

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS  
IN THE WAIKATO REGION**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE  
WAIKATO**

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

**IN THE MATTER** of the hearing of submissions on the Waikato IPIs – Hamilton  
CC PC12, Waipā DC PC26 and Waikato DC Variation 3

**HEARING TOPIC:** Hearing 1 - Strategic Planning Approaches

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

**Dated: 13 February 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**) to the initial hearing on the three Waikato Intensification Planning Instruments (“**IPI**”), being:

- (a) Hamilton City Council’s Plan Change 12 (“**PC12**”);
- (b) Waipā District Council’s Plan Change 26 (“**PC26**”); and
- (c) Waikato District Council’s Variation 3 (“**V3**”) to the Proposed Waikato District Plan 2022.

1.2 The IPIs have been notified in accordance with the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“**Amendment Act**”). The Amendment Act requires the introduction, through intensification streamlined planning processes (“**ISP**”) processes, of:

- (a) The planning provisions required through the objectives and policies of the National Policy Statement for Urban Development (“**NPS-UD**”) that deliver well-functioning urban environments that can change over time.
- (b) The medium density residential standards (“**MDRS**”) specified in the Amendment Act.

1.3 Kāinga Ora is participating in ISP processes across the country in accordance with its national policy direction on urban development. The extent and tenor of Kāinga Ora participation in these processes reflects its commitment both to achieving its statutory mandate and to supporting territorial local authorities to take a strategic and enabling approach to the provision of housing and the support of communities.

1.4 Kāinga Ora acknowledges the directive and compressed timeframes within which councils have been required to prepare and promulgate the IPIs, particularly where preparation of NPS-UD related growth plan changes was already well-advanced or where district plans themselves were in the middle of full review processes (as in Waikato).

- 1.5 These legal submissions will address:
- (a) Kāinga Ora and its statutory mandate.
  - (b) Contextual observations.
  - (c) The rationale for and scope of Kāinga Ora submissions on the IPIs.
  - (d) The Kāinga Ora submissions addressing two qualifying matters:
    - (i) Te Ture Whaimana.
    - (ii) Special character / historic heritage.
  - (e) The Kāinga Ora submissions seeking additional development capacity.
  - (f) Procedural matters.
- 1.6 Evidence by the following witnesses has been exchanged in support of submissions by Kāinga Ora for this hearing topic:
- (a) Brendon Liggett – Corporate evidence and Kāinga Ora representative;
  - (b) Phil Osborne – economics; and
  - (c) Michael Campbell – planning.

## **2. KĀINGA ORA AND ITS STATUTORY MANDATE**

- 2.1 The corporate evidence of Mr Liggett sets out the key statutory provisions from which Kāinga Ora derives its mandate.
- 2.2 Kāinga Ora was formed in 2019 as a statutory entity under the Kāinga Ora-Homes and Communities Act 2019, which brought together Housing New Zealand Corporation, HLC (2017) Limited and parts of the KiwiBuild Unit. Kāinga Ora and its predecessor agencies have a long history of building homes and creating communities and it remains the holder and manager of a significant portfolio of Crown housing assets. More recently the Kāinga Ora development mandate has been expanded and enhanced with a range of powers under the Urban Development Act 2020.
- 2.3 As the Government's delivery agency for housing and urban development, Kāinga Ora works across the housing development spectrum with a focus

on contributing to sustainable, inclusive and thriving communities that enable New Zealanders from all backgrounds to have similar opportunities in life.<sup>1</sup> It has two distinct roles: the provision of housing to those who need it, including urban development, and the ongoing management and maintenance of the housing portfolio.

2.4 In relation to urban development, there are specific functions set out in the Kāinga Ora – Homes and Communities Act 2019. These include:

- (a) **To initiate, facilitate, or undertake any urban development, whether on its own account, in partnership, or on behalf of other persons, including:**<sup>2</sup>
  - (i) **development of housing, including public housing and community housing, affordable housing, homes for first-home buyers, and market housing;**<sup>3</sup>
  - (ii) **development and renewal of urban developments, whether or not this includes housing development;**<sup>4</sup>
  - (iii) **development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works;**<sup>5</sup>
- (b) **To provide a leadership or co-ordination role in relation to urban development, including by-**<sup>6</sup>
  - (i) **supporting innovation, capability, and scale within the wider urban development and construction sectors;**<sup>7</sup>
  - (ii) **leading and promoting good urban design and efficient, integrated, mixed-use urban development;**<sup>8</sup>
- (c) **To understand, support, and enable the aspirations of communities in relation to urban development;**<sup>9</sup>

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<sup>1</sup> Kāinga Ora – Homes and Communities Act 2019, section 12

<sup>2</sup> Section 13(1)(f).

