

UNDER the Resource Management Act 1991
IN THE MATTER of Proposed Waikato District Plan (Stage 1): Hearing 25 -
Rezoning

**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA-HOMES AND
COMMUNITIES**

HEARING 25 – Rezoning and MDRZ Provisions

12 May 2021

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MAY IT PLEASE THE HEARINGS PANEL:

1. Introduction and Summary

- 1.1 These legal submissions are presented on behalf of Kāinga Ora-Homes and Communities (“**Kāinga Ora**”) in relation to the submissions¹ lodged by Housing New Zealand Corporation on the Proposed Waikato District Plan (“**the Plan**” or “**PDP**”) provisions to be addressed in Hearing 25 – Rezoning. Through this topic, the provisions for the Medium Density Residential Zone (“**MDRZ**”) sought by Kāinga Ora are also being addressed.
- 1.2 Kāinga Ora is, by operation of statute, the successor to Housing New Zealand Corporation with respect to the submissions. Kāinga Ora has appeared before the Hearing Panel on several occasions and has previously provided details of its origin, the statutory framework it operates within and the scope of its role and interest in planning processes. A summary of that information is set out in **Annexure A** to these legal submissions.
- 1.3 Kāinga Ora’s key concern with the PDP as notified was that it failed to provide sufficient capacity for growth, housing choice and variety in built form, and therefore would not provide for the compact urban form and consolidation sought in the strategic objectives of the PDP. For that reason, Kāinga Ora sought the introduction of a new MDRZ, which will enable the development of low-rise apartment, terrace housing and multi-unit developments, to be applied around key centres within urban settlements.
- 1.4 Throughout the hearing process, Kāinga Ora has worked to refine both the MDRZ provisions and their spatial extent. Feedback was sought from submitters and the Council and has helped inform the provisions now before you.
- 1.5 Kāinga Ora understands that the Council policy planners now accept the need for the MDRZ and the principle of applying it within walking distance of key centres and urban settlements. Remaining differences between the experts for Kāinga Ora and the Council are limited to

¹ Submission No. 749 and Further Submission No. FS1269.

matters of detail in respect of the MDRZ provisions and its spatial application. These submissions focus on those outstanding matters, being:

- (a) MDRZ Provisions – whether it is necessary for development controls to regulate the allocation and use of ground floor space.
- (b) MDRZ Extent:
 - (i) Whether the MDRZ should apply to schools and land which will potentially be required in the future for commercial purposes.
 - (ii) Whether the MDRZ should follow cadastral or flooding boundaries.
 - (iii) Whether to apply the MDRZ where land is subject to heritage provisions.
 - (iv) Whether the MDRZ height standard in Raglan should be reduced to 7.5m.

1.6 Kāinga Ora has filed evidence by the following experts in support of its relief:

- (a) **John Parlane**, transport engineer, confirming that there are no significant transportation issues generated by the application of the MDRZ in the manner sought.
- (b) **Philip Osborne**, consultant economist, regarding the capacity enabled under and economic benefits of the MDRZ as sought by Kāinga Ora.
- (c) **Cameron Wallace**, consultant urban designer, who addresses the provisions of the MDRZ relating to bulk and location and the process and principles followed in refining its spatial application from that sought in submissions.
- (d) **Philip Stickney**, consultant planner. Mr Stickney's evidence addresses the appropriateness of the MDRZ provisions and their spatial application and includes a comprehensive section 32AA analysis of the revised relief.

2. Process Matters

Previous Hearings

- 2.1 This hearing addresses submissions seeking rezoning. Previous hearings have addressed the strategic framework (Hearing 3) and the proposed provisions and policy framework for the residential and business zones (Hearings 9 and 10).
- 2.2 The evidence Kāinga Ora presented in those hearings addressed:
- (a) A lack of alignment between national direction, strategic planning documents, the RPS and high level objectives of the PDP, with the lower order provisions and rules of the PDP. Kāinga Ora's evidence was that the wider planning and policy framework supported a compact urban form and consolidation approach, which was not then reflected in the lower order provisions and rules².
 - (b) The failure of the PDP as notified to provide sufficiently for housing choice and variety in built form (i.e.: that the notified provisions would perpetuate an outcome of single level detached dwellings).³
 - (c) The social, economic and transportation advantages of the MDRZ, including the improved vitality and functionality of centres that would arise from increasing the density of residential activity on their periphery.⁴
 - (d) The urban design rationale for a gradation in built form (e.g.: bulk and location provisions) between the centres, the MDRZ and the General Residential Zone ("GRZ").⁵
- 2.3 Council's initial response to the MDRZ sought by Kāinga Ora was that, while there was merit in providing for higher density zone, Kāinga Ora's

