BEFORE INDEPENDENT HEARING COMMISSIONERS
AT CHRISTCHURCH

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI ŌTAUTAHI

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions and further submissions on Plan Change 14 to the Operative Christchurch District Plan**

LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

RESIDENTIAL PROVISIONS AND RELATED QUALIFYING MATTERS

22 NOVEMBER 2023

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MAY IT PLEASE THE COMMISSIONERS:

1. EXECUTIVE SUMMARY

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 the Residential provisions of Plan Change 14 to the operative Christchurch City District Plan (**PC14**), and related Qualifying Matters which are being heard during this hearing block.

1.2 There is a high degree of alignment between the Council's expert witnesses, and those called by Kāinga Ora, in relation to the provisions for the relevant Residential zones. Other matters, including proposed heights within the High Density Residential Zone, were addressed during the previous hearings on the Strategic and Commercial Zone provisions.

1.3 The primary focus for this hearing is on the related Qualifying Matters (or "**QMs**"). A number of QMs are proposed to limit development which is otherwise enabled by the Medium Density Residential Standards ("**MDRS**") or the relevant height and building density requirements under Policy 3 of the NPS-UD.

1.4 Counsel has already addressed the tests for both existing and new QMs, as part of the presentation of submissions on the Strategic and Commercial Zone provisions.

1.5 These submissions address the following matters which remain live between Kāinga Ora and the Council:

(a) The proposed rezoning of the unbuilt parts of the Residential New Neighbourhood zones to Future Urban zoning.

(b) The proposed policy (Policy 14.2.3.7) for managing increased building heights within Medium and High Density Residential Zones.

(c) The Low Public Transport Accessibility Area.

(d) Residential Character areas.

(e) Residential Heritage areas and Interface.

(f) Residential-Industrial Interface areas.

(g) The Riccarton Bush interface.

(h) Sunlight access.

1.6 These submissions do not address the issue of Canterbury Regional Council's proposed Stormwater Qualifying Matter for the operative Residential Hills Zone. That issue will be addressed at our next appearance following expert conferencing, which we understand is taking place this week. They also do not address a collection of relatively minor differences regarding the drafting of the Residential provisions, which do not raise matters of legal interpretation.

2. RESIDENTIAL NEW NEIGHBOURHOOD ZONES

Introduction and background

2.1 In its submission, Kāinga Ora opposed the proposed Objective 14.2.8 – Future Urban Zone, and associated Policies 14.2.8.1 to 14.2.8.7, on the basis that the Future Urban Zone label had been inappropriately applied to existing greenfield urban-zoned locations that were zoned Residential New Neighbourhood.

2.2 The submission identified that Future Urban zoning is used in other district plans for areas that are yet to have an operative urban zone. It said that Future Urban zoning is a "holding zone", that identifies where medium to long-term urban growth is anticipated, which is materially inconsistent with the purpose of the Residential New Neighbourhood Zone.

The Council's position

2.3 The Residential New Neighbourhood Zone was introduced through the Christchurch Replacement District Plan, as a means of simplifying greenfield development in identified areas (as directed by the Canterbury Regional Policy Statement and Land Use Recovery Plan). The description of the Residential New Neighbourhood Zone in Table 14.2.1.1.a of the ODP states:

> The Residential New Neighbourhood Zone generally includes new areas of greenfield land where large-scale residential development is planned. The zone will allow a wide range of residential house types and section sizes to provide for a wide spectrum of household sizes and affordable housing. People will therefore be able to remain within the neighbourhood throughout their lifetime as they move to housing types that suit their life stage. These areas are intended to achieve higher

overall residential densities than traditionally achieved in suburban developments.

2.4 The reporting officer for the Council accepts that the Residential New Neighbourhood Zone is *"part of the urban environment, and actually enables urban development"*.[1] Notwithstanding that, the Council considers that the Future Urban Zone (as that term is used in the National Planning Standards) is a *"good match with the RNN Zone"*, with the result being that areas zoned Residential New Neighbourhood are proposed to be rezoned to take them outside the framework of the MDRS.

