

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT RANGIORA / WAIMAKARIRI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI RANGIORA / WAIMAKARIRI**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of the hearing of submissions and further
submissions on the **Proposed Waimakariri
District Plan**
and
of the hearing of submissions and further
submissions on **Variation 1** to the Proposed
Waimakariri District Plan

HEARING TOPIC: Stream 1

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

8 MAY 2023

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1. INTRODUCTION AND SUMMARY

- 1.1 These submissions are filed by Kāinga Ora – Homes and Communities (“**Kāinga Ora**”) in support of the relief sought in its submissions and further submissions on the Proposed Waimakariri District Plan (“**PDP**”) and on Variation 1 (“**Variation 1**”) to the PDP.
- 1.2 Kāinga Ora has a particular interest in the outcome of Variation 1, as a result of its statutory mandate under the Kāinga Ora - Homes and Communities Act 2019 (“**Kāinga Ora Act**”); in addition to its functions as an urban development agency under the Urban Development Act 2020. It also has a wider interest, both in its capacities as a public landlord and urban development agency, in the implementation of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“**Amendment Act**”), including the Medium Density Residential Standards (“**MDRS**”) and the amendments to the National Policy Statement for Urban Development 2020 (“**NPS-UD**”).
- 1.3 In summary, Kāinga Ora seeks relief that ensures the NPS-UD and the provisions of the Amendment Act, including the MDRS, are fully and properly implemented in the Waimakariri District. This includes the wording of the Strategic Directions and Urban Form and Development objectives and policies, which will play an important role in the development of other district-wide and area-specific provisions, given the primacy that those Strategic Directions should be given.
- 1.4 As part of that relief, it is important that references in the Strategic Directions provisions to “amenity values” are supplemented by reference to “planned built [or urban] form” and/or the “anticipated urban/built environment”, to ensure that these higher-order policy directives align with the NPS-UD.
- 1.5 It is also important that the Strategic Directions and Urban Form and Development provisions promote greater intensification, and encourage the Council to be ambitious in its provision of housing and business capacity and typologies, to ensure that the directives in the NPS-UD are met over the short, medium and long-terms.

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. In short, Kāinga Ora was formed in 2019 as a statutory entity under the Kāinga Ora Act, which brought together Housing New Zealand Corporation, HLC (2017) Ltd and parts of the KiwiBuild Unit.
- 2.2 As the Government's delivery agency for housing and urban development, Kāinga Ora works across the entire 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.¹ As the Government's delivery agency for housing and urban development, Kāinga Ora works across the entire 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.
- 2.3 In relation to urban development, there are specific functions set out in the Kāinga Ora Act. 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:²
 - (i) **development of housing**, including public housing and community housing, affordable housing, homes for first- home buyers, and market housing;³
 - (ii) **development and renewal of urban developments**, whether or not this includes housing development;⁴
 - (iii) development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works;⁵

¹ Kāinga Ora – Homes and Communities Act 2019, s 12.

² Section 13(1)(f).

³ Section 13(1)(f)(i).

⁴ Section 13(1)(f)(ii).

⁵ Section 13(1)(f)(iii).

- (b) **to provide a leadership or co-ordination role in relation to urban development, including by:**⁶
- (i) supporting innovation, capability, and scale within the wider urban development and construction sectors;⁷
 - (ii) **leading and promoting good urban design and efficient, integrated, mixed-use urban development;**⁸
 - (iii) **to understand, support, and enable the aspirations of communities in relation to urban development;**⁹ and
 - (iv) to understand, support, and enable the aspirations of Māori in relation to urban development.¹⁰

(our emphasis)

2.4 Participation by Kāinga Ora in the PDP, Variation 1 and the implementation of the MDRS and Policy 3 of the NPS-UD in the Waimakariri District is clearly aligned with these functions.

