

Under the Resource Management Act 1991

In the matter of Hearing of Submissions and Further Submissions on the Proposed
Porirua District Plan

Evidence of Karen Tracy Williams on behalf of Kāinga Ora – Homes and Communities

10 September 2021

Hearing Stream 1 – Monday 27 September, 2pm

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CONNELL**

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1 Introduction

- 1.1 My name is Karen Tracy Williams, and I am Principal Planner at The Property Group Limited, based in Wellington.
- 1.2 I am providing planning evidence on behalf of Kāinga Ora in respect of submissions made on the Porirua Proposed District Plan (“PDP” or “the Plan”).
- 1.3 I was involved with the preparation of primary and further submissions by Kāinga Ora in relation to the PDP. I am familiar with Kāinga Ora’s corporate intent in respect of the provision of housing within Porirua. I am also familiar with the national, regional and district planning documents relevant to the PDP.
- 1.4 In preparing this evidence I have read the Section 42A reports prepared by Council staff and structured my evidence accordingly. My evidence pertains to planning matters.
- 1.5 Although this is a Council hearing, I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court’s Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

2 Expertise

- 2.1 I have a Master of Resource and Environmental Planning, (First Class Honours) from Massey University and have 15 years’ experience in working with resource management and planning matters under the Resource Management Act 1991. I am a graduate member of the New Zealand Planning Institute.
- 2.2 I have worked for local government (Wellington City Council) and in private consultancy. My experience includes the preparation and processing of applications for resource consent and the preparation of, and submissions to,

District Plans. I have also prepared evidence for, and appeared in, the Environment Court.

3 Executive Summary

3.1 My evidence relates to confined points of contention between Kāinga Ora and the recommendations of the reporting officer as set out in the Overarching or Plan Wide Matters (Part A) s 42A report. The key points of my evidence provide:

(a) A discussion regarding Kāinga Ora’s submission point **81.931** in relation to the PDP structure, insofar as it relates to the location of the transportation provisions. In this discussion, I outline the reasons that I support the relocation of transport related provisions from the Infrastructure chapter to the Transport chapter.

(b) A brief discussion on submission point **81.927** in relation to design guidelines and policies and rules requiring proposals to be “consistent” with these. I note in the discussion that the s 42A report does not clearly evaluate this submission point, but rejects it nevertheless. I also note that the directive nature of the word “consistent” could result in design guidelines being considered as quasi rules, rather than as a tool to provide guidance to the decision maker.

(c) A discussion regarding Kāinga Ora’s submission points **81.915** and **81.916** in relation to the approach taken to notification preclusion throughout the PDP and the wider rationale for seeking greater use of this tool.

3.2 In my opinion, the proposed changes sought in Kāinga Ora’s submission and discussed within my evidence, will provide a less complex and more enabling and user-friendly plan framework.

4 Scope of Evidence

4.1 Hearing Stream 1 addresses submission points relating to the PDP on Overarching or Plan Wide Matters (Part A) and Definitions and Definitions Nesting Tables (Part B).

4.2 This evidence addresses Kāinga Ora’s submission points in relation to the Overarching or Plan Wide Matters (Part A) as they relate to the recommendations

of the s 42A report on that topic. I acknowledge the recommendations made in the s 42A report on Definitions and Definitions Nesting Tables (Part B) but present no evidence in relation to this topic and these recommendations.

4.3 The submission points¹ by Kāinga Ora relevant to this hearing stream that are addressed in the recommendations of the s 42A (Part A) report relate to the following overarching topics.

- (a) PDP structure;
- (b) Incorporating documents by reference;
- (c) Use of certain terms;
- (d) Notification preclusion;
- (e) Introduction to strategic objectives.

4.4 While it is noted that the s 42A officer's report does not accept a range of submission points made by Kāinga Ora across the abovementioned topics; in the case of my evidence, I have taken a neutral stance on the submission points and s 42A report that are not otherwise discussed within this evidence.

