

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

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE
O TE WHANGANUI-A-TARA**

**IN THE MATTER of the Resource Management Act 1991
AND**

**IN THE MATTER of the hearing of submissions on Te Mahere -
Rohei Tūtohua the Wellington City Proposed
District Plan**

HEARING TOPIC: Stream 5 – Noise

**STATEMENT OF PRIMARY EVIDENCE OF BRENDON LIGGETT
ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES**

(CORPORATE - NOISE)

18 JULY 2023

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1. EXECUTIVE SUMMARY

- 1.1 My name is Brendon Scott Liggett. I hold the position of Manager of Development Planning within the Urban Planning and Design Group at Kāinga Ora – Homes and Communities (**Kāinga Ora**) and am presenting this evidence on behalf of Kāinga Ora.
- 1.2 This corporate evidence is specifically on the noise provisions in the Wellington City Proposed District Plan (**PDP**) and should be read in conjunction with my corporate evidence filed on District-wide matters, also dated 18 July 2023.
- 1.3 Overall, Kāinga Ora generally supports the direction taken by the Council officers in the section 42A report and amendments made to date on the noise provisions in the PDP. However, there remains a number of key areas in the noise provisions that have not addressed the relief sought in the Kāinga Ora submission.
- 1.4 This evidence provides a summary of the Kāinga Ora submissions on the Noise Provisions in the PDP, including the rationale for the relief sought, such as:
 - (a) The interrelationship of noise provisions with the application of the National Policy Statement on Urban Development 2020 (**NPS-UD**) and the Resource Management (Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**);
 - (b) The inclusion of noise provisions adjacent to State highways and rail corridors in the PDP;
 - (c) The approach to development and use of land under the aircraft noise overlays of Wellington International Airport; and
 - (d) The approach to residential development and use in Courtney Place in the Wellington City Centre.

2. INTRODUCTION

- 2.1 My name is Brendon Scott Liggett. I hold the position of Manager of Development Planning within the Urban Planning and Design Group at Kāinga Ora.
- 2.2 I hold a Bachelor of Planning from the University of Auckland. I have held roles in the planning profession for the past 20 years and have been involved in advising on issues regarding the Resource Management Act 1991 (**RMA**) and District Plans.
- 2.3 My experience has been set out in the evidence filed on Hearing Topic Stream 1 – Strategic Direction for this PDP.
- 2.4 I confirm that I am authorised to give corporate evidence on behalf of Kāinga Ora in respect of the PDP. This corporate evidence should be read in conjunction with the corporate evidence presented on District-wide matters, also dated 18 July 2023. This corporate evidence focuses on the specific relief sought on the submissions related to Noise Provisions, under General District-Wide Matters of Part 2 – District-wide Matters of the PDP.

3. REASONS FOR KAINGA ORA SUBMISSIONS ON NOISE PROVISIONS

- 3.1 In its primary submission on the PDP and consistent with other IPIs in the Wellington Region, Kāinga Ora has taken a principled approach to the application of intensification and the management of noise in areas adjacent to nationally significant infrastructure. This approach has been used as a starting point to conduct location-specific analysis to test the principles and the appropriate response within a local context.
- 3.2 The proposed noise provisions in the PDP raise for consideration the appropriate balance to be struck between maximising transport efficiency through locating urban development near transport routes and maintaining the health and amenity of residents having regard to the adverse effects that can be generated by transport infrastructure

(encompassing of rail, road and air). That involves consideration of who (i.e.: the effects generator or receiver) should be responsible for responding to and addressing any adverse health and amenity effects that may arise from the proximity of residential development and transport routes.

