup>2</sup> for 2 bed and from 100m <sup>2</sup> to 45m <sup>2</sup> for 3 bed	Accept	Delete minimum unit sizes on the basis as subdivision is a restricted discretionary activity. <sup>52</sup>	Support deletion of minimum unit sizes. <sup>53</sup>

<sup>43</sup> s42A report (Hearing 10). Paragraph 578, Pg. 219

<sup>44</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.3

<sup>45</sup> s42a report (Hearing 10). Paragraph 576, Pg. 219

<sup>46</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.5

<sup>47</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.7

<sup>48</sup> s42A report (Hearing 10). Paragraph 580, Pg. 219

<sup>49</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 4.7-4.13 (urban design guidelines).

<sup>50</sup> Council s42a Rebuttal, Hearing 10 at Section 15.

<sup>51</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 3.1-3.12 and 4.7-4.13 (re urban design guidelines); Summary Statement of Phil Stickney.

<sup>52</sup> Council s42a Rebuttal, Hearing 10 at Section 15.

<sup>53</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 3.1-3.12 and 4.7-4.13 (re urban design guidelines); Summary Statement of Phil Stickney.

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
		Amend activity status from Restricted Discretionary to Controlled	Reject	Retain Restricted Discretionary Activity status. In order to provide for maximum flexibility for multi-unit developments, it is preferable for the restricted discretionary activity status to be used over the controlled activity status <sup>54</sup> . Further, Council note that during the development of the PDP, research was undertaken on the multi-unit development rules and how they work in practice within nearby Districts – including how their activity status worked <sup>55</sup> .	Support retention of Restricted Discretionary activity Status. <sup>56</sup>
749.120	16.4.5 Subdivision – Boundary adjustments	Change the activity status for boundary adjustments which do not comply with the conditions from discretionary to restricted discretionary.	Accept	Amend activity status for non-compliance with this rule from discretionary to restricted discretionary.	Support Council's recommendation. <sup>57</sup>
749.121	16.4.11 Subdivision – Road frontage	Delete the matter of discretion pertaining to "amenity values and rural character"	Reject	Amend matter of discretion to reference "residential" rather than "rural" character, as the reference to "rural" was an error <sup>62</sup> . No comment on the rationale to retain the matter of discretion (b)(ii).	Disagree with Council's recommendation. "Amenity values" are dynamic and change over time, along with changes in communities. There is a need to shift the current perception that urban development and intensification only has negative effects on amenity for individuals and rather recognise that development can enhance amenity for people and communities as a whole. Further the perceived amenity value of a 15m vs. 10m road boundary is not considered discernible, rather the built form of the development on site will largely affect the perceived amenity of the site. <sup>58</sup>
		Reduce the minimum width of the road boundary and the minimum building platform dimensions from 15m to 10m.	Reject	Retain the minimum width as notified. The purpose of Rule 16.4.11 is to ensure that lots have full frontage to the road, rather than a series of 3m-wide strips being created to facilitate rear lots, and to assist in the implementation of CPTED <sup>59</sup> . The minimum width is the same width as that used in the Franklin District Plan <sup>60</sup> .	Disagree with Council's recommendation. The reductions and deletion sought ensure better utilisation of sites for residential development and potentially create more lots in a given site, and therefore better achieves the objectives and policies of the PDP. <sup>61</sup>
		Restrict the application of the rule to 'vacant' lots only.	Reject	Retain application of rule to all lots on basis that lots with existing development need to be considered <sup>62</sup> .	Disagree with Council's recommendation. Rules should apply to "vacant" lots only. It is not practicable to assess established developments against the minimum road boundary and building platform thresholds given these are already existing at the time an application would be assessed. <sup>63</sup>
749.122	16.4.12 Subdivision – Building platform	Reduce the minimum width of the minimum building platform dimensions from a 200m <sup>2</sup> rectangle to a 100m <sup>2</sup> rectangle and a minimum dimension of 12m to 6m, and delete the requirement for a circle with a diameter of at least 18m.	Reject	Retain the minimum building platform dimensions as notified. The purpose of Rule 16.4.12 is to ensure that a suitably sized and shaped area of land is available for a dwelling to be easily built upon and considers that the minimum dimensions provided in Rule 16.4.12 can easily accommodate various shaped sections within the overall 450m <sup>2</sup> section size. <sup>64</sup>	Disagree with Council's recommendation. Relief sought by Kāinga Ora ensures better utilisation of sites for residential development and potentially create more lots in a given site, and therefore better achieves the objectives and policies of the PDP. <sup>65</sup>
		Restrict the application of the rule to 'vacant' lots only.	Reject	Retain application of rule to all lots on basis that lots with existing development need to be considered <sup>66</sup> .	Disagree with Council's recommendation. Rules should apply to "vacant" lots only. It is not practicable to assess established developments against the minimum road boundary and building

