

**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

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**OPENING LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA—  
HOMES AND COMMUNITIES**

**Hearing 1 – Strategic Directions**

**30 July 2021**

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## 1 INTRODUCTION

- 1.1 These submissions are presented on behalf of Kāinga Ora—Homes and Communities (**Kāinga Ora**). As discussed below, Kāinga Ora’s role is not just about houses and other physical structures; rather it’s about people, it’s about their community and their sense of place, and it’s about the well-being of the environment. This is encapsulated in the meaning of Kāinga Ora, namely “well-being through places and communities”.

### About Kāinga Ora

- 1.2 As set out in the evidence of Mr Liggett, Kāinga Ora was formed in 2019 as a statutory entity established under the Kāinga Ora—Homes and Communities Act 2019 (**Kāinga Ora Act**), which brought together Housing New Zealand Corporation, HLC (2017) Limited and parts of the KiwiBuild Unit. Under the Crown Entities Act 2004, Kāinga Ora is a Crown entity and is required to give effect to Government policy.
- 1.3 The first Government Policy Statement on Housing and Urban Development (**GPS-HUD**), is currently in the public consultation phase and will be published by 1 October 2021. The GPS-HUD is intended to provide a shared vision and direction across housing and urban development, and to guide and inform the actions of all those who contribute. It will set out how Government and other parts of the housing and urban development system will work together to realise this vision. The GPS-HUD, once finalised, will shape future government policy, investment and programmes of work that will direct Kāinga Ora’s own work programme.
- 1.4 As the Government’s delivery agency for housing and urban development, Kāinga Ora is required to work across the housing spectrum to build complete, diverse communities that enable New Zealanders from all backgrounds to have similar opportunities in life.
- 1.5 As a result, and as outlined by Mr Liggett, Kāinga Ora has two core roles:
- (a) being a world class public housing landlord; and

(b) leading and co-ordinating urban development projects.

1.6 In terms of its role as a public housing landlord, Kāinga Ora's focus is to provide public housing that matches the requirements of those most in need. To achieve this, it has largely focused in recent times on redeveloping its existing landholdings more efficiently and effectively, so as to improve the quality and quantity of public and affordable housing that is available.

1.7 Kāinga Ora's statutory functions in relation to urban development extend beyond the development of housing (which includes public housing, affordable housing, homes for first home buyers, and market housing) to the development and renewal of urban environments, as well as the development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works.<sup>1</sup> It is this function that is particularly important in Selwyn. While Kāinga Ora do not currently have a large number of public houses in the district, facilitating a reduction in regulatory controls and increasing housing supply is important to the outcomes Kāinga Ora is seeking to achieve.

1.8 The legislative functions of Kāinga Ora illustrate this broadened mandate and outline two key roles of Kāinga Ora in that regard:

(a) initiating, facilitating and/or undertaking development not just for itself, but in partnership with or on behalf of others; and

(b) providing a leadership or coordination role more generally.<sup>2</sup>

1.9 The Urban Development Act 2020 (**UDA**) also provides Kāinga Ora with additional statutory obligations and powers to undertake urban development functions, including facilitating the delivery of complex and strategically important urban development projects throughout New Zealand. As such, the UDA provides Kāinga Ora with a toolkit of powers and a new, streamlined, process to enable complex, transformational development in the country's urban areas. However, the UDA does not negate the need for Kāinga Ora to continue to be actively involved in plan-making throughout the country. Indeed, Kāinga Ora's new statutory mandate regarding urban development

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<sup>1</sup> Kāinga Ora Act 2019, s 12(f)

<sup>2</sup> Kāinga Ora Act, s 12(f)-(g)

means that involvement in plan development for urban areas becomes even more critical.

1.10 In that regard, Kāinga Ora considers strong guidance is required from the Strategic Directions chapter of the Proposed Selwyn District Plan (**PDP**) to enable the reduction in regulatory constraint and increase in development capacity that will allow for delivery of, not only additional public housing, but also general market capacity across Selwyn.