3.3 Overall, Kāinga Ora generally supports the direction taken by the Council officers in the section 42A report and amendments made to date. However, Kāinga Ora considers there remains a number of key areas that have not addressed the Kāinga Ora concerns and relief sought in its submission. In particular, Kāinga Ora opposes:

- (a) The 'blanket' distance corridors from State highways and rail corridors – the effects as generated from rail and State highways require a set distance from the activity which, as identified in the PDP, have not been modelled or mapped based on the experienced dBA across the urban areas to establish the effects on health and amenity. This blanket approach is not supported by Kāinga Ora. Kāinga Ora seeks that the corridors are spatially modelled and based on the actual effects, and, if they are to be regulated on the receivers, then they should be shown in the PDP. Furthermore, considering that the existing environment around these transport corridors already includes residential activity, any ongoing use and development of this land for urban living is not considered by Kāinga Ora to be out of character.
- (b) The proposed controls on the density of development and use of land under the aircraft noise overlays – while Kāinga Ora acknowledges that the aircraft noise overlays are based on the contour modelling in relation to the Wellington International Airport Limited (**WIAL**) designation, Kāinga Ora is opposed to the overlay itself being utilised as a method in the Plan to manage the density of development. Kāinga Ora seeks that the provisions within the noise overlay be focussed on setting appropriate standards to achieve the

desired level of indoor health and amenity for building occupants via implementation of acoustic insulation and ventilation.

- (c) The restrictions on residential development in the Courtney Place Noise Area – while Courtney Place is identified as a prominent area for night-time activities that can generate noise levels in the city centre, the justification for limiting residential development within this environment is unclear to Kāinga Ora. Kāinga Ora is of the view that where the noise is managed internally, mixed use developments are an appropriate and viable development within the City Centre and this is already provided for, and enabled by the City Centre Zone. Proposed controls in Courtney Place should allow for residential activity and development.

3.4 It is acknowledged, however, that:

- (a) Unmitigated noise and vibration from transportation activities and corridors has the potential to adversely affect the health and wellbeing of occupiers of noise sensitive land use activities adjacent to those corridors; and
- (b) In addition to other methods outside of the Plan, District Plan rules (including terms and conditions of transport designations that mitigate adverse health effects at source) may be an appropriate mechanism to manage the potential for adverse effects of noise and vibration from transportation corridors on noise sensitive land uses.

3.5 Where Kāinga Ora diverges with the position of the transport authorities and, to a lesser extent, the Council, is with respect to:

- (a) Whether there is any evidential basis establishing a reverse sensitivity effect on the transport networks;
- (b) Whether there is any basis for imposing controls on noise sensitive land uses in the Wellington City District Plan;

- (c) If so, the type and spatial extent of any controls that are necessary and appropriate to manage adverse effects; and
 - (d) Who should bear the burden (cost) of managing these effects, particularly in existing residential areas.
- 3.6 In relation to (a) above, Kāinga Ora has not seen any information that demonstrates a reverse sensitivity effect arises at the interface between the transport environment and noise sensitive activities.
- 3.7 In respect of (b) above, Kāinga Ora does not consider there is an ability to assess in section 32 terms whether there is a basis for imposing controls on receivers without understanding the actual levels involved, the potential health risks; the options to mitigate at source or between source and receiver; and how potential adverse health effects for existing receivers will be addressed by the relief sought by infrastructure providers.
- 3.8 In relation to (c) and (d) above, the Kāinga Ora view is that the issue could be managed through:
 - (a) The transport authorities mitigating their effects at source and as far as is practicable (e.g.: by adopting the Best Practicable Option) (“**At Source Mitigation**”).
 - (b) Undertaking works in areas where noise sensitive land uses exist or are provided for by the underlying zoning, and, where necessary, introducing controls in the receiving environment to deal with effects that cannot be internalised following the adoption of the BPO (“**Receiving Environment Mitigation**”).
- 3.9 Kāinga Ora considers there are a range of mechanisms that might be used to reduce the noise or vibration generation at source and to attenuate potential adverse effects in the receiving environment, for example:
 - (a) Removing or reducing the nuisance at source (e.g.: by improving the quality of the road or rail surface, imposing speed limits and implementing maintenance and repair

regimes that minimise noise and vibration and prevent them from increasing over time);

- (b) Reducing noise levels through constructing walls or bunds; or
- (c) Undertaking mitigation works in the sensitive receiving activities (e.g.: acoustic insulation and ventilation systems; and structural measures to absorb and mitigate potential vibration).

3.10 Under the PDP as proposed, there is an obligation on landowners and occupiers to undertake Receiving Environment Mitigation but no corresponding obligation on transport authorities to provide At Source Mitigation. There are circumstances, however, where requiring authorities have taken responsibility for funding Receiving Environment Mitigation (e.g.: that undertaken by WIAL).

