

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS
AT WELLINGTON**

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE WHANGANUI-A-TARA

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER of the hearing of submissions on Te Manahere ā-Rohei
Tutohua the Wellington City Proposed District Plan
(**WCPDP**)

**MEMORANDUM OF COUNSEL FOR KĀINGA ORA – HOMES AND
COMMUNITIES (SUBMITTER 391; FURTHER SUBMITTER 89)
In response to Minute 27**

7 August 2023

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MAY IT PLEASE THE COMMISSIONERS

1. INTRODUCTION

- 1.1 Counsel refers to Minute 27 issued by the Panel on 27 July 2023 in relation to the Directions for the Wrap-up and Integration Hearing on the IPI Provisions for the Proposed Wellington City District Plan (**PDP**).
- 1.2 To assist with this memorandum, Kāinga Ora-Homes and Communities (**Kāinga Ora**) has reviewed the Council's Rights of Reply and supporting material for the following topics:
- (a) Hearing Stream 1 – Strategic Direction;
 - (b) Hearing Stream 2 – Residential;
 - (c) Hearing Stream 3 – Heritage; and
 - (d) Hearing Stream 4 – Centres.
- 1.3 Kāinga Ora notes that the Council's Right of Reply for Hearing Stream 5 is not yet available due to this Hearing Stream concluding today. Kāinga Ora reserves the right to seek the inclusion of any additional matters raised in that Right of Reply into the Wrap-Up and Plan Integration Hearing Stream process if required.
- 1.4 This memorandum is seeking direction on these key themes:
- (a) Outstanding submission points;
 - (b) Plan Integration;
 - (c) Plan Consistency;
 - (d) Design Guides and Provisions; and
 - (e) Interim Guidance from the Panel

2. OUTSTANDING SUBMISSION POINTS

- 2.1 Kāinga Ora has considered the list of outstanding points attached to Minute 27. Kāinga Ora is concerned that the subject matter of a number of the listed submission points has already been heard. There is a risk that the section 42A reporting officer for the Wrap Up hearing may come to a different conclusion than other reporting officers, potentially opening

the door to re-litigate matters already heard (and in some instances accepted by submitters). If this was to occur, Kāinga Ora seeks to provide additional evidence to address the updated position.

- 2.2 Further, Kāinga Ora seeks to be involved in any further discussion of the definitions for the PDP, particularly if there are any recommended changes to definitions that Kāinga Ora has already provided evidence on.

3. PLAN INTEGRATION

- 3.1 Kāinga Ora supports the intent of the ISPP wrap-up hearing and agrees that an integrated approach to the IPI/PDP is necessary in order to ensure the PDP is user friendly and has a consistent application across the planning framework.

- 3.2 However, Kāinga Ora considers there are some topics where reporting officer recommendations could result in an inconsistent approach to matters across the PDP.

Consistency with the NPS-UD, Amendment Act and the National Planning Standards

- 3.3 The Panel will be aware that Kāinga Ora has sought amendment to the PDP to ensure the NPS-UD, Amendment Act and National Planning Standards are fully and appropriately given effect to. Consequently, Kāinga Ora is concerned that the PDP, as proposed by the Council following Hearing Streams 1 to 5, will not give effect to Policy 2 of the NPS-UD due to a failure to provide sufficient development capacity across the city.

- 3.4 In particular, the evidence provided by Kāinga Ora related to:

- (a) The application of height in the Medium Density Residential Zone, High Density Residential Zone, and Centres and Mixed Use Zones; and
- (b) The application of qualifying matters without sufficient evaluation under the requirements of the RMA; which influence
- (c) The extent of zoning and scale of development enabled across the city (for example walkable catchments and building heights).

- 3.5 These matters have been heard across the Hearings Streams 1 to 4 packages. However, given the implications that these matters have for the PDP's ability to give effect to the NPS-UD and Amendment Act, Kāinga Ora considers it would be appropriate for the section 42A report for the Wrap Up Hearing to consider whether the PDP provisions are integrated and consistent across the PDP.
- 3.6 For example, and as discussed further below, Kāinga Ora is concerned that there may be integration and consistency issues if the Panel was minded to support the inclusion of the Town Centres zone, and its application to Tawa, Newtown and Miramar.
- 3.7 In that event, the Council's proposal to zone adjacent land as Medium Density Residential rather than High Density Residential would no longer be appropriate.

