BEFORE INDEPENDENT HEARING COMMISSIONERS

AT TAURANGA

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI TAURANGA

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions on Proposed Plan Change 92 (Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters) (PC92) to the Operative Western Bay of Plenty District Plan (WBOPDP)**

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

7 SEPTEMBER 2023

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MAY IT PLEASE THE COMMISSIONERS:

1. INTRODUCTION

1.1 These submissions are presented on behalf of Kāinga Ora – Homes and Communities (**Kāinga Ora**) (Submitter 29 and Further Submitter 70) in respect of Plan Change 92 (**PC92**) to the Western Bay of Plenty District Plan (**District Plan**).

1.2 PC 92 has been promulgated by the Western Bay of Plenty District Council (**Council**) in response to the National Policy Statement on Urban Development 2020 (**NPS-UD**) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**the Housing Supply Act**).

About Kāinga Ora

1.3 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 establishment of sustainable, inclusive and thriving communities.

1.4 Kāinga Ora and its predecessor agencies have a long history of building homes and creating sustainable, inclusive and thriving 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 and functions under both the Kāinga Ora Homes and Communities Act 2019 (**Kāinga Ora Act**) and the Urban Development Act 2020.

1.5 The detailed submissions lodged by Kāinga Ora in the ISPP are intended to:

(a) support local authorities in their implementation of national policy direction;

(b) 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

(c) 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.

1.6 Kāinga Ora acknowledges the directive and compressed timeframes within which all councils, including this council, 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.

1.7 The Kāinga Ora submissions seek to promote the vision of growth, the establishment of future urban communities and housing provision, along with the enablement of infrastructure integration as envisaged in the Housing Supply Amendment Act, while also creating and supporting healthy, vibrant communities. In that regard Kāinga Ora can offer a valuable national perspective to facilitate cross-boundary consistency to the implementation of the Act.

1.8 These legal submissions will:

(a) briefly summarise the statutory framework within which Kāinga Ora operates;

(b) comment on the statutory assessment required to be undertaken by the Hearings Panel, including a specific comment on scope/jurisdiction matters;

(c) identify and discuss the following key issues arising from Kāinga Ora submission points that remain in contention following the Council's section 42A report:

(i) the minimum yield provisions for the MRZ and HRZ;

(ii) the application of Policy 3 of the NPS-UD;

(iii) the provision for papakāinga; and

(iv) the rule restricting the extent of development relative to the status of the State Highway 2 / Ōmokoroa Road intersection.

(d) address at a high level, issues arising from the rebuttal evidence received one day prior to these legal submissions needing to be filed (noting that the rebuttal evidence will be responded to in further detail at the hearing itself);

(e) introduce the Kāinga Ora witnesses for this hearing.

1.9 These changes are proposed to be made pursuant to a bespoke planning process inserted into the Resource Management Act 1991 (**RMA**), namely the Intensification Planning Instrument (**IPI**) process.

2. KĀINGA ORA AND ITS STATUTORY MANDATE

2.1 The corporate evidence of Ms Beneke sets out the key statutory provisions from which Kāinga Ora derives its mandate. In short, Kāinga Ora was formed in 2019 as a statutory entity under the Kāinga Ora-

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[1] 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 Act. These include (emphasis added):

(a) *to **initiate, facilitate, or undertake any urban development**, whether on its own account, in partnership, or on behalf of other persons, including:*[2]

(i) ***development of housing**, including public housing and community housing, affordable housing, homes for first-home buyers, and market housing:*[3]

(ii) ***development and renewal of urban developments**, whether or not this includes housing development;*[4]

(iii) *development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works:*[5]

(b) *to **provide a leadership or co-ordination role in relation to urban development**, including by-*[6]

[1] Kāinga Ora – Homes and Communities Act 2019, section 12
[2] Section 13(1)(f).
[3] Section 13(1)(f)(i).
[4] Section 13(1)(f)(ii).
[5] Section 13(1)(f)(iii).
[6] Section 13(1)(g).