3.11 Kāinga Ora considers that mitigation should primarily be the physical and/or financial responsibility of the infrastructure providers and in some instances landowners and developers. It is appreciated that this allocation of responsibility will require a broader range of methods than the PDP provisions that are subject to this hearing and that such a regime would most appropriately be introduced through other methods outside of the District Plan:

- (a) The landowner/developer should be responsible where land use zoning is changed from providing for non-noise sensitive land uses to enabling noise sensitive land uses adjacent to an existing transportation corridor (e.g.: through a plan change to introduce urban zoning on land alongside an existing major transport route where the land was previously zoned rural or industrial).
- (b) The transport authorities should be responsible for mitigating potential adverse health effects of noise and vibration on adjacent sensitive land uses where:

- (i) New infrastructure is constructed or existing infrastructure is upgraded (e.g.: road upgrades involving additional traffic lanes and/or upgrades which have the effect of bringing traffic noise closer to existing sensitive activities);
- (ii) A noise sensitive land use exists adjacent to an existing transportation corridor and that land use is to be retained, expanded, intensified or renovated;
- (iii) Where the operation of the infrastructure generates potential adverse health effects on existing sensitive receivers; or
- (iv) If land is rezoned from a zone that primarily facilitates development for noise sensitive land use activities to a zone that enables the intensification of such sensitive land use activities next to existing transportation corridors.

4. APPROACH TO NOISE PROVISIONS IN WELLINGTON PDP

- 4.1 As a plan-user, facilitator, and supplier of housing and urban development within the Wellington Region, Kāinga Ora has an interest in ensuring that the district wide provisions establish a simplified and enabling planning framework, provide certainty in the resource consenting process, and are efficient and effective.
- 4.2 Kāinga Ora generally supports the direction taken by the Council officers in the Section 42A report and amendments made to date, however, Kāinga Ora considers that the amendments have not addressed all of the concerns and relief sought in its submission and that will result in unintended consequences across the Wellington City.
- 4.3 From a Kāinga Ora perspective, the amended planning framework remains vague and unclear; does not provide certainty with regard to development; and deters any form of urban development of sites

within the proximity of moderate and high noise generating activities such as motorways, rail and the airport.

Qualifying matters

- 4.4 I refer to Section 4 of my evidence submitted in relation to District-Wide Matters for the position of Kāinga Ora as it relates to the application of the NPS-UD, including qualifying matters and the evaluation requirements under the RMA.
- 4.5 In relation to noise provisions, Kāinga Ora has specific concerns with the identification of qualifying matters and the failure of the section 32 Report and section 42A report to address the requirements of the NPS-UD and Amendment Act in relation to urban development of land adjacent to noise generated from infrastructure. Kāinga Ora does not consider that that density standards should restrict or inhibit development of land as proposed as a qualifying matter, particularly where mixed use and residential development is otherwise appropriate.
- 4.6 Primarily, in seeking to establish a qualifying matter, the Council and transport authorities have failed to establish how the issue identified relates to the safe or efficient operation of nationally significant infrastructure¹, or is another qualifying matter under section 77I(j), and that the evaluation requirements of sections 77J and 77L have been met. As such, if a qualifying matter is to be introduced, Kāinga Ora seeks that Council complete the required assessment in accordance with the RMA.

Reverse Sensitivity Effects

- 4.7 Kāinga Ora questions the reverse sensitivity provisions in the PDP relating to the management of noise, in that it is not aware of any evidence of existing infrastructure activities being restricted due to the presence of sensitive activities nearby. The current wording of the provisions has the potential to disproportionately compromise

¹ s77I(e), RMA

development potential where there is no actual adverse reverse sensitivity effect.

