BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS IN THE WAIKATO REGION

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE WAIKATO

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER of the hearing of submissions on Hamilton City Council's PC12

LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA - HOMES AND COMMUNITIES

Dated: 30 August 2023

Instructing solicitor:
C E Kirman
Special Counsel
Kāinga Ora - Homes and Communities
PO Box 14594
Central Auckland 1051
claire.kirman@kaingaora.govt.nz

Counsel Instructed:
D A Allan / A K Devine
Ellis Gould Lawyers
PO Box 1509
Auckland 1140
dallan@ellisgould.co.nz /
adevine@ellisgould.co.nz

MAY IT PLEASE THE COMMISSIONERS:

1. INTRODUCTION

1.1 These submissions and the evidence to be called are presented on behalf of Kāinga Ora – Homes and Communities ("**Kāinga Ora**") in relation to its submissions on Hamilton City Council's ("**HCC**") proposed Plan Change 12: Enabling Housing Supply ("**PC12**").

1.2 Kāinga Ora made extensive and broad submissions on PC12 but its evidence and legal submissions for this hearing focus on matters that directly and significantly impact its landholdings and ability to deliver public housing efficiently.

1.3 These legal submissions will address:

(a) Relief sought by Kāinga Ora at this hearing.

(b) The legal context for Kāinga Ora involvement.

(c) Intensification Planning Instruments and the NPS-UD 2020.

(d) Legal issue 1 - Universal Access.

(e) Legal issue 2 - Financial Contributions.

(f) Legal issue 3 - The WEL relief concerning minimum separation distances from electricity lines.

(g) Legal issue 4 - Council's proposed Urban Tree Canopy rule.

1.4 Subject to the amendments to provisions discussed in the evidence and summarised in these submissions, Kāinga Ora supports the Council's revised spatial extent of zoning.

1.5 Evidence by the following witnesses has been exchanged in support of submissions for this hearing topic:

(a) Brendon Liggett – Corporate evidence and Kāinga Ora representative;

(b) Philip Osborne – Economics;

(c) Phil Jaggard – Infrastructure; and

(d) Michael Campbell – Planning.

2. RELIEF NOW SOUGHT BY KĀINGA ORA

2.1 The changes to the PC12 provisions that Kāinga Ora considers are necessary to give effect to the NPS-UD with respect to its landholdings and more broadly in Hamilton City are:

(a) Amendment of **Urban Tree Canopy - Standards 4.2.5.3f and 4.3.4.3f** which (now) require each residential development to provide sufficient trees to produce 20% site coverage by tree canopy at maturity. These requirements have been introduced though the submission process. In accordance with Mr Campbell's evidence, Kāinga Ora asks that the new wording be rejected. Kāinga Ora would accept retention of the notified "*Urban Trees*" standard.

(b) Deletion of **Deep Soil Area - Standards 4.2.5.3c and 4.3.4.3c**, which require 50% of the landscaped area to be provided as Deep Soil Area.

(c) Amendment of **Water Conservation Measures – Standard 25.13.4.5** which requires all new residential dwellings to install rainwater reuse tanks for non-potable use, to enable the full range of solutions to be utilised to manage stormwater effects from residential roofs (e.g.: detention tanks).

(d) Deletion of **Universal Access – Standards 4.2.5.15, 4.3.4.15 and 4.4.5.15**, which require 10% of units within a development of 10+ units to provide universal access.

(e) Deletion of the **Infrastructure Capacity Overlay** which requires a three waters infrastructure capacity assessment for sites within the Overlay when the net density of the development exceeds the permitted threshold (1:200m^2 in the GRZ, 1:150m^2 in the MDRZ) or where the maximum permitted dwelling number is exceeded (3 or more dwellings in the GRZ; 4 or more dwellings in the MDRZ). Kāinga Ora proposes that infrastructure capacity be identified as a matter for discretion for proposals which exceed the number

of permitted dwellings (as set out above). That approach would avoid introducing a new reason for consent.