<sup>3</sup> Section 13(1)(f)(i).

<sup>4</sup> Section 13(1)(f)(ii).

<sup>5</sup> Section 13(1)(f)(iii).

<sup>6</sup> Section 13(1)(g).

<sup>7</sup> Section 13(1)(g)(i).

<sup>8</sup> Section 13(1)(g)(ii).

<sup>9</sup> Section 13(1)(h).

(d) *To understand, support, and enable the aspirations of Māori in relation to urban development.*<sup>10</sup>

(emphasis added)

2.5 Kāinga Ora considers that the compact urban form promoted by the Amendment Act and to be implemented through the ISP process is clearly aligned with these functions:

- (a) A compact urban form enables residents to live closer to places of employment, education, healthcare, and services such as retail. That reduces the need for travel and supports the use of public transport and active transport modes.
- (b) The intensification around centres promoted by Policy 3 of the NPS-UD further supports those outcomes while enabling the centres to increase in scale, economic activity and viability, diversity of economic, social and cultural activities, and vibrancy.
- (c) A compact urban form enables the sharing of key infrastructure such as urban roading and wastewater and water supply networks and reduces the marginal cost of construction for such infrastructure (albeit that the capacity of wastewater and water trunk networks may need to be increased).
- (d) Intensification, particularly through multi-storey development, reduces the total extent of impermeable surfaces (having regard to roading as well as building coverage) and, consequently, reduces the quantum of total stormwater runoff from urban development.
- (e) That enables an urban form that, overall, is more efficient, connected and supportive of residents while reducing or avoiding the adverse effects and inefficiencies that can arise from less compact forms of development.

2.6 Kāinga Ora considers that the IPIs represent an important opportunity to achieve demonstrable progress in undertaking those statutory functions and, in turn, to promote key statutory objectives.

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<sup>10</sup> Section 13(1)(i).

### 3. CONTEXTUAL OBSERVATIONS

3.1 The Waikato Region has characteristics that render it particularly timely and appropriate to review how future population growth should be accommodated and to revisit the urban planning strategy:

- (a) The Region, together with Auckland and Tauranga, forms part of the most populous part of the country and is becoming increasingly well connected to both of those cities, their ports and the Auckland International Airport. The connection with Auckland is recognised in the Hamilton to Auckland Corridor initiative.
- (b) The Region is connected via the rail network and major state highways to the north, south and east.
- (c) The Region currently offers a less congested location for businesses and industry than Auckland, while still providing significant cultural, economic and social attractions for potential residents.
- (d) The extent and form of the Auckland and Tauranga urban areas are influenced to a significant degree by their coastal locations on harbours and the surrounding topography, while the urban forms of Hamilton, Cambridge, Huntly and Ngāruawāhia are influenced by the Waikato and Waipā rivers. Overall, the Waikato Region's urban areas have more regular or concentric shapes as a consequence of their inland location and relatively easy topography.
- (e) While the urban areas in the Region currently contain relatively low density residential development, the distances between those residential areas and the key centres across the three districts are still relatively short. Additionally, the distribution between various centres within each urban environment, particularly in Hamilton, is also relatively short and well-connected. This spatial layout and access to centres helps movement through and around the urban areas, whether by active modes of travel (i.e.: walking and cycling), public transport or by private vehicle. The extent to which that ease of travel is retained in the future will depend on the density of future development.

