

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

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

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

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

**HEARING TOPIC** **Wrap Up Hearing – ISPP Provision**

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**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA - HOMES  
AND COMMUNITIES**

**Dated: 15 September 2023**

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## **MAY IT PLEASE THE COMMISSIONERS**

### **1. INTRODUCTION**

- 1.1 These submissions and the evidence to be called are presented on behalf of Kāinga Ora - Homes and Communities (**Kāinga Ora**) in relation to Te Mahere ā-Rohe i Tūhono the Wellington City Proposed District Plan (**PDP**) for the Wrap Up Stream – ISPP Provisions.
- 1.2 These submissions should be read together with the legal submissions presented on behalf of Kāinga Ora for:
- (a) Hearing Stream 1: Strategic Overview, which set out the Kāinga Ora statutory mandate and provided initial comments on the statutory assessment framework;
  - (b) Hearing Stream 2: Residential, which provide more detailed comments on the statutory context that the PDP must give effect to, and which set out the Kāinga Ora position on the extent of the qualifying matters assessment that is required under the National Policy Statement on Urban Development 2020 (**NPS-UD**) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Act**);
  - (c) Hearing Stream 3: Heritage, which outlined the Kāinga Ora position on the Mount Victoria North Townscape Precinct and the Heritage Design Guide;
  - (d) Hearing Stream 4: Centres, which set out the Kāinga Ora position on ensuring consistency at a regional level and alignment with national direction; and
  - (e) Hearing Stream 5: General District Wide Matters, which set out the Kāinga Ora position on the Natural Hazards, Earthworks, Subdivision, Three Waters and Noise provisions.
- 1.3 In addition to the Council's Section 42A report and evidence for this hearing stream, these submissions also respond to the following minutes issued by the Panel:
- (a) Minute 29: Wrap-up Hearing – Plan Integration Matters, which provided guidance on what matters could be heard at this hearing; and

- (b) Minute 31: Hearing Stream 4 – City Outcomes Follow-up, which included a legal opinion from James Winchester on the City Outcomes Contribution Policy, dated 8 August 2023.

1.4 These legal submissions address the following matters:

- (a) Design Guides;
- (b) City Outcomes Contributions; and
- (c) Obstacle Limitation Surface.

## 2. DESIGN GUIDES

- 2.1 As the Panel will be aware, Kāinga Ora opposed the inclusion of Design Guides in the PDP and instead sought that the Design Guides be removed from the PDP and be treated as non-statutory tools, to sit outside of the PDP.<sup>1</sup>
- 2.2 Following direction from the Panel for the urban design experts to conferencing on the Design Guides,<sup>2</sup> Mr Rae, Urban Designer and Landscape Architect for Kāinga Ora was an active participant, and attended all sessions either in person or online.<sup>3</sup>
- 2.3 Following the expert conferencing and the joint witness statement,<sup>4</sup> the Council continues to maintain its position that the Design Guides should remain as a statutory component of the PDP.<sup>5</sup>
- 2.4 However, Kāinga Ora still considers the Design Guides should sit outside of the PDP as a non-statutory document.<sup>6</sup> Kāinga Ora is concerned that over time, the outcomes from the Design Guides may need to change, particularly in an urban environment that is subject to intensification. Keeping the Design Guides within the PDP will require separate plan changes and a Schedule 1 process in order to make any proposed amendments operative.

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<sup>1</sup> Submission 6, Kāinga Ora-Homes and Communities, Submitter 391.

<sup>2</sup> In particular, Minute 15 from the Panel, 11 April 2023.

<sup>3</sup> Day 1: 21 April 2023; Day 2 25 July 2023; Day 3: 7 August 2023.

<sup>4</sup> Joint Witness Statement, Urban Design, 22 August 2023, Appendix 13 to the Section 42A Report for this hearing.

<sup>5</sup> Section 42A Report: ISPP Wrap-up and Integration Hearing – Part 2: Design Guides, 22 August 2023, at [24]-[32].

<sup>6</sup> Note Mr Rae has concluded that he is comfortable with the Design Guides to be a statutory document within the PDP.

2.5 Further, Kāinga Ora considers additional amendments are required to the Design Guides, irrespective of whether the Design Guides form part of the PDP or sit outside of the PDP.

2.6 While the proposed amendments to the Design Guide contents and provisions will be addressed in greater detail by Mr Rae and Mr Heale, some common amendments are that are applicable to the Design Guides collectively include:

(a) **Deletion of the Design Guide Introduction from Part 4 of the PDP:** Mr Rae considers the Design Guide Introduction chapter in the PDP is unnecessary, duplicates content from the Design Guides that will cause confusion to plan users and repeats the Strategic Objective CC-03. This sentiment is generally supported by Ms Skidmore for Ryman Healthcare Ltd and the Retirement Villages Association of New Zealand,<sup>7</sup> and Mr McIndoe and Mr Burns for McIndoe Urban Ltd.<sup>8</sup> Ms Stevens for the Council now considers the retention of the Design Guide Introduction chapter in the PDP is no longer tenable and accepts the deletion of the Design Guide Introduction from the PDP. Ms Stevens considers there are two options:<sup>9</sup>

- (i) Make the Design Guide Introduction chapter a non-statutory information document that sits outside of the PDP to provide useful contextual background; or
- (ii) Delete the Design Guide Introduction chapter in its entirety.