4.5 My evidence is therefore confined to areas where I do not support the conclusions reached in the s 42A report, as they relate to the recommendations on the topics. These remaining points of contention relate to the following provisions and submission points.

- (a) Submission point **81.931** in relation to the PDP structure, insofar as it relates to the location of the transportation provisions.
- (b) Submission point **81.927** in relation to design guides and opposing any policy or rule within the PDP which requires development proposals to comply with or be "consistent" with design guidelines.
- (c) Submission points **81.915** and **81.916** in relation to the approach taken to notification preclusion throughout the PDP.

¹ 81.931, 81.934, 81.932, 81.357, 81.367, 81.368, 81.369, 81.370, 81.355, 81.927, 81.940, 81.644, 81.645, 81.251, 81.915, 81.916, 81.917, 81.909, 81.950, 81.522, 81.580, 81.686, 81.727, 81.768, 81.815, 81.903, 81.199, 81.201, 81.206, 81.209, 81.213, 81.219, 81.225, 81.228, 81.233

5 Submission

5.1 Kāinga Ora's submission seeks a planning framework that is enabling and workable, which will also assist in ensuring the Council's regulatory functions are delivered in an effective, efficient and customer-focused manner. This will help to facilitate the reconfiguration of existing housing stock within Porirua and enable Kāinga Ora to deliver public housing in an efficient and effective manner, so as to better contribute to the social and economic wellbeing of the Porirua community, including the health and safety of Kāinga Ora's tenants.

5.2 The focus of this evidence is upon plan-wide matters that I consider have the potential to create added complexity and confusion to plan users or fail to deliver efficiencies across the Plan that could otherwise be meaningfully provided for through this plan review process. The specific points described below fall in this category and are addressed for this reason.

PDP Structure

5.3 Submission point **81.931** sought that all transport related provisions be located in the Transport Chapter rather than being split between both the Infrastructure and Transport chapters.

5.4 The s 42A report does not support this, noting that the transport network is defined as being publicly owned transport infrastructure, and provisions for managing the transport network are therefore determined to be appropriately located in the Infrastructure Chapter. Conversely, the s 42a report notes that the Transport chapter addresses transport facilities on private land, and the transport effects of land use activities. The s 42A assessment also concludes that the users of the Infrastructure and Transport Chapters are network utility operators and developers respectively, both of whom are assumed to be frequent plan users and/or employ professional planners thereby reducing confusion around the scope of the chapters. For these reasons, the s 42A report rejects the submission.

5.5 I do not agree with the reporting officer. In my opinion, splitting transport provisions between the Infrastructure and Transport chapters creates additional and unnecessary complexity to the plan and creates an artificial separation of the Plan content. Users of the Plan would expect all transport related provisions to be

located in the Transport chapter, regardless of whether they relate to publicly-owned transport infrastructure or the transport network.

- 5.6 To illuminate how this may cause confusion, standard homeowners (or their engaged professionals) would be required to review the Transport chapter to determine minimum dimensions for onsite maneuvering and accessway design, and then the Infrastructure chapter to determine compliance and requirements for something as common and simple as site access design (within INF-26), which among other matters controls the number of site access points to a site, the widths of crossings, proximity of access point to an intersection, and pedestrian splays. All of these matters would ordinarily be found together in the Transport chapter. Locating some of these matters in the Infrastructure chapter, simply because this is the point at which the site connects to publicly owned transport infrastructure (the road) is, with respect, seemingly based on a theoretical application of Plan provisions, and does not put the end-user at the forefront of the focus. Based on my experience, it also would not enhance or assist with the duties of the other primary user of the Plan, being the Council processing planner.
- 5.7 As well as creating unnecessary complexity for plan users seeking to understand minimum design standards and compliance with transport related matters, the division of the provisions between the two chapters also results in the dislocation of transport related objectives and policies. When considering an application for a resource consent the decision makers must have regard to all relevant objectives and policies of the Plan or proposed plan regardless of their location within the document; however, in my opinion separating objectives and policies relevant to the transport network from those relating to high-trip generation and onsite transport facilities is a further example of the disjointed plan structure and risks provisions not being considered as a comprehensive and logical package.
- 5.8 I disagree with the underlying assumption of the dislocation that most users will be planning professionals who are sufficiently adept and unlikely to be confused. First, I do not know on what basis it is speculated that infrastructure providers or developers will be the main users of these provisions. But second, even if they are, in my view a successful plan accommodates non-professional users. If there are two available ways of structuring provisions, and professional users will be