The Kāinga Ora position

2.5 We disagree with the Council's approach and we say that it is completely contrary to the statutory intent of the Amendment Act and the MDRS provisions. As the Kāinga Ora submission sets out, and as Mr Clease says, Future Urban zone provisions are focussed on preventing activities from occurring in what are currently rural areas that could prejudice future urbanisation over the medium to long-term (eg quarrying, intensive farming, or lifestyle block subdivision).[2] The associated Future Urban provisions in other District Plans invariably require a further plan change process to be undertake to activate or "live zone" urban development.

2.6 The zone description for Future Urban zoning in Table 13 of the National Planning Standards states that the zoning applies to "*areas suitable for urbanisation **in the future** and for activities that are compatible with and do not compromise **future urban use**".*

2.7 However, as Mr Bayliss accepts, land within the Residential New Neighbourhood zone is **already** part of the urban environment. Urban development is **already** enabled,[3] subject to obtaining a subdivision consent as either a controlled[4] or restricted discretionary[5] activity. It is land which is suitable for urbanisation **now**, not "*at some point in the future*".

2.8 Moreover, and as the High Court has recently recognised, the Residential New Neighbourhood Zone already "*allows for large-scale residential development, with a wide range of residential house types and section*

1 Section 42A Report, Residential Ian Bayliss at [8.2.2].
2 Evidence of Jonathan Clease, [4.37].
3 See ODP Rule 14.12.1.1.
4 ODP Rule 8.5.1.2 C5 – where in accordance with a relevant outline development plan ("**ODP**").
5 ODP Rule 8.5.1.3 RD2 – where compliance is not achieved with Rule 8.5.1.2 C5.

sizes".[6] Importantly, the Court went on to note from the zone description quoted above that the Residential New Neighbourhood Zone "*generally requires higher density housing than has traditionally been provided for in suburban subdivisions*".[7]

2.9 Comprehensive residential development on sites of 6,000m^2 or greater can develop up to a height of 11 metres as-of-right.[8] That is not dissimilar to the permitted height under the MDRS (of 11 m plus a 1 m roof). Without a comprehensive residential development proposal, the maximum height is limited to 8 m (or two storeys). Treating the New Neighbourhood Zone as if it is not a relevant residential zone results in an effective downzoning, by removing those more permissive controls under MDRS and, potentially, locking in a lower intensity outcome.

2.10 Finally, the Council's approach is materially inconsistent with its own submission on the draft National Planning Standards.

2.11 The draft National Planning Standards stated that the purpose of the Future Urban zone was "*to identify land as suitable for urbanisation"*, recording that the Future Urban zone *"is a transitional zone".*

2.12 As recorded in the recommendations report for the Zone Framework Standard, Christchurch City Council submitted on that draft, recommending an amendment to the purpose statement so that it was time-based. The Council considered the draft phrasing of the purpose statement *"might lead to an interpretation that the land is suitable for urbanisation at present".* MfE went on to record that the Council *"suggested adding the words "at some point in the future""*.[9]

2.13 In our submission, the Future Urban zone is completely inappropriate for the Residential New Neighbourhood Zone. It has not been applied solely to areas which are suitable for urbanisation "in the future", and instead has been applied to areas which are already urban. Future Urban zoning is not required to restrict activity to avoid compromising future urban use, as is the case in Auckland. The activities the Zone already enables (including

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6 *Johns Road Horticultural Ltd v Gavin* [2022] NZHC 1747 at [10].

7 Ibid.

8 Standard 14.12.2.1.

9 It is acknowledged that MfE also referred to the ODP's "'Residential new neighbourhood zone" as a form of Future Urban zoning "to ensure that development potential of land is retained". MfE also went on to say that, typically, rural uses continue until a more comprehensive development process has taken place. However, we submit that where land is **already** urban, as is the case with the Residential New Neighbourhood Zoning, a Future Urban zoning is inapposite.

dwellings, and other forms of residential activity) are consistent with urban use.