2.5 Further, Kāinga Ora considers that the compact urban form promoted by the Amendment Act and to be implemented through Variation 1 is clearly aligned with its functions:

- (a) A compact urban form enables residents to live closer to places of employment, education, healthcare, and services such as retail. This 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 centres to increase in scale, economic activity and viability, diversity of economic, social and cultural activities, and vibrancy;

⁶ Section 13(1)(g)
⁷ Section 13(1)(g)(i).
⁸ Section 13(1)(g)(ii).
⁹ Section 13(1)(h).
¹⁰ Section 13(1)(i).

- (c) A compact urban form enables the sharing of key infrastructure such as urban roading, three water networks and reduces the marginal cost of construction for such infrastructure; and
 - (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 total stormwater runoff from urban development.
- 2.6 All of the above 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.
- 2.7 In recent years, Kāinga Ora has focussed on redeveloping its existing landholdings, and 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.
- 2.8 Successful developments of this nature, as well as the more standard housing developments undertaken by Kāinga Ora throughout New Zealand, are greatly supported and enabled by district plans that recognise the need for them and that provide an appropriate objectives, policies and rules framework that allows for an efficient and cost-effective approval process.
- 2.9 The direction contained in the NPS-UD (coupled with the requirements of the Amendment Act) provides an opportunity to address that issue for the future. Kāinga Ora submissions have therefore focused on 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 now or that might need it in future.
- 2.10 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 Urban Development Act in 2020, 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.

3. STATUTORY FRAMEWORK

3.1 The statutory framework that applies to consideration of submissions on the PDP and Variation 1 will be familiar to the Commissioners, and is not repeated at length here.

3.2 That framework includes the requirement to give effect to relevant national policy statements, including the NPS-UD; as well as the Canterbury Regional Policy Statement (“**RPS**”). It also includes the requirement to arrive at provisions that are, in terms of s 32, the most appropriate to achieve the objectives of the PDP, and, ultimately, the purpose of the RMA.

3.3 The key requirement for the purposes of Variation 1 is the need to “give effect to” Policy 3 of the NPS-UD, ie to “implement” it, alongside other directives in national and regional policy statements.¹¹

4. THE KĀINGA ORA SUBMISSION

4.1 Kāinga Ora lodged comprehensive submissions and further submissions on both the PDP and Variation 1.

4.2 Kāinga Ora says that the PDP, and Variation 1 as notified, have the potential to reduce regulatory constraints and increase housing supply as required through both the Amendment Act and the NPS-UD.

4.3 As Mr Liggett explains,¹² the intent of the submissions has been to ensure the delivery of a planning framework across the Canterbury region that contributes to well-functioning urban environments that are sustainable, inclusive and contribute towards thriving communities that

¹¹ *Environmental Defence Society Inc v The New Zealand King Salmon Company* [2014] NZSC 38, [2014] 1 NZLR 593 at [77].

¹² Evidence of Brendon Liggett at [7.1]-[7.5]

provide people with good quality, affordable housing choices and support access to jobs, amenities and services.

4.4 The following key themes arise out of the Kāinga Ora submissions, that are of relevance to this particular Hearing Stream and the Strategic Directions and Urban Form objectives and policies:

- (a) The further enablement of housing choice, residential growth and intensification to support the social and economic demands for the District.
- (b) Amendments to better align the strategic directions and urban form and development chapters of the PDP with the outcomes required by the NPS-UD and the Amendment Act. Specifically, the relationship between urban form and character under the NPS-UD as well providing for long-term development capacity and well-functioning urban environments.
- (c) The enablement of a variety of housing typologies to provide greater housing choice within the district, particularly in or near centre zones and employment opportunities.
- (d) The strategic direction for the management of natural hazards, and development where there may be a natural hazard risk.

5. THE NPS-UD AND THE NEED FOR A CHANGE IN MINDSET

5.1 One of the key issues raised by the section 42A report, and addressed in the evidence of Kāinga Ora for this hearing is the need to supplement references to “amenity values” with references to “planned built [or urban] form”, or the “anticipated / planned urban environment” consistent with the policy direction in the NPS-UD. The relief sought by Kāinga Ora in relation to those provisions reflects the need for a mindset shift in the way in which plan provisions are to provide for urban development, as a result of the NPS-UD.

