

UNDER the the Resource Mangement Act 1991 ("RMA")
IN THE MATTER of Proposed Waikato District Plan (Stage 1): Hearing 3 –
Strategic Objectives

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

HEARING 3 – Strategic Objectives

1 November 2019

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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 submissions¹ lodged by Housing New Zealand Corporation (“**HNZC**”) on the Proposed Waikato District Plan (“**the Proposed District Plan**” or “**PDP**”) provisions to be addressed in this Hearing 3 – Strategic Objectives
- 1.2 In summary, Kāinga Ora’s submissions on this topic relate to alignment of the PDP with the national planning standards, ensuring that the provisions of the PDP support an efficient urban development model, the inclusion of urban design guidelines, and how the urban environment policy framework most appropriately manages the potential for reverse sensitivity effects.
- 1.3 These submissions first set out background information regarding Kāinga Ora, and in particular its role as a public housing landlord within the Waikato District, as it relates to Hearing 3 – All of Plan Matters, before addressing the relief sought by Kāinga Ora, focussing on those matters that remain outstanding between Kāinga Ora and the Council.
- 1.4 Kāinga Ora will be calling Matt Lindenberg, consultant planner, and Mr Brendon Liggett, Development Planning Manager at Kāinga Ora, in support of its case.

2. Background to Kāinga Ora

- 2.1 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. Detail around its enabling development powers will be provided in a second bill which is set to be introduced later this year.
- 2.2 Kāinga Ora has lodged detailed evidence regarding public housing in the Waikato District, the public health benefits of such housing and the role

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

Kāinga Ora has in the provision of public and affordable housing on behalf of the Government.² Further detail around Kāinga Ora's role in leading and co-ordinating urban development projects will follow once the relevant legislation has been introduced. It is also intended that Kāinga Ora will lodge additional corporate evidence in relation to the residential zones and/or rezoning topics which deals with the practical implications of these provisions for Kāinga Ora.

2.3 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.

² EIC, Hearing Topic 3, Brendon Liggett (Corporate) for Kāinga Ora, 22 October 2019.

- (d) Kāinga Ora owns or manages more than 64,000 rental properties throughout New Zealand³, including about almost 1,500 homes for community groups that provide housing services. Approximately 40% of the total public housing portfolio was built before 1967. Kāinga Ora manages a portfolio of approximately 390 dwellings in the Waikato District.⁴
- (e) Kāinga Ora's tenants are people who face barriers (for a number of reasons) to housing in the wider rental and housing market. 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 five fold increase, from 25 households in June 2016 to 159 households in June 2019.⁵
- (f) 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.
- (g) HNZA'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 effectively, so as to improve the quality and quantity of public and affordable housing that is available.
- (h) In addition, Kāinga Ora will play a greater role in urban development more generally. The legislative functions of Kāinga

³ As at June 2019.

⁴ As at 30 June 2019.

⁵ EIC, Hearing Topic 3, Brendon Liggett (Corporate) for Kāinga Ora, 22 October 2019 at 1.7.

Ora illustrate this broadened mandate and outline two key roles of Kāinga Ora in that regard:⁶

- (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.

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.⁷

3. Relief Sought

3.1 In summary, Kāinga Ora's submissions on this topic relate to alignment of the PDP with the national planning standards, ensuring that the provisions of the PDP support an efficient urban development model, the inclusion of urban design guidelines, and how the urban environment policy framework most appropriately manages the potential for reverse sensitivity effects.

3.2 These matters are addressed in turn:

Strategic Directions and Objectives for the District

Location of strategic directions / Reformatting for consistency with National Planning Standards

3.3 As outlined in Mr Lindenberg's planning evidence, the changes proposed in the s42a report to distinguish between strategic objectives and directions are supported on the basis that it provides additional clarification as to the role and relationship between the two sets of provisions.⁸

⁶ Sections 12(f)-(g) of the Kāinga Ora Act.

⁷ Section 12(f) of the Kāinga Ora Act.

⁸ EIC, Hearing Topic 3, Matt Lindenberg (Planning) for Kāinga Ora, 15 October 2019, at paras 5.1-5.5.

