

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT SELWYN**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
HEREWINI**

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF of the hearing of submissions on the
Proposed Selwyn District Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF KĀINGA ORA – HOMES
AND COMMUNITIES (SUBMITTER DPR-414)**

Hearing 30 - Rezoning

5 October 2021

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MAY IT PLEASE THE PANEL

- 1 Kāinga Ora—Homes and Communities (**Kāinga Ora**) is a submitter (DPR-0414) and further submitter on the proposed Selwyn District Plan (**PDP**).
- 2 Among other matters, Kāinga Ora's submission seeks the introduction of a medium density zone to the PDP (including specific provisions and mapped areas) together with the rezoning of the Future Urban Development Areas (**FUDAs**) consistent with the National Policy Statement on Urban Development (**NPS-UD**).
- 3 Both of these submission points are to be heard as part of Hearing 30 – Rezoning which is scheduled to commence in May 2022.
- 4 The purpose of this memorandum is to respectfully seek amendments to the evidence exchange timetable (**EETT**) set down for Hearing 30 – Rezoning in light of the section 42A report circulated on 24 September 2021, subsequent correspondence received from the Selwyn District Council (**SDC**) on 1 October 2020 and other relevant factors as set out in this Memorandum.
- 5 In accordance with the EETT, a section 42A report for the Rezoning hearing was circulated by the Council on 24 September 2021. As requested by the Hearings Panel in Minute 1, that report was intended to *"addresses common matters to be considered in the assessment of submissions seeking rezoning changes"*¹.
- 6 As directed, the section 42A report provides a framework for the assessment of greenfield and intensification rezoning. A subsequent communication from the Selwyn District Council dated 1 October 2021 however confirms that *"the recommended frameworks for assessing rezoning requests [in the s42A Report] are not binding on the Hearings Panel"*.
- 7 Moreover, the email confirms that *"while it was originally intended that the hearing of submissions on the Urban Growth Chapter of the PDP would be completed prior to the issue of the Rezoning Framework s42A*

¹ Paragraph 38, Minute 1, dated 8 June 2021

report, this was not possible due to COVID-19 restrictions. As such, the Rezoning Framework s42A report reflects the latest information available in respect to the Council Reporting Officer's views on the Urban Growth Chapter, however this may be subject to change following the officer's Reply Report for the Urban Growth hearing (now scheduled for 29 & 30 November 2021)" (emphasis added).

- 8 Further, and perhaps most concerningly, the section 42A report identifies a number of matters of uncertainty regarding the District's residential housing capacity analysis. This follows considerable and widespread criticism of the residential housing capacity analysis in recent plan change applications for residential rezoning within the Selwyn District. Such concerns are also reflected in the Minutes of the greater Christchurch Partnership Committee dated 13 August 2021 expressing "*concern that the [residential housing capacity] report does not reflect the current reality of the unavailability of land in Selwyn and Waimakariri District's (sic)*"².
- 9 As a result of these issues, Kāinga Ora now considers that a much more significant review of the District's residential housing capacity is required to underpin its rezoning request (and likely those of other submitters). Specifically, Kāinga Ora considers the following is necessary:
 - (a) *Review of the SDC Growth Modelling* - Kāinga Ora intends seeking access to SDC's Growth Modelling data in order to inform a full review of the residential capacity assessment as set out below.
 - (b) *Review of the residential capacity assessment* – Given the evident concerns with the most recent residential housing capacity assessment, Kāinga Ora wishes to access and review the model. Dependent on the outcome of that review, Kāinga Ora may be obliged to undertake its own modelling to better inform the role that the proposed medium density zone and additional zoning could play in addressing any shortfall.

² Greater Christchurch Partnership Committee. (2021) Minutes from GCPC/2021/00026

(c) *Investigation on restrictive covenants* – A matter which has arisen in the preparation of evidence is the extent of existing properties in Selwyn which include restrictive covenants prohibiting or otherwise restricting further subdivision of residential land. Kāinga Ora has contacted SDC to obtain further information on the location and extent of land affected by such covenants, but has been advised that SDC does not hold such information and accordingly Kainga Ora will be obliged to undertake its own assessment. The outcome of this work may have significant implications for the extent to which the intensification proposed by Kāinga Ora (and other parties) is achievable, and/or will contribute to overall housing capacity in the District. It will, of course, also impact the residential housing capacity analysis.

- 10 Given the information deficits set out above, it is unlikely that Kāinga Ora could undertake the work outlined, and prepare its full suite of evidence within the current timetable even if we were operating in “normal” times. These are not, however, normal times with Auckland and the Waikato at Alert Level 3 Covid restrictions and the balance of the country in Alert Level 2. In this regard it is noted that a number of the Kāinga Ora client and expert team are based in Auckland.
- 11 As it presently stands, the current EETT will require submitters to prepare evidence some five months prior to the hearing, under continuing Alert Level restrictions, with significant questions hanging over the residential housing capacity analysis against which such requests will be assessed and without the benefit of the Council Officer’s Reply Report for the Urban Growth hearings.
- 12 While it is admirable that SDC is trying to press on with matters, in my submission, the current EETT risks resulting in a fragmented review process based on inaccurate or incomplete data which will prejudice submitters and provide a less than optimal basis for the Panel’s consideration of residential development within the District.

Request for Extension

- 13 On the basis of the above, and consistent with the original intention to have the section 42A report follow the Urban Growth hearing, Kāinga Ora respectfully seeks the following amendment to the EETT:
- (a) An updated section 42A report for Hearing 30 – Rezoning be circulated to all submitters following the conclusion of the Urban Growth hearings but no later than **14 January 2022**;
 - (b) Submitters requesting rezoning are to file their expert evidence for the hearing, including a section 32AA further evaluation report, by **12 February 2022**;
 - (c) Submitters opposing any rezoning request are to file their evidence for the hearing by **4 March 2022**;
 - (d) SDC is to prepare and release all individual section 42A reports for the hearing by **1 April 2022**;
 - (e) Any rebuttal evidence by the proponents and opponents of the rezoning is to be filed by **22 April 2022**; and
 - (f) Any legal submissions are to be filed no later than 5 working days prior to commencement of the hearing.
- 14 Kāinga Ora considers that the above amendments to the EETT are appropriate on the basis that:
- (a) The interests of the community will be better served by granting the extension. The extension will provide SDC with the opportunity to better integrate the Rezoning process with the remainder of the review process and will give submitters an opportunity to provide more detailed and targeted information on their submissions.
 - (b) The amendments to the EETT will provide the Hearings Panel with better quality information without any alteration the hearing date (currently 16 May 2022). As such, no unreasonable delay will ensue.

- (c) Kāinga Ora's reasons for seeking the extension are likely to apply to several other submitters and where appropriate submitters may be able to work together to provide a more robust residential capacity analysis. The timeframe sought would enable SDC to be included in such discussions.

- 15 In the alternative, the Panel may consider it appropriate to issue directions to SDC regarding updating the residential housing capacity analysis and/or seeking a peer review report to be provided to the Panel and all parties.
- 16 Kāinga Ora wishes to thank the Panel for considering this request. Counsel is available as required to elaborate further on the information contained in this Memorandum.

DATED this 5th day of October 2021

L J Semple

Counsel for Kāinga Ora—Homes and Communities