Ms Stevens does not provide any conclusions on which option she prefers, but instead refers to Dr Zamani preferring to keep the Design Guide Introduction as a non-statutory document outside of the PDP. Kāinga Ora agrees that the Design Guide Introduction should be removed from the PDP and become a non-statutory guidance document.

(b) **Amendments to the Introduction Section within the Design Guides for Residential, Centres and Mixed Use, and Subdivision:** At section 6 of Mr Rae's evidence, he sets out a

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<sup>7</sup> Statement of evidence for Rebecca Skidmore, 5 September 2023, at [24].

<sup>8</sup> Statement of evidence for Graeme McIndoe and Andrew Burns, 5 September 2023, at [15]-[24].

<sup>9</sup> Statement of supplementary planning evidence for Anna Stevens, 12 September 2023, [21(b)]-[21(c)].

number of amendments to the Introduction Sections within the Residential, Centres and Mixed Use, and Subdivision Design Guides that he considers are necessary in order to remove duplication and to provide greater clarity on what design outcomes need to be addressed. Ms Stevens has not accepted a number of Mr Rae's proposed amendments, on the basis that the proposed amendments were not agreed to by other urban design experts involved in the conferencing process, and would undermine the agreed revisions of the Residential and Centres and Mixed Use Design Guides.<sup>10</sup> However, Mr Rae will confirm that the Introduction sections were not discussed during the expert conferencing process. Further, he considers these amendments are necessary to ensure the Design Guide succinct and user friendly. Kāinga Ora still seeks for the amendments proposed to the Introduction section of the Design Guides are incorporated into the final version of the Design Guides, irrespective of where the Design Guides sit.

### **Subdivision Design Guide**

- 2.7 The Subdivision Design Guide was not part of the scope for the expert conferencing, but it was understood that this would be reviewed by Council in light of the changes made to other Design Guides.
- 2.8 As outlined by Mr Rae,<sup>11</sup> where content in the Subdivision Design Guide overlaps with other Design Guides that have submission points on them, the Panel directed that such content is also addressed in the review of the Subdivision Design Guide. Kāinga Ora does not consider the Subdivision Design Guide review process was sufficient.
- 2.9 As a result, Kāinga Ora is concerned that the Subdivision Design Guide may conflict with the Residential or Centres and Mixed Use Design Guides, resulting in inconsistent design outcomes. Mr Rae's evidence provides some examples of where this conflict arises.<sup>12</sup>
- 2.10 Ms Stevens, in her supplementary evidence, disagrees with Mr Rae's concerns and considers it acceptable that there are differences

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<sup>10</sup> Anna Stevens, 12 September 2023, at [32].

<sup>11</sup> Statement of evidence for Nick Rae, 5 September 2023, at [10.1] – [10.3].

<sup>12</sup> Ibid, at [10.5]-[10.10].

between the design guides.<sup>13</sup> Further, she does not consider there is scope for the proposed amendments outlined by Mr Rae.

- 2.11 Kāinga Ora disagrees with Ms Stevens' position. As outlined above, Kāinga Ora sought for all Design Guides, including the Subdivision Design Guide, to be deleted in their entirety, but also sought for the opportunity to review the Design Guides if these were to remain a statutory document in the PDP.<sup>14</sup> On this basis, the Panel has scope to consider the proposed amendments outlined by Mr Rae.
- 2.12 Further, Kāinga Ora disagrees with Ms Stevens' position on the conflict between the Design Guides. For any development that involves a subdivision component, consistent design outcomes will be critical to ensuring density is done well.

### **3. CITY OUTCOMES CONTRIBUTIONS**

- 3.1 While Kāinga Ora addressed the proposed City Outcomes Contributions (COC) extensively during Hearing Stream 4: Centres, Minute 29 from the Panel granted Kāinga Ora with leave to address the changes made to the COC provisions by the Council following the Hearing process for Hearing Stream 4.
- 3.2 In principle, Kāinga Ora supports the overall intention of the COC framework to ensure that intensification and development is done well within the City. However, Kāinga Ora remains concerned with the mechanics of the provisions and the unintended implications that the COC framework will have on future development within the City Centre, Metropolitan Centre, and Local Centre zones. To address these concerns, Kāinga Ora considers further amendments are required to the Policies and COC framework provisions included in Appendix 16 of the PDP to ensure the COC framework is efficient and effective. The amendments that Kāinga Ora considers are necessary to achieve the overall intention of the COC framework are set out in Mr Heale's evidence.<sup>15</sup>
- 3.3 Kāinga Ora has considered the legal opinion from Mr Winchester which considered the validity of the approach for the COC framework, and the

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<sup>13</sup> Statement of evidence for Anna Stevens, 12 September 2023, at [43].