able to easily access the relevant plan provisions either way, the more intuitive, publicly accessible way, should be adopted.

- 5.9 In my opinion a degree of consistency should be found across District Plans, including the logical structure and placement of content, to assist with navigation of the plan. In this regard, I note that section 5.2.2 of the Council's s 32 evaluation report for the Infrastructure Chapter concludes that all other District Plans that were reviewed as part of the evaluation process contained transport specific chapters, which accommodated all relevant transport provisions. The notified PDP is an outlier in this regard, and I can see no reason in the Council's s 32 analysis and s 42A reporting that would illuminate why such a bespoke approach is necessary in the Porirua context.
- 5.10 I support the submission of Kāinga Ora, which seeks the consolidation of all transport provisions within the Transport chapter, as this would reduce confusion and complexity and would provide a degree of consistency with other District Plans elsewhere in the country.
- 5.11 An amended set of consolidated transportation provisions has not been produced to reflect this submission point, as Kāinga Ora has also sought changes across the wider transport provisions, and it is anticipated that these will be addressed further in a later hearing stream.
- 5.12 For completeness in relation to this topic, I note that the submission by Kāinga Ora (**81.934**) also sought that all earthworks related provisions be located within the Earthworks chapter. This has been rejected in the s 42A report. I have reviewed the analysis by the reporting officer, which states that the National Planning Standards suggest that earthworks provisions relating to infrastructure should be located in an Infrastructure Chapter, and further, that engagement with Ministry for the Environment officials directed that where controls on earthworks are to manage effects on an overlay matter, they should be placed in that chapter. I accept the rationale and do not present further evidence in relation to this matter.

Incorporating documents by reference

- 5.13 Submission point **81.927** is referenced within section 9.8 of the s 42A report and is listed in Appendix B, Table B3 of that report. This submission point opposes any

policy or rule within the PDP which requires development proposals to comply with or be “consistent” with design guidelines. The s 42A report does not provide any specific analysis on this submission point or the relief sought; although it is noted that the submission point is rejected.

- 5.14 I support the submission of Kāinga Ora, which opposes policies and rules that require proposals to be “consistent” with design guidelines. In my opinion, use of such a directive term can have the effect of making design guidelines, which by their nature have a degree of flexibility, operate instead as quasi-rules. This is a matter that is addressed by Kāinga Ora within various submission points throughout the urban zone chapters. It is anticipated that the absence of any specific evaluation of this submission point (and the absence any reference to other submission points by Kāinga Ora that directly relate to this matter) within the s 42A report is indicative that this submission point will instead be canvassed more fully in a subsequent hearing stream. I concur with this approach.
- 5.15 For completeness, I also note that the wider Kāinga Ora submission point summarised under **81.927** supports the development of design guidelines to be used as a tool to optimise high quality design but considers that these should be located outside the District Plan as non-statutory documents. Again, this aspect of the submission has not been evaluated within the s 42A report, and other submission points relating to this matter have also not been referenced. For these reasons, it is anticipated that this matter will be addressed in subsequent hearing streams and accordingly I present no further evidence on this matter.

Notification preclusion

- 5.16 Submission points **81.915** and **81.916** supported the initial application of non-notification clauses within the notified PDP but sought greater application of this method throughout.
- 5.17 The s 42A report does not support this, noting that non-notification clauses have been used judiciously and appropriately throughout the PDP. The s 42A report further notes that consideration whether the use of the clause is appropriate in

relation to any particular provision is addressed under the s32 evaluation of that topic.