Conclusion

2.14 We agree with Mr Clease's opinion that these operative urban zones should be rezoned Medium Residential, unless there is a QM in play which restricts the application of MDRS in some way.[10] That is consistent with the approach taken by other Tier 1 councils,[11] and the underlying intent of the Enabling Housing Supply Amendment Act ("**Amendment Act**").

2.15 Finally, and as Mr Clease identifies, there are other means available to the Council to control development to ensure the outcomes of the New Neighbourhood Zone are achieved. That result can be achieved, without trying to apply the wrong zoning under the National Planning Standards.

3. MANAGEMENT OF INCREASED HEIGHTS

3.1 New proposed Policy 14.2.3.7 seeks to "manage" increased building heights within medium and high density zoned areas, and beyond those enabled in the zone or precinct, by only allowing infringements where a list of outcomes (numbered (i) to (v) are achieved). It appears that this list is cumulative – in other words, for additional height to be consistent with the policy, every one of the sub-clauses would need to be achieved by any proposal.

3.2 Kāinga Ora submitted in opposition to the proposed policy, noting that it was inconsistent with Policy 5 (proposed to be introduced through Schedule 3A to the RMA), which seeks to "*provide for developments not meeting permitted activity status, while encouraging high quality developments*". Kāinga Ora sought deletion of Policy 14.2.3.7, and replacement with another policy which more closely reflected MDRS Policy 5.

3.3 Mr Clease agreed with the Kāinga Ora position in his evidence at paragraph 4.15, noting that taller buildings above permitted height levels are anticipated where "high quality developments" can be achieved, and supported the wording proposed by Kāinga Ora.

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10 Evidence of Jonathan Clease at [4.38].
11 Ibid.

3.4 In our submission, a number of the identified matters in proposed Policy 14.2.3.7 have nothing to do with increased building heights:

(a) Sub-clause (ii) in particular, which requires development to be *"consistent with the built form outcomes anticipated by the underlying zone or precinct"* would be almost impossible to comply with, where there is a proposal to breach a permitted height limit.

(b) Sub-clause (i) is also likely to be irrelevant in High Density Residential zones, as a greater variety of housing types, price points, and sizes should already be enabled and encouraged through the proposed permitted heights (ie apartments).

(c) Finally, sub-clause (v), which directs consideration of the "economic impacts on the city centre" from an increase in height, appears to be disconnected entirely from "*high quality developments*" under MDRS Policy 5. (The wording of this sub-clause also appears incomplete.)

3.5 Mr Clease has developed amended wording, which strikes a more appropriate balance between the somewhat open-ended nature of the relief sought by Kāinga Ora, and the heavily proscriptive approach promoted by Council. We submit that Mr Clease's alternative wording should be preferred.

4. LOW PUBLIC TRANSPORT ACCESSIBILITY AREAS

4.1 In its submission, Kāinga Ora opposed the Low Public Transport Accessibility Areas ("**LPTAA**") qualifying matter, on the basis that it is inconsistent with the requirements of s 77L of the RMA. The submission raised particular concerns regarding the large areas in the eastern parts of the City, which were identified as having inadequate services and where the lack of such services has the potential to exacerbate existing social inequalities.

4.2 The Council's position is somewhat of a self-fulfilling prophecy. In our submission, investment in public transport by territorial and regional authorities tends to follow demand, rather than the other way around.[12] "Baking in" a low-density outcome in the east of the District, on the basis

[12] See evidence of Tim Joll at [9.37], and with limited exceptions (eg the City Rail Link). Other public transport infrastructure projects with the potential to drive greater intensification often face problems in the starting blocks. Auckland Light Rail is a prime example of this.

of current low public transport accessibility, is unlikely to ever improve the provision of public transport to the area. Investment will instead be directed to those areas which are able to demonstrate a need or demand for greater public transport, often on the basis of increases in the resident population.