(f) Deletion of the **Financial Contributions – Chapter 24** requirements.

(g) Deletion of the **balcony separation and building separation** requirements as other standards already manage issues of privacy and building dominance

2.2 The rationale for the Kāinga Ora position on these matters is set out in the evidence. Legal issues are addressed below.

3. LEGAL CONTEXT FOR KĀINGA ORA INVOLVEMENT

3.1 The PC12 Hearing 1 corporate evidence for Kāinga Ora addressed the statutory provisions from which it derives its mandate. While that statutory mandate is broad, the evidence and submissions of Kāinga Ora in this hearing are focused on issues which are relevant to its ability to fulfil its function as a public social housing provider.

3.2 In that regard, and as outlined by Mr Liggett, there is a significant and disproportionate demand for public housing within Hamilton.[1] There is also a need for Kāinga Ora to redevelop and reconfigure its portfolio to meet that demand in an efficient manner because the current portfolio is aging and is not well aligned with the demand profile (i.e.: it is skewed towards 2-3 bedroom homes, whereas demand is for 1 or 4-6 bedroom homes).[2]

3.3 Kāinga Ora has significant land holdings within Hamilton which are affected by PC12. Across the three proposed urban residential zones to be amended by PC12, the portfolio consists of approximately:

(a) GRZ (General Residential Zone) – 2,670 land parcels;

(b) MDRZ (Medium Density Residential Zone) – 550 land parcels; and

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[1] Liggett EIC, Para 4.1
[2] Liggett EIC, Para 4.3

(c) HDRZ (High Density Residential Zone) – 50 land parcels.

In many of those locations, the Kāinga Ora landholdings are of a larger scale and/or contiguous, meaning they can accommodate comprehensive redevelopment (e.g.: Fairfield and Enderley).[3]

3.4 The ability for Kāinga Ora to redevelop its aging portfolio and fulfil its function as a public social housing provider is strongly influenced by district plan provisions. District plans which recognise the need for more housing and that provide an appropriate framework for that to occur along with an efficient and cost-effective approval process assist Kāinga Ora in meeting its obligations. On the flipside, overly restrictive planning frameworks directly constrain the ability of Kāinga Ora to deliver public housing in an efficient manner.

4. INTENSIFICATION PLANNING INSTRUMENTS

4.1 Kāinga Ora has previously addressed the Panel on the statutory framework applying to IPI's.[4] Kāinga Ora reiterates those earlier submissions and makes the observation that they take on increased importance in the context of Hamilton – a city that is in the process of morphing from a provincial city to a sizeable and increasingly complex metropolitan area.

4.2 These submissions therefore reiterate only the following key observations:

(a) The IPI process promotes intensification in Tier 1 urban areas such as Hamilton through implementation of Policies 3 and 4 NPS-UD; and through incorporation of the Medium Density Residential Standards.

(b) The statutory (RMA) and regulatory (NPS-UD) framework seeks to improve housing affordability through supporting competitive land and development markets, recognising the role that district plans play in enabling people to live and work in efficient locations, and providing a range

[3] Liggett EIC, Para 4.2
[4] In the context of the Panel's introductory session and its hearings on the Waipa and Waikato District Councils' IPI's.

of housing choices (e.g.: infill, multi-unit and higher density development).

(c) The NPS-UD recognises that intensification within urban environments will lead to changes in amenity over time, but that these changes are not necessarily adverse.

(d) While the Amendment Act requires PC12 to give effect to Policies 3 and 4 NPS-UD,[5] this does not negate the need for the IPI to also give effect to the balance of the NPS-UD to the extent possible (i.e.: provided that the changes to give effect to it are within the bounds of an IPI)[6].

5. LEGAL ISSUE 1 - UNIVERSAL ACCESS

5.1 Kāinga Ora opposes the Council's proposal to require provision of universal access in 10% of units where 10 or more dwellings are proposed. Instead, it supports the use of assessment criteria encouraging the provision of universal access for a proportion of dwellings within a multi-unit development.