(i) *supporting innovation, capability, and scale within the wider urban development and construction sectors;*[7]

(ii) ***leading and promoting good urban design and efficient, integrated, mixed-use urban development:***[8]

(c) *to* ***understand, support, and enable the aspirations of communities in relation to urban development;***[9]

(d) *to understand, support, and enable the aspirations of Māori in relation to urban development.*[10]

2.4 Kāinga Ora participation in the ISPP is clearly aligned with these functions. 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.

2.5 Kāinga Ora developments throughout New Zealand are greatly supported and enabled by district plans that recognise the need for them and that provide an appropriate objectives, policies and rules framework that allows for an efficient and cost-effective approval process.

2.6 The direction contained in the NPS-UD (coupled with the MDRS legislation) provides an opportunity to address that issue for the future. Kāinga Ora submissions have therefore focused on critical drivers of successful urban development including density, height, proximity to transport and other infrastructure services and social amenities, as well as those factors that can constrain development in areas that need it, either now or as growth forecasts may project.

2.7 If these planning frameworks are sufficiently well crafted, benefits will flow to the wider development community. With the evolution of the Kāinga Ora mandate, via the 2019 establishing legislation and the UDA

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

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

3. ISPP STATUTORY ASSESSMENT MATTERS

3.1 The purpose of the Housing Supply Act is to enable more medium density development and to bring forward the outcomes sought under the intensification policies in Policy 3 of the NPS-UD.[11]

3.2 These submissions do not set out the detail of the statutory assessment framework applicable to the Hearing Panel's decision-making role. Kāinga Ora largely agrees with description of that framework set out in the section 42A report.

3.3 In a statutory sense, PC92 must be prepared in accordance with:

(a) the Council's functions under section 31 of the RMA;[12]

(b) the provisions of Part 2 of the RMA;[13]

(c) the evaluation reports prepared in accordance with section 32 and section 32AA of the RMA;[14]

(d) management plans and strategies prepared under other Acts;[15]

(e) the requirement that a district plan (and therefore any plan change) must give effect to:

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[11] Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (83-1), explanatory note at 4.
[12] Resource Management Act 1991, section 74(1)(a).
[13] Part 2.
[14] Section 74(1)(e).
[15] Section 74(2)(b)(i).

(i) any relevant national policy statement, including, in this case, the NPS-UD and the National Policy Statement on Freshwater Management;[16]

(ii) any New Zealand coastal policy statement;[17]

(iii) the National Planning Standards, November 2019;[18]

(iv) any regional policy statement, including, in this case, the Bay of Plenty Regional Policy Statement (**BOPRPS**);[19] 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;[20]

(g) management plans and strategies prepared under other Acts;[21] and

3.4 Pursuant to the Housing Supply Act, PC92 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 (including most relevantly to this hearing, Policy 3(d));[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]

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[16] Section 75(3)(a).
[17] Section 75(3)(b).
[18] Section 75(3)(ba).
[19] Section 75(3)(c).
[20] Section 75(4)(b).
[21] Section 74(2)(b)(i).
[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 In regard to those directions, in our submission it is not lawful for Council to seek to defer the intensification objectives of Policy 3(d) of the NPS-UD for the Te Puke Town Centre until a future structure plan. The clear statutory intent is that, as regards, residential intensification, the IPI plan changes are the appropriate mechanism to make these changes. This is particularly evident from s 80G(1)(a) which specifically prohibits a specified territorial authority from notifying "more than 1 IPI".[26]

3.6 Material provided by the Council in support of PC92 as notified includes evaluation reports prepared to address the matters in sections 32 and 32AA. It is worth reiterating the key legal principles that apply to those evaluation reports:

(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;[27]

(b) 'most appropriate' does not mean 'superior';[28]

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[24] Section 80H.
[25] Section 32 and section 77J.
[26] See, in particular, references in the explanatory note to the Enabling Housing Supply Bill to "bring[ing] forward the implementation of the NPS-UD intensification policies (at p 1), and the Departmental Report on the Bill at para 2.1, where officials identified that "*a significant benefit of requiring tier 1 councils to use the ISPP once is the certainty it provides developers and communities about the planning process for housing intensification*", when rejecting submissions seeking to allow the ISPP to be used more than once, including to resolve future issues.
[27] *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45].
[28] At [45].