- 5.18 In relation to the latter point made by the reporting officer, I note that Kāinga Ora has made specific submission points on particular provisions/topics where more extensive use of non-notification clauses have been sought. The evidence for this hearing stream is therefore necessarily high-level, noting that submission points relating to specific provisions will be addressed in subsequent hearing streams when those topics are considered in greater detail.
- 5.19 In my opinion, non-notification clauses are an effective tool to help enable development as intended by the strategic direction of the Plan. I support the submission of Kāinga Ora that this tool has not been utilised to its full potential across the PDP. I acknowledge that the use of this tool requires careful responsibility to ensure parties are not inappropriately disadvantaged; however, as currently drafted, the PDP does not utilise this tool to the extent that it strikes the balance between ensuring effects are appropriately considered upon potentially affected parties, while meaningfully enabling development and streamlining the resource consent process.
- 5.20 Putting this in context, in zone-based chapters I consider that any infringement to development controls that are specifically intended to manage off-site effects upon neighbours should be subject to the normal tests of notification (for example height and site coverage breaches). Conversely, where infringements relate purely to development controls that seek to manage design outcomes or on-site amenity, it is my opinion that these should be subject to notification preclusions (for example onsite landscaping). In my opinion utilising the tool in this manner provides an appropriate balance between providing clear regulatory direction with regard to neighbourhood character and amenity goals, while also providing greater flexibility with regards to internal site amenity and layout considerations.
- 5.21 In my opinion, non-notification clauses can also be appropriately applied to rules where a 'public good' assessment is required that does not impact on specific individuals (such as urban design considerations). Non-notification clauses are also effectively linked to rules relating to technical standards where non-compliance with the rule would require a specialist/expert assessment to determine acceptability, but the breach would otherwise be a matter that is

unlikely to be understood by or have a direct impact on any individual (for example technical transport design standards).

- 5.22 When looking more holistically, residential development proposals often trigger consent in relation to a range of matters (for example the number of units, open space, earthworks, and accessway infringements). Where a proposal breaches any rule that does not include a non-notification clause, then the whole proposal is subjected to a s 95A and/or s 95B assessment.
- 5.23 In my opinion greater use of non-notification clauses can be appropriately utilised across the district-wide provisions, especially in relation to transport and earthworks rules. Without these, simple rule triggers could nullify notification preclusions for consents that would otherwise appropriately benefit from this tool. I note that the placement of non-notification clauses does not obviate the consent authority from needing to consider the merits of the proposal when undertaking a s 104 assessment, nor does it limit the Council in its imposition of conditions. It does, however, provide certainty to all parties around what path an application will take process-wise. In my opinion, additional and considered utilisation of this tool would provide certainty and efficiency of decision making.
- 5.24 As noted above, evidence regarding the specifics of where this tool would be more effectively used will be presented in later hearing stream(s) relevant to those topics and submission points.
- 5.25 For completeness in relation to this topic and matters addressed in the s 42A report, I note that the submission by Kāinga Ora (**81.917**) sought revised drafting of notification exclusion clauses where effects are directed to be considered on specifically identified parties (for example road controlling authorities) but are otherwise to be excluded from public and limited notification. This has been rejected in the s 42A report noting that little detail has been provided in this regard. I note that Kāinga Ora does not seek to present further evidence in relation to this matter.

6 Conclusion

- 6.1 In conclusion, I am of the opinion that the amendments sought by Kāinga Ora (as discussed in this evidence) are appropriate and will assist in improving the consistency, usability and interpretation of provisions within the Plan, including

how provisions are interpreted and implemented by both plan users and Council alike.

6.2 I consider that provisions reflecting these changes will be efficient and effective in achieving the purpose of the RMA.

Date: 10 September 2021



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Karen Tracy Williams