Under the Resource Management Act 1991

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

Submissions of Kāinga Ora – Homes and Communities

23 September 2021

Hearing Stream 1 – Monday 27 September, 2pm

MEREDITH CONNELL

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Submissions of Kāinga Ora – Homes and Communities

1 Outline

1.1 Kāinga Ora's presentation in Hearing Stream 1 focuses on:

(a) Clarifying its submission on the use of "avoid" throughout the Porirua Proposed District Plan (**PDP**);

(b) Proposing that more extensive use of notification preclusions is adopted;

(c) Reconfiguring the transport chapter to include all transport provisions.

2 Scope of evidence in Hearing Stream 1

2.1 Kāinga Ora has lodged expert planning evidence from Karen Williams in support of its position on the matters in Hearing Stream 1.

2.2 It had also intended to lodge "corporate" evidence from Brendon Liggett, Manager Development Planning at Kāinga Ora. While that could still have been done by Zoom, he prefers that this evidence is presented in person and the Covid-19 situation in Auckland precluded that course. In any event that evidence is most relevant to the urban/residential hearing stream which is to be the subject of a variation and so, subject to any preferences or directions from the Hearing Panel, it will be presented at that time.

3 Kāinga Ora and Porirua

3.1 Kāinga Ora is the Government's delivery agency for housing and urban development. It works across the entire housing spectrum to build complete, diverse communities that enable New Zealanders from all backgrounds to have similar opportunities in life. Its two core roles are:

(a) being a world class public housing landlord; and

(b) leading and coordinating urban development projects.

3.2 Kāinga Ora's statutory objective requires it to contribute to sustainable, inclusive, and thriving communities that:[1]

(a) provide people with good quality, affordable housing choices that meet diverse needs;

(b) support good access to jobs, amenities and services; and

(c) otherwise sustain or enhance the overall economic, social, environmental and cultural wellbeing of current and future generations.

3.3 Kāinga Ora owns or manages 68,169 rental properties throughout New Zealand.[2] Within Porirua, Kāinga Ora manages a portfolio of approximately 2,050 dwellings.

3.4 As for leading and coordinating urban development, Kāinga Ora's current focus is to provide public housing that matches the requirements of those most in need. Since its inception it has largely focused on redeveloping its existing landholdings.

3.5 The legislative functions of Kāinga Ora require it to provide a leadership or coordination role more generally on plan development and planning practice, especially in respect of urban development and the associated network and transport infrastructure required. This has been reflected in Kāinga Ora's lengthy and detailed submission on the Porirua Proposed District Plan (**PDP**).

3.6 Kāinga Ora's concern that the PDP does not meet the outcomes necessitated by the National Policy Statement on Urban Development 2020 (**NPS-UD**) will be addressed through a plan variation and need not therefore be addressed in this hearing stream.

4 Use of "avoid" in the PDP

4.1 With respect, it seems as if this submission has been misconstrued.

4.2 Submission point 81.940 relates to paragraph 34(y) of Kāinga Ora's submission. Paragraph 34 takes the form of a general summary of the points made and relief sought in Attachment 1 to the submission. Attachment 1 contains a table of the

1 Kāinga Ora – Homes and Communities Act 2019, s 12.
2 As at June 2021.

specific chapters and provisions in the PDP that Kāinga Ora either supports, seeks amendment to, or opposes.

4.3 Paragraph 34(y) reads:

> Amendments are sought throughout the PDP to remove reference to 'avoiding' such activities, in favour of the term 'discourage', or inclusion of qualifying statements given the specific meaning that 'avoid' has following on from [*King Salmon*].

4.4 Kāinga Ora is not suggesting that every time the word "avoid" appears in the PDP it should be substituted for "discourage" or qualified. This ought to have been clear from a review of Appendix 1 which contains a number of examples of objectives or policies which include the word "avoid" and to which Kāinga Ora seeks no amendment or qualification. Two early examples identified by using the CTRL-F function for the word "avoid" are HO-O2, and INF-O5.

4.5 As well, and necessarily, alignment of a particular "avoid" policy with higher order planning documents will from time to time be required.

4.6 That being the case, Kāinga Ora has not sought to address, in this hearing stream focused on the mechanics of the PDP, each and every use of the word "avoid". For that reason its evidence has not addressed specific provisions and it reserves its position for future hearing streams where the use of "avoid" can be addressed on a provision-by-provision basis. We note that a similar approach has been taken to the word "minimise" by Transpower.[3]

5 Notification Preclusions

5.1 This approach may also be appropriate in respect of notification preclusions. In short, Kāinga Ora is concerned that the PDP misses an opportunity by not using notification preclusions more frequently. By contrast the s 42A report writer considers that they have been used judiciously and appropriately. With respect, that is not in doubt. They could be adopted more frequently as a tool and still be both judiciously and appropriately used.

5.2 Kāinga Ora's submission identifies numerous individual rules where a notification preclusion has not been included but where Kāinga Ora considers it ought to be.

