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

STRATEGIC, CITY CENTRE AND COMMERCIAL ZONE PROVISIONS

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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 Plan Change 14 to the operative Christchurch City District Plan (**PC14**).

1.2 Kāinga Ora is a major participant in various intensification streamlined planning processes (**ISPP**) across the country designed to give effect to national policy direction on urban development. The extent and tenor of Kāinga Ora participation in these processes reflects its commitment both to achieving its statutory mandate and to supporting territorial local authorities to take a strategic and enabling approach to the provision of housing and the support of communities.

1.3 Kāinga Ora and its predecessor agencies have a long history of building homes and creating communities and it remains the holder and manager of a significant portfolio of Crown housing assets. More recently, however, the breadth of the Kāinga Ora development mandate has expanded and enhanced with a range of powers under the Urban Development Act 2020 (**UDA**)

1.4 The detailed submissions lodged by Kāinga Ora in the ISPP, including on PC14, are intended to:

(a) provide leadership and innovation in the urban development sector;

(b) support local authorities grappling with national policy direction and reconciling that direction with the views and expectations of their communities;

(c) encourage councils to utilise the important opportunity provided by ISPP to enable much-needed housing development utilising a place-based approach that respects the diverse and unique needs, priorities, and values of local communities; and

(d) optimise the ability of updated district plans to support both Kāinga Ora and the wider development community to achieve government housing objectives within those communities experiencing growth pressure or historic underinvestment in housing.

1.5 Kāinga Ora acknowledges the directive and compressed timeframes within which councils have been required to prepare and promulgate the intensification plan changes, particularly where preparation of NPS-UD related growth plan changes was already well-advanced or where district plans themselves were in the middle of full review processes.

1.6 The Kāinga Ora submissions are not intended to increase the burden on councils, but rather to challenge traditional thinking about growth, urban communities, housing provision and infrastructure integration by providing a perspective that is weighted towards enabling development while also creating and supporting healthy, vibrant communities.

1.7 The Kāinga Ora submissions and its participation in the ISPP also provide a valuable national perspective that can offer individual councils greater visibility on cross-boundary consistency and strategic solutions to challenges faced by many others. This has been applied and considered in the Christchurch context through submissions on PC14.

1.8 As Mr Liggett says, Kāinga Ora has a substantial portfolio over nearly 6,800 properties across greater Christchurch, with 6,690 of those Christchurch City (and totalling 9.9% of the national portfolio).[1] In the last five years, the social housing register for Christchurch has more than tripled, despite Kāinga Ora adding nearly 740 homes during this period.[2] In addition to its national role described above, Kāinga Ora also has a direct interest in ensuring that the NPS-UD directives are met in Christchurch so that it can meet this growing need.

1.9 These submissions address the following topics that are due to be heard in the next few weeks, and in which Kāinga Ora has an interest:

(a) Strategic overview and the commencement of general submissions on the whole of the plan change.

(b) Central City and Commercial Zones.

1.10 Legal submissions will be presented on other later topics during the hearings process, including on qualifying matters (other than those which have been brought forward to be heard on 18 and 19 October 2023, in which Kāinga Ora does not have an active interest).

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1 Evidence of Brendon Liggett at [4.6].
2 Evidence of Brendon Liggett at [4.7].

1.11 As this is the first opportunity, in substance, to address the Panel on the Kāinga Ora position on PC14, these legal submissions will:

(a) briefly summarise:

(i) the statutory framework within which Kāinga Ora operates;

(ii) with regard to that statutory framework, the Kāinga Ora overall position on PC14, which, fundamentally, seeks to ensure that the outcomes required to be introduced through the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Housing Supply Act**) are implemented; and

(b) discuss the changes sought by Kāinga Ora to the provisions applying to the City Centre and Commercial Zones, including the introduction of a new Metropolitan Centre zone to implement the directive in Policy 3 of the National Policy Statement on Urban Development 2020 (**NPS-UD**).

2. KĀINGA ORA AND ITS STATUTORY MANDATE

2.1 Kāinga Ora was formed in 2019 as a statutory entity under the Kāinga Ora-Homes and Communities Act 2019, 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 contribution to sustainable, inclusive and thriving communities that enable New Zealanders from all backgrounds to have similar opportunities in life. It has two distinct roles: the provision of housing to those who need it, including urban development, and the ongoing management and maintenance of the housing portfolio.