1.11 It is within this context that Kāinga Ora made its submissions on the PDP, and within this context that it presents these legal submissions and the evidence of Mr Liggett and Mr Roberts.

## 2 **STATUTORY ASSESSMENT FRAMEWORK**

2.1 As noted by the reporting officer (at 6.1, page 6 s42A report):

*The role of a strategic objective is to provide the overall context for the district plan, the overarching direction for other chapters through high level objectives that provide an integrated policy framework for the district as a whole, and sets the land use pattern of Selwyn.*

2.2 In a statutory sense, the proposed objectives and policies must be considered having regard to:

- (a) the Council's functions under s31 of the Resource Management Act 1991 (**RMA**);<sup>3</sup>
- (b) the provisions of Part 2 of the RMA;<sup>4</sup>
- (c) the evaluation report prepared in accordance with s32 and s 32AA of the RMA;<sup>5</sup>
- (d) Relevant national policy statements, including the National Policy Statement on Urban Development (**NPS-UD**);<sup>6</sup>
- (e) the requirement that a district plan be prepared in accordance with a national planning standard in s74(1)(ea)

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<sup>3</sup> RMA, s 74(1)(a)

<sup>4</sup> RMA, s 74(1)(b)

<sup>5</sup> RMA, s 74(1)(e)

<sup>6</sup> RMA, s 74(1)(ea)

of the RMA and must give effect to any national planning standard under s75(3)(ba) of the RMA;

- (f) management plans and strategies prepared under other Acts;<sup>7</sup>
- (g) the requirement that a district plan must give effect to any relevant national policy statement and regional policy statement, including, in this case, the NPS-UD, and the Canterbury Regional Policy Statement (**CRPS**);<sup>8</sup> and
- (h) the requirement for a district plan provision to not be inconsistent with a regional plan for any matter specified in s 30(1) of the RMA.<sup>9</sup>

2.3 With specific reference to s32 and s32AA of the RMA, the following legal principles are particularly pertinent:

- (a) evaluating whether an objective is the most appropriate requires a value judgement as to what, on balance, is the most appropriate when measured against the relevant purpose;<sup>10</sup>
- (b) 'most appropriate' does not mean 'superior';<sup>11</sup>
- (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;<sup>12</sup> and
- (d) the nub of the test under s32(1)(b)(ii) of the RMA 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*

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<sup>7</sup> RMA, s 75(3)(ba)

<sup>8</sup> RMA, s 75(3)(a) and (c)

<sup>9</sup> RMA, s 75(4)(b)

<sup>10</sup> *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45]

<sup>11</sup> At [45]

<sup>12</sup> At [46]

*successful they are likely to be in solving the problem they were designed to address.”<sup>13</sup>*

(ii) Efficiency has been described as follows:<sup>14</sup>

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.<sup>21</sup> 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.<sup>22</sup> A more holistic approach was adopted in another case.<sup>23</sup> Referring to those two cases, the High Court stated that:

“The issue of whether s32 requires a strict economic 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 judgement. 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 judgement under Part 2 of the RMA.”<sup>24</sup>

### 3 ROLE OF THE STRATEGIC OBJECTIVES

- 3.1 In accordance with the statutory framework, Kāinga Ora’s submissions have focused on ensuring that the strategic objectives and policies provide the most appropriate and most efficient high level guidance for the remainder of the PDP. Kāinga Ora’s particular focus has been on ensuring the strategic provisions also give effect to the relevant higher level guidance, as required by the RMA, in this instance the NPS-UD and the CRPS are pertinent in that regard.
- 3.2 The submission points place particular emphasis on the importance of precise and consistent wording in the Strategic Directions themselves and in locating Urban Growth objectives and policies within the Strategic Directions of the PDP. Kāinga Ora is unapologetic about this approach, which may seem pedantic to some.
- 3.3 The Environment Court has given specific attention to the role of strategic objectives in district plans on a number of occasions. On an appeal related to the proposed Queenstown Lakes District Plan the Environment Court considered the role that the strategic objectives should play in a plan. The Court ultimately determined:

<sup>13</sup> Ministry for the Environment. 2017. *A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017*. Wellington: Ministry for the Environment at p 18

<sup>14</sup> Ibid

- (a) The strategic objectives were intended to have an ongoing interface with the whole of the plan and as such it was important that the strategic provisions were *"coherent and integrated and clear in its intentions to the ordinary reader."*<sup>15</sup>
  - (b) The use of the word 'strategic' in the name of the chapter connotes *"something reflecting a long term plan or aim to achieve a specific purpose"*. In the RMA context that purpose was read as pertaining to long term sustainable management priorities.<sup>16</sup>
  - (c) Strategic objectives are intended to be applied "in tandem" with other objectives and policies but some strategic objectives will be more directive than others.<sup>17</sup>
  - (d) Sections 75 and 32 of the RMA do not preclude a plan expressly creating priorities and relationships between objectives and policies such that a hierarchy is created.<sup>18</sup>
- 3.1 The Christchurch District Plan (CDP) also includes strategic objectives and policies which have been the subject of commentary from the Environment Court in recent years.
- 3.2 In *Yaldhurst Quarries Joint Action Group v Christchurch City Council*<sup>19</sup>, the Court recognised that the strategic directions chapter of the CDP *"has primacy over the other objectives and policies in the Plan which must be expressed and achieved in a manner that is consistent with the direction given in [that chapter]."*<sup>20</sup> Given the *"very general"* wording of those directions, the Court then held that their discrete application on a case-by-case basis was not intended, but rather, that they are *"given effect to by the objectives and policies in the balance of the District Plan and are to be interpreted and applied accordingly."*<sup>21</sup> In practice, the Court has drawn on the

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<sup>15</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [75]

<sup>16</sup> *Darby Planning Limited v Queenstown Lakes District Council*, Minute dated 22 February 2019, at [7]

<sup>17</sup> *Darby Planning Limited v Queenstown Lakes District Council*, Minute dated 22 February 2019, at [13]

<sup>18</sup> *Darby Planning Limited v Queenstown Lakes District Council*, Minute dated 22 February 2019, at [11]

<sup>19</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 167 (ENV-2016-CHC-049)

<sup>20</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council*, above n19 at [29]

<sup>21</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council*, above n19 at [30]

strategic objectives and policies to inform the interpretation and application of more specific objectives and policies, rather than directly to the activity in question.

- 3.3 These cases demonstrate the way in which district plans can express relative priorities between strategic objectives and other relevant objectives and policies within a plan. In all cases it remains important that the provisions are drafted with clarity, designed as they are to guide decision making across a whole plan.
- 3.4 Among other relevant considerations, the PDP must be prepared in accordance with the National Planning Standards (**planning standards**), and once approved, it must give effect to those planning standards. Alongside a range of other mandatory directions, the planning standards require the inclusion of a “strategic directions” section within a district plan. Clause 7(1) then describes the sorts of provisions that must locate within that mandatory section, if they are addressed.
- 3.5 They include:
  - (a) An outline of the key strategic or significant resource management matters for the district.
  - (b) Issues, if any, and objectives that address key strategic or significant resource management matters for the district and guide decision making at a strategic level.
  - (c) An Urban Development chapter.
- 3.6 The requirements of the planning standards as they apply to the Urban Growth objectives and policies of the PDP are addressed in more detail below. In summary, clause 7(1) of the Standards sets out mandatory requirements for the location of some provisions within a district plan. Other than the specific provisions that are required to be located within the Strategic Directions section of the PDP, the Council may choose to locate additional provisions within the Strategic Directions section and as set out above, may direct the role the provisions of the Strategic Directions play in the plan as a whole.