- 3.2 In light of those factors, the Region is, unsurprisingly, experiencing significant population growth which is expected to continue. As a consequence, Hamilton is in the process of morphing from a provincial city to a sizeable and increasingly complex metropolitan area, with the urban areas of both Waikato District and Waipā District having supporting roles in this shift. As that occurs: congestion and travelling times will increase; the incentive to develop sub-regional commercial and employment centres (e.g.: at The Base and Ruakura) will continue to grow; and residents will increasingly look to work, shop, obtain services and entertain themselves close to their homes.
- 3.3 In that context, a compact urban form focussing in and around a number of centres will support a more efficient transport system and in particular a more comprehensive and frequent public transport system.
- 3.4 Hamilton's growth is likely to add to the attraction of the surrounding townships in both Waikato and Waipā districts. To the extent that these townships function as part of the broader regional market, intensification within them will also reinforce transport efficiencies while minimising adverse effects (notably reliance on private motor vehicles) that might arise from lower density peripheral expansion.
- 3.5 The decisions made in the context of the IPIs have the ability to enable Hamilton and the urban environments of Waipā and Waikato districts to adopt now a strategic planning framework that will ensure that the incoming population growth is accommodated in an efficient manner and with regard to an urban form that is appropriate in the long term. That might avoid in Hamilton's case the difficulties that have been faced in other cities (most notably Auckland) where it has proven challenging and expensive to retrofit residential density and a strong public transport network into an extensive metropolitan area that was designed around the private car and now has widely-spread residential areas that cannot easily be served by public transport.

#### **4. THE RATIONALE FOR AND SCOPE OF THE KĀINGA ORA SUBMISSIONS**

- 4.1 The submissions lodged by Kāinga Ora in the ISP process are intended to:

- (a) Provide leadership and innovation in the urban development sector.
  - (b) Utilise delivery experience to constructively engage with and work alongside local authorities to aid the creation of a planning framework that will see the objectives and policies of the NPS-UD realised.
  - (c) Encourage councils to take advantage of the important opportunity provided by ISP process to enable much-needed housing development adopting a place-based approach that respects the diverse and unique needs, priorities, and values of local communities through the delivery of Policy 3 of the NPS-UD.
  - (d) Optimise the ability of district plans to support both Kāinga Ora and the wider development community in the short, medium and long term to achieve government housing objectives within those communities experiencing growth pressure or historic underinvestment in housing.
- 4.2 The Kāinga Ora submissions seek to promote the vision of growth, the establishment of future urban communities and housing provision, along with the enablement of infrastructure integration as envisaged in the Amendment Act, while also creating and supporting healthy, vibrant communities. In that regard Kāinga Ora can offer a valuable national perspective to facilitate cross-boundary consistency to the implementation of the Act.
- 4.3 The Kāinga Ora submissions on the IPIs address a range of issues which will be addressed in detail through the hearings. The following broad categories cover much of the relief sought:
- (a) Submissions that relate to qualifying matters relied on by the councils to reduce the level of intensification from that which would otherwise have been required pursuant to the Amendment Act<sup>11</sup>, most notably:
    - (i) Te Ture Whaimana and its infrastructural implications; and
    - (ii) Special character / historic heritage.

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<sup>11</sup> See discussion in Michael Campbell's EIC Part 4 – Qualifying Matters.



These two matters are addressed briefly in Part 5 of these submissions.

- (b) Submissions that seek to amend district plan provisions in order to reduce or remove practical challenges that Kāinga Ora is concerned will arise for developers when working through the consenting regime for developments, even with the IPI provisions in place. These submissions generally seek to increase the development capacity enabled in the provisions. These matters are discussed briefly in Part 6 below.
- (c) Submissions opposing the approach taken to Financial Contributions due to the information provided and assessment undertaken to date. These matters will be addressed in the relevant substantive hearing.

4.4 The Kāinga Ora submissions relate to both the intensification within and around centres required under NPS-UD Policy 3 and the more dispersed intensification inherent in the MDRS. In practice, it is intensification focused on centres and along key transport corridors that will generate the greatest contribution to an efficient urban form.

## **5. KĀINGA ORA SUBMISSIONS RE KEY QUALIFYING MATTERS**

### ***Te Ture Whaimana***

- 5.1 Section 77I(a) of the RMA (as amended by the Amendment Act) provides that “*a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River*” is a qualifying matter on the basis of which a council may make the MDRS and the relevant building height or density requirements under Policy 3 less enabling of development.
- 5.2 Te Ture Whaimana has been utilised as the basis for infrastructure constraint overlays under both PC12 (Hamilton) and PC26 (Waipā). The underlying assumption appears to be that intensification will necessarily generate adverse effects in terms of water supply, wastewater and stormwater that conflict with Te Ture Whaimana and can only be addressed through constraining development and requiring infrastructure assessments.