5.2 The evidence of Mr Liggett[7] outlines the rationale for this position. That is:

(a) Requiring provision of universal access is not practical in all situations (e.g.: universal access is challenging for two-three storey terraced housing and for development on steeply sloping sites and flood prone sites) and may detract from the feasibility of residential developments and therefore the wider goals in the Plan of increasing housing supply. Mr Liggett outlines how universal access is provided for within the Kāinga Ora portfolio, noting that its goal of 15% homes with universal access is managed at a portfolio wide rather than project specific level, which enables Kāinga Ora to respond to the individual site context.

(b) Utilising assessment criteria rather than a standard avoids the unintended consequences that can be produced through use of a threshold or ratio (e.g.: incentivising the delivery of nine, rather than ten or more, units if a trigger of

[5] Sections 77G (residential zones) and 77N (non-residential zones) RMA. Section 80E(1)(a)(ii)(A) RMA.
[6] Section 75(3)(a) RMA.
[7] Liggett EIC, paras 5.4 – 5.5.

10 units is specified in a rule).

(c) Utilising assessment criteria rather than a standard provides an appropriate balance, as it enables increased housing capacity while promoting the health and social wellbeing benefits of universal access where practicable.

5.3 Further, the inclusion of such provisions in a district plan is *ultra vires* because it would introduce development controls for individual buildings which are more restrictive than those provided for in the Building Code, which is precluded by the Building Act 2004 ("**Building Act**"). By way of explanation:

(a) Section 18 of the Building Act provides that a person cannot be required to undertake any building work[8] in accordance with performance criteria that is additional to or more restrictive than the performance criteria[9] prescribed in the building code, unless specifically provided for in another Act (emphasis added):

> ***18 Building work not required to achieve performance criteria additional to or more restrictive than building code***
>
> *(1) A person who carries out any building work is not required by this Act to—*
>
> > *(a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the building code in relation to that building work; or*
> >
> > *(b) take any action in respect of that building work if it complies with the building code.*
>
> *(2) Subsection (1) is subject to any express provision to the contrary in any Act.*

(b) The two exceptions to section 18 of the Building Act contained in the RMA are sections 68 and 76, which relate to the protection of other property from the effects of surface water (e.g.: specifying minimum floor levels in a District Plan would not contravene section 18 of the Building Act, despite being a

[8] Defined in section 2 of the Building Act.
[9] Defined in section 2 of the Building Act.

matter that is also controlled under the Building Act).

(c) A number of cases have considered the interplay between section 18 of the Building Act and the RMA.[10] These cases establish that the purpose of the control is key. If the objective / purpose of the control is a resource management one (i.e.: to control the effect of the activity on the environment and the environment on that activity), then it is not a "*performance criterion*" in terms of section 18 of the Building Act. An example of this is acoustic attenuation requirements imposed through district plans. These do not offend section 18 as the purpose of the standard is to control the effects of noise from an activity, rather than the performance of the building.[11]

(d) The Council's proposed universal access standard requires provision of "*convenient wheelchair access*".[12] Specifically, access from the street to an entry door with a maximum gradient of 1:20 and a level transition; doorway widths of at least 810mm; and the location of at least one bedroom and accessible bathroom at ground level and on the same level as the kitchen and dining room.

(e) That is something that is squarely addressed within the Building Code. Clause D1 of the Building Code sets out access requirements to ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings. The Building Code access requirements cover the approach to the main entrance of a building, corridors, doors, stairs, ramps and lifts, being matters which the Council's proposed provisions seek to regulate.