- 3.7 The PDP as notified makes it clear that the Strategic Directions are intended to hold primacy over other objectives and policies in the PDP. The overview of the Strategic Directions chapter, as notified, states:

*For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these Strategic Directions.*

*There is no hierarchy between the stated Objectives i.e., no one Strategic Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole.*

- 3.8 This is reiterated in the section 32 report for the Strategic Directions Chapter (at 6.1, page 6) which confirms:

*These provisions should have primacy, and all other provisions should be expressed and achieved in a manner consistent with the strategic objectives, subject to RMA requirements. In other words, a clear hierarchy should exist between them and those that are chapter specific. Strategic objectives should identify and address district wide sustainable management priorities, give overarching direction, and ensure their purpose achieves the outcomes sought by higher order planning documents.*

#### **4 MOVING THE URBAN GROWTH OBJECTIVES AND POLICIES INTO THE STRATEGIC DIRECTIONS SECTION**

- 4.1 In accordance with the statutory framework outlined above, Kāinga Ora seeks that the objectives and policies located in the Urban Growth chapter of the PDP as notified are relocated to the Strategic Directions section of the PDP. Relocation of the provisions will ensure the PDP aligns with, and gives effect to, the planning standards and the NPS-UD.
- 4.2 As notified, the PDP contains a chapter entitled Urban Form and Development within the Strategic Directions Section, but that chapter only contains three objectives, and no policies. A separate Urban

Growth chapter then contains further objectives and policies relating to the urban form and development of the district.

- 4.3 The planning standards set out mandatory requirements for the location of provisions within district plans. Clause 7(1) specifically requires:

#### Mandatory directions

##### Strategic direction

1. If the following matters are addressed, they must be located under the *Strategic direction* heading:
  - a. an outline of the key strategic or significant resource management matters for the district
  - b. issues, if any, and objectives that address key strategic or significant matters for the district and guide decision making at a strategic level
  - c. policies that address these matters, unless those policies are better located in other more specific chapters
  - d. how resource management issues of significance to iwi authorities are addressed in the plan.
2. Rules must not be included under the *Strategic direction* heading.
3. An *Urban form and development* chapter must be included under the *Strategic direction* heading.
4. Each strategic direction matter must be its own chapter and be included alphabetically under the *Strategic direction* heading.

- 4.4 It is Kāinga Ora's submission that the mandatory inclusion of an Urban Form and Development chapter is a clear indication of the role such provisions are intended to have and particularly the key strategic nature and significance of such provisions generally. This is summarised by Mr Roberts in his evidence:

*In making Urban form and development the only mandatory topic of a strategic directions chapter, the National Planning Standards recognise the central and important role that is played by such provisions in achieving the purpose of the RMA. I agree with this status, particularly given the clear additional direction in this area recently set out in the NPSUD.<sup>22</sup>*

- 4.5 As Mr Roberts further explains in his evidence, the result of the introduction of the planning standards is that the Strategic Directions part of the PDP must not only contain an Urban Form and Development chapter within the Strategic Directions, but it must also contain any provisions relating to "key strategic or significant resource management matters for the district":

<sup>22</sup> Evidence of Nick Roberts, 23 July 2021, [9.7]

*The PDP **must** contain an Urban form and development chapter within the Strategic Directions and any objectives and policies relating to “key strategic or significant resource management matters for the district”, relating to any topic not just urban form, **must** be located within the Strategic Directions. The directions are mandatory and emphatic. Any of the Urban Growth objectives and policies that meet the requirement in Part 7.1(a) of the planning standards must be included within the Strategic Directions and cannot be moved to a generic “catch all” chapter.*<sup>23</sup>