<sup>54</sup> s42A report (Hearing 10). Paragraph 225, Pg. 108

<sup>55</sup> s42A report (Hearing 10). Paragraph 281, Pg.113

<sup>56</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.11-7.14

<sup>57</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 6.4-6.6

<sup>58</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.22.

<sup>59</sup> s42A report (Hearing 10). Paragraph 642, Pg. 245

<sup>60</sup> Rule 26.6.1 of the Franklin District Plan

<sup>61</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.18 and 7.20.

<sup>62</sup> s42A report (Hearing 10). Paragraph 643, Pg. 245

<sup>63</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.18 and 7.20.

<sup>64</sup> s42A report (Hearing 10). Paragraph 649, Pg. 248

<sup>65</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.18 and 7.20.

<sup>66</sup> s42A report (Hearing 10). Paragraph 643, Pg. 245

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
					platform thresholds given these are already existing at the time an application would be assessed. <sup>67</sup>
749.123	16.4.14 Subdivision of esplanade reserves and esplanade strips	Retain provisions as proposed	Accept	Retain as notified with minor amendment to correct a wording error.	Support Council recommendation. <sup>68</sup>
749.125	Amendments to Chapter 16: Residential Zone	Amend rules and activities in Chapter 16 Residential Zone to align with the activities and rules in the new proposed Medium Density Residential Zone section.	Reject	-	Position dependent on whether or not MDRZ is accepted. Amendments may be required if caucusing on MDRZ is directed.
<b>Chapter 29: Appendices</b>					
749.151	Chapter 29: Appendices, Appendix 3: Design Guidelines	Delete Appendix 3.4 from the PDP. The Urban Design Guidelines Multi-Unit Development 2018 (Appendix 3.4 of the PDP) should be treated as non-statutory documents to inform design and development within the District.	Reject	Retain design guidelines. Kāinga Ora's submission does not address the potential effects on residential amenity and townscape from the proposed relief sought <sup>69</sup> .  Council considers Appendix 3.4 is only used as a matter of discretion or to provide the link within the policy between the specific matters of the policy and where those matters are located within Appendix 3.4 and, therefore recommends its retention <sup>70</sup> .	Disagree with Council's recommendation. Not opposed to the use of urban design guidelines by Council to provide further detail and guidance regarding best practice design outcomes, but do not consider statutory weight should be provided to these documents through District Plans.  Should be treated as non-statutory documents to inform design and development. Do not support any policy or rule approach which would require a development proposal to comply with (non-statutory) design guidelines.  Incorporating design guidelines within the PDP results in the requirement to undertake a formal RMA Schedule 1 plan change process to alter or update the guidelines, which is not an efficient approach from a plan-making point of view.  Removing design guidelines will ensure there is no uncertainty in responding to the guidelines, while allowing the guidelines to be updated frequently in response to updated best practice design outcomes. <sup>71</sup>  Design guidelines appear to have been developed in isolation from development standards. Creates situation where achieving outcomes sought by guidelines would require infringements to development standards. <sup>72</sup>
		Delete reference to the multi-unit development urban design guidelines from Policy 4.2.18(b), Rule 16.1.3, Rule 16.4.4(b)(vii) and Rule 16.4.1(RD1)(b)(vii).	Reject	Retain references to the design guidelines in matters of discretion and policies. The purpose of referencing the design guides is so that the design of subdivision is underpinned by the outcomes sought by the design guidelines <sup>73</sup> . Council further notes that if the reference was removed it would not facilitate good design within the District <sup>73</sup> .	Disagree with Council's recommendation. While there is no requirement to 'adhere' or 'meet' the guidelines, Policy 4.2.18(b) encourages developments that "promote the outcomes" of the design guidelines and the assessment matters contained in Rules 16.1.3 16.4.4 and 16.4.1 require Council's discretion to be restricted to the "manner in which" the design guidelines "have been incorporated" and the "consistency with" the "matters" and "outcomes" of the design guidelines for restricted discretionary resource consent applications respectively.