4.3 The outcome that Council is advocating for runs directly against the underlying policy rationale for the Amendment Act. In the Department Report accompanying the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill, MfE recorded part of that underlying policy rationale for the Bill was that "*higher population densities also improve investment, and the efficiency of investment, by councils and others in community services (such as parks, public transport, and streets) and retail*".[13] They later noted, in response to concerns regarding the impact of the Bill on climate change objectives, that "*further intensification of existing urban areas allows us to maximise opportunities to encourage mode shift, support greater uptake of public and active transport, and more efficient use of infrastructure*".[14]

4.4 In doing so, MfE recommended against including a specific qualifying matter for infrastructure constraints, including areas not serviced by activity and public transport. MfE recorded that no change was necessary, as a qualifying matter on these grounds would give *"too much discretion for councils to be able to limit areas because of* ***perceived*** *infrastructure concerns"*, with the likely result being that councils would require resource consent for such development as a restricted discretionary activity.[15]

4.5 Counsel submit that is effectively what the Council has done here. There is no evidence to support the proposition that public transport infrastructure cannot be provided to the outer suburbs. The Council's evidence, at its highest, is that there is a "perceived" infrastructure concern, resulting from a current lack of public transport infrastructure.[16] This is not a sufficient evidential basis for a QM.

4.6 Mr Joll raises three other issues with the proposed QM:

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13 Departmental Report, p 8.
14 Ibid at p 12.
15 Ibid at p 57.
16 See the s42A evidence of Ike Kleynbos at [7.1.78]-[7.1.121] and Chris Morahan at [94]-[106] in particular.

(a) A lack of analysis of "specific characteristics" that make the level of development enabled by the MDRS inappropriate, in light of the new starting point for medium-density residential development mandated by the Amendment Act.

(b) A lack of any perceived difference between Christchurch and other Tier 1 local authorities who have not used (current) low public transport accessibility as a limiting factor to MDRS, including a lack of site-specific analysis, or an appropriate s 32 evaluation under s 77L(c).

(c) The proposed linking of low public transport accessibility to other, non-public transport-related infrastructure issues, such as wastewater and stormwater concerns.

4.7 In our submission, insufficient justification has been provided for the proposed QM under s 77L.

5. RESIDENTIAL CHARACTER AREAS

5.1 Mr Joll identifies two key questions in relation to the proposed QM for Residential Character areas, namely whether:

(a) the methodology for identifying Character Areas is appropriate; and

(b) the Council's proposed activity status provisions are appropriate.

Methodology – effects on the "environment"

5.2 In his evidence in relation to both Residential Heritage and Residential Character areas, Mr Joll raises concerns regarding the Council's methodology, and in particular, whether unimplemented resource consents and certificates of compliance ("**CoC**") for demolition of "defining", "contributory", or "primary" sites should be taken into account where considering the "intactness" of an area.

5.3 Mr Joll disagrees, in particular, with the statement of Dr McEwan for the Council, where he states (at paragraph 75) that "*it is not best practice to anticipate the outcome of unimplemented resource consents, given that such consents may never be actioned"*. Mr Joll concludes that these consents form part of the existing environment, and that the assessment

on individual sites should reflect the future state of the environment (as that test has developed through case law).[17]

5.4 We agree with Mr Joll. Section 76(3) of the RMA states that when making a rule in a district plan, a territorial authority shall "have regard to the actual or potential effect on the environment of activities including, in particular any adverse effect".

5.5 The "environment", as that term is defined in s 2 of the RMA, encapsulates not only what is currently present on a particular site or within its surroundings, but how they might develop in the future pursuant to permitted activities or unimplemented resource consents **that are likely to be implemented**.[18]

5.6 The bolded statement above is crucial to the difference in opinion between Mr Joll and Dr McEwan. Respectfully, Dr McEwan's statement above is inconsistent with the well-established case law developed since *Hawthorn*. In the present circumstances, it was necessary for the Council to identify whether any sites that might be considered as "defining", "contributory", or "primary" sites are subject to a consent (or CoC) for demolition.[19]