- 3.4 The Council, however, does not propose to relocate the strategic directions into a separate 'Strategic Directions' chapter, which would be consistent with the first set of National Planning Standards. Council instead proposes to undertake the reformatting that would be required subsequent to the PDP becoming operative.
- 3.5 Consistent the position it has taken in earlier hearings, Kāinga Ora opposes the Council's approach of deferring alignment with the National Planning Standards until after the PDP is made operative.
- 3.6 In Kāinga Ora's submission, implementing the standards and identifying all the flow on amendments to the Plan is most efficiently done through a full plan review. While the Council has 5 years (plus 2 years for definitions) to implement the standards, this will not align with a future plan review process - meaning that the process will need to be undertaken separately in the future. Deferring implementation to a later date creates a duplication of processes, meaning additional time and resource not just for council staff, but also for submitters in the context of changes that may require more than consequential amendments.
- 3.7 In short, Kāinga Ora acknowledges that the Council is not legally required to amend its plans in the manner sought by it. However, it remains strongly of the view that taking the necessary steps towards compliance with the standards now would be appropriate, efficient and good planning practice.

Objectives and Policies relating to an efficient or compact urban development model

Policy 4.1.3

- 3.8 Kāinga Ora sought amendments to Policy 4.1.3 to direct that new urban growth areas should be located within existing urban limits, and that urban subdivision, use and development in the rural environment be avoided. The Council appears to have rejected Kāinga Ora's submission point without considering it on its merits, and fails to provide any analysis of the reasons for its rejection of the submission point.

- 3.9 As outlined in Mr Lindenberg's planning evidence⁹, the benefits of providing for an efficient urban form by locating density within proximity to amenities are well established. Where urban growth expands to the outer edges of urban limits (at low densities), this has consequences for the ability for the compact or efficient urban development model to be achieved. As a result, Mr Lindenberg is of the view that these amendments are required so as to avoid the likelihood of a growth pattern which would compromise the compact or efficient urban form model.

Policy 4.1.5

- 3.10 Kāinga Ora has also sought an amendment to Policy 4.1.5 to include an additional medium density target of 30 households per hectare. Currently, Policy 4.1.5 includes one 'Residential Zone' target of 12-15 households per hectare. The medium density target sought by Kāinga Ora supports the new Medium Density zone which Kāinga Ora has sought be introduced. The Council has rejected this request on the basis that it will be addressed in a later hearing.
- 3.11 Kāinga Ora will pursue this submission point in the residential zones hearing, but takes this opportunity to reiterate the need for the provisions of the PDP to enable adequate levels of density to be provided in order to accommodate future housing demands and residential growth within the district. Providing for an additional density target in appropriate locations (i.e. in proximity to town centres and amenities) supports the provision of additional housing capacity and diversity of typologies, and allows for additional density to be provided in areas where the benefits are best realised. In Kāinga Ora's submission, retention of a single density target does not support a variety of built form outcomes being achieved across an entire district and risks comprising the ability for an efficient/compact urban form model to be provided.

Reverse Sensitivity and Policies 4.1.10 – 4.1.18

- 3.12 The Council has recommended making a number of amendments to Policies 4.1.10-4.1.18 in response to submissions by KiwiRail. The changes recommended by the Council include:

⁹ EIC, Hearing Topic 3, Matt Lindenberg (Planning) for Kāinga Ora, 15 October 2019, at paras 5.8-6.