(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;[29]

(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 the are likely to be in solving the problem they were designed to address."[30]

(ii) efficiency has been described as follows:[31]

> *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.*
>
> *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 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."*

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[29] At [46].

[30] 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. (Noting that while such guidance documentation is not legally binding on a decision-maker or determinative as to the meaning of provisions, it may provide assistance to those implementing the documents.)

[31] At 18.

4. KEY ISSUES OF CONCERN TO KĀINGA ORA

4.1 Kāinga Ora lodged substantial submissions, and many of the comments have been picked up by the section 42A Report. The remaining key issues, which will be addressed specifically in evidence include:

(a) the minimum yield provisions for the MRZ and HRZ;

(b) the application of Policy 3 of the NPS-UD;

(c) the provision for papakāinga;

(d) the rule restricting the extent of development relative to the status of the State Highway 2 / Ōmokoroa Road intersection; and

(e) response to relief requested by other parties.

Minimum yields

4.2 The Proposed Plan's "minimum yield" provisions will perpetuate a low density outcome that will result in an inefficient use of infrastructure and land. That outcome is not consistent with either the BOPRPS or the NPS-UD.

4.3 If minimum yields are to be specified, then they should be 35 and 50 residential units / hectare of developable land in the MRZ and HRZ respectively.

Application of Policy 3(d), NPS-UD – Amendments required

4.4 Policy 3(d) is the only applicable policy that applies to the Te Puke and Ōmokoroa Town Centres. That policy reads (emphasis added):

> In relation to tier 1 urban environments, regional policy statements and **district plans enable**: …
>
> d. **within and adjacent to** neighbourhood centre zones, local centre zones, and **town centre zones** (or equivalent), **building heights** and densities of urban form **commensurate with the level of commercial activity and community services**.

4.5 "Enable" is a very directive policy and must be afforded appropriate weight, both because of its nature, and because of the direct obligation on councils to implement this policy through the IPI process.

4.6 Further, this policy is forward looking. It should not be restricted to the level of commercial activity and community services currently present, but instead should focus on what is to be enabled or required. To adopt any other interpretation – ie to limit one's analysis to the current level of commercial activity and community services – would be to eschew the primary planning principle, namely that of looking forward (ie, planning).

4.7 Kāinga Ora says that, to properly give effect to that policy, height, height in relation to boundary (**HIRB**) and residential unit amenity standards need to be revised. The height in the Te Puke Town Centre (**TPTC**) should be increased to 24.5m (from 12.5m) and the height in the Ōmokoroa Town Centre (**ŌTC**) should be increased to 24.5m (from 20m). This height adjustment will increase feasibility of development in the centres, which is the most efficient location for development, including residential development, to occur.

4.8 In addition to the additional allowances for development in the TPTC and the ŌTC, Kāinga Ora requests that the Ōmokoroa Stage 3C areas should be rezoned to HRZ with a consequential 'uplift' in the performance standards, notably the height, HIRB and yield provisions. Kāinga Ora supports a height of 22m in the HRZ and a HIRB of 19m + 60° (to a depth of 22m and dropping to 8m + 60° thereafter). These provisions will enable a high density urban form (of 50 residential units / hectare of developable land) and provide for intensification in an efficient location around the ŌTC.

Provision for Papakāinga

4.9 Kāinga Ora asks that PC92 makes specific provision for papakāinga in order to address s80E of the Housing Supply Act. Although the Council

is, counsel understands, contemplating a future plan change to address papakāinga in our submission it is open to the Council to make provision for that activity now in PC92.

State Highway 2/Ōmokoroa Road roundabout

4.10 Unfortunately, as with many places in New Zealand, the proposed urban intensification of Ōmokoroa, a very desirable location for new housing, is hamstrung by the lack of infrastructure. In this case, the difficulty has arisen due to a substandard intersection between Omokoroa Road and State Highway 2.

