

Under the Resource Management Act 1991

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

Memorandum on behalf of Kāinga Ora – Homes and Communities – Hearing Stream 4

15 October 2021

**MEREDITH
CONNELL**

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- 1 In Minute 5, the Panel invited parties to comment on the proposed timetable for Hearing Stream 4.
- 2 Kāinga Ora is comfortable with the timetable sketched out in para 7 of Minute 5.
- 3 However, Hearing Stream 4 addresses various topics within the areas of Strategic Directions, Energy, Infrastructure and Transport and General District-Wide Matters, including noise. Counsel anticipates that this will include hearing all submissions and further submissions on the PDP provisions addressing the effects of noise and vibration from the State Highway and rail corridors and, in particular, whether and to what extent land uses adjacent to such transport corridors should be subject to constraints and/or be required to obtain resource consent (**Provisions**).
- 4 Kāinga Ora seeks deferral of hearing of all submissions and further submissions on the Provisions from Hearing Stream 4 to a later Hearing Stream.

Deferral of considering the Provisions

- 5 The Provisions broadly raise for consideration the appropriate balance to be struck between locating urban development near mass rapid transport (and otherwise the desirability of locating close to transport routes), and maximising that development, with management of reverse sensitivity effects on transport corridors. 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.
- 6 Kāinga Ora has instructed separate counsel – Douglas Allan at Ellis Gould – to represent it in relation to these issues given his involvement on these matters in other plan reviews around the country.
- 7 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 on Whangarei City Council's Urban and Services Plan Changes (currently subject to mediation with a proposed timetable for additional work to be undertaken over the rest of 2021).
 - (b) First instance hearings before commissioners on the Proposed Waikato District Plan (on which decisions are, counsel understands, due for release later in 2021).
 - (c) 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).
 - (d) Submissions on the Selwyn Proposed District Plan.
 - (e) 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).
- 8 Kāinga Ora considers it preferable for government entities to present a consistent and agreed position to councils, hearing panels and courts on policy matters such as this. It has therefore been endeavouring through discussion and correspondence over many months to reach agreement regarding these issues with Waka Kotahi and KiwiRail, with the aim that the parties promote a consistent approach around the country. Kāinga Ora considers that such an agreement would usefully reduce debate regarding the Provisions.
- 9 Kāinga Ora considers that a deferral is the most appropriate course of action and makes this request on the following grounds:
- (a) The Provisions address issues that are already the subject of other proceedings and hearing processes elsewhere in New Zealand.
 - (b) There is no basis for concluding that:
 - (i) Circumstances in Porirua are unique with respect to these issues; or
 - (ii) The outcome of the other, procedurally more advanced, proceedings in respect of similar provisions and issues elsewhere

in the country cannot usefully inform consideration of the issues in respect of Porirua.

- (c) The hearing on the Provisions will require the preparation of evidence and legal submissions on behalf of submitters, hearing time before the Panel, and deliberation time for the Panel. Kāinga Ora considers that those costs can be reduced significantly if not eliminated if the hearing of the Provisions is deferred:
- (i) To enable Waka Kotahi, KiwiRail and Kāinga Ora to continue seeking an agreed outcome; and
 - (ii) To enable the parties to take advantage of any agreement reached in other proceedings or any decision issued by the Environment Court on the Whangarei appeals. Kāinga Ora considers that the outcome of the Whangarei process could inform the panel's consideration of this issue in Porirua. It considers there would be benefit in deferring the hearing on the Provisions to allow the Whangarei process to be completed.

10 Accordingly, Kāinga Ora respectfully requests that the submission points relating to the Provisions be allocated to a later Hearing Stream. Kāinga Ora considers that the Provisions and submissions are sufficiently discrete to enable such an approach to be taken.

11 Kāinga Ora does not know whether Waka Kotahi and KiwiRail consider that a deferral is appropriate. Counsel (either Mr Allan or myself) would be available on short notice to attend a telephone or video conference with the Panel, Council officers, Waka Kotahi, Kiwi Rail and other affected submitters (if any), if that would assist the Panel in determining the request.

Date: 15 October 2021



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Nick Whittington
Counsel for Kāinga Ora – Homes and Communities