City Outcomes Contributions

- 3.8 Following Hearing Stream 4, the Council has made a number of proposed changes to the City Outcomes Contributions provisions in its right of reply. In short, the Council no longer considers that a guidance document is required to support the provisions, and instead proposes to amend the provisions to provide the necessary clarity to implement the City Outcomes Contributions in the PDP.
- 3.9 Kāinga Ora remains concerned about the integration between building heights sought by Kāinga Ora and the application of the City Outcomes Contribution.
- 3.10 In particular, Kāinga Ora considers the Council's proposed amendments represent a significant change from the position it presented at Hearing Stream 4 and give rise to further questions that have not been fairly tested before the Panel. Given the implications that the City Outcomes Contributions have for the application of the PDP, including the implications for the High Density Residential Zone where the current City Outcomes Contribution was not presented as evidence in Hearing

Stream 2, Kāinga Ora seeks to provide further information to the Panel as part of the Wrap Up Hearing.

Notification

- 3.11 Kāinga Ora is concerned that the notification provisions may have been applied inconsistently across Hearing Streams 1 to 5, due to different reporting officers taking different approaches.
- 3.12 Kāinga Ora considers it would be a useful exercise for the Council to consider notification application across the PDP as part of the section 42A report for this hearing stream to ensure submitters have an opportunity to reply to any potential changes required to ensure consistency.

4. PLAN CONSISTENCY

- 4.1 Kāinga Ora supports the Panel's request for advice from the reporting officers on the Style Protocols that have been applied in the development of the PDP. As the Panel will be aware, Kāinga Ora has made extensive submission on the PDP. In some instances, Kāinga Ora has sought for amendments to the PDP provisions following the section 42A reports for each of the Hearing Streams. However, in many instances Kāinga Ora has supported or remained neutral on the notified version of a provision, or the amended provision following the section 42A report.
- 4.2 Kāinga Ora is concerned that there may be variations in the application of the Council's Style Protocol which may result in changes to the planning provisions to ensure a consistent approach. These changes could have flow on effects throughout the PDP, particularly if significant changes are made to objectives or policies to ensure consistency with the Council Style Protocol.
- 4.3 It would therefore be appropriate for the Council to identify any amendments to the planning provisions that are necessary to ensure a consistent approach is achieved, so that submitters have the chance to address any changes suggested as part of the Wrap Up Hearing Process.

5. DESIGN GUIDES AND PROVISIONS

- 5.1 Kāinga Ora welcomes the opportunity to provide further evidence and legal submissions on the Council's final position on the Design Guides and associated PDP Provisions.

6. INTERIM GUIDANCE SOUGHT

- 6.1 Kāinga Ora acknowledges that the Wrap Up Hearing is not an opportunity to revisit matters on which submissions and evidence has already been heard. However, a number of topics been heard during Hearing Streams 1 to 5 which benefit from the provision of interim guidance from the Panel in case further evidence is required to assist the Panel with making its final recommendation.
- 6.2 Kāinga Ora considers interim guidance on the following topics would be of assistance:
- (a) Inclusion of a Town Centre zone into the PDP;
 - (b) The adequacy of Qualifying Matters assessments completed by the Council to date;
 - (c) Impacts of the Obstacle Limitation Surface designation on the level of intensification enabled under the MDRS and pursuant to NPS-UD Policy 3.

Inclusion of a Town Centre zone into the PDP

- 6.3 Kāinga Ora seeks the inclusion of a Town Centre zone to be included in the PDP, and for that zoning to apply to Tawa, Newtown and Miramar. The Council to date has opposed the Kāinga Ora position.
- 6.4 However, if the Panel does not support the inclusion of the Town Centre Zone, or its application to Tawa, Newtown and Miramar, consequential amendments may be required to enable appropriate intensification provisions to reflect that these areas do function differently to others with the same proposed zoning. Kāinga Ora considers these amendments include the strategic direction provisions heard in Hearing Stream 1, the residential provisions heard in Hearing Stream 2 and the Centres provisions heard in Hearing Stream 4.