Origins of the NPS-UD and Policy 3 – the Productivity Commission’s 2015 report

5.2 The NPS-UD and the Amendment Act have their origins in the Productivity Commission’s 2015 report, “Using land for housing” (“**Report**”).¹³ Among the Report’s findings were that planning frameworks were overly restrictive on density, and that density controls were too blunt, having a negative impact on development capacity, affordability, and innovation. The Report also commented that planning rules and provisions lacked adequate underpinning analysis, resulting in unnecessary regulatory costs for housing development, particularly in the case of heritage and “special character” protections.

Policies 3 and 6 of the NPS-UD

5.3 As a response to that issue, successive Governments have enacted national policy statements to direct district councils to enable greater development capacity within our urban areas, to address the challenges identified above by the Productivity Commission.

5.4 Policy 3 of the NPS-UD is directive. It requires district councils to enable building heights and density of urban form:

- (a) as much as possible in city centre zones, to maximise the benefits of intensification;
- (b) in metropolitan centre zones, of at least six storeys and otherwise reflecting demand;
- (c) of at least six storeys within a walkable catchment of:
 - (i) rapid transit stops; and
 - (ii) the edge of city and metropolitan centre zones; and
- (d) commensurate with the level of commercial activity and community services within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones.

5.5 Policy 6 of the NPS-UD illustrates, in our submission, the mindset shift that is required by this new planning paradigm. It relevantly provides that:

¹³ Productivity Commission, “Using land for housing” (October 2015) – see link [here](#).

Policy 6: when making planning decisions that affect urban environments, decision-makers **have particular regard to** the following matters

- (a) the planned urban build form anticipated by those RMA planning documents that have given effect to [the NPS-UD];
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - (ii) are not, of themselves, an adverse effect;

[...]

5.6 The requirement to “have particular regard” to the matters in Policy 6 signifies the importance attached to those matters, and the need for them to be carefully considered and weighed in coming to a conclusion when considering submissions on Variation 1.¹⁴ In short, the changes that may result from implementation of the NPS-UD may improve the amenity of those who have (to date) been poorly served by urban planning, at the expense of existing amenity.

5.7 It is also worth noting that the heights enabled through Policy 3 are just the floor (ie “at least”), and not the ceiling.

The Amendment Act, Policy 3 of the NPS-UD and the MDRS

5.8 The Amendment Act is similarly directive in its approach, towards enabling increased and varied housing densities, types, and, ultimately, choice.

5.9 Section 77G(1) of the Amendment Act requires territorial authorities to incorporate the MDRS in “*every relevant residential zone*”. Section

¹⁴ *Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220 at 228; approved in *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [67]-[68].

77G(2) requires territorial authorities to give effect to the NPS-UD, and in particular, Policy 3, in “*every residential zone in an urban environment*”.

- 5.10 The sole basis upon which a territorial authority may alter the application of the MDRS, or the building height and density requirements under Policy 3 of the NPS-UD to make them less enabling of development, is by identifying matters which qualify, through evidence and a robust cost-benefit analysis, under ss 77I through 77L. Restrictions can only apply *to the extent necessary* to accommodate those matters.¹⁵

The change of mindset required

- 5.11 These provisions have important consequences for the task before you as Commissioners.
- 5.12 In district planning processes prior to the promulgation of the NPS-UD, the starting point was the identification of matters that required protection from inappropriate subdivision, use and development. In order to properly give effect to the strong directive objectives and policies in the NPS-UD, a new approach is required which sets intensification as the starting point.
- 5.13 From the Kāinga Ora perspective, it is critical that you apply that mindset when considering submissions on the PDP and Variation 1, in order to ensure that those directives will be implemented properly.
- 5.14 It is for those reasons that Kāinga Ora seeks that the objectives and policies of the Strategic Direction and Urban Form and Development provisions are forward-looking and address the planned form and amenity outcomes of the district, rather than prioritising existing character and amenity values.¹⁶

6. PRIMACY OF STRATEGIC DIRECTIONS

- 6.1 Kāinga Ora sought amendments to the introduction section of the PDP to clarify the relationship between the Strategic Directions and Urban

¹⁵ RMA, s 77I.

