UNDER the the Resource Mangement Act 1991 ("**RMA**")

IN THE MATTER of Proposed Waikato District Plan (Stage 1): Hearing 9 – Business and Business Town Centre Zones

---

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

HEARING 10 – Business and Business Town Centre Zones

12 February 2020

ELLIS GOULD
LAWYERS
AUCKLAND

REF: Daniel Sadlier / Alex Devine

Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND

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 submissions[1] lodged by Housing New Zealand Corporation ("**HNZC**") on the Proposed Waikato District Plan ("**the Plan**") provisions to be addressed in Hearing 9 – Business and Business Town Centre Zones.

1.2 These submissions are structured as follows:

(a) The evidence to be called on behalf of Kāinga Ora.

(b) Background information regarding Kāinga Ora, and in particular its role as a public housing landlord within the Waikato District.

(c) The reasons/context for Kāinga Ora's submissions in relation to this hearing.

(d) Discussion of two key legal issues arising in respect of Kāinga Ora's participation in the hearing.

2. Witnesses on behalf of Kāinga Ora

2.1 Kāinga Ora will be calling the following experts in support of its case:

(a) *Philip Osborne* – Mr Osborne is a consultant economist at Property Economics Ltd. His evidence identifies the diminishing significance of centres within the District as a result of out-of-centre growth, driven in part by a planning framework which does not incentivise growth within these areas in a manner which would enables the Centres and Business zones to compete for growth and investment. In that context, he has considered the potential outcomes of Kāinga Ora's submission from an economic perspective and reaches the conclusion that by providing for activities that would support the growth and sustainability of commercial business within centres, it would provide an increased competitive advantage for these centre and business locations

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

and therefore better meet the objectives of the proposed Plan from an economic perspective.

(b) *Cameron Wallace* – Mr Wallace is an Associate (Urban Designer) at Barker & Associates. Mr Wallace's evidence addresses the way in which ground floor residential activities have been addressed in the Business Town Centre Zone, the proposed development standards applying to multi-unit development in the Business and Business Town Centre Zones and the use and reference to Urban Design Guidelines and Character Statements. Mr Wallace concludes that the provisions of the Plan are unlikely to enable residential activities to occur in these zones and in some instances, will actively undermine positive urban design outcomes from occurring in and around the District's town centres in the manner anticipated by the strategic objectives of the Plan.

(c) *Philip Stickney* – Mr Stickney is a Senior Associate (Planner) at Beca Ltd. Mr Stickney's evidence considers the strategic directions and objectives of the Plan with respect to centres and business land. He identifies a misalignment between these provisions which are "forward looking" in the outcomes they seek, and the zone-specific policy framework and provisions which essentially seek retention of the status quo. In a context of existing centres struggling for growth and relevance, he considers greater diversity of land use mix should be enabled within these zones (with differing emphasis) so that the status quo in respect of amenity and intensity of use in these centres does not prevail.

2.2 Kāinga Ora says that the evidence that the Panel will hear from these witnesses demonstrates that the relief sought by it will ensure better alignment with higher order planning documents and deliver better urban outcomes in terms of compact and efficient urban redevelopment over time than implementation of the Plan as notified. Unless the relief sought by Kāinga Ora is granted, the Centres and Business zones will continue to struggle for relevance and out-of-centre growth will continue.

3. Background to Kāinga Ora

3.1 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. The Urban Development Bill was introduced to the House in December 2019, and provides detail around Kāinga Ora's enabling development powers.

3.2 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.

3.3 To summarise that 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 Zealand[2], including about almost 1,500 homes for community groups that provide housing services. Kāinga Ora 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

[2] As at June 2019.
[3] As at 30 June 2019.
[4] 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: [5]

(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.

(j) 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]

4. Reasons/context for Kāinga Ora's submissions

4.1 The functions of Kāinga Ora are set out in section 13 of the Kāinga Ora Homes and Communities Act 2019. Its functions in respect of urban development include as follows:

> **13 Functions of Kāinga Ora-Homes and Communities**
>
> (1) The functions of Kāinga Ora-Homes and Communities are the following:
>
> …
>
> *Urban development*
>
> (f) to initiate, facilitate, or undertake any urban development, whether on its own account, in partnership, or on behalf of other persons, including-
>
> (i) development of housing, including public housing, affordable housing, homes for first-home buyers, and market housing:
>
> (ii) development and renewal of urban environments, whether or not this includes housing development:
>
> (iii) development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services, or works:

[5] Sections 12(f)-(g) of the Kāinga Ora Act.
[6] Section 12(f) of the Kāinga Ora Act.