Kāinga Ora therefore seeks interim guidance from the Panel on whether it supports the inclusion of the Town Centre Zones and its application to Tawa, Newtown and Miramar.

Adequacy of Qualifying Matters assessments completed by the Council to date

6.5 As the Panel will be aware, Kāinga Ora has queried whether the Council has satisfied the evaluation requirements of the RMA for Qualifying Matters under sections 77I-77L (for residential zoned land) and 77O-77R (for non-residential-zoned land) in relation to the following qualifying matters:

- (a) Character Precincts;
- (b) Mount Victoria North Townscape Precinct;
- (c) NH R-11 through the restricted discretionary activity status for hazard sensitive activities in flood hazard - inundation layer;
- (d) Air Noise Overlay (different for inner and outer).

6.6 As a starting position, it remains unclear whether the qualifying matters (in particular, the Characters Qualifying Matters) have been used to limit intensification only to the extent permitted under the Amendment Act.

6.7 It would be helpful to submitters and the Council for the Panel to provide interim guidance on whether it considers the Council has provided sufficient assessment of the qualifying matters listed above. If the Panel does not consider the Council has provided sufficient assessment on a particular qualifying matter, Kāinga Ora considers this could be an opportunity for the Council to provide further assessment and for submitters to consider that additional information.

Oriental Bay Height Precinct

6.8 In relation to the proposed Oriental Bay Height Precinct, Kāinga Ora considers that Policy 3 of the NPS-UD applies to this Precinct due to its proximity to the City Centre and provided evidence on this in Hearing Stream 2. On this basis, Kāinga Ora considers the Precinct should be zoned High Density Residential where it falls within a walkable catchment of the CCZ. However, the Council considers this area should

be zoned as Medium Density Residential. Kāinga Ora considers the Council approach effectively applies a qualifying matter to the Precincts, but without completing the necessary assessment.

- 6.9 Kāinga Ora therefore seeks interim guidance on whether it considers Policy 3 of the NPS-UD has been applied correctly for the Oriental Bay Height Precinct. If guidance is not provided, Kāinga Ora considers it would be appropriate for the Council to provide further information on this matter in the section 42A report for the Wrap Up Hearing, to provide submitters the opportunity to respond to the Panel.

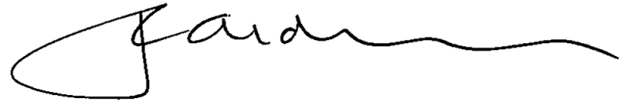
Impact of the Obstacle Limitation Surface on intensification obligations

- 6.10 As outlined at the hearing on Friday 4 August, Kāinga Ora has recently become aware of that the Obstacle Limitation Surface (**OLS**) which forms part of the Wellington International Airports Designation (WIAL 1) has now been mapped in the PDP/e-Plan/GIS viewer.¹ It appears from the updated PDP maps that the application of the OLS is extensive and is likely to have a significant impact on the ability to develop properties over an 8m threshold without obtaining written approval from WIAL in accordance with section 176 of the RMA.
- 6.11 Kāinga Ora acknowledges that the Council does not consider the application of the OLS to be a qualifying matter and that it has the discretion not to assess it as such. However, the Council made this decision when the full extent of the OLS was not available due to a lack of GIS data and mapping. The extent of the OLS application now appears to be extensive and is likely to impact the Council's ability to meet its development capacity requirements under the NPS-UD and the Amendment Act. Kāinga Ora therefore seeks guidance from the Panel on how the impact of the OLS should be assessed and whether the Council should present further evidence on the extent to which the OLS could constrain otherwise enabled intensification.
- 6.12 Kāinga Ora seeks an opportunity to respond to any further information provided by either WIAL or the Council in relation to the OLS. However, irrespective of the qualifying matter point, Kāinga Ora considers it would be prudent of the Council to complete a development capacity

¹ The PDP Planning Maps were updated on 27 July 2023.

assessment with its proposed zoning with the OLS overlay to understand whether the PDP will meet the development capacity required for the City.

Dated 7 August 2023

A handwritten signature in black ink, appearing to read 'J Caldwell', written in a cursive style.

Jennifer Caldwell
Counsel for Kāinga Ora – Homes and
Communities