

UNDER the the Resource Mangement Act 1991 ("RMA")
IN THE MATTER of Proposed Waikato District Plan (Stage 1): Hearing 2 –
All of Plan Matters

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

HEARING 2 – All of Plan Matters

9 October 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 covered by Hearing 2 – All of Plan Matters
- 1.2 In summary, Kāinga Ora’s submissions on this topic relate to alignment of the PDP with the national planning standards, the imposition of building setbacks for sensitive land uses and use of discretionary or non-complying activity status as the ‘default’ position where there is non-compliance with development standards.
- 1.3 These submissions are structured as follows:
- (a) Background information regarding Kāinga Ora and its roles as a public housing landlord and the leader and coordinator of urban development projects within the Waikato District, as it relates to Hearing 2 – All of Plan Matters.
 - (b) Relief sought.
- 1.4 Kāinga Ora will be calling Matt Lindenberg, consultant planner, 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.

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

- 2.2 As previously advised, detailed evidence regarding public housing in the Waikato District, the public health benefits of such housing and the role Kāinga Ora has in the provision of public and affordable housing on behalf of the Government, as well as its role in initiating, facilitating or undertaking urban development will be given in Hearing 3 – Strategic Objectives².
- 2.3 Ahead of providing that detail, a brief updated³ summary of the background information provided in opening submissions follows:
- (a) 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.
 - (b) 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.
 - (c) Kāinga Ora owns or manages more than 64,000 rental properties throughout New Zealand⁴, including about almost 1,500 homes for community groups that provide housing services. Approximately 40% of the total state housing portfolio was built before 1967. Kāinga Ora manages a portfolio of approximately 400 dwellings in the Waikato District.⁵
 - (d) Kāinga Ora’s tenants are people who face barriers (for a number of reasons) to housing in the wider rental and housing market.

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.

³ To refer to Kāinga Ora and its objectives. As noted above in fn 2, all references to HNZC are to be read as a reference to Kāinga Ora pursuant to the Kāinga Ora Act.

⁴ As at June 2019.

⁵ As at 30 June 2019.

- (e) 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; and
 - (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.

- (f) As was noted in the opening submissions⁶, in recent years the demand for social 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) HNZC's focus in recent times has been to provide social housing that matches the requirements of those most in need. To achieve this, it has largely focused on redeveloping its existing landholdings.

- (h) 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.

- (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:⁷
 - (i) initiating, facilitating and/or undertaking development not just for itself, but in partnership or on behalf of others; and

⁶ Hearing Topic – Opening Submissions, HNZC (now Kāinga Ora), Legal Submissions, 26 September 2019

⁷ Sections 12(f)-(g) of the Kāinga Ora Act.

- (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.⁸

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, the imposition of building setbacks for sensitive land uses and use of discretionary or non-complying activity status as the 'default' position where there is non-compliance with development standards. These matters are address in turn:

4. *National Planning Standards*

- 4.1 The planning evidence of Mr Lindenberg proposes a structural amendment to the PDP to provide for a dedicated 'Noise' chapter so as to align the PDP with the first set of National Planning Standards⁹, as well as generally supporting an approach of reformatting the PDP to align with the Planning Standards at this stage of the plan review standards.¹⁰
- 4.2 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

⁸ Section 12(f) of the Kāinga Ora Act.

⁹ Paragraphs 5.7-5.9.

¹⁰ Paragraphs 5.17-5.18.

for council staff, but also submitters in the context of changes that require more than consequential amendments.

- 4.3 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 and good planning practice.

5. **Setback**

- 5.1 Kāinga Ora sought the deletion of all rules for building setbacks for sensitive uses in all zones, which are rolled over from the Operative Plan. These rules require that any new buildings or alterations to buildings for sensitive land uses (including residential activities, retirement villages and health facilities) must be setback from the boundaries of land uses such as railway corridors, regional arterial roads, the Waikato Expressway and wastewater treatment facilities. The proposed setback rules would also apply to extensions / alterations to existing 'sensitive land uses' (not just the establishment of new land uses).
- 5.2 In general terms, Kāinga Ora has an issue with the extent of the building setback control proposed and the attendant issues of equity and natural justice. As noted in the planning evidence of Mr Lindenberg, applying a setback restriction on the use of land adjoining the corridor, without an equivalent setback or buffer being provided within the transport corridor, is not a balanced or equitable approach.¹¹
- 5.3 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 law¹², the sensitive land uses, have not necessarily come to the reverse sensitivity, but were either lawfully

¹¹ Paragraph 5.13.

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.

established in their current locations prior to the establishment of the adjoining transport infrastructure.¹³

- 5.4 In Mr Lindenberg's view, 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.¹⁴

6. *Default activity status where development standards not met*

- 6.1 Kāinga Ora opposes the application of discretionary or non-complying activity status where activities fail to comply with development standards and considers there should instead be provided for as a restricted discretionary activity.

- 6.2 As set out in Mr Lindenberg's evidence, giving activities a default discretionary or non-complying activity status because they fail to meet a development standard is overly restrictive and does not improve the usability of the PDP. While it is acknowledged that there may be some activities where matters over which discretion could be so wide that it is more appropriate to use discretionary status, more generally, the provision of specifically identified and targeted matters of discretion provides clarity and certainty for plan users. In particular, providing for a default non-complying activity status places an onerous burden on landowners, and is an inefficient and ineffective way of managing the effects of activities which are likely to be certain enough to be considered through, for example, consideration of the relevant objectives and policies, any specific matters identified in the relevant rule, and the effects of the infringement. In RMA terms, a default full discretionary or non-complying activity status for infringement of standards is not the "most

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.

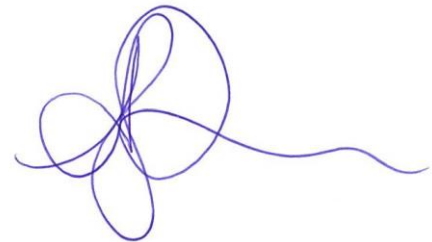
¹⁴ Paragraph 5.15. Refer *Wellington International Airport Ltd v Wellington City Council W102/97*, where the Court considered in the context of Wellington Airport, that the appropriate way of dealing with the effects of airport noise in the case of existing residential dwellings, was the noise insulation provisions, extensive monitoring of noise events and the assessment criteria – not through an effective prohibition on any further residential development.

appropriate” means of implementing the objectives of the PDP or achieving the purpose of the RMA, having regard to the benefits and costs of that approach, particularly when contrasted with a less onerous restricted discretionary activity approach.

7. Hamilton to Auckland Corridor Plan

7.1 For completeness, we record that Kāinga Ora also lodged further submissions in support of submissions seeking that the PDP be amended to provide for the outcomes set out in the Hamilton to Auckland Corridor Plan which are identified as forming part of this hearing topic. Kāinga Ora considers that, where possible, the PDP should be amended to best provide for such outcomes. However, as the relevant submitters have not called evidence on this matter in this hearing, Kāinga Ora considers it appropriate to address these aspects of its further submissions when those submitters address their relevant primary submissions in later hearings.

DATED this 9th day of October 2019

A handwritten signature in blue ink, consisting of several loops and a long horizontal tail extending to the right.

Dr Claire Kirman / Daniel Sadlier / Alex Devine
Counsel for Kāinga Ora-Homes and Communities