- 4.8 The proposed provisions promote notification for noise sensitive development adjacent or in the proximity of high and moderate noise generating activities despite controls being set out within the District Plan to manage the acoustic environment. Kāinga Ora considers that the effects of reverse sensitivity should be assessed on a case by case basis, with a focus on the health and well-being of people and communities, and considered in relation to the specific land use and development proposed. As identified in the evidence of Mr Lindenberg, health and wellbeing is not compromised within a well-designed dwelling.
- 4.9 Kāinga Ora considers that, to the extent that such rules are warranted, they should be refined to apply to health and amenity effects and not to reverse sensitivity.
- 4.10 To establish that there is a risk of reverse sensitivity, the transport authorities or Council would need to demonstrate that noise complaints from new land uses is likely to result in unreasonable restrictions being placed upon network operations. Kāinga Ora has received no evidence that this is the case.
- 4.11 Further, at this stage Council has not yet introduced evidence-based reasoning for the protection of transport authorities from appropriate development as per the argument identified above under section 32. Further, a zoning application is considered inappropriate when the policy should relate to effects and the dBA level within noise sensitive dwellings. It is considered that spatial mapping can be done to an extensive level which can appropriately identify noise effects rather than blanket applications through the Plan provisions.

Appropriate land use and development adjacent to infrastructure

- 4.12 As it stands at the moment, the controls as notified in the PDP will impact on landowners and occupiers, and in practice will both restrict, and add cost to, the activities that can be undertaken on land. This is

of particular importance on land that has not been designated, and where the relevant authorities are not proposing to mitigate effects at source or through funding improvements to existing dwellings (which are already subject to an allegedly unacceptable level of noise and will continue to be), with the exception of the quieter homes programme in relation to Wellington Airport.

- 4.13 Given that the transport authorities have elected not to acquire the land in proximity to their networks that the proposed District Plan has deemed as affected, it is appropriate for any regulation to be applied only where there is an evidential basis that establishes a need for that regulation.
- 4.14 Further, it is possible to model the noise effects area relatively precisely. If the noise distances are measured based on a dBA scale rather than a set distance, then this will more appropriately model the effects and whether non-source mitigation is required for the development of noise sensitive activities.
- 4.15 The rules and standards as amended in the section 42A report limit urban development within areas where development would otherwise be appropriate. Kāinga Ora opposes any provision which seeks to limit the density to one dwelling per site or requires limited notification, namely the requirement for authorities to provide affected party approval for any development exceeding one residential unit within certain overlays. Kāinga Ora considers that the mapping as proposed with the exception of the airport inner noise overlay has not been appropriately demonstrated within the section 32A report as a qualifying matter.

Acoustic Insulation and Ventilation Requirements

- 4.16 Kāinga Ora considers that the proposed acoustic treatment and ventilation requirements can be simplified. As it stands, the proposed standards impose an onerous cost on development in excess of what is necessary, while no similar requirement is placed on noise generating activities to avoid the adverse health effects on communities that their activities generate under the notified PDP.

- 4.17 The provisions proposed and requested raise for consideration the appropriate balance to be struck between maximising transport efficiency through locating urban development near transport routes on the one hand, and maintaining the health and amenity of residents having regard to the adverse effects that can be generated by transport infrastructure on the other. The noise standards as addressed in the evidence set out by Mr Lindenberg include providing a permitted activity pathway to provide certainty and minimisation of compliance costs for property owners and developers.
- 4.18 It is also noted that technological changes and innovation are substantially changing the noise generating activities and such innovations have the potential to drastically reduce the noise associated with activities over time and as such there is the potential for these spatial extents to fluctuate over time, rather than for fixed spatial applications to be applied (e.g. electric vehicle uptake).
- 4.19 As identified above, in Kāinga Ora's view, mitigation should in many instances be the physical and/or financial responsibility of the infrastructure providers and landowner/developers.

Notification to Affected Parties

- 4.20 Kāinga Ora opposes the provisions to notify specific transport authorities as an affected party when a rule or standard is infringed. Kāinga Ora is unclear on how transport authorities are affected by the landowner or occupant specifying an internal acoustic environment different to that specified by the rules of the District Plan.
- 4.21 This issue is further complicated by the fact that the notification rule, as currently proposed, would require WIAL to be notified as an affected party to a resource consent application, even when the relevant District Plan standards relating to acoustic insulation and / or ventilation are being complied with – creating a potentially time consuming and costly additional consenting burden (e.g. obtaining affected party approvals) for applicants, with no clear benefit to the timely processing of such consent applications.

Other Provisions

- 4.22 Kāinga Ora supports the repetition of conditions from the designation within the district plan as proposed in the PDP as this provides Council with an additional enforcement tool for managing effects generated by third parties.

Brendon Scott Liggett

18 July 2023