2.3 In relation to urban development, there are specific functions set out in the Kāinga Ora – Homes and Communities Act 2019. 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:*[3]

[3] Section 13(1)(f).

(i) ***development of housing****, including public housing and community housing, affordable housing, homes for first-home buyers, and market housing:*[4]

(ii) ***development and renewal of urban developments****, whether or not this includes housing development;*[5]

(iii) *development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works:*[6]

(b) *to* ***provide a leadership or co-ordination role in relation to urban development****, including by-*[7]

(i) *supporting innovation, capability, and scale within the wider urban development and construction sectors;*[8]

(ii) ***leading and promoting good urban design and efficient, integrated, mixed-use urban development****:*[9]

(c) *to* ***understand, support, and enable the aspirations of communities in relation to urban development****;*[10]

(d) *to understand, support, and enable the aspirations of Māori in relation to urban development.*[11]

(our emphasis)

2.4 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[12] and the UDA in 2020, the 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

4 Section 13(1)(f)(i).
5 Section 13(1)(f)(ii).
6 Section 13(1)(f)(iii).
7 Section 13(1)(g).
8 Section 13(1)(g)(i).
9 Section 13(1)(g)(ii).
10 Section 13(1)(h).
11 Section 13(1)(i).
12 Kāinga Ora – Homes and Communities Act 2019.

leverage private, public and third sector capital and capacity. Local government also has a critical role to play.

2.5 Kāinga Ora participation in the ISPP is clearly aligned with these functions, and arguably represents the best opportunity since establishment to achieve demonstrable progress in undertaking those functions and, in turn, delivering against its key objectives.

2.6 In recent years, Kāinga Ora has had a particular focus on redeveloping its existing landholdings, 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.

2.7 Successful developments 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. However, not all district plans currently provide this framework.

2.8 The direction contained in the NPS-UD (coupled with the MDRS legislation) provides an unprecedented opportunity to address that issue for the future. The Kāinga Ora submissions on PC14 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, either now or as growth forecasts may project.

3. ISPP STATUTORY MATTERS

3.1 The purpose of the Enabling Housing Supply Act is to enable more medium density development and to expedite the operation of planning provisions required under Policy 3 of the NPS-UD that deal with intensification.

3.2 These legal submissions do not set out the detail of the statutory assessment framework applicable to the Hearing Panel's decision-making role. To the extent necessary, that detail will be provided where it is engaged later in these submissions (or in later submissions during the hearing process).

3.3 However by way of overview, PC14 must be prepared in accordance with:

(a) the Council's functions under section 31 of the RMA;[13]

(b) the provisions of Part 2 of the RMA;[14]

(c) the evaluation reports prepared in accordance with section 32 and section 32AA of the RMA;[15]

(d) management plans and strategies prepared under other Acts;[16]

(e) the requirement that a district plan must give effect to:

(i) any relevant national policy statement, including, in this case, the NPS-UD, the National Policy Statement on Freshwater Management (**NPS:FM**), and the National Policy Statement – Highly Productive Land 2022;[17]

(ii) any New Zealand coastal policy statement;[18]

(iii) the National Planning Standards, November 2019;[19]

(iv) any regional policy statement, including, in this case, the Canterbury Policy Statement (**RPS**);[20] and

(f) the requirement that a district plan provision must not be inconsistent with a regional plan for any matter specified in section 30(1) of the RMA.[21]

3.4 Pursuant to the Enabling Housing Supply Act, PC14 must also be prepared in accordance with:

(a) the requirement to incorporate the Medium Density Residential Standards (**MDRS**) set out in Schedule 3A of the RMA and to give effect to Policy 3 of the NPS-UD;[22]

(b) the qualifying matters in applying the MDRS and Policy 3 to relevant residential zones set out in section 77I of the RMA;[23]

13 Resource Management Act 1991, section 74(1)(a).
14 Part 2.
15 Section 74(1)(e).
16 Section 74(2)(b)(i).
17 Section 75(3)(a).
18 Section 75(3)(b).
19 Section 75(3)(ba).
20 Section 75(3)(c).
21 Section 75(4)(b).
22 Section 77G(3); section 77N and section 77O.
23 Section 77I.