<sup>67</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.18 and 7.20.

<sup>68</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 7.25.

<sup>69</sup> s42A report (Hearing 10). Paragraph 224, Pg. 83 and Paragraph 274, Pg. 112

<sup>70</sup> s42A report (Hearing 10). Paragraph 556, Pg. 206

<sup>71</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 4.1-4.13.

<sup>72</sup> Cam Wallace, Hearing 10 EIC at 3.6(b).

<sup>73</sup> s42A report (Hearing 10). Paragraph 281, Pg. 113

Sub Point	Plan Provision / Reference	Summary of relief sought by Kāinga Ora in submissions	Council Response	Summary of Council's position on relief sought	Summary of evidence / Kāinga Ora position
					<p>As an example, the design guidelines state a design statement "should be provided with every development"<sup>74</sup>. Retaining reference to the guidelines within the Policies and rules creates ambiguity and uncertainty in how one 'promotes' the provision of, or assesses the 'incorporation' of, a design statement without providing a design statement.</p> <p>Policies, rules and assessment frameworks within District Plans should identify and articulate the built form / design outcome which the Council is seeking to achieve, with non-statutory design guidelines sitting outside of the District Plan to provide additional guidance, usually with regard to a variety of differing design approaches or responses, which can assist an applicant to achieve the outcomes stated in the District Plan.<sup>75</sup></p>

<sup>74</sup> Refer to 'Supporting Design Statements' section (pg. 6) of Appendix 3.4: Urban Design Guidelines Multi-Unit Development 2018

<sup>75</sup> Phil Stickney Hearing 10 EIC, Appendix 3 at 4.1-4.13.



## **ANNEXURE B – SUMMARY BACKGROUND TO KĀINGA ORA**

1. HNZC has been disestablished and now forms part of Kāinga Ora, a new Crown agency that is the Government's delivery agency for housing and urban development. The recently enacted Kāinga Ora-Homes and Communities Act 2019 ("**Kāinga Ora Act**") provides for the establishment of Kāinga Ora and sets out its objectives, functions and operating principles. A bill which was introduced to the House in December 2019 provides detail around Kāinga Ora's enabling development powers.
2. Kāinga Ora lodged detailed evidence in Hearing 3 regarding public housing in the Waikato District, the role Kāinga Ora has in the provision of public and affordable housing, as well as urban development more generally, on behalf of the Government. This section of the legal submissions provides a summary of that information.
3. To summarise the information that has previously been presented to the Panel:
  - (a) Kāinga Ora was formed in 2019 as a statutory entity established under the Kāinga Ora Act, and brings together HNZC, HLC (2017) Ltd and parts of the KiwiBuild Unit. Under the Crown Entities Act 2004, Kāinga Ora is listed as a Crown agent and is required to give effect to Government policies.
  - (b) Kāinga Ora will work across the entire housing spectrum to build complete, diverse communities that enable New Zealanders from all backgrounds to have similar opportunities in life. As a result, Kāinga Ora will have two core roles:
    - (i) being a world class public housing landlord; and
    - (ii) leading and co-ordinating urban development projects.
  - (c) Kāinga Ora's statutory objective requires it to contribute to sustainable, inclusive, and thriving communities that:
    - (i) provide people with good quality, affordable housing choices that meet diverse needs;
    - (ii) support good access to jobs, amenities and services; and

- (iii) otherwise sustain or enhance the overall economic, social, environmental and cultural well-being of current and future generations.
  
- (d) Kāinga Ora owns or manages more than 64,000 rental properties throughout New Zealand<sup>30</sup>, including about almost 1,500 homes for community groups that provide housing services. Kāinga Ora manages a portfolio of approximately 390 dwellings in the Waikato District.<sup>31</sup>
  
- (e) Kāinga Ora's tenants are people who face barriers (for a number of reasons) to housing in the wider rental and housing market.
  