(f) The Building Code rules and the Council's suggested provisions in PC12 have the same purpose of ensuring safe and convenient universal access and this

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[10] See for example: *Christchurch International Airport Ltd v Christchurch City Council* [1997] NZRMA 145; *Portmain Properties (No 7) Limited* 4 ELRNZ 10; *Petone Planning Action Group Inc v Hutt City Council* (W020/08); *Department of Survey and Land Information v Hutt City Council* [1997] NZRMA 378.
[11] *Christchurch International Airport Ltd v Christchurch City Council* [1997] NZRMA 145.
[12] Standard 4.2.5.15 (GRZ); 4.3.4.16 (MDRZ); 4.4.5.16 (HDRZ).

is not a case where there is a different purpose in terms of RMA to that being addressed by the Building Act.

(g) While the Building Code's universal access requirements (Clause D1.3.2) do not apply to housing, this does not justify the inclusion of such provisions within the District Plan. Instead, a policy decision has been made at central government not to require universal access for residential dwellings. Seeking to introduce them through a district plan would be contrary to section 18 of the Building Act.

5.4 It is noted that the Independent Hearing Panel on the Auckland Unitary Plan ("**AUP - IHP**") rejected universal access rules on the following basis:

(a) Such controls overlap with controls in the Building Code and cover the same aspects of building works. They are not limited to matters affected the location of buildings or activities which might otherwise establish a purposive difference on which the relevant case law depends.[13]

(b) Resource management issues that are relevant to the requirements for consent should be properly founded on the external effects of the activity (i.e.: effects on sites and parties that are outside the subject site):[14]

> *"On this basis, plan rules which purport to control the internal effects of activities can go beyond the purpose of the Resource Management Act 1991. This is especially so where the effects do not affect neighbours or the environment or where other regulatory methods are in place to control those effects. Such rules can impose inappropriate costs on people beyond those costs which they ought to bear in order to internalise the costs of their effects. Such rules are also likely to be inefficient, involving unnecessary duplication of other controls, tending towards confusion for both applicants and consent*

[13] Auckland Unitary Plan Independent Hearings Panel Recommendation Reports – Report on Topic 050-054 City Centre and Business Zones at page 16 (https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/history-unitary-plan/ihp-designations-reports-recommendations/Documents/ihp050to054citycentrebusinesszones.pdf).

[14] Auckland Unitary Plan Independent Hearings Panel Recommendation Reports – Overview of Recommendations dated 22 July 2016 at page 44, referring to the quoted text which was set out at page 43 (https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/history-unitary-plan/ihp-designations-reports-recommendations/Documents/ihpoverviewofrecommendations.pdf).

authorities and imposing extra costs for little or no benefit."

5.5 Kāinga Ora agrees with the AUP IHP's analysis of the issue and submits this Panel should adopt the same approach.

6. LEGAL ISSUE 2 - FINANCIAL CONTRIBUTIONS

6.1 Kāinga Ora opposes the Council's proposed financial contribution ("**FC**") provisions and considers that in the absence of a clear link between cause and effect, they should be deleted.

6.2 As outlined in Mr Liggett's evidence[15] the concerns of Kāinga Ora are that:

(a) The Council's evidence has not demonstrated that FC provisions are warranted.

(b) In the event FCs are warranted, the provisions are unclear on their face as to the relevant threshold (or trigger) for contributions to be levied, and in what circumstances they will not be required.

(c) The Council now proposes levying the FC on a per dwelling basis. This does not reflect actual demand or effects generated. It will have a disproportionate impact on Kainga Ora given the need to deliver a high proportion of single bedroom dwellings. More broadly, it could disincentivise the delivery of smaller dwellings in the market and thus reduce housing choice. This is because a constant FC for all dwellings will comprise a bigger proportion of the dwelling cost for smaller units.

6.3 Council's rebuttal evidence proposes amendments to address the matters in (b) above but makes no changes in response to issues (a) or (c).

6.4 With respect to whether the provisions are warranted (item (a) above), Kāinga Ora notes that:

(a) The fact that the RMA allows councils to introduce FCs via their IPI does not mean that they need to or should do so. HCC has a comprehensive

[15] Liggett EIC, section 7.

