

UNDER the Resource Management Act 1991
("RMA")

IN THE MATTER of the Proposed Porirua District Plan

HEARING TOPIC Hearing Stream 4- Noise

**STATEMENT OF EVIDENCE OF BRENDON SCOTT LIGGETT ON
BEHALF OF KĀINGA ORA-HOMES AND COMMUNITIES**

CORPORATE (RE NOISE AND VIBRATION)

21 January 2022

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1. Introduction

- 1.1 My name is Brendon Scott Liggett. I hold the position of Manager - Development Planning at Kāinga Ora – Homes and Communities (“**Kāinga Ora**”). 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 RMA and District Plans.
- 1.2 My experience includes four years in various planning roles within local government. For the past 16 years, I have been employed by Kāinga Ora (formerly as Housing New Zealand).
- 1.3 I have been providing development planning expertise within Kāinga Ora (and as well as Housing New Zealand) since 2006. In this role, I have:
- (a) Undertaken assessment and identification of redevelopment land within the portfolio;
 - (b) Provided input into Kāinga Ora’s strategic land planning, including the Asset Management Strategy, various investment and land use frameworks, and various structure plan processes;
 - (c) Provided advice on, and management of, the regulatory planning processes associated with Kāinga Ora’s residential development projects;
 - (d) Managed engagement with local authorities, local communities and other agencies on matters relating to regulatory policy frameworks associated with residential development;
 - (e) Provided advice on, and management of, Kāinga Ora’s input into strategic planning activities including plan changes and plan review processes throughout the country. This has included as technical lead and project management responsibility for Kāinga Ora’s submissions to the Proposed Auckland Unitary Plan and Christchurch District Plan review, as well as more recent plan review processes throughout the country such as Waikato, Whangarei, New Plymouth and others.
- 1.4 I confirm that I am authorised to give evidence on behalf of Kāinga Ora in respect of Proposed Porirua District Plan – Hearing Stream 4 (“**PDP**”). My evidence focuses upon Kāinga Ora’s submission points relating to noise and vibration issues (“**the Provisions**”).

2. Background to Kāinga Ora

- 2.1 The background to Kāinga Ora and the reason for its involvement generally in the PDP was set out in the legal submissions presented on behalf of Kāinga Ora at the hearing for Hearing Stream 1.
- 2.2 I reviewed and approved those legal submissions, and aside from the additional comments below, adopt that background for the purposes of this evidence.
- 2.3 Of relevance to Kāinga Ora's interest in this topic is that Kāinga Ora now has a statutory mandate to play a greater role in urban development more generally. The legislative functions of Kāinga Ora illustrate this broadened mandate and outline two key roles of Kāinga Ora in that regard¹:
- (a) initiating, facilitating and/or undertaking development not just for itself, but in partnership with or on behalf of others; and
 - (b) providing a leadership or coordination role more generally.
- 2.4 The predecessors to Kāinga Ora always have had an interest in how plan provisions can help support it use its landholdings efficiently and deliver additional social and affordable housing, however, with its broadened mandate Kāinga Ora now has an even greater interest in how plan provisions can contribute to sustainable, inclusive and thriving communities.
- 2.5 Under the Urban Development Act 2020 ("**UDA**") Kāinga Ora has additional statutory obligations and powers to undertake urban development functions. The UDA does not negate, however, the need for Kāinga Ora to be actively involved in plan making throughout the country. Rather, Kāinga Ora's new statutory mandate regarding urban development supports its involvement in plan development for urban areas.
- 2.6 Finally, I note that the first Government Policy Statement on Housing and Urban Development ("**GPS-HUD**") was published in September 2021. Kāinga Ora, as the Crown's public housing provider and urban development agency, must give effect

¹ Sections 12(f) – (g) of the Kāinga Ora Act 2019.

to the GPS-HUD. Expectations for Kāinga Ora set out in the GPS-HUD include (relevantly):

Recognise intensification as a key consideration in delivery or enabling construction of housing and infrastructure and that intensive urban environments need to support customers and thriving communities.

Contribute to the Government's broader housing objective to improve housing supply and affordability through urban development that increases the supply of build ready land and the pace, scale, density and affordability of new housing supply.

Maintain future focused planning by considering new Government priorities and work with HUD, Treasury and relevant local authorities on relevant policy directions, for example, working with HUD on options to increase the supply of affordable homes, including those for low to moderate income households.

Have planning frameworks, tools and approaches in place to give effect to the GPS. Through the entity's strategic documents, respond to the direction in the GPS and report annually on progress against GPS expectations.

3. Reason for Kāinga Ora's Submission

- 3.1 The Provisions 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 such transport infrastructure. 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.
- 3.2 Overall, Kāinga Ora opposes the extent and nature of controls proposed. It considers that the Provisions are not supported by sufficient evidence to warrant being upheld and asks that they variously be deleted or modified.
- 3.3 It is acknowledged, however, that:
 - (a) Noise and vibration from transportation corridors has the potential to adversely affect the health and well being of occupiers of noise sensitive land use activities adjacent to those corridors.