² Hearing 9 EIC, Phil Stickney (Planning) for Kāinga Ora at paras 4.3-4.5; Hearing 10 EIC, Phil Stickney (Planning) for Kāinga Ora at paras 1.2, 4.7, 4.16. See also Hearing 10 EIC, Cam Wallace (Urban Design) for Kāinga Ora at paras 3.14, 4.3-4.4; Hearing 10 EIC Philip Osborne (Economics) for Kāinga Ora at para 3.6-3.8.

³ Hearing 10 EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.13.

⁴ Hearing 10 EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 3.3; Hearing 10 EIC Philip Osborne (Economics) for Kāinga Ora at section 7; Hearing 9 EIC Philip Osborne (Economics) for Kāinga Ora at section 4, and paras 8.17-8.19.

⁵ Hearing 10 EIC, Cam Wallace (Urban Design) for Kāinga Ora at para 4.5.

proposal should be rejected because of the time and cost involved in assessing it⁶ and because no specific section 32 RMA analysis had been undertaken.⁷

- 2.4 Subsequently, through rebuttal on Hearing 10, the Council's reporting planner acknowledged the merits of a MDRZ and 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 requested.

Review of MDRZ Provisions and Extent

- 2.5 In light of the Council's indication, Kāinga Ora proposed a further process (involving submitter and council feedback) to refine the MDRZ provisions and spatial extent. In November 2020 Kāinga Ora filed the draft material⁸ with the Panel which was then forwarded onto submitters with an interest in Kāinga Ora's relief. Parties were invited to provide feedback prior to 23 December 2020, with the Council and one other submitter⁹ taking up this opportunity. As a result of this, Kāinga Ora has:

- (a) Reduced the extent of the MDRZ from that sought in the submission. Mr Wallace's evidence outlines the analysis methodology and principles used to refine the extent of zoning in each town¹⁰;
- (b) Refined the MDRZ provisions to address feedback from the Council¹¹. These changes are summarised in the evidence of Mr Stickney¹² and Mr Wallace¹³.
- (c) Prepared a comprehensive section 32AA report assessing the relief sought.¹⁴

⁶ PDP Section 32 Report – Residential Zones at page 77.

⁷ Hearing 10 Section 42a Report at para 178.

⁸ The memorandum dated 23 November 2020 attached a draft set of MDRZ provisions, a set of revised zoning maps, the zoning methodology report and a draft s32AA assessment.

⁹ Pokeno West, CSL and Top End Properties. Queries (but no substantive feedback) were received from other parties, including Waka Kotahi-NZTA.

¹⁰ Hearing 25 EIC Cam Wallace (Urban Design) for Kāinga Ora at sections 6 to 12. Methodology report attached as Annexure 1 of s32AA report. Summary of key changes can be found in Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at para 10.13.

¹¹ Hearing 25 s42a MDRZ Report Part 1 (Jan) at para 219 and s42a MDRZ Report Part 2 (April) at para 131-132.

¹² Hearing 25 EIC Phil Stickney (Planning) at para 9.8 summarises the refinements to the provisions. Rebuttal at paras 4.4 and 4.8.

¹³ Hearing 25 EIC Cam Wallace (Urban Design) at paras 5.2-5.4; Rebuttal at paras 2.6-2.8, 2.10, 2.15-2.17.

2.6 Accordingly, Kāinga Ora is addressing in this hearing both:

- (a) The refined MDRZ provisions that it now seeks; and
- (b) The revised spatial extent of that zone.

Scope

2.7 The relief sought in the original submission by Kāinga Ora included a series of maps for each settlement which identified the extent of the MDRZ sought. A full set of proposed MDRZ provisions was also appended to the submission.

2.8 In carrying out its review of the MDRZ zone extent, Kāinga Ora has taken a conservative approach to scope. In instances where a question arises as to scope for a change, Kāinga Ora has erred on the side of caution. For example, Kāinga Ora has not increased the extent of MDRZ from that identified in submission, although it has in a number of locations reduced extent of the zone.

2.9 Accordingly, while changes have been made to the MDRZ provisions and spatial extent of the MDRZ since the submission was first lodged, in all instances these changes have reduced:

- (a) The extent of the MDRZ; or
- (b) The intensity of development enabled pursuant to the provisions (e.g.: by incorporating a requirement for upper floor balconies to be setback 4m rather than 1m from the boundary).