- 4.6 The PDP is required to “give effect to” the planning standards under s75(3) of the RMA. The meaning of “give effect to” is discussed in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*. The Supreme Court noted that “give effect” means to “implement” and the words imply a “strong directive, creating a firm obligation on the part of those subject to it.”<sup>24</sup>
- 4.7 Pursuant to Clause 7(1)(b) of the planning standards, objectives which meet the qualifying attributes are required to be located within the mandated strategic directions section of the PDP. Where, for example, an objective addresses significant matters for a district and guides decision-making at a strategic level, it must be located under the “strategic direction” section.
- 4.8 Kāinga Ora considers that all of the Urban Growth objectives and policies meet the standard of being “key strategic or significant resource management matters for the district” as well as falling within the ambit of an Urban Form and Development chapter. In particular, it is noted that the definition of ‘strategic’ in *Darby*, being “something reflecting a long term plan or aim to achieve a specific purpose”<sup>25</sup> is easily met by the all of the Urban Growth objectives and policies proposed. The PDP describes those objectives and policies as addressing the settlement pattern of all urban areas in the district and addressing development capacity for housing and business needs:

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<sup>23</sup> Evidence of Nick Roberts, 23 July 2021, [9.6]

<sup>24</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*], at [77]

<sup>25</sup> *Darby Planning Limited v Queenstown Lakes District Council*, above n15, at [7]

*The Urban Growth chapter assists in meeting these demands by encouraging a consolidated and compact settlement pattern that optimises the use and development of resources. This chapter also assists in ensuring there is enough urban development capacity available to meet the District's housing and business needs while assuring that high quality living and business environments continue to be developed to implement the adopted Development Plans.<sup>26</sup>*

- 4.9 Mr Roberts agrees, finding that the Urban Growth objectives and policies meet the requirements to be included in the Strategic Directions and in fact are "crucial" in their strategic role:

*According to the s32 report "the role of a strategic objective is to provide the overall context for the district plan, the overarching direction for other chapters through high level objectives that provide an integrated policy framework for the district as a whole, and sets the land use pattern of Selwyn." I agree with this description of the role of a strategic direction objective for the PDP. The objectives of the Urban Growth chapter are crucial for setting the land use pattern of Selwyn and therefore are better placed under the Strategic direction heading to ensure that this provides the overarching direction and integrated policy framework needed for other chapters to appropriately give effect to the NPSUD.*

- 4.10 As he explains, amending the name of the chapter does not make the provisions in it less strategic or significant and the departure from the prescribed location risks the consistency sought by the planning standards:

*The purpose of the planning standards is to provide national consistency in district plans (as well as regional plans and regional policy statements). In using the alternative wording of Urban growth for district plan content that reasonably falls under the purview of the Urban form and development chapter, the PDP departs from this consistency and results in the PDP*

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<sup>26</sup> Proposed Selwyn District Plan, Urban Growth Overview

*failing to give effect to the planning standards as required by the RMA.*<sup>27</sup>

4.11 As the proposed plan sets out, “*The planning standards require that ‘like’ matters are grouped together in a chapter with the relevant objectives.*”<sup>28</sup> On this basis, even if the Urban Growth objectives and policies were not required by a higher order document to be located within the Strategic Directions (which it is clear they are), it also makes sense according to the framework of the PDP.

4.12 Kāinga Ora also seeks amendment to some of the specific objectives and these matters are addressed below.

## 5 SD- D1-01 – SENSATIONAL SELWYN

5.1 Kāinga Ora seeks a minor amendment to provisions SD-D1-01 in the following terms:

*Selwyn is an attractive and pleasant place to live, work, and visit, where development:*

1. *takes into account the character of ~~individual communities~~  
planned urban and non-urban form;*
2. *is well-connected, safe, accessible, and resilient; and*
3. *enhances environmental, economic, cultural, and social, and health outcomes for the benefit of the entire District;*

5.2 The Council officer has recommended that the requested amendment be rejected on the basis that the current wording is sufficiently wide to allow either existing or planned character to be taken into account and this is sufficient to meet the requirements of the NPS-UD.