- (a) Correcting, but also arguably fundamentally shifting, the focus of the notified PDP wording within Policies 4.1.11 Pokeno, 4.1.13 Huntly and 4.1.16 Horotiu as they relate to reverse sensitivity. As notified, the issue to be managed by the PDP was the potential for reverse sensitivity effects “from” strategic transport infrastructure “on” the development of these towns was to be avoided or minimised. As identified by Mr Matheson in his rebuttal evidence, this characterisation of reverse sensitivity effects in these policies was incorrect. The wording now proposed more correctly characterises reverse sensitivity effects insofar as they require sensitive development to ensure reverse sensitivity effects generated “on” strategic transport infrastructure is avoided or minimised. However, in doing so, the focus or burden of managing the interface between incompatible activities under these policies is shifted from the primary effects generator to the potentially sensitive activity. Kāinga Ora does not agree that is appropriate. The Council’s s42a report provides no justification or reasoning for this change, and Mr Matheson’s rebuttal evidence treats the amendment as a simple correction.
 - (b) Introducing “strategic infrastructure” into Policies 4.1.10 Tuakau and 4.1.15 Ngarauwahia as an existing activity to be protected from the effects of reverse sensitivity.
 - (c) Adding new reverse sensitivity clauses into Policies 4.1.12 Te Kauwhata and 4.1.14 Taupiri, where no previous policy existed. These clauses, however, relate to protecting against reverse sensitivity effects generated by “new” residential development.
 - (d) In addition, it is noted that Policies 4.1.17 Te Kowhai and 4.1.18 Raglan contain no specific reverse sensitivity clauses and the Council has not sought to include them.
- 3.13 The variety in wording now recommended by the Council for Policies 4.1.10-4.1.18 results in a policy framework which contains two different approaches to the management of potential reverse sensitivity effects. In some cases, development (in a general sense) is to avoid or minimise

reverse sensitivity effects on strategic transport infrastructure.¹⁰ In other cases it is only the potential reverse sensitivity effects from “new residential development” that existing strategic transport infrastructure (and other) activities are to be protected from.¹¹

- 3.14 In that regard, the Council appears (in some instances) to be conflating the issue of reverse sensitivity with the issue of incompatible activities / land use. As discussed with the Panel in earlier hearings, Kāinga Ora is concerned to ensure that the way in which potential reverse sensitivity effects are managed by the PDP provisions do not extend beyond the situations covered by existing case law¹², and do not have implications for sensitive land uses that do not in fact generate reverse sensitivity effects because they have not located in an area already subject to effects from existing effects generators, but were either lawfully established in their current locations prior to the establishment of the adjoining (generally) transport infrastructure which is itself intensifying.¹³

Residential Subdivision and Urban Design Guidelines (Appendix 3)

- 3.15 Kāinga Ora has sought the deletion of the reference in Policy 4.7.3 (Residential Subdivision) to the Urban Design Guidelines - Residential Subdivision 2018 (Appendix 3.1 to the PDP). Kāinga Ora does not oppose the use of urban design guidelines in providing further detail and guidance regarding best practice design outcomes. It does, however, oppose statutory weight being accorded to such documents through a District Plan (i.e. by requiring development to comply with them) in circumstances where they have not been subject to the Schedule 1 process.
- 3.16 As outlined in the evidence of Mr Lindenberg,¹⁴ while requiring new development to “respond to the outcomes” of the guidelines (e.g. Policy 4.7.3) is not strictly requiring development to “meet” the guidelines, it does

¹⁰ For example Policy 4.1.13 – Huntly.

¹¹ For example Policy 4.1.12 Te Kauwhata.

¹² 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.

¹³ 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.

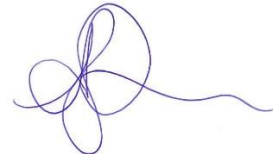
¹⁴ EIC, Hearing Topic 3, Matt Lindenberg (Planning) for Kāinga Ora, 15 October 2019, at paras 6.22-6.33.

create a level of uncertainty as to how and the extent to which a person needs to respond to a design statement. Instead, the District Plan framework should identify and articulate the built form / design outcome the Council is seeking to achieve, with non-statutory design guidelines sitting outside the plan to provide additional guidance to an applicant as to how to achieve the outcomes stated in the Plan. To that end, Mr Lindenberg's evidence suggests wording to achieve this.¹⁵

The relevant character to be considered

3.17 Mr Lindenberg's summary statement provides a planning commentary on the proposed change to Objective 4.1.7, specifically as it relates to the consideration of existing rather than planned character. This reflects the position being taken by Kāinga Ora throughout NZ (i.e. that policy direction should seek that new residential development be consistent with planned/anticipated future residential character, rather than existing character) and with the approach taken in the proposed National Policy Statement on Urban Development Capacity.

DATED this 1st day of November 2019



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¹⁵ At para 6.28.