4.11 Waka Kotahi and the Council have recognised this and, together with Kāinga Ora, are contributing funding to enable a "stage 1" solution to be developed. This is proposed to accommodate further urban development, while acknowledging that any long term solution would involve a fully grade separated interchange. Counsel understands that these stage 1 works are now "locked in", with funding committed and a timeframe for commencement in October this year.

4.12 Kāinga Ora and its planning expert, Ms Tait, have been working with Council and with Waka Kotahi representatives to develop a staging rule that enables urban development commensurate with the safe and efficient operation of the roundabout. Those discussions continue and a further update will be provided at the hearing.

4.13 Despite the modelling not, in Ms Tait's opinion, justifying a rule to manage the safe and efficient operation of the State Highway 2 / Ōmokoroa Road intersection, she accepts that there is a margin of error to traffic models and also that she is promoting higher densities (which may exhaust the roundabout capacity sooner than 2048). As such, she considers that a restricted discretionary activity rule is appropriate for managing the issues raised by Waka Kotahi, and has proposed wording for this rule.

Other matters

4.14 The Kāinga Ora planning evidence has addressed a wide range of other proposed amendments, which Kāinga Ora asks the Commissioners to address in its decision.

Response to relief requested by other parties

4.15 Kāinga Ora has filed rebuttal evidence in opposition to two provisions referenced by Kiwi Rail, being:

(a) The proposed requirement for acoustic insultation and vibration controls within 100m and 60m, respectively, of the railway corridor; and

(b) The retention of the proposed 10m building setback controls as notified.

Setback as a qualifying matter

4.16 Prior to addressing those matters, Kāinga Ora wishes to comment on the reporting planner's observation that "land within 10m of a railway corridor or designation should be identified by the District Plan [within the definition of] a qualifying matter".

4.17 The proposed definition is:

> Qualifying matter means one or more of the following: … Land within 10m of a railway corridor or designation for railway purposes (for sites created by of application for subdivision consent approved after 1 January 2010).

4.18 The ECMT railway line passes through both Ōmokoroa and Te Puke. The 10m setback from the railway corridor is an existing rule in Section 13 – Residential of the operative District Plan.

4.19 The section 42A Report states at p 34:

> Council's Section 32 Addendum Report identifies the rail corridor as an existing qualifying matter in the context of the 10m setback. This is deemed "a matter required for the purpose of the safe or efficient operation of nationally significant infrastructure" under Section 77I(e) of the RMA. Council's submission on Plan Change 92 also seeks to include this in a definition for qualifying matter as "Land within 10m of a railway corridor or designation for railway purposes (for sites created by way of an application for subdivision consent approved after 1 January 2010)".
>
> Kāinga Ora's opposition to the 10m setback is based on a view that acoustic and vibration controls are not a qualifying matter. No reason is provided. KiwiRail's submission appears to suggest that this 10m setback is not about managing noise and vibration but is instead to ensure that buildings and structures are able to be used and maintained without needing access on or over the rail corridor. Noise and vibration controls are sought elsewhere in KiwiRail's submission.

4.20 And, later on that same page:

> Because the rule is part of the existing District Plan and is proposed to be retained by Plan Change 92, it is recommended that this rule is retained as notified. The submitters in opposition would need to provide evidence justifying why the 10m setback should no longer be applied.

4.21 In my submission, just because the setback provision is in the District Plan already does not make that an existing qualifying matter for the purposes of the Housing Supply Act. There is no evidence as to why a 10m building setback is "necessary for the safe and efficient operation of nationally significant infrastructure" (s 77I, Housing Supply Act). While Kāinga Ora accepts that some building setback from the edge of the designation boundary might be necessary, that should be limited to 2.5, not 10m.

4.22 It is consistent with the overall purpose of the Housing Supply Act, and the NPS-UD, to impose qualifying matters only to the extent necessary to provide for the identified resource or issue (in this case the main trunk rail line). It would be inconsistent, therefore, to simply "roll over" an existing setback requirement in the absence of justification for that continued setback.