5.7 That conclusion makes logical sense. Kāinga Ora holds a CoC that provides for the demolition of approximately 20 sites within Residential Heritage or Residential Character areas.[20] Those sites could be, and most likely will be, demolished by Kāinga Ora to allow a more intensive use of those sites, consistent with its overarching goal to deliver significantly increased numbers of new warm, dry, fit, for purpose, public homes.[21] As Mr Liggett says, the size of many state houses do not match the changing demand for public housing, with a large proportion of its stock comprising two-three bedroom homes on large lots which are too large for smaller households and too small for larger households.[22] It makes no sense to assess heritage or character against an illusory baseline, where the

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17 While it is noted that Mr Brown has some sympathy with Dr McEwan from a historic heritage perspective, he also notes that this requires consideration from a planning perspective, especially in light of the future planning environment; and that if the existence of those CoCs is given significant weighting, it would be harder to justify the retention of RHAs in particular on the basis of their integrity: evidence of John Brown at [7.6]-[7.7].

18 *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

19 We include CoCs within that category, as a certificate which has been granted must be treated "**as if it were an appropriate resource consent that...contains the conditions specified in an applicable plan**": RMA, s 139(10).

20 Evidence of Tim Joll at [6.7].

21 Evidence of Brendon Liggett at [4.4]-4.5].

22 Ibid at [4.4](b).

properties that contribute towards those values are likely to be demolished.

5.8 Respectfully, it is not open to you as Commissioners to disregard the potential for demolition of sites subject to an existing unimplemented resource consent or CoC, if that resource consent or CoC is likely to be implemented. Mr Joll's evidence on those matters, and Mr Brown's conclusions (on the basis that unimplemented consents and CoCs are to be considered) should, therefore, be preferred.

5.9 In the Piko/Shands area, in particular, which has the largest number of buildings that are subject to potential demolition under CoCs, Mr Joll considers that removal of those buildings could justify reconsideration of the boundaries of the area, and may warrant further reflection on its overall integrity and coherence (at [9.22]).

Has Council identified the correct activity status and provisions?

5.10 Mr Joll identifies a number of issues with the proposed activity status and provisions for Residential Character areas:

(a) First, he notes that the proposed new built form standards are more restrictive than they are in the Operative District Plan, and queries whether this is necessary given the approach generally taken by Council when consenting developments in existing Character Areas.

(b) Secondly, he notes the potential limitations of the Court's decision in *Waikanae* (which was addressed in earlier submissions), to the extent that the proposed changes take away rights that already exist under the Operative District Plan.

(c) Thirdly, Mr Joll queries the need for additional "specific" area-based built form standards, given that redevelopment of sites would require resource consent as a restricted discretionary activity.

5.11 From a legal perspective, there is also a scope issue associated with the proposed changes to Residential Character Areas, arising out of the Environment Court's decision in *Waikanae*. Applications for new buildings are currently controlled activities within Character Areas. The various options considered by the Council (which could include restricted

discretionary status) would make consenting new buildings more onerous than what is currently provided for under the Operative District Plan. While the decision in *Waikanae* was aimed at the erosion of permitted activity rights through the IPI, we submit that it could logically be extended to circumstances where an existing activity status is made more onerous, especially for controlled activites (for which consent must be granted).

5.12 In the event that there is scope, Mr Joll concludes that a restricted discretionary pathway, with the proposed matters of discretion and otherwise adopting the heights and densities permitted by the MDRS, would appropriately manage the specific characteristics of the relevant area through a design assessment. From a legal perspective, we support his conclusions.

6. RESIDENTIAL HERITAGE AREAS / INTERFACE AREAS

6.1 Kāinga Ora supports the protection of areas of historic heritage where the requirements of s 6 of the RMA are met. However, it notes (and Mr Joll agrees) that the proposed approach to addressing historic heritage across two plan changes (the IPI for built form, and other standards through PC13) has created inefficiencies. Mr Joll also identifies that the approach is inconsistent with Objective 3.2.2 of the Operative District Plan, which seeks to make the Plan easy to understand and use.

6.2 Mr Joll and Mr Brown have similar concerns regarding the methodologies applied to establish the Residential Heritage Areas ("**RHAs**"), noting concerns (in addition to those already expressed above) regarding the consistency and robustness of data in some instances.