Development Contributions Policy ("**DCP**") through which it already recovers extensive monetary contributions towards the costs of growth. The FC regime must not duplicate the charges recovered under the DCP (i.e.: Council cannot double dip) and an FC regime should only be introduced if there is a rationale for an additional and different mechanism.

(b) The purpose of the proposed residential amenity FCs is to address the "*adverse effects of residential development density that cannot be managed on site*". These costs will include but are not limited to:

(i) Where public open spaces can be improved, the costs of developing enhanced spaces;

(ii) Where additional public space is required, the cost of land acquisition and development; and

(iii) Where streetscape amenity can be enhanced, the cost of that enhancement[16].

(c) Kāinga Ora considers that matters (i) and (ii) fall squarely within the ambit of the DCP and should be addressed wholly through that document.

(d) With regard to Item (iii):

(i) This FC appears to rely on an assumption that greater intensification will necessarily reduce streetscape amenity. Kāinga Ora does not agree. Streetscape amenity will be influenced by the density of development but there is no necessary causative connection. Factors such as architectural quality, the choice of materials (both in the street and on private developments), landscaping and vegetation will all influence that amenity.

(ii) It is a significant and unsupportable leap to place responsibility for funding improvements on streetscape amenity (which may already

[16] Refer: 24.4.2(a)(ii)(B).

be sub-standard) on new development that, if carried out appropriately, will improve rather than detract from that amenity.

(iii) No information is provided as to the factors that will determine the calculation of the FC.

(iv) Given that whether and to what extent new development improves or detracts from streetscape amenity is likely to involve a subjective assessment, it may prove difficult for developers to convince officers that a FC should not be charged or should be reduced.

6.5 With respect to the Council's changes to make clearer when a contribution is required and the basis for a discount (item (b) above):

(a) Kāinga Ora acknowledges that the addition of Rule 24.4.2(f) makes it clearer that the trigger will be any additional new residential unit of demand (e.g.: if one dwelling is replaced by three dwellings, a financial contribution is payable on the additional two dwellings only);

(b) Kāinga Ora considers that the proposed definition for "*discount factor*" does not provide clarity or certainty as to when a FC will not be required, or a reduction made:

(i) The proposed provisions record that a discount factor will be considered where on-site mitigation or betterment measures are proposed which "*contribute*" to the FC purpose (24.4.2(e)); and define "*discount factor*".

(ii) The definition records that the quantum will be assessed through a case-by-case analysis based on development specific attributes or the value or other contributions for the same purposes. That wording specifies that a process will be undertaken but gives no clarity or guidance (to Council officers or applicants) as to the factors and criteria that will determine the outcome of the process.

(iii) Kāinga Ora considers this to be particularly important in circumstances where FCs can be collected for permitted activities

and therefore there is no permitted baseline of effects which a discount can be assessed against. At the very least, assessment criteria should specify the factors that would support a discount.

6.6 With regard to item (c) above:

(a) Levying financial contributions on a per dwelling basis has a disproportionate impact on Kāinga Ora because Kāinga Ora needs to deliver a high proportion of smaller (e.g.: one bedroom) homes. If the quantum of the FC does not change based on the size of the dwelling, the FC will comprise a bigger proportion of the overall cost for smaller dwellings. This may disincentivise the delivery of smaller dwellings and to that extent is at odds with the NPSUD's directives to provide housing choice (e.g.: Policy 1).

(b) This approach is also at odds with the methodology for calculation (Appendix 18) which records that, "*the basis for a financial contribution charge for residential development is the number of residential units. This ensures that larger developments which have a greater effect on the physical and natural environment will pay a larger contribution*" (emphasis added).

(c) Kāinga Ora submits that bedroom numbers provide a far more fair and reasonable proxy for anticipated resident numbers and hence potential adverse effects that the FC is endeavouring to address.

(d) If the FC regime is to be retained, then it should adopt the charging mechanism used in the HCC DCP (para 10.36) whereby "*standard*" dwellings pay a Household Unit Equivalent (HUE) contribution, but smaller units pay a reduced rate (e.g.: 0.3 or 0.6 x the HUE).