- 5.3 The Kāinga Ora submissions disagree with that assumption. In short, accommodating population and activity growth through intensification is:
- (a) *Likely to generate similar demand for water supply as would a more dispersed form of development* - Additional capacity may need to be provided in the existing water supply network but that could occur via on-site storage, upgrading existing pipes or installing additional pipes.
  - (b) *Likely to generate similar demand for wastewater services as would a more dispersed form of development* – Again additional capacity may need to be provided to the existing network and system. Capacity can be added to the pipe network through upgrading existing pipes, installing additional pipes or on-site storage. The wastewater treatment plants will need upgrading regardless of where the growth is located.
  - (c) *Likely to reduce the total impermeable surfaces in comparison with a more dispersed form of development* – Multi-storey developments allow many dwellings to benefit from a single roof. Intensification also reduces the area of land that is set aside for roading. That suggests that accommodating growth through (well managed) intensification should generate reduced adverse stormwater effects in comparison with a more dispersed urban form.
- 5.4 Kāinga Ora is concerned that the councils may have approached this issue by comparing the effects of intensive development in accordance the NPS-UD Policy 3 and MDRS with current conditions. That is, the councils do not appear to have considered the effects of accommodating the same quantum of growth in a different, more dispersed urban form.
- 5.5 Changing district plan provisions does not in itself generate growth. Rather, it specifies how any growth that does occur might be accommodated. In that regard:
- (a) Significant growth is anticipated in the Waikato region and will need to be accommodated in some form.

- (b) There is no suggestion that Te Ture Whaimana requires a planning regime that would or could prevent further growth in the Waikato region.
  - (c) The councils need therefore to compare like with like (i.e.: what are the differences, if any, in effects generated if growth is accommodated in an intensive urban form as opposed to a dispersed urban form).
- 5.6 Finally, the IPIs are not being assessed in a vacuum or against a pristine environment. Te Ture Whaimana identifies and responds to the environmental degradation that is currently present and continuing to occur in the catchment. A wide range of measures are required to rectify those problems, most of which will relate to existing activities, conditions and infrastructure. The incorporation of suitable standards regarding new activities should ensure that they positively contribute to the health and well-being of both the Waikato and Waipā rivers. Hence, intensification should not be precluded or constrained by the plan changes to give effect to Te Ture Whaimana.

***Special character / historic heritage***

- 5.7 Section 77I(a) of the RMA (as amended by the Amendment Act) provides that a matter of national importance under section 6 is a qualifying matter on the basis of which a council may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development.
- 5.8 Section 77I(j) provides that “*any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area*” may be a qualifying matter, “*but only if section 77L is satisfied*”. These are the provisions that need to be relied on by any council that wants to provide for “*special character*”, as opposed to “*historic heritage*”, as a qualifying matter. Section 77L imposes additional obligations on a council wishing to use section 77I(j) including a detailed site-specific analysis.
- 5.9 Kāinga Ora understands that councils may consider the use of heritage and special character as qualifying matters and thereby limit the application of density. In order to do so, however, they must establish that such changes are appropriate in terms of the RMA as amended by the Amendment Act. Kāinga Ora is concerned that both Hamilton City and

Waipā District Councils have failed to comply with those statutory obligations when seeking to rely on historic heritage and special character respectively as qualifying matters.

5.10 Re Hamilton City:

- (a) The distinction between “*historic heritage*” under section 6 and “*special character*” in terms of section 7 RMA has been articulated clearly and repeatedly by the Courts. That distinction has significance in the case of the approach that has been adopted by Hamilton City Council.
- (b) Hamilton City has addressed this issue through PC9 as well as its IPI (PC12). PC9 seeks to allocate historic heritage status under section 6 RMA to significant areas of the city that have not previously been given such status. PC9 is not subject to the ISP process and will therefore be able to be appealed to the Environment Court by any submitter. That may result in PC9 being determined after the ISP process has been completed. Kāinga Ora has opposed PC9 on the basis that much of the identified areas and buildings do not qualify as historic heritage.
- (c) PC12 relies on PC9 to justify excluding the identified “*heritage*” areas from the increased building envelopes required under Policy 3 NPS-UD and the MDRS. Kāinga Ora considers that this approach is inappropriate given that it relies on assumptions to the outcome of the PC9 process. If PC9 is ultimately declined in part, or in whole, then the extent of the Policy 3 provisions and the MDRS will need to be revisited.
- (d) Whereas the Council exercised a discretion when notifying PC9, it is subject to a statutory obligation with respect to the IPI (PC12) which Kāinga Ora considers has not been complied with. The Kāinga Ora submissions therefore seek that PC12 addresses the Council’s obligations under the Amendment Act with respect to the land that is subject to PC9.
- (e) In any event, Kāinga Ora considers that the analysis undertaken by and on behalf of the Council in the context of PC9 is inadequate, and does not support the conclusions reached by Council in its

section 32 report. These matters will be addressed in the context of the PC9 hearings.