4.23 While the difference (between 2.5m and 10m setback) might not seem like much, over the length of the main trunk line through residential zones, the impact on building platforms adds up.

Vibration controls

4.24 In respect of the proposed vibration controls, Kāinga Ora says that there has been no appropriately analysis to justify such a control, which could have quite significant (ie costly) implications for developments adjacent

to the railway corridor. The proposed changes load all of the "risk" onto the adjacent neighbour, which is completely inappropriate and is inconsistent with sections 16 and 17 of the RMA.

4.25 Kāinga Ora would not oppose the proposed alternative relief sought by Kiwi Rail, namely an "alert layer" for properties adjacent to the railway corridor.

Acoustic controls

4.26 Mr Styles' and Ms Tait's rebuttal evidence have addressed their concerns with the acoustic controls proposed by KiwiRail, and what they would propose instead.

Building setbacks

4.27 Kāinga Ora opposes the proposed additional setback sought by Kiwi Rail, and says that such a setback is not consistent with the NPS-UD. Counsel understands that Kiwi Rail is seeking a 5m setback from the designation boundary, which would provide a total setback of 10m from the railway line itself.

4.28 Kāinga Ora opposes this setback as unreasonably large. A setback of 2.5m from the edge of the designation is sufficient for parties to access the rear of their buildings and maintain them.

4.29 Kiwi Rail's planning evidence in support of the building setback relies on Mr Brown's evidence. Mr Brown is a qualified lawyer and is giving corporate evidence for Kiwi Rail.

5. INITIAL COMMENT ON REBUTTAL EVIDENCE FILED BY COUNCIL

5.1 A substantial volume of rebuttal evidence has been presented by the s 42A authors. In many instances this evidence simply repeats their earlier evidence and says that their opinion has not changed, rather than engaging more directly with the evidence of submitters and responding

to the substance of it. In many cases, therefore, the rebuttal evidence does not particularly advance matters.

5.2 To the extent that substantive matters were responded to, then these will be addressed by the Kāinga Ora witnesses in their presentations. From a legal perspective, we make the following comments:

(a) There were a number of comments made in the rebuttal evidence about a "lack of scope" to make changes, apparently because there was not a submission directly on point.[32] These comments appear to have overlooked the specific power in clause 99 of the First Schedule to the RMA which, as part of the IPI process, gives the IPI Hearing Panel jurisdiction to make changes even if there was not a specific submission made on that point. (This issue will be addressed further at the hearing.) Mr Hextall's rebuttal evidence supported the Kāinga Ora proposed changes to the Ōmokoroa "if there is scope";[33] in our submission there clearly is scope, and this is exactly the type of situation that clause 99 was designed for – ie a sensible amendment to the provisions that is supportive of the intensification outcomes envisaged by the Housing Supply Act and the NPS-UD, but which might not have been specifically raised in an original submission.

(b) The proposed intensification of the Te Puke Town Centre was opposed not really on planning grounds at all, but because there was a future structure plan process proposed and that any rezoning should wait for that process to occur.[34] We have responded in substance to that suggestion above, and we would simply note that that is not a lawful reason to defer implementing Policy 3(d) of the NPS-UD. (We would also observe that making a change now in no way limits what the

[32] Ms Price, rebuttal, paras [27]-[28]; Mr Hextall, rebuttal, paras [149] - [157]
[33] Mr Hextall, rebuttal, para [157]
[34] Mr Hextall, rebuttal, paras [149] - [157]

Council might further explore with the community in a future structure plan process, which would look at a wide range of other matters – other than simply height/intensification.)

(c) There was criticism of the Kāinga Ora evidence around the Council's proposed "minimum yields" for Ōmokoroa and a suggestion that Kāinga Ora might have thought these were "maximum yields".[35] We can confirm that the Council's assumption in this case is incorrect. The concern was – and remains – that the "minimum yields" specified are simply too low and do not represent medium or high intensity development.