2.10 It is therefore submitted that there is no risk of the recommendations sought by Kāinga Ora being out of scope.

3. Planning Context

3.1 The Council is required to prepare its Plan in accordance with:

- (a) Its functions under section 31 RMA;
- (b) The duties under Part 2 RMA;

¹⁴ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at Annexure 1.

- (c) The evaluation required under section 32 RMA; and
- (d) Its obligations to give effect to higher order planning instruments.

3.2 Kāinga Ora says that as notified, the PDP failed to meet these tests in that it failed to provide for sufficient residential capacity, and did not give effect to the higher order policy framework directives regarding a consolidated urban form.

Key RMA Provisions

3.3 One of the Council's functions under **section 31 RMA** is to ensure that there is sufficient development capacity in housing and business land to meet the expected demands of the District. Introducing and applying the MDRZ in the manner sought by Kāinga Ora will assist the Council in ensuring it is meeting its functions under section 31 RMA in relation to residential land.¹⁵

3.4 The Council is required to undertake a **section 32 RMA** analysis which evaluates whether the objectives of the Plan are the most appropriate way in which to meet the purpose of the RMA and whether the proposed policies and rules are the most appropriate way to achieve the objectives. This requires an assessment of the efficiency and effectiveness of policies and rules sought, taking into account costs and benefits. The section 32 report on the notified PDP identified the merits of providing for a higher density zone, but this option was not pursued by the Council because of time and cost involved¹⁶.

3.5 As the MDRZ was requested in submissions, an examination under **section 32AA RMA** is required. This has been undertaken by Beca¹⁷. The s32AA report concludes that the MDRZ and its spatial extent is the most appropriate way to meet the objectives of the Plan, which in turn are the most appropriate way in which to achieve the purpose of the RMA.¹⁸ This conclusion is supported by the Council planner¹⁹.

¹⁵ Hearing 25 EIC Phil Osborne (Economics) at sections 5-6 and para 7 of Appendix 1.

¹⁶ Section 32 Report – Residential Zones at page 77.

¹⁷ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at Annexure 1.

¹⁸ Summarised in Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at paras 9.3-9.6.

¹⁹ Hearing 25 42a MDRZ Report Part 2 (April) at section 7.13.

National Instruments – NPS-UD

- 3.6 The National Policy Statement on Urban Development 2020 (“**NPS-UD**”) requires local authorities to provide for adequate development capacity in urban areas for housing and business land.
- 3.7 The NPS-UD contains a broad suite of objectives and policies that encompass high-level goals and explicit instructions to councils as to how to accomplish those goals based on a three tiered approach.
- 3.8 Waikato is identified as a Tier 1 Local Authority, and while no township in the district is specifically identified as a Tier 1 Urban Environment in Appendix 1 to the NPS-UD, there are settlements (e.g.: Pokeno; Ngāruawāhia) which would arguably qualify on the basis that they form part of the housing and labour market of Auckland and/or Hamilton which are listed.
- 3.9 Kāinga Ora says there are a number of consistent themes within the NPS-UD which apply irrespective of what ‘Tier’ a particular settlement falls within. These include:
- (a) The importance of providing housing capacity and choice within urban environments.²⁰
 - (b) Urban environments (and amenity values) are expected to change over time, sometimes significantly, and those changes are not of themselves adverse effects.²¹ This represents a significant shift from the historic approach to planning 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.²²
 - (c) The importance of integrating land use and infrastructure development.²³

²⁰ Objective 2, Policy 1, Policy 2, Policy 6. See also Clauses 3.2, 3.23(2), 3.24 and 3.25.

²¹ Objective 4, Policy 6.

²² That position was recently confirmed by the Environment Court in *Summerset Villages (St Johns) Limited v Auckland Council* [2019] NZEnvC 173, which was considering the (now replaced, and less directive) NPS-UDC.

²³ Objective 6.

- (d) The intensification of development in proximity to centres of employment, public transport, or in areas of high demand.²⁴
- (e) Decision making should be strategic²⁵, future focused and evidence based²⁶. When making a trade-off between intensification and some other matter, a robust assessment is required to be undertaken²⁷.
- (f) Overall, that expectations regarding the density of development and the range of housing typologies will alter in regional centres (as is currently occurring in major cities).