7. LEGAL ISSUE 3 - MINIMUM SEPARATION DISTANCES FROM ELECTRICITY LINES

7.1 WEL Networks Limited ("**WEL**") seeks to introduce rules into the District Plan which reflect the requirements of ECP 34 - New Zealand Electrical Code of Practice for Electrical Safe Distances ("**NZECP34**") regarding minimum safe distances between structures and electricity infrastructure ("**WEL Provisions**"). The WEL Provisions seek to:

(a) Amend policies and rules within the subdivision chapter to ensure that building platforms can be located in positions where a subsequent building can comply with NZECP34.

(b) Amend policies and rules within the residential zones chapters to ensure buildings and development are located in a way that complies with NZECP34.

7.2 WEL seeks to introduce these provisions on the basis that developers are generally not aware of the mandatory minimum setback requirements prescribed under NZECP34.

7.3 While Council's initial position was to introduce an advice note, it now supports the introduction of the WEL Provisions into the residential zone chapters. The Council's position in respect of the subdivision chapter is unclear.

7.4 Kāinga Ora agrees with the Council's primary evidence on this matter. Namely that:

(a) The Council is not responsible for administering NZECP34.

(b) Compliance with NZECP34 is mandatory, regardless of the provisions in the District Plan.

(c) It is not appropriate to enforce another regulation through the District Plan.

(d) There are no proposed land use provisions related to NZECP34 that would regulate the location of buildings established on allotments after subdivision.

7.5 Kāinga Ora therefore agrees that the most appropriate response (and the most efficient and effective one) is the use of an advice note. An advice note is sufficient for a landowner to be alerted to the fact that there are other matters that must be complied with. This mechanism is used elsewhere in the District Plan where regulations apply (e.g.: in Chapter 19 Historic Heritage in relation to the regulation of activities relating to archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014).

7.6 WEL refers to the existence of the National Grid Corridor Overlay in support of its submission that the WEL Provisions should be introduced. Kāinga Ora disagrees this provides a basis to introduce the WEL Provisions and duplicate regulation.

(a) The National Grid Corridor and National Grid Yard is a buffer area around the national grid high voltage electricity transmission lines. Its purpose is to manage activities and structures in close proximity to the National Grid transmission lines and is required by the National Policy Statement for Electricity Transmission ("**NPS-ET**")[17].

(b) The NPS-ET only applies to the National Grid, not local (lower voltage) electricity networks such as WEL's. As Kāinga Ora understands it, it is the requirement to give effect to Policy 11 of NPS-ET which results in the National Grid Corridor provisions. That is, there is a very clear direction from a higher order policy document which requires these matters to be provided for in a District Plan. The proposed corridor goes beyond simply replicating that regulation which applies in any event.

7.7 Kāinga Ora remains of the view there is no basis for simply replicating the NZECP34 regulation through the District Plan in circumstances where an advice note is sufficient to alert plan users to the requirements under other regulation.

8. LEGAL ISSUE 4 - COUNCIL'S PROPOSED URBAN TREE CANOPY RULE

8.1 Council proposes to amend the "*Landscaped area*" density standard specified in Schedule 3A of the RMA to include additional requirements for urban trees. The density standard now included in Schedule 3A requires a landscaped area of a minimum of 20% of a developed site with grass or plants, which <u>may</u> include tree canopies. Council's proposal will require each residential development to provide "*sufficient*" trees to eventually produce 20% canopy coverage in combination with or additional to the minimum 20% landscaped area requirement. Deep soil area requirements are also specified.

[17] As defined in the Hamilton District Plan, Chapter 26 Definitions 'National Grid Corridor and National Grid Yard Overlay'.

8.2 That form of the urban tree canopy standard is opposed by Kāinga Ora. The planning and economic rationale for opposing the requirements is set out in the evidence of Mr Campbell[18] and Mr Osborne[19]. These include increased complexity, potential costs (including distribution of costs and benefits), and administrative burdens associated with the proposed standards.