> (g) to provide a leadership or co-ordination role in relation to urban development, including by-
>
> (i) supporting innovation, capability, and scale within the wider urban development and construction sectors:
>
> (ii) leading and promoting good urban design and efficient, integrated, mixed-use urban development:
>
> …

4.2 Kāinga Ora's involvement should be viewed in this context. To deliver on the above purposes, Kāinga Ora is interested in the achievement of vibrant, functioning centres. The economic, urban design and planning advice that it has received in this respect is that the relief sought in its submission, including in respect of encouraging compact urban form and providing for residential development opportunities in and around centres, is consistent with these purposes, as well as better achieving the higher level policy direction already provided for in the Plan and RPS.

5. Key issues

5.1 The relief sought by Kāinga Ora is addressed in detail in the evidence of Mr Stickney, and the witnesses on behalf of Kāinga Ora have addressed the content of the Council's rebuttal evidence, where appropriate and relevant to Kāinga Ora's submission, in the summaries they have prepared for the hearing.

5.2 These legal submissions do not repeat Kāinga Ora's position in respect of each of its submission points, instead focussing on two key legal issues arising:

(a) Lack of alignment between higher level policy and lower order provisions and rules within the Plan.

(b) Existence or otherwise of scope for some appropriate changes to the provisions of the Plan.

5.3 We note that as a result of an administrative oversight the Council's planning consultant only received a copy of Kāinga Ora's planning evidence following lodgement of his rebuttal evidence. We would therefore welcome an update from the Council as to what remain as

issues in disagreement having now considered Kāinga Ora's planning evidence.

Lack of alignment between the strategic objectives and lower order provisions – NPS:UDC and the need for forward looking approach

5.4 All three expert witnesses called on behalf of Kāinga Ora identify a lack of alignment between the outcomes sought by the higher-level provisions of the Plan and the lower order provisions including the rules that primarily govern activities that can be undertaken in the zones.

5.5 The Strategic directions and objectives for the district contained in Chapter 1 are appropriately forward-looking. If properly implemented through the lower order provisions, they would appropriately achieve the purpose of the RMA and superior planning instruments. Kāinga Ora is supportive of the outcomes sought, including in particular the achievement of a compact good quality urban environment and the various social, economic and urban design benefits that flow from that. Mr Stickney in particular addresses the content and effect of these directions and objectives. In short, the policy direction of the truly "strategic" directions and policies is one of dynamic change, enablement and achievement of good outcomes to reinvigorate existing centres and communities over time. The lower order policies and rules of the Plan, on the other hand, do not flow comfortably from the higher order. They are instead focussed on maintaining the status quo in terms of ongoing activities and character.

5.6 In a context where the identified centres are declining in terms of their proportional contribution to the economic and social wellbeing of communities in the Waikato District, Kāinga Ora says it is necessary to encourage reinvestment and development in the business zones in and around these centres rather than taking a protectionist approach of retaining existing amenity and character. The approach advocated by Kāinga Ora will better achieve the Plan's own strategic directions and objectives and the sustainable management purpose of the RMA. It is also more consistent with higher level policy, including the National Policy Statement: Urban Development Capacity ("**NPS:UDC**"). In terms of the latter document, we note that the forward-looking nature of the NPS:UDC was recently considered by the Environment Court in in *Summerset*

Villages (St Johns) Limited v Auckland Council [2019] NZEnvC 173, where the analysed the NPS:UDC as follows (emphasis added):

