
JOINT OFFICER'S RESPONSE TO QUESTIONS FROM THE HEARINGS PANEL

DATE: 17 November 2022

HEARINGS: Public Access, Subdivision and Development Areas, and Residential Zones

HEARING DATES: 21 and 24 November 2022

PREPARED BY: Rachael Carruthers and Jocelyn Lewes

Introduction

The purpose of this report is to provide a written response to questions posed by the Hearings Panel on the Residential Zones section 42A report where it relates to integration with the Subdivision chapter.

As requested by the Panel, Ms Carruthers and Ms Lewes have liaised and have prepared the following joint response to the Panel questions.

Questions and Answers

Paragraph or Plan reference	Question from the Hearings Panel
RESZ s42A 8.9	<p>In her Public Access, Subdivision and Development Areas Section 42A Report Ms Carruthers recommended accepting Kainga Ora's submission to amend SUB-O1 to refer to "planned form". You (Ms Lewes) have recommended the opposite for RESZ-O1 (and numerous other provisions).</p> <ul style="list-style-type: none">• Can you and Ms Carruthers please advise us of the basis for that inconsistency and whether or not either one of you wishes to amend your recommendations.
Officer's Response:	<p><i>To respond to the Panel Question requires consideration of the term 'planned form'.</i></p> <p><i>As initially considered by Ms Carruthers, this was considered to refer only to permitted and controlled activities. However, having regard to the NPS-UD, it is now considered that it also includes restricted discretionary activities (Refer to NPS-UD clause 3.4 (2)).</i></p> <p><i>One of the purposes of objectives and policies is to provide guidance when making or considering an application to do something beyond that permitted.</i></p> <p><i>Where there is no limit beyond which a RDIS activity becomes DIS or NC, we consider that requiring development to be compatible with the activity for which consent is sought results in an unhelpful circular argument.</i></p> <p><i>If we are incorrect in our understanding that 'planned form' includes RDIS activities, and the phrase does only refer to permitted or controlled activities, we consider that using such a phrase is as equally unhelpful, as it would imply that there was no policy</i></p>

Paragraph or Plan reference	Question from the Hearings Panel
	<p><i>support for something that varied only slightly from the permitted, because it has not been planned for.</i></p> <p><i>For example, in a location where an activity has a permitted height of 8m, any taller building requires resource consent as an RDIS activity, regardless of whether the proposed building is 8.08m tall or 808m tall. Taking the first interpretation of 'planned form' discussed above, the 808m tall building would be consistent with the planned form of the zone (because of the RDIS status) and therefore give effect to objectives and policies that rely on 'planned form'.</i></p> <p><i>Conversely, taking the second interpretation would result in the 8.08m tall building being inconsistent with the planned form and therefore considered inappropriate, even though the difference in height would likely be imperceptible beyond the site.</i></p> <p><i>Therefore, Ms Carruthers now considers that amendments should be made to SUB-O1 and SUB-MAT1.</i></p> <p><u>SUB-O1</u> <i>For consistency with the recommendations included in the Right of Reply report for Hearing 1 Strategic Directions relating to SD-DI-O1, Ms Carruthers now recommends that SUB-O1 be amended to refer to the 'anticipated character' of the zone, rather than to its 'planned form'.</i></p> <p><u>SUB-MAT1</u> <i>Considering the above, Ms Carruthers now recommends that SUB-MAT1.4 not be amended as requested in submission point DPR-0414.134 Kāinga Ora, and that the provision instead be retained as notified.</i></p> <p><i>These updated recommendations are shown in Appendix 1 of the Officers response to Panel questions for Hearing 14 Public Access, Subdivision and Development Areas.</i></p> <p><i>Ms Carruthers updated recommendations in relation to relevant submission points are shown in Appendix 2 of the Officers response to Panel questions for Hearing 14 Public Access, Subdivision and Development Areas.</i></p>
RESZ s42A 13.15	<p>You (Ms Lewes) have recommended amendments to SUB-R10 that differ from those recommended by Ms Carruthers in her Section 42A Report for the Public Access, Subdivision and Development Areas chapters.</p> <ul style="list-style-type: none"> • Can you and Ms Carruthers please liaise and advise us of the basis for that inconsistency and whether or not either one of you wishes to amend your recommendations.
Officer's response	<p><i>Submission points relating to the Subdivision chapter were split between Hearing 14 and other hearings (including Hearing 22), based on whether they were generally procedural in nature, in which case they were allocated to Hearing 14, or whether they would have an effect on the final form of the area being subdivided, in which case they were allocated to the relevant zone or district-wide topic hearing. In this way, submissions relating to, for example, residential urban form would be heard coherently.</i></p> <p><i>In this instance, submission point DPR-0367.102 Orion relates to when a proposed site should be subject to a minimum site size. Given Ms Lewes's recommendation that a minimum site size is not required for any site created in accordance with SUB-R10, Ms Carruthers no longer considers that the amendment requested by</i></p>

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	<p><i>Orion is required because the outcome sought by Orion is provided for within Ms Lewes's recommendation.</i></p> <p><i>Ms Carruthers updated recommendation in relation to SUB-R10 is shown in Appendix 1 of the Officers response to Panel questions for Hearing 14.</i></p> <p><i>Ms Carruthers recommendation in relation to submission point DPR-0367.102 Orion remains that it be accepted in part, for the reasons above.</i></p>
	Can you and Ms Carruthers please advise liaise and determine if there are any other areas of inconsistency with your respective H14 and H22 recommendations and if there are, can you please identify these for us and advise whether or not either one of you wishes to amend your recommendations
<i>Officer's Response:</i>	<i>Ms Carruthers and Ms Lewes advise that no other areas of inconsistency have been identified.</i>