

UNDER the the Resource Mangement Act 1991 ("RMA")
IN THE MATTER of Proposed Waikato District Plan (Stage 1): Hearing 5 –
Definitions

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

HEARING 5 – Definitions

5 December 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 Plan**”) provisions to be addressed in Hearing 5 – Definitions, as well as submission points relating to the definitions chapter (Chapter 13) which have been allocated to subsequent hearing topics.

1.2 These submissions are structured as follows:

- (a) Background information regarding Kāinga Ora, and in particular its role as a public housing landlord within the Waikato District.
- (b) Relief sought by Kāinga Ora, focusing on those matters that remain outstanding between Kāinga Ora and the Council.

1.3 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.

2.2 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.

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

- 2.3 A second bill providing detail around Kāinga Ora's enabling development powers was introduced today, 5 December 2019 (Urban Development Bill 197-1). Counsel intends to provide the Panel with a brief update as to the contents of the Bill at the hearing on Tuesday.
- 2.4 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 Zealand², including about almost 1,500 homes for community groups that provide housing services. Kāinga Ora

² As at June 2019.

manages a portfolio of approximately 390 dwellings in the Waikato District.³

- (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 2019.⁴
- (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 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:⁵

³ As at 30 June 2019.

⁴ EIC, Hearing Topic 3, Brendon Liggett (Corporate) for Kāinga Ora, 22 October 2019 at 1.7.

⁵ Sections 12(f)-(g) of the Kāinga Ora Act.

- (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.⁶

3. Relief Sought

3.1 Mr Lindenberg's evidence and summary statement identifies the Council's recommendations which are supported by Kāinga Ora. These legal submissions only address the submission points of Kāinga Ora which have not been accepted by the Council and which Kāinga Ora still pursues.

National Planning Standards

3.2 While Kāinga Ora supports the Council's recommendation to accept Kāinga Ora's submission point (in part), and align most of the proposed definitions in the Plan with those definitions provided for in the First Set of National Planning Standards ("**Standards**"), it does not support the recommendation in the s42a report to only align the definitions which have been "submitted"⁷ on. In that regard, it is noted that Kāinga Ora's submission point 749.26 sought the alignment of all definitions in the Plan with the final Definitions Standards. To the extent that the Council considers there are only submission points seeking alignment of certain definitions, that is incorrect.

3.3 As outlined previously to the Panel in submissions and evidence, implementing the standards and identifying any flow on amendments required to the Plan is most efficiently done through a full plan review.

⁶ Section 12(f) of the Kāinga Ora Act.

⁷ Section 42a Report at paragraph 48; Rebuttal report at paragraph 14.

Kāinga Ora considers there is no rational basis for concluding that only definitions that have been submitted on should be aligned with the Standards at this stage. The remaining definitions will need to be incorporated into the Plan at a later stage in any event⁸ and, as their incorporation does not require a Sch 1 process, no issue of scope would (automatically) arise as a result of incorporating the Standards at this stage of the Plan Review. Further, in my submission, partially implementing the definitions Standard is only likely to generate uncertainty or confusion for plan users as to why some but not all relevant definitions included in the Plan reflect the national direction.

- 3.4 In short, Kāinga Ora remains strongly of the view that taking all necessary steps towards compliance with the Standards now is appropriate, efficient and good planning practice. Kāinga Ora would support a direction for expert conferencing to progress this task,
- 3.5 As an aside, Kāinga Ora notes that some minor changes to the Definitions Standard have recently been incorporated⁹, and wishes to confirm that the Council will update the Plan to reflect these amendments.

Other definitions

- 3.6 The definitions of “*Comprehensive Land Development Consent*” and “*Comprehensive Subdivision Consent*” relate specifically to the Te Kauwhata Lakeside Precinct Plan Area, and the definition of “*Landscape restoration area*”¹⁰ relates specifically to the Rangitahi Peninsular Zone. Kāinga Ora’s submission sought amendment to these definitions to remove these references on the basis that definitions in the Plan should not be location / precinct specific. Mr Lindenberg’s view is that there is benefit to retaining a definition of these terms within the Plan, so that these defined planning mechanism may be available elsewhere in the district.
- 3.7 In Kāinga Ora’s submission, the structure and content of the definition of “*Impervious surface*” proposed by it should be adopted in preference to the definition notified by Council. This is because the Kāinga Ora definition

⁸ The definitions Standards are required to be implemented within 7 years of the Standards coming into force (May 2026). This is unlikely to align with a future plan review process, meaning it will need to be undertaken separately in the future.

⁹ Minor changes to the national planning standards – Published by the Ministry for the Environment, November 2019.

¹⁰ To be addressed in a subsequent hearing.

more clearly articulates what an impervious surface is (and what it is not). Providing additional guidance around what is included and excluded from the definition by reference to surfaces which may commonly be considered in applying the definition makes it more “user friendly” and certain in its application, which in turn assists in applying the rules of the plan.

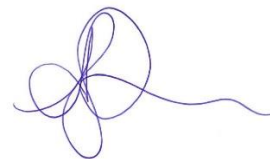
Definitions Addressed in other topics

- 3.8 A number of definitions have been allocated to subsequent hearing topics, for example: “*Duplex*”, “*Landscape restoration area*”, “*Hazard*” and “*Use*”. While Mr Lindenberg’s evidence on this topic has briefly addressed the relief sought by Kāinga Ora and reasons for it, Kāinga Ora will pursue these amendments/deletions in these later topics.

4. Conclusion

- 4.1 In conclusion, Kāinga Ora asks that you uphold the relief sought by it as outlined in these legal submissions and the planning evidence of Mr Lindenberg.

DATED this 5th day of December 2019



Alex Devine
Counsel for Kāinga Ora-Homes and Communities