- (f) In general terms, housing supply issues have made housing less affordable and as such there is an increased demand for social housing. This is particularly so within the Waikato District Council jurisdiction, which proportionally has seen the second largest growth in the public housing register, in excess of a fivefold increase, from 25 households in June 2016 to 159 households in June 2019.<sup>32</sup>
  
- (g) Approximately 40% of the total public housing portfolio was built before 1967. In recent years the demand for public housing has changed markedly from 2-3 bedrooms houses, to single unit housing for the elderly and 4-5 bedroom houses for larger families. This demand contrasts with Kāinga Ora's existing housing portfolio of which a significant proportion comprises 2-3 bedroom houses on larger lots.
  
- (h) HNZC's focus in recent times has been to provide public housing that matches the requirements of those most in need. To achieve this, it has largely focused on redeveloping its existing landholdings. Kāinga Ora will continue this approach of redeveloping existing sites by using them more efficiently and

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<sup>30</sup> As at June 2019.

<sup>31</sup> As at 30 June 2019.

<sup>32</sup> EIC, Hearing Topic 3, Brendon Liggett (Corporate) for Kāinga Ora, 22 October 2019 at 1.7.

effectively, so as to improve the quality and quantity of public and affordable housing that is available.

(i) In addition, Kāinga Ora will play a greater role in urban development more generally. The legislative functions of Kāinga Ora illustrate this broadened mandate and outline two key roles of Kāinga Ora in that regard:<sup>33</sup>

(i) initiating, facilitating and/or undertaking development not just for itself, but in partnership or on behalf of others; and

(ii) providing a leadership or coordination role more generally.

4. Notably, Kāinga Ora's functions in relation to urban development extend beyond the development of housing (which includes public housing, affordable housing, homes for first home buyers, and market housing) to the development and renewal of urban environments, as well as the development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works.<sup>34</sup>

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<sup>33</sup> Sections 12(f)-(g) of the Kāinga Ora Act.

<sup>34</sup> Section 12(f) of the Kāinga Ora Act.

## ANNEXURE C

### SUMMERSET - ENVIRONMENT COURT'S ANALYSIS OF NATIONAL POLICY STATEMENT: URBAN DEVELOPMENT CAPACITY 2016

[44] Turning first to the UPS, this instrument sets out matters relevant to the achievement of the purpose of the Act. It is at the top of the planning hierarchy and requires of regulatory authorities due consideration when these organisations establish their policy frameworks on the matters of urban growth and development.

[45] Importantly, the UPS sets out its imperative as:

...(providing) direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, ... enable urban environments to grow and change in response to the changing needs of the communities and future generations; and

Provide enough space for their populations to happily live and work. This can be both through allowing development to go "up" by intensifying existing urban areas, and "out" by releasing land in greenfield areas.

The document goes on to confirm that:

... the overarching theme running through this national policy statement is that planning decisions must actively enable development in urban environments...

Within this context of proactivity, the UPS describes its intention as follows:

This national policy statement is about recognising the national significance of:

(a) Urban environments and the need to enable such environments to develop and change; and

(b) Providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.

[46] At this point, we recognise the use of critical language in these provisions of the [National Policy Statement: Urban Development Capacity]. **Deliberately, it seems to us, the authors of the document have deployed the words "change" and "future". Unarguably, the use of these terms intends a future focus for development planning.**

[47] Most significantly, the [National Policy Statement: Urban Development Capacity] sets out clear directions and the imperatives under which "decision makers" are to operate. In this connection, the document defines "decision makers" as "any person exercising functions and powers under the Act." This definition clearly embraces such entities and individuals as regulatory authorities, including unitary authorities and officers of these organisations responsible for policy formulation and similar tasks. It also includes this Court. This imposes an expectation and a presumption.

[48] Founded on this "mission statement", key objectives contained within the document and the sub-parts of these relevant to this appeal are as follows:

Objective Group A – Outcomes for planning decisions

OA1: Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental well-being.

OA3: *Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.*

[49] *There is a clear commonality of purpose and principle to be found, on the one hand, in the theme of the UPS, set out above, and, on the other, in the particular thrust of OA3: "change". In our view, the inescapable conclusion is apparent: the UPS gives direction to decision-makers to have regard to urban growth outcomes which have previously been under-emphasised in favour of local environmental or amenity considerations.*

[50] *The UPS requires evaluation in the context of "national significance" within which planning endeavours are to be undertaken and which will allow "(urban) environments to develop and change." Accordingly, our conclusion is that a more future-oriented, outcome-focused conclusion than what might have been the case otherwise and common-place before the promulgation of the UPS is envisaged.*