¹⁶ Evidence of Clare Dale at [4.37]-[4.39].

Form and Development chapters, and other plan chapters. In her evidence at paragraphs 4.3 to 4.8, Ms Dale sets out the planning rationale for providing that the Strategic Directions should have primacy over other objectives and policies within the PDP. Mr Liggett also addresses this issue at his paragraphs 8.3 to 8.5, and Mr Osborne at his paragraph 6.20.

- 6.2 Counsel accept that there is nothing on the face of the National Planning Standards which requires the Strategic Directions (including Urban Form and Development) objectives and policies to have greater weight than other objectives and policies. However, there is equally nothing within the National Planning Standards to prevent the Panel from providing that guidance to plan readers.
- 6.3 From a legal perspective, there are a number of reasons why the Strategic Directions objectives and policies should have primacy:
- (a) Section 7 of the National Planning Standards identifies that *“issues, if any, and objectives that address key strategic or significant matters for the district and **guide decision making at a strategic level**”*, as well as policies that address these matters, must be located under the Strategic Direction heading (our emphasis). That decision-making must include decisions as to the lower-order district-wide and zone-specific provisions that flow from the higher-order objectives of the PDP.
 - (b) The inclusion of a Strategic Direction heading was intended to *“better provide for **integrated management**”* of natural and physical resources across planning instruments (our emphasis).¹⁷ The principle of integrated management is a key function of district councils under s 31(1)(a) of the RMA, and is informed by (inter alia) the higher-order policy directions in the RPS, which the PDP must give effect to. Affording a similar “higher order” status to Strategic Directions provisions (ie so that other objectives and policies must achieve them) is entirely consistent with that approach.

¹⁷ Ministry for the Environment *1 Overall introduction - Recommendations on Submissions Report for the first set of National Planning Standards* (2019, Wellington) at 6.

- (c) The same structure is used elsewhere successfully to achieve the same outcome, including in the Christchurch Replacement District Plan¹⁸ and the Dunedin Second Generation (“2GP”) District Plan. In relation to the latter, Dunedin City Council, when providing feedback on the draft National Planning Standards, noted the following:¹⁹

[in] the Dunedin 2GP of using a strategic direction section to overview the key issues for the district and the methods used to achieve them **including the criteria used to determine zones and schedule items is a critical aspect of the usability of the DCC 2GP** that had broad support through submission on the 2GP and should be enabled by the Standard.

(our emphasis)

- (d) The Ministry for the Environment (“MfE”), in responding to DCC’s submission, considered that all of the provisions within the 2GP could be accommodated within the draft district plan structure, which must include the Strategic Direction structure.²⁰ As such, MfE was aware of the common approach to Strategic Direction provisions when it adopted the National Planning Standards.
- (e) Guidance published by MfE to address, inter alia, how Strategic Direction provisions are intended to relate to other standards notes that the Strategic Direction heading “*provides a location for the high-level direction that district councils are working towards for their city and/or district*”; that “*this is an area of emerging best practice in second-generation plans*” (cf DCC above); and that strategic direction is “*often supported with objectives and policies that tend to relate to the whole city and/or district and may include cross-cutting issues*”.

¹⁸ As to which, see evidence of Clare Dale at paragraph [4.7].

¹⁹ Ministry for the Environment. *2C District Plan Structure Standard - Recommendations on Submissions Report for the first set of National Planning Standards* (2019, Wellington) at 7.

²⁰ *Ibid* at 9.

6.4 In our submission, affording priority to the Strategic Directions objectives and policies will assist you as Commissioners with your deliberations on other district-wide and area-specific provisions. It will also provide clear direction to decision-makers as to how any conflicts between those provisions are to be reconciled on any given application (whether it be for a resource consent, a notice of requirement, or a plan change).