3.10 The evidence of Kāinga Ora with respect to the NPS-UD is that adopting the proposed MDRZ in the manner sought by Kāinga Ora:

- (a) Can accommodate the projected growth of the Waikato while providing feasible and affordable housing options.²⁸
- (b) Will assist in giving effect to the requirements of the NPSUD by providing sufficient opportunities for the development of housing to meet projected demand and providing for housing choice.²⁹

3.11 This conclusion is generally supported by the s42 MDRZ report³⁰, and the report undertaken by Dr Davey³¹.)

Relevant non-statutory documents

3.12 As a document prepared under the Local Government Act, the Council is required to have regard to **Future Proof** in preparing the Plan.³² The Future Proof Strategy is currently being updated, however, the current Strategy identifies Tuakau, Pokeno, Te Kauwhata and Ngaruawahia as residential growth nodes. Te Kauwhata, Raglan, Huntly and Ngaruawahia are identified as Major Commercial Centres.

²⁴ Objective 3.

²⁵ Objective 6.

²⁶ Subpart 3, in particular Clause 3.11.

²⁷ Policy 4

²⁸ MDRZ s32AA Report (Annexure 1 to Phil Stickney EIC) at section 5.1 and Appendix 6.

²⁹ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at para 8.14

³⁰ Hearing 25 42a MDRZ Report Part 1 (Jan) at paras 180 and 222; 42a MDRZ Report Part 2 (April) at para 32.

³¹ Hearing 25 Framework Report Supplementary Evidence (April 2021) at paras 12 and 38.

³² Section 74(2)(b)(i) RMA.

- 3.13 **Waikato 2070** also envisages and seeks a compact urban form and urban consolidation, focusing development within existing town centres at increased densities.³³ Settlements identified as being appropriate for the application of the MDRZ by Kāinga Ora are also recognised in **Waikato 2070** as being suitable for medium density residential development within the life of the Plan (e.g.: Pokeno, Te Kauwhata, Ngāruawāhia, Huntly).
- 3.14 Kāinga Ora’s evidence concludes that the MDRZ aligns with the types and patterns of growth envisaged in both **Waikato 2070** and **Future Proof**.³⁴

Waikato Regional Policy Statement

- 3.15 The **Waikato Regional Policy Statement (“WRPS”)** supports an approach to residential growth which provides for consolidated, sustainable and coordinated development that is focused within existing urban areas in a manner that enables for housing choice and good urban design outcomes.³⁵ Kāinga Ora’s evidence concludes that introducing the MDRZ will give effect to the WRPS.³⁶ This conclusion is supported by the Council evidence.³⁷

Waikato District Plan Policy Framework

- 3.16 Kāinga Ora’s submission largely supported the Chapter 4 Strategic Directions and Objectives of the **PDP** which it considers to be appropriately forward-looking and creating a clear expectation that:
- (a) The character of existing urban areas will change over time; and
 - (b) Future growth will be located in a manner that promotes a consolidated urban form and enables a variety of built forms to be provided.
- 3.17 Some amendments were sought to ensure emphasis was placed on the importance of giving priority to the compact urban model and residential

³³ For example, 3.1(2),(5) and (6).

³⁴ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at para 10.10.

³⁵ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at paras 8.16 – 8.22.

³⁶ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at paras 8.16-8.22. Hearing 25 EIC Cam Wallace (Urban Design) for Kāinga Ora at paras 4.3-4.4.

³⁷ Hearing 25 42a MDRZ Report Part 1 (Jan) at para 183.

intensification in existing urban areas, which were accepted by the Council in part.³⁸

- 3.18 Other amendments to the objective and policy framework were limited to relatively minor amendments to provide for the introduction of the MDRZ³⁹ and the removal of design guidelines⁴⁰. A specific suite of objectives and policies specifically for the MDRZ has also been proposed⁴¹.

4. The proposed MDRZ provisions

Overview

- 4.1 The MDRZ enables a variety of building and dwelling typologies such as low-rise apartment, terrace housing and multi-unit developments. Kāinga Ora proposes that it be applied to walkable catchments around key centres in urban settlements.
- 4.2 The MDRZ provisions incorporate a quantitative approach for smaller scale residential development coupled with a qualitative assessment process on applications for resource consent for larger scale residential development:
- (a) Up to three dwellings on a site is a permitted activity, provided the proposal complies with development standards addressing key bulk and location matters.
 - (b) Four or more dwellings on a site requires assessment against a number of key matters of discretion.
 - (c) The balance of the MDRZ provisions (e.g.: provisions relating to earthworks, noise or non-residential activities) largely replicate those found in the GRZ.
- 4.3 Kāinga Ora says that the combination of development standards and matters of assessment provides an appropriate means of achieving

