

UNDER

the Resource Management Act 1991
("RMA")

IN THE MATTER

of the Proposed Waikato District
Plan: Hearing 25 – Zone Extents.

**MEMORANDUM OF COUNSEL FOR KĀINGA ORA-HOMES AND
COMMUNITIES**

9 March 2021

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May it please the Hearing Commissioners:

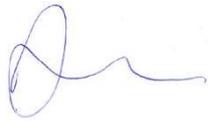
1. This memorandum of counsel is filed on behalf of Kāinga Ora-Homes and Communities (“**Kāinga Ora**”) further to the Commissioners’ Minute and Directions of 5 March 2021 which provided submitters with an opportunity to comment on the procedure set out in the Waikato District Council’s section 42A RMA Framework Report (“**42A Framework Report**”) and specifically whether: *“the procedure set out in the Framework Report, and, in particular, compliance with Lens 1, should be generally adhered to, and, if not, the reasons why”*.
2. Counsel has reviewed the memorandum filed by Mr Fuller on behalf of Pokeno West Limited and CSL Trust and Top End Properties and agrees that:
 - (a) Lens 1 is not the correct statutory test for the Panel’s assessment of the Waikato Proposed District Plan (“**Proposed Plan**”) provisions, and such an approach lacks a basis in either statute and/or case law.
 - (b) Lens 2 is more (but not wholly) reflective of the statutory requirements for the assessment of District Plan provisions under the relevant sections of the Resource Management Act 1991 (“**RMA**”).
3. Kāinga Ora’s planning evidence in chief on Hearing Topic 25 from Mr Stickney addresses this issue (at paragraphs 7.1 to 7.9). We make some brief additional comments below:
 - (a) Submissions seeking wide ranging relief have been lodged on objectives, policies and rules in the Proposed Plan with bearing on the zoning issues being addressed in Topic 25.
 - (b) Council has elected to hold separate hearings on those matters but to date it has issued no decisions and Kāinga Ora’s expectation is that the Commissioners will undertake a comprehensive review of all the evidence presented and the relief sought before making decisions on the Proposed Plan provisions. Those decisions should result in a package of internally consistent provisions which may or may not be consistent with the notified policy framework.

- (c) The relief sought by Kainga Ora (and no doubt other parties) is intended to form a coherent set of provisions whereby the zonings sought in Topic 25 will give effect to amended and augmented higher order objectives and policies.
- (d) Accordingly, the fact that the hearing topics have been separated in time for the convenience of all parties (Commissioners, Council officers and advisors and submitters) does not mean that parties to subsequent hearings should assume that:
 - (i) The notified objectives and policies will be upheld unchanged;
 - (ii) The notified objectives and policies necessarily satisfy higher order statutory requirements; or
 - (iii) The zonings sought should be assessed against those notified objectives and policies.
- (e) Rather, the zonings sought should in each case be considered in the context of the policy provisions sought by the relevant submitter. Provided a submitter seeks a coherent framework of objectives, policies, rules and zonings, it will be open to the Commissioners to accept that relief on its merits. In that case, a failure to give effect to the notified objectives and policies (which the submitter is challenging) will not preclude the submissions being accepted.
- (f) This can be contrasted with a situation where relevant objectives and policies are operative, or a situation where there are no submissions on relevant objectives and policies. In that instance, in order for the relevant statutory requirements to be met, it must be established that any changes to the lower order provisions (rules or methods) are the most appropriate way to achieve the operative or unchallenged higher order provisions (objectives and policies).
- (g) If it were the case that all changes to lower order provisions had to give effect to the notified objectives and policies, as Lens 1 would seem to suggest, then the submission and hearing process for higher order provisions would in effect be redundant (save for

amendments which do not change their substance), because that presumes that there will be no further change to those higher order provisions.

4. In summary, while it is important that the PDP is integrated in a vertical and horizontal manner, that task is best undertaken by the Commissioners having heard all the submissions and evidence on the full ambit of resource management matters before them. Kāinga Ora's expectation is that, having done this, the Commissioners will ultimately make decisions that are coherent and internally consistent.
5. Accordingly:
 - (a) Decisions regarding zoning do not need to give effect to the notified objectives and policies; as
 - (b) The higher order provisions may be altered in response to submissions and in a way that leads logically to zoning outcomes that may not give effect to the notified PDP provisions.

Dated this 9th day of March 2021



D A Allan / A K Devine

Counsel for Kāinga Ora-Homes and Communities