(d) It was disappointing and surprising to see the following comment in the Council's rebuttal evidence (emphasis added):[36]

> 60. **In regard to natural landforms and the cultural values of the land, these were identified as a significant issue.** As notified there were specific controls over the extent of earthworks and related cut and fill performance standards. Although it has been recommended to remove those specific performance standards there remains assessment criteria related to earthworks and related matters to ensure these matters are appropriately addressed through the resource consent process. There are also existing other provisions in the Operative Plan that relate to the cultural impacts of earthworks. **Although clearly not a significant issue for Kāinga Ora it is for others**.

The pejorative implication in the last sentence – ie that Kāinga Ora does not consider that natural landforms or cultural values of land are important - is both unjustified and inaccurate. There is no evidence referenced to justify this assertion. What Ms Tait, the planning consultant giving evidence for Kāinga Ora, said in her evidence at [9.5] was as follows:

> With respect to the Section 14A Issue Statements, I consider that amendments are required to better articulate the issues for the zone (and differentiate it from the HRZ that I will canvas later in my evidence). I also consider that amendments are needed to remove

[35] Eg, Mr Hextall, rebuttal para [14] et seq; Mr Clow, paras [46] - [51]
[36] Mr Hextall, rebuttal para [60]

> reference to natural landforms (seeing as no earthworks rules are proposed now) and the notification issues around higher density development (given that the notification requirements are prescribed by the Housing Supply Act).

Her reason for her proposed amendments was because the Council had separately recommended removing the earthworks rules. Refer also Ms Tait's paragraphs [9.13]:

> I have recommended deleting Objective 14A.2.1.6 as earthworks performance standards are no longer proposed and therefore, I do not consider that a specific objective is required. I provide further commentary on the proposed earthworks assessment criteria below in paragraphs 9.78 – 9.80, but if these are retained then I consider Objective 14A.2.1.4 provides the necessary framework for these matters.

Finally, see Ms Tait's paragraph [9.75], which explained further her opinion on the identified matter of discretion:

> I consider that matter of discretion 14A.7.1(m)(iv) – cultural values associated with the existing natural landform – is effectively functioning like a QM. Section 77I of the Housing Supply Act enables the Council to make the MDRS less enabling to accommodate a QM, including for a matter of national importance (s6 of the RMA). More specifically, s6(e) provides for '*the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*'. If the natural landform of Ōmokoroa and Te Puke needs to be retained to protect the relationship of Māori with these areas, then I consider that this is a matter that should be justified through S77J of the Housing Supply Act (noting that there is no existing overlay for this matter). I note that the earthworks procedures set out in Section 4 of the WBOPDP address the need to consult with mana whenua and the protocols associated with accidental discoveries, including of koiwi, artefacts and indications of occupation.

(e) We support the Council reporting officer's suggestion that there is no need for any control on residential development because of the limitations on the roundabout on State Highway 2.[37] What we cannot understand however, is that same reporting officer's position that while a rule is not needed, if there was to be a rule then it should be a non-complying status. That seems entirely contradictory. The issue is not whether the activity – ie additional residential lots - should occur at all (as a non-complying status would infer),

[37] Mr Clow, rebuttal, paras [29] – [42]

but rather that any effects would need to be assessed at the time (ie circa 2048). Those effects are easily identified and fit appropriately within a restricted discretionary activity framework that would allow any particular application to be declined if the safety and efficiency effects *as assessed at that time*, required such an outcome. A non-complying status is completely inconsistent with the recognised planning principle that an activity should be regulated to the least extent necessary to address the environmental effect of concern.

6. WITNESSES FOR KĀINGA ORA

6.1 The following witnesses will give evidence for Kāinga Ora:

(a) Ms Lezel Beneke, Principal Development Planning, Kāinga Ora.

(b) Mr Philip Osborne, economic consultant, Property Economics Ltd.

(c) Mr Jon Styles, principal of Styles Acoustic and Vibration Consultants Ltd

(d) Ms Susannah Tait, consultant planner and partner at Planz Consultants Ltd.

B J Matheson / A Cameron

Counsel for Kāinga Ora – Homes and Communities