5.3 As Mr Roberts has explained in his evidence, the intention of Kāinga Ora’s submission is to ensure that the objective is forward looking and seeks to address the planned form of the zone. The notified wording risks that the existing character of communities will be prioritised above that sought by the PDP.<sup>29</sup>

<sup>27</sup> Evidence of Nick Roberts, 23 July 2021, [9.8]

<sup>28</sup> Notified provisions of the PDP, Strategic Directions Overview

<sup>29</sup> Evidence of Nick Roberts, 23 July 2021, [6.4]

5.4 The NPS-UD specifically seeks that particular regard must be paid to the following factors (among others) in the context of decision making in urban environments:<sup>30</sup>

- (a) The planned urban built form as anticipated by those RMA documents that have given effect to the NPS-US;
- (b) That the planned urban form may involve significant changes to an area that may detract from those amenity values appreciated by some people but improve amenity values appreciated by others; and
- (c) That those significant changes are not, of themselves, an adverse effect.

5.5 As a document that the PDP must “give effect to”, this policy must be implemented.<sup>31</sup> Mr Roberts considers that the amendments sought to the strategic objective are necessary in order to set a clear statement of intent that the planned form of each zone needs to be considered:

*In my view, the proposed wording of the objective directing development to take into account “the character of individual communities”, means taking into account “existing character”. I do not consider this gives effect to the NPSUD. I also do not agree that relying on the zone based chapters to decide between maintaining the existing character of an area, or the anticipated character of an area is appropriate. In my opinion, the NPSUD is clear that existing character should be enabled to develop and change over time as the needs of future communities change. For these reasons, I consider that the strategic direction should set a clear basis for the consideration of planned future form not simply existing form at the highest level of the PDP.*<sup>32</sup>

5.6 Kāinga Ora continues to seek this amendment in order for the PDP to give effect to the NPS-UD and in order for the Strategic Directions to

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<sup>30</sup> NPS-UD, Policy 6(a) and (b)

<sup>31</sup> *King Salmon*, at [77]

<sup>32</sup> Evidence of Nick Roberts, [6.5]

provide effective and efficient guidance for the implementation of the remainder of the PDP.

## 6 SD- UFD – 01 – COMPACT AND SUSTAINABLE TOWNSHIP NETWORK

- 6.1 Kāinga Ora's submission supported this objective as notified. As the result of a submissions made by another party,<sup>33</sup> the reporting officer has recommended amendment of the provision to replace the word "around" with "adjoining". Kāinga Ora is seeking a reversion to the notified wording of objective SD-UFD-O1 Compact and Sustainable Township Network as follows:

*Urban growth is located only in or ~~around~~ adjoining existing townships and in a compact and sustainable form that aligns with its anticipated role in the Township Network, while responding considering to the community's needs, natural landforms, cultural values, highly productive land, and physical features.*

- 6.2 The Officers report recommended the replacement of "around" with "adjoining" in order to clarify that *"urban growth is only intended to occur in areas adjoining an existing urban area."*<sup>34</sup>
- 6.3 The evidence of Mr Roberts disagrees with the rationale of the reporting officer, noting:

*While I support this principle, I do not agree with the reporting officer's rationale and consider that the amended wording is overly narrow and may serve to inappropriately constrain the areas in which new urban growth may occur. Efficient development that supports infrastructure and services, public transport use and consolidation does not necessarily require land to "adjoin" existing townships. Provided the land is located within walking distance to townships, is supported by a structure plan and coordinated with staged infrastructure delivery, a well-functioning urban environment can still be achieved.*<sup>35</sup>

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<sup>33</sup> Specifically the submission by Christchurch City Council, DPR-0032  
<sup>34</sup> s42A Report on the Strategic Directions, [16.3]  
<sup>35</sup> Evidence of Nick Roberts, 23 July 2021, [7.3]