³⁸ Objective 4.1.2 and Policy 4.1.3. Hearing 3 EIC Matt Lindenberg (Planning) for Kāinga Ora at paras 5.7-5.9

³⁹ For example, Introducing a medium density target into Policy 4.1.5 (see Hearing 3 EIC Matt Lindenberg (Planning) for Kāinga Ora at paras 6.1 - 6.6), changes to Policy 4.1.18 (see Hearing 10 EIC Phil Stickney (Planning) for Kāinga Ora at paras 6.6-6.7) and changes to Policies 4.2.12, 4.2.8, 4.2.18(b) (Hearing 10 EIC Phil Stickney (Planning) for Kāinga Ora at Annexure 3).

⁴⁰ Hearing 3 EIC Matt Lindenberg (Planning) for Kāinga Ora at para 6.22 -6.29 re Policy 4.7.3.

⁴¹ Hearing 25 Rebuttal Phil Stickney (Planning) for Kāinga Ora at Appendix 1.

positive built form outcomes and managing amenity effects both on-site and off-site.

- (a) Mr Wallace has modelled possible built form outcomes under the permitted activity standards and concludes that for up to three dwellings per site an appropriate built form can be achieved by the permitted activity status and development standards.⁴²
- (b) Mr Wallace also considers that the qualitative assessment approach proposed for four or more dwellings is a robust method for ensuring positive built-form outcomes, and allows for a more considered assessment with regard to matters such as amenity and built form which cannot be easily quantified into a rigid control.⁴³

Application to greenfields areas

- 4.4 Submitters have sought to apply the MDRZ to areas other than around town centres (e.g.: to greenfields areas).
- 4.5 Kāinga Ora considers that the MDRZ is most appropriately applied around centres, and the zone has been developed for that purpose. It has not prepared evidence or legal submissions with regard to the broader relief sought by other submitters and considers that it is for those parties to satisfy the Panel that the MDRZ is a suitable response in other locations and to promote any necessary changes to the policy and rule framework.

Remaining areas of difference between Kāinga Ora and the Council

- 4.6 The Council's reporting planner, Mr Cleese, and Kainga Ora's experts are agreed as to the merits of introducing a MDRZ to the Plan and are also largely agreed on the MDRZ provisions.⁴⁴ No other submitters have challenged the provisions of the MDRZ.
- 4.7 The two key remaining areas of difference between the Council planner and Kāinga Ora in relation to the zone provisions relate to:

⁴² Hearing 25 EIC Cam Wallace (Urban Design) for Kāinga Ora at para 5.7. Rebuttal at paras 2.2-2.3.

⁴³ Hearing 25 Rebuttal Cam Wallace (Urban Design) for Kāinga Ora at paras 2.2-2.3.

⁴⁴ Hearing 25 42A MDRZ Report Rebuttal (10 May 2021) at para 10.

- (a) Whether units with the ground floor habitable space should be required to provide an outdoor living court; and
- (b) Whether sites should be required to provide at least 50% of the ground floor of buildings as habitable space (rather than, say, garaging or storage).

4.8 Kāinga Ora's concern with the changes proposed by Mr Clease is that they will unnecessarily and inappropriately constrain opportunities for providing a range of housing typologies. This could undermine the policy intent of the zone to provide for housing choice:⁴⁵

- (a) Kāinga Ora agrees with Mr Clease that rules typically involve a trade-off whereby development options and flexibility is compromised to provide certainty regarding amenity outcomes. In this case, however, Kāinga Ora considers that the proposed response is unnecessarily strict.
- (b) Mr Wallace's evidence is that the concerns raised regarding outdoor living courts are addressed through the additional development controls proposed in his evidence (e.g.: introduction of a setback for balconies). More broadly, developers and councils outside the Waikato District have or are rapidly gaining experience with intensive forms of residential development (e.g.: apartment buildings) and there are many examples of high amenity being provided in these typologies through good design rather than the imposition of strict standards.
- (c) With regard to the provision of living space and garaging at ground floor, Kainga Ora understands that Mr Clease's concerns relate largely to offsite amenity effects (i.e.: visual amenity as viewed from driveways and the street). Given typical section dimensions in NZ with relatively narrow frontages to the street, it would be unusual to end up with a row of garages directly fronting the street. In any event, in the case of developments involving four dwellings or more, the appearance of parking from the street can be considered under 16A.3.1 RD1(b)(vii). That

⁴⁵ Hearing 25 Rebuttal Phil Stickney (Planning) for Kāinga Ora at paras 4.15-4.17 and Rebuttal Cam Wallace (Urban Design) for Kāinga Ora at paras 2.12

would enable visual concerns to be addressed while enabling the developer to design and construct units that provide suitable amenity for inhabitants.