6.3 Mr Joll also has a number of suggested refinements to the proposed provisions for RHAs. In particular, he identifies a need for a more bespoke, or two-tier policy for the demolition of "defining" or "contributory" buildings, as opposed to scheduled heritage items. From Mr Joll's perspective, it does not make sense to have a less onerous activity status for defining or contributory buildings, and to nevertheless apply the same policy criteria (many of which simply do not apply).

6.4 Mr Joll's suggested policy wording addresses whether the demolition of a defining or contributory building would "significantly compromise the collective heritage values and significance of the heritage area". In our submission, that would be a more appropriate means of evaluating the

impact of such a proposal, rather than treating defining or contributory buildings at the same level as those that receive individual protection (eg through scheduling).

6.5 The same applies to the need for a more enabling pathway for change where sites or features are identified as either neutral or intrusive to Heritage areas.

The Residential Heritage Area Interface is not justified

6.6 Whatever the Panel's view of RHAs might be, there is, simply put, no justification for controlling new buildings on sites sharing a boundary with a RHA via the (entirely separate) Interface QM. Mr Joll does not agree that the QM is needed to mitigate the adverse effects of new buildings on heritage values of sites within adjoining RHAs.

6.7 The concern, as Mr Joll identifies, appears to be one of visual dominance or shading, which are amenity-related effects. Those amenity-related effects are subject to a different regime altogether, and arguably irrelevant as a result of Policy 6 of the NPS-UD. Mr Brown and Mr Joll have been unable to identify any reason (including in the Council's own evidence) to support limiting the permitted level of development in the high-density residential zoned area next to RHAs. Counsel understand that the Council's own heritage expert was not involved in the preparation of this QM, which is both surprising and disappointing.

6.8 In the absence of any effects-based justification, or site-specific analysis under s 77L, this QM should be deleted.

7. RESIDENTIAL - INDUSTRIAL INTERFACE AREAS

7.1 Kāinga Ora also opposes the proposed Residential-Industrial Interface Area QM.

7.2 There are any number of reasons why the proposed QM does not make sense. As Mr Joll identifies:

(a) Contrary to the position taken by Council, increasing the density of built development on residential zoned land does not reduce the

availability of industrial land to meet demand. The amount of land zoned for industrial use will not change.

(b) Council is promoting the rezoning of Industrial zoned land to Commercial Mixed Use zoning in Sydenham and Philipstown. If there was a concern regarding industrial land supply, one would have thought retention of existing zoning would be a first step.

(c) The Council's Housing and Business Capacity Assessment, undertaken with NPS-UD requirements, establishes that there is already a substantial surplus of industrial zoned land.

7.3 The primary concern appears to be the potential for an increase in reverse sensitivity effects from additional building height within 40 metres of the zone interface. However:

(a) This is already governed by the requirements of the Operative District Plan, as they relate to noise. Noise rules in the Operative District Plan require activities in an adjacent Industrial zone to meet the relevant noise level in the *receiving* zone. Importantly, most, if not all residential zoned land in PC14 is already zoned for that purpose. It is the *intensity* of that development which is increasing, but that does not change the requirement to meet the permitted noise levels in that zone.

(b) The change brought about by PC14 is to add additional height (in the form of a third storey) enabled through MDRS. In areas which are zoned for Low Density or Medium Density Residential, there will already be some degree of effects from neighbouring industrial land use which are not able to be mitigated through screening at the ground floor, and which exists regardless of what is proposed through PC14.

(c) As Mr Joll identifies, reverse sensitivity occurs where a new sensitive use establishes near existing lawfully operating activities which emit noise, dust, odour or other effects. It is usually an issue where sensitive activities are proposed *within* an industrial area, or where land is proposed to be rezoned to provide for sensitive activities near an existing industrial zone (where they do not already exist). Residential activities are, in almost all circumstances, permitted within residential zones, and form part of

the existing environment. Effects of that nature on neighbouring industrial land are not reverse sensitivity effects.