(c) the requirements for an IPI to show how the MDRS is incorporated to satisfy section 77M, sections 86B and 86BA;[24] and

(d) the evaluation report prepared in accordance with section 32 and section 77J(2), including the additional requirements set out under sections 77J(3) and 77J(4):[25]

3.5 Material provided by the Council in support of PC14 includes evaluation reports prepared to address the matters in sections 32 and 32AA. In that regard:

(a) evaluating whether an objective is the most appropriate requires a value judgment as to what, on balance, is the most appropriate when measured against the relevant purpose;[26]

(b) 'most appropriate' does not mean 'superior";[27]

(c) relevant objectives should not be looked at in isolation, because it may be through their interrelationship and interaction that the purpose of the RMA is able to be achieved;[28]

(d) the nub of the test under s 32(1)(b)(ii) is the relative efficiency and effectiveness of the options being considered:

(i) effectiveness "assesses the contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address";[29] and

(ii) efficiency has been described as follows:[30]

> *Efficiency measures whether the provisions will be likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of society. The assessment of efficiency under the RMA involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary.*
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> *There have been differing views of how efficiency should be interpreted. In one case an approach based on a strict economic theory of efficiency was taken. A more holistic approach was*

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24 Section 80H.
25 Section 32 and section 77J.
26 *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45].
27 At [45].
28 At [46].
29 Ministry for the Environment "A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017" (2017) Wellington: Ministry for the Environment at 18.
30 At 18.

adopted in another case. Referring to those two cases, the High Court stated that:

> *"The issue of whether s32 requires a strict economy theory of efficiency or a more holistic approach was raised before Woodhouse J in* Contact Energy Limited versus Waikato Regional Council *[2011] NZEnvC 380…while economic evidence can be useful, a s32 evaluation requires a wider exercise of judgment. This reflects that it is simply not possible to express some benefits or costs in economic terms … in this situation it is necessary for the consent authority to weigh market and non-market impacts as part of its broad overall judgment under Part 2 of the RMA."*

Role of objectives and policies

3.6 A key area of focus for Kāinga Ora has been on ensuring that the objectives and policies introduced via the ISPP provide the most appropriate and efficient guidance for the incorporation of the NPS-UD and MDRS within the district plan and appropriately give effect to the NPS-UD and MDRS provisions.

3.7 The Kāinga Ora submission points place particular emphasis on the importance of precise and consistent wording in the objectives and policies. These matters will be discussed further, both in relation to the issues relevant to this hearing and later hearings.

4. THE KĀINGA ORA SUBMISSION ON PC14

4.1 Kāinga Ora lodged a comprehensive submission and further submission on PC14. The relief sought arises from both the operational and development needs of Kāinga Ora, but also reflects a wider interest in delivering the strategic vision and outcomes sought through the Amendment Act and the NPS-UD. As Mr Liggett explains,[31] the intent of the submission is to ensure the delivery of a planning framework within Christchurch that contributes to well-functioning urban environments that are sustainable, inclusive and contribute towards thriving communities that provide people with good quality, affordable housing choices and support access to jobs, amenities and services.

4.2 Through its participation in various IPI processes, one of the strategic goals of Kāinga Ora is to seek that local authorities fully implement the NPS-UD. This acknowledges the benefits that intensification, when done well, can bring to an area. Kāinga Ora acknowledges that PC14 as notified

[31] Evidence of Brendon Liggett at [5.1].

is more enabling of residential and business development when compared to the Operative Christchurch City District Plan.

4.3 However, and as the Kāinga Ora submission sets out, a number of key themes within PC14 compromise the extent to which PC14 enables appropriate development within Christchurch City, including:

(a) the extensive number, and coverage of QMs, which mean that urban outcomes intended by the Enabling Housing Supply Act are unreasonably and inefficiently constrained;

(b) an overly complex rule, zoning and overlay framework;

(c) the lack of a Metropolitan Centre Zone within the proposed hierarchy of centres; and

(d) a lack of housing choice and typology enabled across Christchurch.

5. "DENSITY DONE WELL" AND PLANNED URBAN FORM

5.1 The opening legal submissions for the Council describe, in some detail, the Council's approach to implementing the directives in the NPS-UD, through its "density done well" framework. This is contrasted with a "full intensification" response, which is described as one where the MDRS and Policy 3 of the NPS-UD are "*fully enabled without the imposition of restrictions on intensification (eg using QMs) in order to provide for sufficient development capacity*".