- 5.11 Re Waipā District: PC26 relies on special character as a qualifying matter to justify excluding areas from the intensification provisions. Kāinga Ora considers that, based on the material it has seen to date, the Council has not carried out an adequate site-specific analysis in terms of section 77L RMA. This is a matter that will be addressed in detail at the relevant hearing.

## **6. KĀINGA ORA SUBMISSIONS SEEKING ADDITIONAL DEVELOPMENT CAPACITY**

- 6.1 In recent years, Kāinga Ora has had a particular focus on its existing larger scale landholdings which can accommodate comprehensive redevelopments, using these sites more efficiently and effectively so as to improve the quality and quantity of public and affordable housing available for those most in need of it. Kāinga Ora is currently endeavouring to implement such redevelopment in Hamilton, which the submissions on PC12 endeavour to promote.
- 6.2 Successful developments of this nature, as well as the more standard housing developments undertaken by Kāinga Ora throughout New Zealand (which Kāinga Ora is undertaking in all three Waikato districts), are greatly supported and enabled by district plans that recognise the need for them and that provide an appropriate framework (objectives, policies and rules) that allows for an efficient and cost-effective approval process. However, not all district plans currently provide this framework.
- 6.3 The direction contained in the NPS-UD (coupled with the MDRS legislation) provides an unprecedented opportunity to address this issue. The Kāinga Ora submissions have therefore focused on plan provisions that govern critical drivers of successful urban development including density, height, proximity to transport and other infrastructure services and social amenities, as well as those factors that can constrain development in areas that need it, either now or as growth forecasts may project.
- 6.4 If these planning frameworks are sufficiently well crafted, benefits will flow to the wider development community. With the evolution of the Kāinga Ora mandate, via the 2019 establishing legislation and the UDA in 2020, the government is increasingly looking to Kāinga Ora to build partnerships and

collaborate with others in order to deliver on housing and urban development objectives. This will include partnering with private developers, iwi, Māori landowners, and community housing providers to enable and catalyse efficient delivery of outcomes, using new powers to leverage private, public and third sector capital and capacity. Local government also has a critical role to play.

- 6.5 These matters will be addressed in detailed evidence through the course of the hearings.

## **7. PROCEDURAL MATTERS**

- 7.1 Given the complexity and breadth of the IPIs and the submissions lodged by parties, Kāinga Ora considers that it would be beneficial for the panel to refer topics to mediation prior to holding hearings. That would give parties an opportunity to clarify issues, exchange information, commission research that they consider may assist, resolve any differences in technical approach<sup>12</sup>, identify respective priorities, put in place informal witness caucusing, and narrow or resolve matters.

- 7.2 In particular, Kāinga Ora asks that the councils each circulate analysis of:

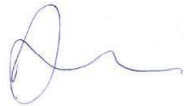
- (a) The existing infrastructure capacity and condition in Hamilton, and the urban environments of Waipā and Waikato districts (e.g.: water supply network; wastewater network and treatment plants, and stormwater management measures).
- (b) Whether, where and to what extent that infrastructure has sufficient capacity to accommodate the population and commercial growth that is anticipated over the next 10 and 20 years in terms of the urban form enabled under:
  - (i) The operative district plan provisions).
  - (ii) The district plan provisions proposed in the IPIs.

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<sup>12</sup> For example, it appears from the evidence that the economists for the councils and Kāinga Ora have taken different approaches when assessing the extent of development that might arise under existing and proposed provisions. Ideally those technical elements would be resolved before the relevant hearings occur. That might occur through parties and consultants meeting to discuss their views regarding theoretical, economically feasible and realistic levels of intensification under the various regulatory regimes.

- (c) The investment required (and any current planned investment) to upgrade and expand that infrastructure to enable the anticipated growth to be accommodated:
- (i) In locations enabled by the operative district plan provisions and any peripheral areas to be urbanised.
  - (ii) In the areas identified for intensification in the IPIs.
  - (iii) In the areas identified for intensification in the IPIs together with areas in and around centres and along key corridors (addressed in the Kāinga Ora submissions).

Dated this 13<sup>th</sup> day of February 2023



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