- (d) Kainga Ora is concerned that Mr Clease's approach could result in developers underutilising a site in order to avoid perceived consenting risks. That is, they may propose developments that have compromised amenity for residents (e.g.: by providing living spaces at ground floor, notwithstanding adverse implications in terms of orientation, outlook or sunlight access) because to do otherwise would require additional resource consent.

5. The proposed spatial application of MDRZ

- 5.1 It is proposed to locate the MDRZ within walkable catchments of town centres in the urban settlements of Tuakau, Pokeno, Te Kauwhata, Huntly, Ngāruawāhia and Raglan. While Kāinga Ora originally sought the application of the MDRZ in Taupiri, this is no longer pursued.
- 5.2 The extent of the MDRZ proposed in the Kāinga Ora submission was based on the identification of residential zoned land within a radial 400m or 800m distance of either the Business Town Centre Zone or Business Zone boundary. 400m catchments were used as the main determinant for the MDRZ zone extent within Te Kauwhata, Taupiri and Raglan due to their relatively small size, whilst 800m was adopted for the larger settlements of Tuakau, Pokeno, Huntly and Ngāruawāhia.
- 5.3 Following Hearing 10, Mr Wallace developed the Zone Extent Methodology Report which was then used to assess Kāinga Ora's primary submission relief and inform refinements to the MDRZ boundaries in all settlements. The maps included in the 32AA Report⁴⁶ illustrate the proposed spatial extent of the MDRZ now sought by Kāinga Ora.
- 5.4 Mr Wallace's evidence summarises the key matters considered relevant for the spatial application of the MDRZ within the Waikato context. These included:

⁴⁶ Hearing 25 EIC Phil Stickney (Planning) for Kāinga Ora at Annexure 1.

- (a) Proximity to existing town centres as defined by walking catchments (e.g. a range of commercial activities and community facilities);
- (b) Barriers to walkability;
- (c) Proximity to a range of amenities and services essential for day-to-day living where these are not already located within a defined town centre; and
- (d) Areas identified as subject to significant risks to natural hazards.

5.5 A finer level of analysis was used to determine precise zone boundaries taking into account site / area specific characteristics such as: streets / roads / walkways; rail corridors; streams / rivers / estuaries; open spaces / reserves (whether zoned or not); and schools. Split zoning and pepper potting within blocks were avoided where possible.

5.6 Kāinga Ora says that the zoning pattern now proposed gives effect to higher order documents and will enable sufficient development capacity.

6. Issues re application of MDRZ raised in 42A reports

6.1 As with the MDRZ provisions themselves, there are relatively limited areas of disagreement between Council and Kāinga Ora in terms of the spatial application of the MDRZ zone. These are addressed below.

Underlying zonings for School

6.2 The issue here is whether schools should be upzoned from GRZ to MDRZ in circumstances where they are designated for education purposes.

6.3 The section 42A reports have taken an inconsistent approach to this issue:

- (a) In Pokeno and Tuakau the Council planners are of the view that schools in the areas identified as being appropriate for MDRZ should remain zoned as GRZ as they are unlikely to be developed for residential purposes in future and are therefore an ineffective method of securing additional capacity.

- (b) In Huntly, the Council planner supports the view of Kāinga Ora that school sites should be zoned as MDRZ for consistency and to take account of the possibility that the site may in future be disposed of or no longer utilised for its designated purpose.

6.4 Kāinga Ora's approach will enable appropriate development onsite in the event that all or any part of the land ceases to be used as a school. The approach adopted in the Auckland Unitary Plan was to zone schools in accordance with the surrounding sites, and Kāinga Ora says this same approach should be adopted here.

Land adjacent to town centres

6.5 The reporting planners for Raglan and Pokeno both propose to retain a GRZ zoning for land surrounding the town centres to provide for the possibility of that land being required in future for commercial zoning to allow for expansion of the Town Centre.