5.2 To be clear, Kāinga Ora supports an approach which achieves the directives in the Enabling Housing Supply Act to enable greater intensification in urban areas, and to achieve well-functioning urban environments consistent with Objective 1 and Policy 1 of the NPS-UD. The Kāinga Ora approach is not a "full intensification" response (in the way that term is described by the Council), and Kāinga Ora acknowledges that there may be areas in which the intensification enabled under a strict application of the MDRS and Policy 3 of the NPS-UD would be inappropriate (eg due to the need to manage significant risks from natural hazards).

5.3 However, the Council's approach, with its multitude of QMs and other proposed restrictions, appears to be borne out of a traditional approach to urban planning, which begins by identifying matters (including amenity

values) which require protection, and then enabling development to the extent that such development is compatible with protecting those existing values. We submit that is not a permissible or appropriate approach for PC14. We also note some reservations regarding the Council's interpretation and approach to the *Waikanae Land Company* decision, which will be addressed in later hearings where directly relevant.

5.4 Rather, what the Enabling Housing Supply Act directs, and what is required, is a step-change in thinking regarding the approach to urban planning, which encourages greater intensification within urban areas as the default position. 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

5.5 The NPS-UD and the Enabling Housing Supply Act have their origins in the Productivity Commission's 2015 report, "Using land for housing" (**Report**). 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.[32] 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.[33]

Policies 3 and 6 of the NPS-UD

5.6 In response to the issues raised by the Report, 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.

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

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32 Productivity Commission, *Using Land for Housing* (2015) at 5.

33 Productivity Commission, above n 30 at 119.

(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.

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

5.9 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:

> **Policy 6**: when making planning decisions that affect urban environments, decision-makers **have particular regard to** the following matters:
>
> (a) the planned urban built 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;

[…]

5.10 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 PC14.[34] 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.

5.11 At this point, we record our disagreement with the Council's interpretation of Policy 6, as it applies to *"planned urban built form"*. In its opening legal submissions, the Council submits that Policy 6 is only relevant where plans have already been amended to give effect to the NPS-UD, and so it is permissible for the Panel to consider the amenity effects on people within the City that will result from the intensification policies in the NPS-UD.

5.12 With respect, that is an overly narrow interpretation of the thrust of both Policy 6 of the NPS-UD and the other policies. What Policy 6 recognises, inherently, is that the changes required to be implemented through, inter alia, Policy 3 of the NPS-UD will result in significant changes to an area, but it also directs that those changes are not an adverse effect. In essence, the NPS-UD has set new expectations for the development of urban areas which place less weight on traditional amenity values associated with a less intensive urban form; and which promote other amenity values, such as those experienced by future generations. It would contradict both the highly directive nature, and thrust, of the NPS-UD to allow its implementation to be watered down by reference to traditional amenity values, in the way the Council's legal submissions are proposing. This will be addressed in more detail in later submissions on the Residential chapters.

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[34] *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].

The Enabling Housing Supply Act, Policy 3 of the NPS-UD & MDRS

5.13 The Enabling Housing Supply Act is similarly directive in its approach, towards enabling increased and varied housing densities, types, and, ultimately, choice.

5.14 Section 77G(1) of the Enabling Housing Supply Act requires territorial authorities to incorporate the MDRS in "*every relevant residential zone"*. Section 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"*.

5.15 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.[35]

The change of mindset required

5.16 This has important consequences for the task before you as Commissioners.

5.17 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.

5.18 In our submission it is critical that you apply that mindset when considering submissions on PC14, in order to ensure that those directives will be implemented properly.

5.19 It is for those reasons that Kāinga Ora seeks that the objectives, policies and matters of discretion that apply through PC14 are forward-looking and address the planned form and amenity outcomes of the City, rather than (as the Council's legal submissions would suggest) prioritising existing character and amenity values.

[35] RMA, s 77I.

"At least" sufficient capacity

5.20 Finally, the Council's submissions make particular mention of the existing capacity within the Christchurch City district, and make the argument that, because there is sufficient capacity, an alternative approach to "full intensification" is warranted.

5.21 In his evidence, Mr Colegrave shares some reservations about the Council's assessment of realisable and feasible capacity.[36] Mr Liggett also states his concerns regarding a lack of sufficient development capacity, in terms of both housing choice and typology, to the extent anticipated and provided for under the NPS-UD and the Enabling Housing Supply Act.[37]

5.22 Instead, we submit there should be a focus on ensuring that PC14 secures "at least" sufficient capacity at all times.