- (b) In addition to other methods outside of the Plan, district plan rules (including terms and conditions of transport designations) may be an appropriate mechanism to manage the potential for adverse effects of noise and vibration from transportation corridors on noise sensitive land uses.
- 3.4 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 evidential basis establishing a health and wellbeing effect on noise sensitive land uses;
 - (c) Whether there is any basis for imposing controls on noise sensitive land uses in the Porirua District;
 - (d) If so, the type and spatial extent of any controls that are necessary and appropriate to manage adverse effects; and
 - (e) Who should bear the burden (cost) of managing these effects, particularly in existing residential areas.
- 3.5 In relation to (a) above, I have not seen any information that demonstrates a reverse sensitivity effect arises at the interface between the transport environment and noise sensitive activities.
- 3.6 In respect to (b) above, I have not seen any information that demonstrates the actual or future level of noise exposure that will be experienced beyond the state highway / railway corridor after the best practicable option (“**BPO**”) has been adopted to internalise effects. That is, I am not aware of evidence which establishes that, in the Porirua District, the noise levels are or will be high enough to create an adverse health effect that would require mitigation once the BPO has been adopted at source. Further, I am not aware of evidence that demonstrates that the proposed margins along the state highway and rail networks are required to manage noise levels.
- 3.7 In respect of (c), I do not consider there is an ability to assess in section 32 terms whether there is a basis for imposing controls without, as starting point, the information in paragraph 3.6 above.

3.8 In relation to (d) and (e), Kāinga Ora's 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 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;
- (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); or
- (d) Ensuring that new greenfields (e.g.: rural) land adjacent to existing noise and vibration sources is not zoned for sensitive urban activities unless suitable mitigation measures are incorporated as part of the proposal for new urban zoning.

3.10 Under the Provisions 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.: Auckland International Airport Limited).

3.11 In Kāinga Ora's view, mitigation should be the physical and/or financial responsibility of the infrastructure providers and landowner/developers as follows.

It is appreciated that this allocation of responsibility will require a broader range of methods than the Provisions that are subject to this hearing and that such a regime would most appropriately be introduced through other methods outside of the plan:

- (a) The landowner/developer should be responsible where land use zoning is changed from providing for non 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 (for example, 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; or
 - (iii) 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.
- (c) Where the situation in (a) arises (i.e. rezoning of land from a zone that does not primarily facilitate development for noise sensitive land use activities to an urban zone primarily facilitating the development of new noise sensitive land use activities next to existing transportation corridors) then:
 - (i) Any decision whether to rezone land should take account of potential incompatibility between the incoming noise sensitive land use activities and the existing transport corridor.
 - (ii) Where land is rezoned and noise walls or bunds are required in order to ensure an appropriate noise environment for that rezoned land,

the developer/landowner should fund the construction and maintenance of the wall or bund.

- (iii) Where land is rezoned, the new urban zone provisions may require mitigation measures such as those identified in paragraph 3(b)(iii) above to be incorporated into any new noise sensitive activities, at the cost of the developer/landowner
- (iv) Once land has been rezoned:
 - The transport authority should mitigate noise and vibration effects through the items listed in paragraph 3.9 above, with maintenance and repair being undertaken at all times; and
 - Additional measures (including those specified in paragraph 3.9(b) and (c)) may need to be implemented by transport authorities over time where traffic intensity on the road or railway changes, with the consequence that potential adverse health effects may arise from increased levels of noise and/or vibration.

4. Background to Kāinga Ora's involvement in issues regarding noise and vibration controls nationwide

4.1 While the NPS-UD directive has made resolving these issues particularly important, the issue is not a new one, or particular to Porirua. There has been ongoing discussion between Waka Kotahi, Kiwi Rail and Kāinga Ora as to the need for and appropriate content of such provisions in district planning documents and plan reviews throughout New Zealand.

4.2 Waka Kotahi, KiwiRail and Kāinga Ora are currently involved in the following proceedings regarding similar provisions:

- (a) Environment Court appeals by Waka Kotahi and KiwiRail against the decision of the commissioners on Whangarei City Council's Urban and Services Plan Changes who declined to introduce such provisions (currently subject to mediation with a proposed timetable for additional work to be undertaken).
- (b) First instance hearings on Christchurch Plan Change 5 (in respect of which the hearing on this topic has been adjourned to enable discussions to occur).

- (c) Submissions on the Selwyn Proposed District Plan.
 - (d) First instance hearings on the New Plymouth Proposed District Plan (in respect of which the hearing on this topic has been delayed to enable discussions to occur).
- 4.3 The issue of management of noise and vibrations effects resulting from land transport activities has also had first instance hearings before commissioners on the Proposed Waikato District Plan. The decision for this was released on 17 January 2022. In that context, the Panel declined to introduce similar provisions and instead adopted the setback provisions originally notified in the plan.
- 4.4 Kāinga Ora considers it preferable both:
- (a) For government entities be in a position to present a consistent and agreed approach to councils, hearing panels and courts on policy matters such as this.
 - (b) For topics that raise similar issues throughout the country to be addressed and resolved at a national level to ensure a consistent approach.
- 4.5 Kāinga Ora has therefore been in discussion and correspondence with Waka Kotahi and KiwiRail, with the aim that the parties can promote a consistent approach around the country. Kāinga Ora considers that such an agreement would usefully reduce debate regarding the Provisions.
- 4.6 Currently the discussion is primarily being progressed through Environment Court mediation proceedings and is therefore subject to privilege, limiting my ability to elaborate further on potential solutions being discussed.

Brendon Scott Liggett

21 January 2022