7.4 Fundamentally, however, the proposed QM fails to meet the tests in s 77L. There is no specific characteristic that makes the level of development provided by the MDRS inappropriate in a given area; nor is there any justification in light of the national significance of urban development and the objectives of the NPS-UD. The proposed QM falls well short of the high standard required to establish a QM under s 77I(j).

8. RICCARTON BUSH INTERFACE AREA

8.1 Kāinga Ora has filed expert landscape evidence from Sophie Strachan of Beca in support of its submission on the Riccarton Bush Interface Area QM. Ms Strachan attended expert conferencing on 27 September 2023 with Dr Wendy Hoddinott, the Council's expert witness in relation to this QM.

8.2 The joint witness statement identifies areas of agreement and disagreement. The areas of disagreement are narrow in scope, and essentially boil down to whether it is appropriate to require a 3 m wide accessway on one side of an allotment across all sites, to allow viewshafts through to the Bush. Mr Joll (and, if necessary, Ms Strachan) can speak to those remaining differences in opinion and the rationale for them.

9. SUNLIGHT ACCESS

9.1 The final QM that we wish to address you on is the proposed Sunlight Access QM. This is a matter which is solely raised in the corporate evidence of Mr Liggett, and is opposed based on legal grounds only – essentially, on the basis that it was grappled with and addressed in the design of, and intention behind, the Amendment Act.

9.2 Mr Liggett is correct to identify that Parliament did grapple with the issue of access to sunlight when setting standards for height in relation to boundary under the Amendment Act. The original standard in the Bill as introduced was set at six metres plus 60 degrees, which attracted significant attention from submitters.

9.3 As a result, the Select Committee report at p 12 recommended that height should be reduced to five metres at side and rear site boundaries plus a

60 degree recession plane. In recommending the five metre + 60 degree standard, the Select Committee recorded as follows:

> *"We were advised that this would improve the **balance** between access to sunlight and enabling three storey dwellings in practice"*
>
> (our emphasis)

9.4 This was further reduced in the Government Supplementary Order Paper which followed the Select Committee report, to a four metre plus 60 degree recession plane.

9.5 Hansard records from the third reading of the Bill confirm that the reduction down to four metres plus 60 degrees was a deliberate choice on the part of Parliament – in the name of good design standards. Nicola Willis, then the National Party's housing spokesperson, indicated that the change to height-in-relation-to-boundary rules was made as a result of submissions received on the Bill.[23]

9.6 Earlier, during the Committee stages, the Hon. David Parker referred to advice which concluded that adopting a 3 metre plus 45 degree recession plane (as is the case for Auckland's Mixed Housing Suburban Zone) would reduce the housing outcome by 31 percent, which he said would be a "substantial unwinding" of the intention sitting behind MDRS.

9.7 Having made a political choice regarding the balance to be struck between access to sunlight and intensification, a level of expectation has been created as to the trade-offs involved, which are reflected in the requirement to the need to respond to "the neighbourhood's **planned urban built character, including 3-storey buildings**" in Objective 2 of Schedule 3A. That objective, and the policies which are designed to implement it, indicate that there is a new expectation as to, inter alia, sunlight access which is set by Parliament.

9.8 Having done so, we submit that the bar for promoting alternative standards based on the very same effects that Parliament was grappling with in setting the standard must be extremely high. Using the s 77L calculus, there must be something which applies at such a site-specific context, and with effects so significant, that the clear expectation set down by

[23] See also the speeches of the Hon Eugenie Sage, and Simon Watts.

Parliament in relation to a reasonable degree of sunlight access needs to be amended. For all the reasons identified by Mr Liggett, and despite the earnest efforts of the Council witnesses to justify it, we say the standard simply has not been met.

10. CONCLUSION

10.1 The following witnesses will give evidence in support of the relief sought by Kāinga Ora in respect of the Residential provisions and related QMs:

(a) Brendon Liggett – Corporate;

(b) Timothy Joll – Planning (QMs); and

(c) John Brown – Heritage; and

(d) Jonathan Clease – Planning (Residential Provisions).

10.2 Ms Strachan will also be available to answer questions from the Panel, if that would be of assistance.

Dated 22 November 2023

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