5.23 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:[38]

> … 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.

5.24 As the Court held in *Middle Hill:*[39]

> …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

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36 Evidence of Fraser Colegrave at [5.76].
37 Evidence of Brendon Liggett at [5.4](d).
38 *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].
39 *Middle Hill*, above n 26 at [139].

> 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.

5.25 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. Areas of the existing urban form in Christchurch are 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).

6. KEY ISSUES IN RELATION TO STRATEGIC DIRECTIONS AND CITY CENTRE / COMMERCIAL ZONES

6.1 As Kāinga Ora is presenting on both the relief sought in relation to the Strategic Directions provisions of the District Plan, as well as those provisions relating to the City Centre and Commercial Zones, the following matters arising out of the evidence are addressed further below:

(a) proposed heights within the City Centre Zone and Commercial Central City Mixed Use zones;

(b) the request by Kāinga Ora to introduce Metropolitan Centre Zone for three areas within the City (Riccarton, Papanui and Hornby); and

(c) the proposed rezoning of Industrial General zoning in Sydenham and Philipstown to Commercial Mixed Use zoning, and the rules applying to it.

7. CITY CENTRE HEIGHTS

No height limit in the City Centre Zone

7.1 In its submission, Kāinga Ora sought to delete standards which seek to limit height within the City Centre Zone, on the basis that they were inconsistent with the direction in NPS-UD Policy 3 to enable building heights to realise as much development capacity as possible in those areas.

7.2 Mr Clease's opinion is that having no height limit would be the most effective means of maximising capacity within the City Centre Zone.[40] He goes on to say that a height limit of 90m, as is currently proposed, is also set at a sufficiently high level to enable considerable capacity, at a level which is consistent with the extent of the tallest buildings that existed prior to the earthquakes.

7.3 As Mr Clease notes, an "enabling" approach does not necessarily require activities to be fully permitted by the rule framework, and controls on the effects of tall buildings can be achieved through other measures, including restricted discretionary activity status for the buildings themselves.[41] This allows the urban design merit of tall buildings to be assessed, while not placing unnecessary controls on built form matters (such as height). In Mr Clease's view, there is little material difference in terms of either strategic or urban design outcomes between a building that is, say, 35 stories tall, rather than a building that is 30 storeys.[42]

7.4 However, in practice, Mr Clease says that consent planners and decision-makers place considerable weight on built form rules (such as permitted height) and the associated building envelope anticipated, which can make consenting those developments more difficult than they really ought to be.[43] As he notes, even under a restricted discretionary framework, height and built form rules very much establish an anticipated envelope – and the existence of such a framework is quite different, in practice, to having an enabling planning framework.

7.5 We agree with Mr Clease's observations. Restricted discretionary activity status, combined with objectives and policies, is often used to identify an environment that is "anticipated" by the District Plan.[44] Proposals to exceed the envelope created through height built form standards often, in our experience, attract criticism that a proposal is in conflict with the district plan – even where the effects of any exceedance are negligible.

7.6 The legal risk associated with breaching height limits, particularly where they trigger assessment beyond urban design matters, often has a self-limiting impact on such applications. Enabling height to a higher level can

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40 Evidence of Jonathan Clease at [3.53].
41 Evidence of Jonathan Clease at [3.36].
42 Evidence of Jonathan Clease at [3.53].
43 Evidence of Jonathan Clease at [3.38].
44 See, for example, the description of the anticipated environment in *Wallace v Auckland Council* [2021] NZHC 3095.

also increase the feasibility of urban design matters which are otherwise seen as "nice to haves", making better urban design more affordable.

7.7 This is supported by the evidence of Mr Colegrave, who concludes that the benefits of increased building heights include *"agglomeration efficiencies, economic vibrancy, greater housing choice, improved housing affordability, more efficient land use, and better infrastructure efficiency"*.[45]

Activity status for breach of height limits

7.8 If there is to be a height limit, then it is important that any activity status for breaching the height limit is still sufficiently enabling of development, provided that all relevant effects can be considered and addressed. Mr Clease favours restricted discretionary activity status, on the basis that it is most consistent with the directive in Policy 3(a). Mr Willis seeks discretionary activity status, as in his opinion discretionary status is sufficiently enabling.