8.3 The proposed standard raises a jurisdictional issue as it goes beyond simply making the MDRS, "*less enabling of development than provided for in [Schedule 3A]*" and instead represents an additional and potentially significant restriction on existing development rights:

(a) As noted by Mr Campbell, the proposed tree canopy provisions have significantly expanded the notified PC12 requirements while also creating a far more prescriptive standard that would apply to permitted activities within residential zones, as well as incurring additional costs. There is no equivalent provision in the operative District Plan. Kāinga Ora submits that this is a situation covered by the principle in the *Waikanae* Environment Court and High Court decisions.[20] That is because PC12 would wrongly introduce provisions that reduce rights which landowners have under the operative District Plan through imposition of a new, more onerous, standard which must be complied with before an activity can be considered as permitted.

(b) A tree canopy requirement has a fundamentally different impact on occupiers than does a landscaping or permeable surface requirement. A landscaping requirement does not in itself affect factors such as solar gain, outlook, views or shading. In contrast, a requirement to provide tree coverage will have such impacts, which (depending on the circumstances and preferences of the occupier) would amount to adverse effects on

[18] EIC, Campbell (Planning) at sections 9 and 10.
[19] EIC, Osborne (Economics) at paras 51 – 60.
[20] *Waikanae Land Company Limited v Heritage NZ Pouhere Taonga and Kapiti District Council* [2023] NZEnvC 056. Upheld on appeal in *Kāpiti Coast District Council v Waikanae Land Company Ltd* [2024] NZHC 1654

amenity.

(c) Imposition of the tree canopy standard may have a significant impact on:

(i) Where on a site new dwellings can be located, because of the need to set aside relatively large and regularly shaped areas for the trees.

(ii) The orientation of those dwellings, in order to provide sunlight access and retain any views given the shade that will be generated by and visual impact of the trees; and

(iii) The efficiency with which the site may be used and the development yield.

(d) Thus, development design is likely to be driven by the need to provide for and manage the effects of the trees rather than by the amenity of residents. That is particularly problematic in the context of the intensification, and hence smaller sites, that IPI's are intended to provide for.

(e) The tree canopy standard is unrelated to the adverse effects of any individual development. Instead, it is a site-specific response to a city-wide consequence of greater intensification, being a reduction in the aggregate tree canopy. The appropriate response in that regard is to increase tree coverage in public spaces (e.g.: road reserves and parks).

8.4 It is understood that this standard is being amended on the basis of the Te Ture Whaimana qualifying matter[21] (i.e.: the management of stormwater to reduce the impact of intensification on the water quality of the Waikato River):[22]

(a) Mr Jaggard's opinion is that the tree canopy and deep soil area rules are not required from a stormwater management perspective, because the rules do not reduce the extent of impermeable surfaces permitted on site.

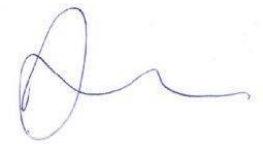
(b) Dr Junquera's evidence refers to research which suggests that street trees

[21] EIC, Junqueira (Flood Hazards and Green Policies) at para 18.
[22] EIC, Junqueira (Flood Hazards and Green Policies) at paras 15-17.

can have benefits in terms of runoff volume and the chemical composition of water. That research has not been attached to her evidence, however, and the nature of the comparison undertaken in the studies is unclear (e.g.: do they compare areas with trees and areas with impervious surfaces; or areas with trees and other permeable surfaces such as grass or sand). Kāinga Ora submits that such information is necessary to determine whether the proposed rule is necessary.

(c) In summary, there appears to be no rationale in terms of Te Ture Whaimana for requiring trees rather than lower vegetation and the rules would be contrary to section 77I RMA.

Dated this 30th day of August 2024



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Douglas Allan / Alex Devine

Counsel for Kāinga Ora-Homes and Communities