> *[44] Turning first to the UPS, this instrument sets out matters relevant to the achievement of the purpose of the Act. It is at the top of the planning hierarchy and requires of regulatory authorities due consideration when these organisations establish their policy frameworks on the matters of urban growth and development.*
>
> *[45] Importantly, the UPS sets out its imperative as:*
>
> > *…(providing) direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, … enable urban environments to grow and change in response to the changing needs of the communities and future generations; and*
> >
> > *Provide enough space for their populations to happily live and work. This can be both through allowing development to go "up" by intensifying existing urban areas, and "out" by releasing land in greenfield areas.*
>
> *The document goes on to confirm that:*
>
> > *… the overarching theme running through this national policy statement is that planning decisions must actively enable development in urban environments…*
>
> *Within this context of proactivity, the UPS describes its intention as follows:*
>
> > *This national policy statement is about recognising the national significance of:*
> >
> > *(a) Urban environments and the need to enable such environments to develop and change; and*
> >
> > *(b) Providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.*
>
> *[46] At this point, we recognise the use of critical language in these provisions of the [National Policy Statement: Urban Development Capacity].* ***Deliberately, it seems to us, the authors of the document have deployed the words "change" and "future". Unarguably, the use of these terms intends a future focus for development planning.***
>
> *[47] Most significantly, the [National Policy Statement: Urban Development Capacity] sets out clear directions and the imperatives under which "decision makers" are to operate. In this connection, the document defines "decision makers" as "*any person exercising functions and powers under the Act." *This definition clearly embraces such entities and individuals as regulatory authorities, including unitary authorities and officers of these organisations responsible for policy formulation and similar tasks. It also includes this Court. This imposes an expectation and a presumption.*
>
> *[48] Founded on this "mission statement", key objectives contained within the document and the sub-parts of these relevant to this appeal are as follows:*
>
> > *Objective Group A – Outcomes for planning decisions*

> *OA1: Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental well-being.*
>
> *OA3: Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.*
>
> *[49] There is a clear commonality of purpose and principle to be found, on the one hand, in the theme of the UPS, set out above, and, on the other, in the particular thrust of OA3: "change**". In our view, the inescapable conclusion is apparent: the UPS gives direction to decision-makers to have regard to urban growth outcomes which have previously been under-emphasised in favour of local environmental or amenity considerations.***
>
> *[50] The UPS requires evaluation in the context of "national significance" within which planning endeavours are to be undertaken and which will allow "*(urban) environments to develop and change.*" **Accordingly, our conclusion is that a more future-oriented, outcome-focused conclusion than what might have been the case otherwise and common-place before the promulgation of the UPS is envisaged.***

5.7 While the analysis on the part of the Environment Court related to a resource consent for a multi-unit residential development in a residential zone, the analysis of the provisions of the NPS:UDC remains entirely consistent with the thrust of Kāinga Ora's submission in respect of the provisions of the business zones (and residential zones to be heard later) in the proposed Plan. Kāinga Ora is advocating for changes to the plan that are more directly enabling of development to meet the needs of future generations, and which will better reflect the future-oriented, outcome focused approach that is now required by this higher-level planning instrument. Kāinga Ora says that the lower order provisions of the Plan as notified take the now outdated approach of looking at protection of existing amenity/the existing state of the urban environment – an approach expressly rejected by the Court in *Summerset* as being inconsistent with the requirements of the NPS-UDC.

5.8 Kāinga Ora says that the changes it seeks to the provisions of the Business and Business Town Centre Zone are more appropriate that those notified, or as proposed to be amended by the s42A author:

(a) From an urban design perspective the proposed changes will assist in delivering the urban design outcomes sought by the strategic directions and objectives of the Plan in a manner consistent with good urban design practise. The provisions as currently proposed will in some instances actively undermine good urban design outcomes in and around the town centres.

(b) From an economic perspective, provision of greater capacity and flexibility for development and typology (including residential in appropriate locations) will improve outcomes consistent with the higher-level policy guidance within the Plan. The proposed provisions have the very real potential of creating an environment where appropriate levels of development cannot be achieved, reducing the competitiveness of centres and impacting upon the District's potential for non-primary economic growth.

(c) From a planning perspective, and relying upon the conclusions of Kāinga Ora's urban design and economics experts, a substantive shift is required in the policies and rules within the Business Town Centre Zone in order to give effect to the higher order Objectives or Strategic Directions in Parts 1 and 4 of the PDP, and in order to achieve the purpose of the RMA. The relevant amendments are discussed in the evidence of Mr Stickney – key amendments include:

(i) Alignment of policies 4.5.23 and 24 with the higher-level policy direction for more compact and intensive urban form in the business zones.

(ii) Amendments to the matters of discretion and conditions for multi-unit developments in the Business Zone – Rule 17.1.3.

(iii) Provision for multi-unit development in the Business Town Centre Zone – Rule 17.1.3, including removal of the ground floor level restriction and deletion of Design Guidelines.

(iv) Changes to various rules in 17 and 8 in relation to building height, daylight admission and Living Court standards.

(v) Alignment of subdivision standards with approved multi-unit developments – Rules 17.4.1.1 and 18.4.1.1.