6.6 In both Raglan and Pokeno there is a significant demand for residential capacity with demand only being met in Pokeno through the provision of a FUZ zone which is subject to a future process before it is live zoned⁴⁷. Kāinga Ora considers that:

- (a) If the capacity report has identified clear demand and adverse effects arising from a shortage of commercial land, the zoning pattern desired should be brought in now (e.g.: through a variation).
- (b) If, in the absence of such evidence, residential zoning is to be retained into the future for that land then the most appropriate residential zoning should be adopted (i.e.: MDRZ in the immediate vicinity of the centres). To do otherwise will result in the land retaining a residential zoning but not being developed to the intensity and in the typologies that are most appropriate.
- (c) GRZ zoning should not be used to preserve options for Council to up-zone in the future. That approach is likely to result in inefficient use of the land in the interim and potentially its redevelopment for housing typologies that will be present for

⁴⁷ Hearing 25 Framework Report Supplementary Evidence (April 2021) at Figure 16.

many decades, that do not take advantage of the land's location and that prevent suitable intensification for an extended period of time.

- 6.7 It is unclear whether the Council has considered enabling greater development on Business Centre zoned sites by amending the zone provisions (e.g.: by increasing the height limit of 10m). Kāinga Ora provided evidence in Hearing 9⁴⁸ regarding the importance of providing for a set of Business Centre Zone provisions which facilitate increased levels of development in those locations (e.g.: through an increase in height to 12m and flexibility for activities that could support the centres). It is submitted that the Council needs to consider the provisions and the spatial application of the business zones holistically.
- 6.8 Retaining GRZ zoning because Council may choose to increase commercial zoning in the future is not the most appropriate way to give effect to relevant objectives in terms of section 32 RMA. Instead, given the policy framework in higher order planning instruments, the most appropriate approach is to apply the MDRZ in accordance with Mr Wallace's evidence.

Zone boundaries in areas subject to Flooding

- 6.9 In Huntly it is proposed by the Council planner to delineate the MDRZ boundary at a site in Huntly West by utilising the (current) boundary of the flood plain rather than the cadastral boundary⁴⁹.
- 6.10 While Kāinga Ora accepts that it is not always appropriate to rezone areas subject to significant risk from natural hazards and has removed sites on this basis (e.g.: in Raglan), it considers it appropriate to rezone the whole of the Huntly site to MDRZ:
- (a) The Site is large and currently has a residential zoning.
 - (b) Identified flood boundaries can change as a result of updated information.

⁴⁸ Economic (Phil Osborne), Urban Design (Cam Wallace) and Planning (Phil Stickney) evidence was provided.

⁴⁹ Hearing 25 42a Report Huntly at paras 582-587.

- (c) Risk from flood hazards can be reduced through engineering solutions which enable safe levels of development to occur, particularly on a large site such as this where earthworking could provide sufficient clearance.
- (d) In any event, given the size of the site, development can be located outside the high risk flood hazard area.

6.11 Notably, the section 42A report on Ngāruawāhia adopts a different approach as the Council planner supports Kāinga Ora's where the proposed zone boundary following cadastral boundaries rather than the periphery of the flood hazard area.⁵⁰

Historic heritage

6.12 An issue arises regarding whether land in Huntly subject to a historic heritage precinct should retain lower intensity GRZ zoning⁵¹.

6.13 Kāinga Ora considers that the Council should address zoning and precincts separately. That is:

- (a) The heritage issues ought to be addressed through the site-specific precincts, which can specify whether heritage structures should be retained and, if necessary, impose site-specific bulk and location controls on new or replacement structures.
- (b) In contrast, the MDRZ would determine an outcome if, for example, the heritage precinct was removed and activity was undertaken in accordance with the underlying zoning.

MDRZ height limit and zone extent in Raglan

6.14 The Council's reporting planner is of the view that a 7.5m height standard is required in the MDRZ to manage character values in Raglan⁵². 7.5m is lower than the 8m maximum height for the GRZ recommended by the reporting planner for the Council in Hearing 10.

⁵⁰ Hearing 25 42a Report Ngāruawāhia at paras 137 and 139.

⁵¹ Hearing 25 s42a Rebuttal Huntly at section 3.2.2.

⁵² Hearing 25 42a Report Raglan at paras 203 - 206.