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3 See the evidence of Pauline Whitney dated 10 September 2021 at [1.9].

5.3 The benefits of notification preclusions are that they make the consenting process more efficient – not only because notification is avoided, but the AEE may be drafted without having to determine whether the effects of the proposal trigger the thresholds for public or limited notification (depending on the relevant preclusion).

5.4 However, because of the application of the doctrine of "bundling", the efficiency of notification preclusions is lost if preclusions are not provided for all rules likely to be triggered in common applications. "Bundling" is the term given to the principle of applying the most restrictive activity status to a resource consent application involving several linked or overlapping activities that have different activity statuses. Its purpose is to ensure that applicants do not divide up applications into smaller applications so as to avoid consent authorities from having the full picture, or only being able to consider certain effects, when determining resource consent applications.

5.5 The text of ss 95A and 95B of the RMA have been drafted with bundling in mind:

(a) For public notification:

(i) at Step Two the council is not permitted to publicly notify an application if the application is for a resource consent for 1 or more activities, and *each activity* is subject to a rule that precludes public notification;

(ii) at Step Three the council must publicly notify an application if the application is for a resource consent for 1 or more activities, and *any of those activities* is subject to a rule or national environmental standard that requires public notification; and

(b) For limited notification, at Step Two the council is not permitted to limited notify an application if the application is for a resource consent for 1 or more activities, and *each activity* is subject to a rule that precludes limited notification.

5.6 The effect of the italicised phrases is that, for notification preclusions to effect their purpose, each and every rule triggered must be subject to a notification preclusion. If they are not, and applying ss 95A and 95B leads to notification of some form, then the entire application is to be notified and any aspect, including

those that might otherwise relate to a rule with a notification preclusion, can be the subject of a submission.

5.7 Karen Williams's evidence records her opinion that this tool has not been used to its full potential across the PDP. She considers that where infringements relate purely to development controls that seek to manage design outcomes or on-site amenity, these should be subject to notification preclusions (for example onsite landscaping). She also considers that non-notification clauses can be applied to rules where a "public good" or technical assessment is required.

6 Transport chapter

6.1 Kāinga Ora's submission recorded:

> Kāinga Ora opposes the current division of transport related provisions between the Infrastructure and Transport Chapters of the PDP. The current division of provisions and standards is inconsistent with best practice and makes navigation of the Plan and determining compliance cumbersome and prone to error. Kāinga Ora seeks the full package of transport related provisions (objectives, policies, rules and definitions) are reviewed and located in the Transport Chapter.

6.2 The National Planning Standards were introduced "to make RMA plans (eg, policy statements, regional plans, district plans) more consistent with each other, easier to use and faster to make".[4] One of the primary intentions was to ensure that plans are accessible to everyone.[5] This does not work if a person needs to have a planning degree to be able to comprehend and interpret the differing plan provisions and chapters. Kāinga Ora submits that a simple thing like locating transport provisions in a transport chapter is important, because this location is the most rational, logical, and intuitive and therefore the most publicly accessible. As Ms Williams's evidence notes, if there are two available ways in which to locate these provisions, the more publicly accessible way should be adopted.

6.3 To that end, Kāinga Ora considers that the evidence of Ms Williams on this point should be accepted in preference to the s 42A report writer. It may well be, as the s 42A report says at [9.5.2], that "the users of the Infrastructure and Transport Chapters are network utility operators and developers respectively,

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4 Ministry for the Environment *National planning standards factsheets: Information for plan users* (April 2019) at 1.

5 See Ministry for the Environment *Introduction to the National Planning Standards* (Wellington, 2017).

both of which are frequent plan users and/or employ professional planners". However, the Council should not solely be aiming to cater for network utility operators, developers and professional planners. Kāinga Ora's view is that the Council should be aiming to ensure the plan is accessible to all plan users, including non-professional planners.

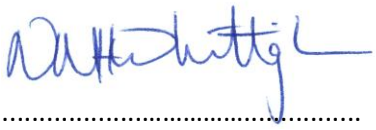
6.4 The s 42A report records at [9.5.2] that rationale for the allocation of provisions within and between chapters:

> is listed in the relevant s32 evaluation report. For example, the rationale for locating infrastructure provisions is outlined in section 4.6 of the s32 evaluation report for the Infrastructure Chapter.

It may be a cross-reference error, but there does not appear to be a compelling rationale anywhere in section 4.6. On counsel's review there does not appear to be a compelling rationale anywhere in the report.

6.5 A similar point was made about the earthworks provisions. However, Kāinga Ora accepts the views of the s 42A report writer, with whose position Ms Williams agrees, that earthworks provisions relating to infrastructure may be located in the Infrastructure Chapter. Kāinga Ora submits that there is a distinction between the earthworks provisions and the transport provisions. Part 7 of the National Planning Standards suggests that earthworks provisions may be relevant to general district-wide matters that are not solely contained within the Earthworks Chapter (for example earthworks provisions relating to infrastructure).

Date: 23 September 2021



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