Amendments to the Integrated Residential Development Standard and Subdivision Standard – scope issues

5.9 As notified, the multi-unit development activity rule in the Business or Business Town Centre zones did not itself specify minimum unit sizes. However, a proposal for multi-unit development must comply with minimum unit sizes by virtue of standards 17.1.3 RD1 (a)(iv) and 18.1.3 RD1(d). These standards require that a proposal for multi-unit development comply with the multi-unit development subdivision rule, which does contain a minimum unit size standard (for unit title subdivision).

5.10 The Council's s42a report recommends accepting a submission[7] from Waikato District Council and introducing a minimum unit size standard in the Multi-unit development activity in the Business Town Centre Zone. We note that:

(a) This is inconsistent with the reporting planner's discussion of the submission point, which records that a minimum unit size standard is "*unnecessary as it makes any minor non-compliance change activity status to full discretionary, and the matter is already contained within Matter of Discretion (a)(ii) – Multi-unit design guidelines*"[8]; and

(b) A similar amendment has not been recommended in relation to the Business Zone.

5.11 In rebuttal, the reporting planner reaches the view that that the minimum unit sizes standard within multi-unit subdivision rule should be deleted in the Business Zone[9] and reconsidered in the Business Town Centre

[7] 697.169

[8] Section 42a Report, para 330.

[9] Council rebuttal at para 84.

Zone[10]. He does not recommend deletion, however, because in his view there is no scope to do so.

5.12 While this was not expressly sought in Kāinga Ora's own submission, upon reflection it does support deletion entirely of the minimum unit sizes from the Plan. Furthermore, having looked at the submissions received by the Council in greater detail, Kāinga Ora's considers there is likely scope for deletion of minimum unit sizes from the subdivision rule.

Relevant principles

5.13 A brief summary of the principles relevant in demarcating the Panel's jurisdiction in respect of a submission on a proposed plan is as follows:

(a) Any decision must be fairly and reasonably within the general scope of an original submission, the proposed plan as notified or somewhere in between (*Re Vivid Holdings* [1999] NZRMA 467).

(b) Whether or not an amendment goes beyond what is reasonably and fairly raised will be a question of degree to be judged by the terms of the proposed change and the content of the submissions (*Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145).

(c) The question of whether or not an amendment is reasonably and fairly raised in the course of submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety (*Royal Forest and Bird v Southland District Council* [1997] NZRMA 408).

(d) An aspect of determining whether an amendment is reasonably and fairly raised in submissions is the "reasonable person" test. In the context of a full plan review, it is appropriate to employ a test based on what might be expected of a reasonable person in the community at large genuinely interested in the implications of the plan process for him or her (*Albany North Landowners v Auckland Council* [2017] NZHC 239).

[10] Council rebuttal at para 106.

(a) For plan changes, the submission must be “on” the plan change. Determining this involves a bipartite approach which considers whether: the submission addressed the change to the status quo advanced by the proposed plan change; and there was a real risk that persons potentially affected by such a change would be denied an effective opportunity to participate (*Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290). Note, in the case of a plan review as opposed to a plan change, the first step in the test outlined above is of reduced relevant (*Albany North Landowners*).

(b) A party is not necessarily restricted in the matters it can raise by the express words of a submission, and consequential changes which logically arise from the grant of relief requested and submissions are permissible provided they are reasonably foreseeable (Refer: *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 and *Cephas Group Ltd v Tasman District Council* [2013] NZEnvC 239).

(c) Changes can therefore extend to consequential rule changes following agreed relief regarding policy changes, provided those changes are reasonably foreseeable (See *Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166).

5.14 In Kāinga Ora’s submission, the key issues for the Panel are therefore:

(a) Whether or not the proposed relief could fairly and reasonably be considered to be within the general scope of submissions on the Plan, applying a realistic, workable interpretation of the relief sought in those submission; and

(b) Whether or not potential submitters have been given fair and adequate notice of what is proposed.

Analysis of submissions

5.15 Submission Point 310.1 sought deletion of the minimum unit areas for multi-unit development in the residential zone on the basis that it will assist in providing for affordable dwellings and minimum sizes restrict housing choice:

Amend Rule 16.4 Multi-unit development 1. 16.4.4 RD1 (a) (iv) by deleting the minimum unit areas OR replacing them with lower values e.g. Studio unit 30m^2 , One bedroom unit 40m^2 , Two bedroom 50m^2 , Three bedroom 70m^2 2. 16.4.4 RD1 (b) by adding: '(xi) Positive effects for affordable housing'

Reason for Decision Requested Affordability of housing should be enabled by the objectives and Rules of the District Plan. The cost of building has risen such that in order to retain affordability, building smaller dwellings is necessary. Having fixed minimum sizes in the rules restricts those who desire to live in a much smaller space in order to meet the Building Code and retain accessible building cost.