- 6.15 As noted in the rebuttal evidence of Kāinga Ora⁵³, due to the topography in Raglan it would be very difficult in practice to achieve two level development in many locations and landowners would struggle to achieve multi-unit development if a 7.5 m height standard was introduced. This has the potential to have significant implications for capacity able to be achieved in Raglan.
- 6.16 While the rebuttal evidence for the Council states that the revised spatial extent of the recommended MDRZ has been incorporated into the Council's updated capacity report⁵⁴ it appears that the effect of the recommended reduction in height standard has not been taken into account in that report. In those circumstances:
- (a) Council has not undertaken a cost benefit analysis of the implications for development in Raglan of the proposed reduction in height limit.
 - (b) Nor has a broader section 32AA RMA analysis been undertaken which assesses the benefits of the special character approach proposed by Council against the costs (i.e.: reduction in capacity) which will result.

A failure to consider costs in section 32 RMA terms may be a sufficient basis for disallowing proposed rules.⁵⁵

- 6.17 The NPS-UD explicitly requires an evidence based approach to planning, particularly when provisions conflict with or have the potential to compromise urban development capacity and the need for a compact urban form.⁵⁶ In that regard it is submitted that:
- (a) In terms of clause 3.11(a) of the NPS-UD, the resource management issues being managed have not been clearly identified. As noted in Kāinga Ora's feedback on the Raglan

⁵³ Hearing 25 Rebuttal Cam Wallace (Urban Design) for Kāinga Ora at paras 8.2 - 8.4.

⁵⁴ Hearing 25 Framework Report Supplementary Evidence (April 2021).

⁵⁵ *Meridian Energy Ltd v Central Otago District Council* [2010] NZRMA 477 (HC) at [106]; *Independent Māori Statutory Board v Auckland Council* [2017] NZHC 356, [2017] NZRMA 195 at [98], [99].

⁵⁶ Clause 3.11 which requires Councils "clearly identify the resource management issues being managed" and to "use evidence...to assess the different options for urban development and their contribution to achieving well functioning urban environments and meeting the requirements to provide at least sufficient development capacity".

topic, the 'special character' provisions are not spatially identified and nor are the values well defined.

- (b) To the extent that the character provisions are intended to be mapped and introduced as an overlay at some point (as is required under the National Planning Standards for provisions which identify particular values to be managed), these provisions should operate independently of the zone provisions and should not drive the zoning outcome in that location. The character values should be managed through the controls of the special character area. Downzoning the Raglan sites effectively duplicates such controls.
- (c) The NPSUD identifies "*qualifying matters*" which allow for modifications to the policies directing particular heights be achieved. Whilst Raglan is not identified as a Tier 1 urban environment and is therefore not subject to the relevant policies requiring the specified level of intensification, the qualifying matters (generally section 6 RMA matters) provide an indication of the types of matters which Central Government considers justify a reduction in building heights and density otherwise directed by the NPS-UD. Special character is not one of the identified matters.

Capacity Report

- 6.18 In response to a request from Council, Kāinga Ora provided its estimates of plan enabled theoretical⁵⁷ and feasible⁵⁸ capacity within the MDRZ broken down by suburb. That material appears to be replicated in the Council's Capacity Report.
- 6.19 It is unclear whether and how the Council has accounted in that Capacity Report for the changes recommended by its reporting officers

⁵⁷ The theoretical capacity numbers represent the number of dwellings that would be enabled under the MDRZ provisions if all of the MDRZ Land was developed to capacity, based on a typology composition reconciled with that of projected demand.

⁵⁸ The feasible capacity numbers represent the potential level of commercial feasible development specifically for the proposed MDRZ i.e.: the maximum number of dwellings that would be commercial feasible on the MDRZ Land under the MDRZ provisions. The overall feasible capacity is based on relevant typology reconciled alongside the projected demand profile for the District (by household structure demand preference)

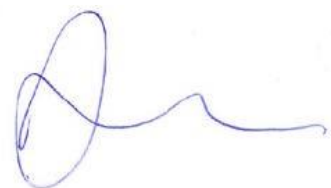
to the spatial extent of the MDRZ and particular bulk and location provisions (e.g.: height in Raglan). Those changes would reduce the capacity of the zone and, accordingly, its ability to accommodate future growth.

7. Relief Sought

7.1 For the reasons set out in the evidence, Kāinga Ora asks that you:

- (a) Adopt the MDRZ provisions as set out in Mr Stickney's rebuttal evidence at Annexure 1.
- (b) Apply the MDRZ in the manner shown on in the maps attached to the s32AA Report⁵⁹ at Appendix 2.

DATED this 13th day of May 2021



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Counsel for Kāinga Ora-Homes and
Communities

⁵⁹ Hearing 25 EIC Phil Stickney (Planning) at Annexure 1.