7. SUFFICIENT OPPORTUNITIES FOR HOUSING AND BUSINESS LAND

7.1 In her evidence at paragraphs 4.17 to 4.25, Ms Dale refers to the need to ensure that there are sufficient opportunities for housing and business land enabled through the Strategic Directions and Urban Form and Development provisions. In particular, she seeks amendments to UFD-O2 and UFD-P1 to ensure that there is:

- (a) **at least** sufficient feasible development capacity;
- (b) **at all times.**

(our emphasis)

7.2 The latter reference to “at all times” is a reference to ensuring that capacity is enabled over both the short, medium **and** long-terms. The reference to “at least” sits at the core of the Kāinga Ora position, which is that it is not simply enough for the Council to say that only “*sufficient*” feasible capacity should be provided and no more. As Ms Dale notes, the figures in UFD-O1 are a bottom line (ie a minimum or a “floor”) and should not be treated as a cap or a ceiling.²¹ This is supported by Mr Osborne, who considers there are economic benefits to “full enablement” of residential capacity,²² and opportunity costs and inefficiencies associated with the alternative.²³

7.3 Mr Liggett addresses this issue in his evidence at paragraphs 8.6 to 8.10, where he notes that housing choice and the location of higher density housing in Waimakariri is important because it affects the way

²¹ Evidence of Clare Dale at [4.22].

²² Evidence of Phil Osborne at [6.12].

²³ Evidence of Phil Osborne at [6.19].

the area grows and changes.²⁴ From the Kāinga Ora perspective, if there is a good mix of different types of housing available in Waimakariri, including both high-density and medium density housing options, this can create a more balanced and sustainable community.²⁵ It is for those reasons that Kāinga Ora requests that the Strategic Directions chapter includes a requirement that there is “at all times, at least” sufficient feasibility development capacity to meet needs over the short, medium and long term.

7.4 The requirement to provide “at least” sufficient capacity is consistent with the forward looking nature of zoning. As the High Court in *Belgiorno-Nettis* held, when considering zoning:²⁶

... engaged in a higher level, more complex, forward looking exercise, that necessarily involves making very broad assumptions about potential patterns of development. That necessarily involves an assessment of (among other things) whether the zoning will enable the Council to discharge its functions under s 31 of the RMA, including the integrated management of effects of the use, development, or protection of land. Inevitably, there will be individual sites that may not be “likely” to utilise the development potential of a proposed rezoning... . There is no mandatory requirement on the part of the Council to be satisfied, when settling on a zone for an area, that the development potential is “likely” to be taken up by individual sites.

7.5 As the Court held in *Middle Hill*:²⁷

...feasibility can change over time, and sometimes it is necessary to take a longer view of when it may be appropriate for development to occur. If highest and best use is a key factor during zoning decisions there would be a broad distribution of high land value, retail-enabled zones across Auckland and limited provision of lower land value zones such as industrial, rural or open space.

²⁴ Evidence of Brendon Liggett at [8.7].

²⁵ Evidence of Brendon Liggett at [8.8].

²⁶ *Belgiorno-Nettis v Auckland Council* [2020] NZHC 6 at [101], cited with approval in *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162 at [134].

²⁷ *Middle Hill*, above n 26 at [139].

7.6 The above quotes point to the need to be ambitious in the approach taken to policy settings, when implementing the directives in the NPS-UD. If the opportunity to intensify and provide greater potential development across residential and business-zoned land is not enabled, it simply will not occur. The existing urban form in Waimakariri is testament to that. But that is not what the NPS-UD directs you as Commissioners to implement. The NPS-UD expressly acknowledges that the changes in urban form that New Zealand's cities now need to adopt will represent a changed amenity (see Policy 6, NPS-UD).

8. CONCLUSION

8.1 In summary, Kāinga Ora seeks the amendments to the Strategic Directions and Urban Form and Development provisions set out in Appendix 1 to the evidence of Ms Dale.

Dated 8 May 2023

A handwritten signature in blue ink, appearing to read 'Bal Matheson', with a long horizontal flourish extending to the right.

Bal Matheson | Aidan Cameron
Counsel for Kāinga Ora