- 6.4 Mr Roberts also highlights the requirements in the NPS-UD to better enable development capacity and to ensure that growth is located in proximity to existing urban areas.
- 6.5 The NPS-UD does not require that urban development must be immediately adjacent to existing urban areas, rather that is it *"in or near"* an area with employment opportunities and well serviced by infrastructure<sup>36</sup>. In fact, the NPS-UD requires that planning decisions *"improve housing affordability by supporting competitive land and development markets"*<sup>37</sup> which implies flexibility in respect of availability of land for development and that planning decisions are *"responsive, particularly in relation to proposals that would supply significant development capacity"*, again implying a greater degree of flexibility than the wording supported by the council officer allows for.
- 6.6 While the CRPS has yet to be updated to reflect the provisions of the NPS-UD, it is also of assistance to note that the wording in the CRPS is already less restrictive than the term "adjacent" implies. The CRPS seeks to provide for development on the "periphery" of Christchurch's urban area in a way that meets demand and is serviced by infrastructure.
- 6.7 Kāinga Ora supports the wording of Objective SD- UFD – 01 as notified in order to give effect to the higher order documents, in particular the NPS-UD and the CRPS.

## 7 SD – UFD – 02 - URBAN GROWTH AND DEVELOPMENT

- 7.1 Kāinga Ora supports this objective in part but seeks the following amendment:

*There is at all times at least sufficient feasible development capacity to meet ~~anticipated~~ expected demands for housing and business ~~activities~~ land over the short term, medium term and long term.*

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<sup>36</sup> NPS-UD, Objectives 3 and 6

<sup>37</sup> NPS-UD, Objective 2



- 7.2 The reporting officer accepts that the replacement of “anticipated” with “expected” better reflects the wording in the NPS-UD and as such has made that recommendation.
- 7.3 In respect of the remaining amendments sought, the reporting officer considers the changes are unnecessary as the concepts they import are already inherent in the wording as notified.
- 7.4 As expressed in Mr Robert’s evidence, Kāinga Ora accepts that the change to add “land over the short term, medium term and long term” is not necessary **if** the amendment to include “at all times at least” is included. Mr Roberts summarises:

*However, I consider it necessary to include ‘at all times at least’ in order to give effect to, and to achieve consistency with, Policy 2 of the NPSUD. I note that the words ‘at all times, provide at least’ were introduced to the NPSUD when it replaced the earlier National Policy Statement on Urban Development Capacity 2016 (NPSUDC) in 2020.<sup>38</sup>*

- 7.5 The CRPS has not yet been updated to reflect the stronger wording of the NPS-UD, in particular Policy 2 of the NPS-UD which very clearly anticipates local authorities seeking to achieve a higher standard than simply “sufficient”.
- 7.6 The requirements in Policy 2 are repeated in the implementation section of the NPS-UD which again refers to “*at least sufficient development capacity*” and to “*the short, medium and long term*” (which, as discussed above would not be necessary provided “*at all times*” is included in the objective).
- 7.7 The NPS-UD further requires that if a local authority determines that there is insufficient development capacity over the short, medium or long term then it must take immediate steps to increase capacity.<sup>39</sup>
- 7.8 The PDP must give effect to the NPS-UD. This includes the clear requirements in the NPS-UD to provide “*at least sufficient development capacity*”<sup>40</sup>. Given the role of the Strategic Directions in the PDP to guide the remainder of the plan and to have primacy

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<sup>38</sup> Evidence of Nick Roberts, 23 July 2021, [8.4]

<sup>39</sup> Evidence of Nick Roberts, 23 July 2021, [8.7 – 8.9]

<sup>40</sup> NPS-UD, Policy 2

over other objectives and policies, it is Kāinga Ora's submission that unless the words "*at all times at least*" are included in the objective then the PDP will fail to achieve the level of implementation required to give effect to the NPS-UD.

## 8 CONCLUSION

- 8.1 Kāinga Ora's submission, these legal submissions and its evidence is made in the context of its functions in terms of facilitating high quality, fit for purpose public housing and providing leadership and coordination in urban development generally. Ensuring the strategic provisions of the PDP result in effective and efficient guidance for the remainder of the plan is vitally important. Without such guidance, the PDP may be unable to give effect to the higher order documents required by the RMA. On this basis, it is submitted that the amendments proposed by Kāinga Ora most appropriately meet the purpose of the Act.

**DATED** this 30<sup>th</sup> day of July 2021

L J Semple

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