5.16 While the submission point is identified as relating specifically to the multi-unit development subdivision rule in the residential zone, the reasons for the submission are couched in general terms and relate to the relationship between affordability and size of dwellings, and the need for the District Plan to enable affordable housing to be provided (including by enabling a range of dwelling sizes to be provided). Given the overarching theme of the submission, Kāinga Ora says that making an equivalent change to the equivalent rule in a different chapter can appropriately be considered as falling reasonably and fairly within the scope of this submission.

5.17 In Kāinga Ora's submission, an informed and reasonable member of the public could have appreciated that the submission seeking deletion of minimum unit sizes for multi-unit development in the residential zone could also lead to the deletion of minimum unit sizes for multi-unit development in other zones, particularly in the context of a full plan review. The matter (minimum unit sizes for multi-unit development) was clearly put at issue by this (and other) submissions. To that end, Kāinga Ora says there is no risk that persons potentially affected are at risk of a "submissional side wind" which would deny them an effective opportunity to participate in the plan change process.

5.18 Submission Number 471.45 opposed the Multi-unit development subdivision rule on the basis that minimum standards should be a landuse requirement:

Plan Section Support/Oppose Decision Requested	*Plan Section Support/Oppose Decision Requested*	*Plan Section Support/Oppose Decision Requested*

16.4.4 Subdivision – Multi-unit development	***Oppose***	***Minimum unit size standards should be a land use requirement. Subdivision around existing or lawfully established units should be enabled.***

5.19 While the submission point is identified as relating specifically to the multi-unit development subdivision rule in the residential zone, the reasons for the submission are also very much couched in general terms as being opposition to inclusion of minimum unit size standards within a subdivision rule. Kāinga Ora contends that in those circumstances, making an equivalent change to the equivalent rule in a different chapter can be considered a consequential amendment. To do otherwise could lead to perverse outcomes.

5.20 In the event, however, that the Panel disagrees with Kāinga Ora in respect of the issue of scope or is otherwise not minded to delete the minimum unit size standards from the Plan in their entirety, Kāinga Ora requests that:

(a) The change sought by Waikato District Council to insert the minimum unit sizes into the multi-unit development activity rule for the Business Town Centre be declined – as the amendment is unnecessary.

(b) That the amended minimum unit sizes sought by Kāinga Ora, as discussed and for the reasons set out in the evidence of Mr Wallace and Mr Stickney be substituted for those in the notified Plan.

5.21 In that case, it would also support a direction or recommendation being made by the panel that this issue is addressed by the Council through a variation to the Plan.

Amendments to the activity status for residential at Ground Floor - scope

5.22 In response to submitter evidence regarding the activity status of multi-unit development at ground floor residential in the Business Town Centre Zone, the reporting planner's rebuttal evidence also recommends that the activity status for multi-unit development in the Business Town Centre Zone be considered as part of a variation (see paras 103 and 106).

5.23 No variation is required to consider an alternative activity status. Kāinga Ora's submission sought a permitted activity status for residential at ground floor, and a restricted discretionary activity status for multi-unit development located at ground floor (Submission ID 117-119). Accordingly, there is scope to consider alternative activity status for residential or multi-unit development at ground floor in the Business Town Centre Zone.

5.24 Kāinga Ora supports the approach outlined in Mr Stickney's evidence of introducing retail frontage controls and identifying areas that could accommodate residential uses at ground floor (at paras 6.3-6.6 and 10.3). This would be a more nuanced, appropriate and efficient approach in terms of section 32, for the management of potential conflicts in demand for residential and retail activities in these locations. Kāinga Ora would be happy to make its experts available for discussions / conferencing in respect of these issues, should the panel consider there to be merit in the proposed approach.

6. Conclusion

6.1 For the reasons given in the evidence that the Panel will hear from Kāinga Ora's witnesses today, we say that the relief sought in Kāinga Ora's submission is more appropriate than the provisions of the notified Plan, and will better achieve the higher level planning documents and the Council's stated goal of supporting the vitality and viability of existing commercial centres and compact form of urban development into the future. We ask that the Panel grant the relief sought, amended in accordance with the evidence Kāinga Ora's witnesses.

DATED this 12th day of February 2020

Daniel Sadlier / Alex Devine

Counsel for Kāinga Ora-Homes and Communities