7.9 We agree with Mr Clease's response to Mr Willis' view that *"it is only non-complying or prohibited activity statuses that are clearly not enabling"*. In our view, there is a clear distinction between discretionary activities, on the one hand, and permitted, controlled or restricted discretionary activities on the other. In the case of discretionary activities, it has long been the case that there is no presumption either in favour or against such activities being approved.[46] Instead, all aspects of the application are required to be assessed in order to determine whether or not they are consistent with the objectives and policies of the relevant plan.[47]

7.10 Restricted discretionary activities, on the other hand, are "generally anticipated in the existing environment", and are capable of being assessed against the range of potential adverse effects identified in the relevant plan.[48] Controlled activities are those for which consent must be granted, and permitted activities can be undertaken as-of-right.

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45 Evidence of Fraser Colegrave at [1.11].

46 See, in relation to conditional uses under the former Town and Country Planning regime, *Foodtown Supermarkets Ltd v Auckland City Council* (1984) 10 NZTPA 262 (CA).

47 *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892 at [157].

48 *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892 at [157].

Rule package for built form within the City Centre zone

7.11 Finally, and as Mr Clease identifies, the reporting officers' recommendations on PC14 includea suite of additional built form rules that as a package significantly reduce functional height on most sites. These built form rules would, if imposed, render any height limit within the City Centre Zone otiose, as they would limit functional height to no more than 28m on most sites. Mr Clease recommends amendments to those provisions to ensure that the intent behind the height limit is not defeated by other unnecessary, inefficient and ineffective restrictions.

Increase in height in the Commercial Central City Mixed Use Zone

7.12 Mr Clease also supports an amendment to support an increase in permitted height limit to 39m within the Commercial Central City Mixed Use Zone, within the Four Avenues (and with the exception of the South Frame mixed use area).

7.13 In Mr Clease's opinion, this would achieve a consistent and commensurate outcome for those areas within a walkable catchment of the City Centre Zone, simplifying the height framework which applies and reducing complexity associated with different height levels across zones, where those levels are otherwise unaffected by QMs. It would also align with the 39m height limit Mr Clease is recommending on High Density Residential Zoned land within the Four Avenues – the rationale for which will be addressed in legal submissions at a later hearing.

8. METROPOLITAN CENTRE ZONING

8.1 One of the key pieces of relief sought by Kāinga Ora in relation to the Commercial Zones is the introduction of a Metropolitan Centre zoning (**MCZ**) for the commercial areas in Riccarton, Papanui and Hornby.

8.2 Mr Clease identifies that the proposed commercial centre hierarchy for Christchurch City is missing a key level that is anticipated both in the NPS-UD and the National Planning Standards, namely MCZs.[49] The National Planning Standards define an MCZ as an area:

[49] Evidence of Jonathan Clease at [3.146].

> …used predominantly for a broad range of commercial, community, recreational and residential activities. The zone is a focal point for sub-regional urban catchments.

8.3 Policy 3(b) of the NPS-UD requires development within MCZs to *"reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys".*

8.4 Mr Clease says that the three centres are the largest suburban centres in the South Island, and each have a clear sub-regional catchment which extends beyond their immediate suburbs, their retail spend, and their geographic extent.[50] Mr Clease says that a MCZ zoning for those areas would be consistent with the outcomes sought within similar areas in other large urban centres in New Zealand.[51]

8.5 As Mr Colegrave identifies, the key difference between Town Centre (**TCZ**) and MCZ zoning under the National Planning Standards is the size of the catchment, shifting from the "immediate and neighbouring suburbs" for TCZ, to a sub-regional focus. Mr Colegrave found that all three centres' capture of retail spend sits between the CBD and any other centre, and that all three (in terms of size) comfortably fit within the MCZ categorisation when compared to MCZ zoned areas in Auckland.[52]

8.6 The Council's opening legal submissions say that the Council considers metropolitan centre zones are "*not a feature of Christchurch's urban environment"*. While they say this will be addressed during the later hearings, for present purposes, it is assumed that this is based on the evidence of Mr Lightbody, which equates a "sub-regional catchment" to the greater Christchurch area.[53] Mr Clease responds to this point, considering that such a definition is unduly broad.[54] He considers 'sub-regional' to be the next tier above catchments for town centres, ie those that are larger than both the immediate and neighbouring suburbs. Otherwise, as Mr Clease says, there would be a void in the centres hierarchy between the town centres and CBD, with no distinction drawn for centres which clearly fall between the two in terms of size, scale and catchment.