<sup>14</sup> Kāinga Ora-Homes and Communities, Primary Submission, Submission 391-6.

<sup>15</sup> Statement of evidence, Matt Heale, 5 September 2023, Section 8 and Appendix 1.

mandatory public notification of resource consent applications which do not give effect to the COC Policy.<sup>16</sup> Overall, Kāinga Ora supports the analysis set out by Mr Winchester. In particular, Kāinga Ora agrees with Mr Winchester's conclusions in relation to the invalidity of the proposed mandatory public notification provisions, and supports the Council's latest proposed amendments to this provision in response.

- 3.4 However, Kāinga Ora wishes to clarify one component of Mr Winchester's opinion. At paragraph [63]-[64] of his opinion, Mr Winchester noted that Kāinga Ora considered the proposed duplication of Building Act and Resource Management processes were unlawful. This is incorrect. Instead, Kāinga Ora considers the proposed duplication to be inappropriate and unnecessary, adding an addition layer of compliance to address matters that are already addressed through separate processes. This level of duplication is not efficient nor effective in terms of section 32 of the RMA.

#### **4. OBSTACLE LIMITATION SURFACE**

- 4.1 During the Kāinga Ora presentation at Hearing Stream 5, the potential implications of the Wellington International Airport's Designation WIAL 1 which applied the Obstacle Limitation Surface (**OLS**) were discussed. The updated maps identifying the extent of the OLS in the PDP were made available to the public on 27 July 2023, just before the hearing for Hearing Stream 5 commenced.
- 4.2 Kāinga Ora outlined its concerns that the full extent of the OLS application may have unintended consequences upon the Council's ability to meet its obligations under the NPS-UD, particularly in relation to Policy 2 and Policy 3; and the Enabling Act, through the mandatory application of the Medium Density Residential Standards.
- 4.3 In Minute 29, the Panel agreed that further information on the OLS application was required from the Council.<sup>17</sup> Of particular relevance to the concerns raised by Kāinga Ora, the Panel sought advice from the Council on whether the OLS process "acts as a material constraint on development in practice".<sup>18</sup> The Council provided further information on

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<sup>16</sup> James Winchester, 8 August 2023, as attached to Minute 31 from the Panel dated 11 August.

<sup>17</sup> Minute 29, 9 August 2023, at [10(iii)].

<sup>18</sup> Ibid.

the OLS designation in section 13 of the of the Section 42A report.<sup>19</sup> In short, the Council does not consider the OLS designation will act as a material constraint in practice, 'not in any significant way'.<sup>20</sup>

- 4.4 As a starting position, Kāinga Ora does not oppose the OLS designation, and understands the key safety purpose that the OLS is intended to provide for. However, Kāinga Ora does consider that the OLS may restrict landowners ability to develop land to a level of intensity that would be otherwise provided for in the PDP, in some parts of the City.
- 4.5 The Council considers the OLS designation has not required any down zoning or otherwise decreased permitted or restricted discretionary heights, and that this position has not changed between and Operative Plan and the PDP. On this basis, the Council determined that the OSL designation is not a qualifying matter.<sup>21</sup>
- 4.6 However, in practice, in some locations, the OSL may still restrict the full extent of intensification otherwise permitted by the PDP. On this basis, Kāinga Ora considers it was necessary for the application of the OSL to have been assessed in accordance with sections 77J/77K and/or sections 77P/Q.
- 4.7 A completion of the qualifying matters assessment would have addressed the issues raised in the Section 42A Report where the Council notes that there is not sufficient information to thoroughly understand and quantify the impact of the OLS on development capacity, its costs, and impacts nor alternative building heights and densities that would appropriately depart from Policy 3 of the NPS-UD or the MDRS.<sup>22</sup>
- 4.8 The Council's decision to not classify the OLS designation as a qualifying matter, and therefore not completing the necessary assessments leaves the question of whether the Council or the Panel will have met the obligations under the NPS-UD and the Enabling Act.

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<sup>19</sup> Section 42A report: Part 1 – ISPP Wrap-up hearing, 22 August 2023.

<sup>20</sup> Ibid, [360].

<sup>21</sup> Hearing Stream 1, Reporting Officer Right of Reply of Adam McCutcheon and Andrew Wharton, 14 April 2023, Appendix 5.

<sup>22</sup> Section 42A Report: Part 1 – ISPP Wrap-up hearing, 22 August 2023, at [364].



**5. EVIDENCE**

5.1 Evidence by the following witnesses has been exchanged in support of submissions by Kāinga Ora for this hearing topic:

- (a) Matt Heale – Planning; and
- (b) Nick Rae – Urban Design.

Dated 15 September 2023



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