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50 Evidence of Jonathan Clease at [3.146].
51 Evidence of Jonathan Clease at [3.138].
52 Evidence of Fraser Colegrave at [5.15].
53 Evidence of Mr Lightbody at [6.2.7]-[6.2.8].
54 Evidence of Jonathan Clease at [3.139].

8.7 In our view, there is an inescapable logic to Mr Clease's opinion. It makes no sense for a sub-regional catchment lens to be set at the scale of an entire metropolitan area. No centre would ever meet that definition. Mr Colegrave also identifies a clear distinction between the centres at Riccarton, Papanui and Hornby and other centres within Christchurch. To say that MCZ zones are *"not a feature of Christchurch's urban environment"* also takes a rather fixed view of development, which does not encourage those centres to grow to meet their potential. Not enabling greater intensity and built form in these areas results in lost opportunities to create a denser, more attractive urban form which aligns with the amenities these areas provide.

8.8 Mr Clease had prepared a set of MCZ provisions, and an amendment to the Strategic Directions, to ensure that these opportunities are available to be taken up through PC14. In his opinion, they represent a more efficient and effective outcome than the status quo.

9. PROPOSED MIXED USE ZONING IN SYDENHAM & PHILIPSTOWN

9.1 Mr Clease has also reviewed the background to the proposed rezoning of Industrial General areas in Sydenham and Philipstown, and recommended a consolidation of the proposed Mixed Use zoning, until such time as the necessary place making and urban design exercises have been undertaken to ensure that the necessary amenities for mixed use living are available to residents in those locations,

9.2 We support that suggestion. In our experience, the concept of mixed use is synonymous with a "live, work, play" approach to urban development. If the amenities associated with the "live" and "play" elements of the mixed use concept are not available at the time land is proposed to be rezoned, and if there is no strategy to ensure that they will be implemented as development proceeds, then the Council risks creating a poor functioning urban environment in those locations.

9.3 We also agree with Mr Clease's opinion that, whatever area is ultimately zoned Mixed Use, it is important that the zone has provisions which reflect the true nature of mixed use living, and are not simply limited to residential living within an industrial environment. Again, in our submission, residential developments within a mixed use setting thrive off the ability to be located close to other associated amenities, including retail, which provide for localised outcomes that are less defined by a

residential/industrial interface, and informed more by community amenities and small scale retail activity. The proposed amendments in Mr Clease's evidence would also more closely align with the zone description in the National Planning Standard, providing for a mix of commercial, residential and community-based activities, than the wording recommended by the Council..

Height limit applying to the Mixed Use zone in Mandeville Street

9.4 Finally, Mr Clease notes that it would make logical sense to increase the height limit in the operative Mixed Use zone applying to the Mandeville Street area in Riccarton to 36m, due to its proximity to both Riccarton Mall and Hagley Park.[55] There is no submission point which would support an increase to 36m in this location.[56] However, we submit that this is one area where the Panel could exercise its powers under cl 99 to recommend relief outside the scope of submission, so long as a matter is raised with the Panel in evidence or at the hearing. There is a clear logic for increasing a height limit, given the parallel increases in height proposed for the residential areas surrounding this Mixed Use Zone area, and the proposed change to create a Metropolitan Centre Zone for Riccarton. This leads to increased height in the immediate catchment, and aligns the heights in this specific area of Mixed Use zone with the High Density Residential zoned land on either side.

9.5 In our submission, inclusion of a broader power within cl 99 was intended to address the sorts of anomalies that would otherwise occur if Kāinga Ora's relief in relation to the surrounding residential zoned area were to be accepted.

10. CONCLUSION

10.1 Kāinga Ora looks forward to participating in this hearing process, and to improving the outcomes that are sought to be enabled through PC14.

10.2 The following witnesses will give evidence in support of the relief sought by Kāinga Ora in respect of the Strategic and City Centre and Commercial zone matters:

(a) Brendon Liggett – Corporate;

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55 Evidence of Jonathan Clease at [3.110].
56 Evidence of Jonathan Clease at [3.110].

(b) Jonathan Clease – Planning; and

(c) Fraser Colegrave – Economics.

Dated 6 October 2023

B J Matheson / A Cameron
Counsel for Kāinga Ora – Homes and Communities