

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing of Submissions and Further
Submissions on the Proposed Central Hawke's
Bay District Plan Review

**Seventh Memorandum and Direction of the Hearings Panel
DIRECTIONS FOLLOWING HEARING 2**

Introduction

1. The second Hearing of submissions on the Proposed Central Hawke's Bay District Plan (PDP) was held in the Council Chamber of the Central Hawke's Bay District Council on 30 March 2022, adjourning at 5pm.
2. The Hearing heard submissions on the provisions of the Proposed District Plan that relate to urban environment, sustainability, and general district wide matters which includes Urban Form & Development, General Residential Zone, Commercial Zone, General Industrial Zone, Settlement Zone, Subdivision - Urban, Sustainable Subdivision & Building, Light, Noise, Signs, and Temporary Activities.

Reporting Officers' Right-of-Reply

3. At the end of the hearing, the four s42A reporting officers were each requested to provide a written right-of-reply to respond to matters arising during the hearing. These rights-of-reply are to be provided to the District Council for circulation to all relevant parties by the close-of-business on Friday 6 May 2022, except where the directions below provide for further steps for completion before the reply can be finalised.

Expert Conferencing

4. One of the policies of the PDP in regard to the management of noise is Policy NOISE-P2, which seeks:

“to ensure that noise sensitive activities and the addition of habitable space to existing noise sensitive activities in the Commercial and General Industrial Zones, within 100m of state highways and the rail network, and within identified airnoise boundaries for the Waipukurau Aerodrome shown on the Planning Maps, are acoustically designed and constructed to mitigate noise arising from legitimately established activities.”

5. This policy is given effect through Rule NOISE-S3:
 1. *The following Minimum External Sound Insulation Level Standards applies to all habitable spaces within any building that contains a noise sensitive activity within 100 metres of the sealed edge of a State Highway or the Rail Network Boundary, either:*
 - a. *Provide a design report prepared by an acoustic specialist prior to construction of the habitable spaces, demonstrating that road-traffic/rail network sound levels will not exceed 40 dB LAeq(24hr) inside all habitable spaces; or*
 - b. *Provide a design report prepared by an acoustic specialist prior to construction of the habitable spaces, demonstrating that road-traffic/rail network sound levels will not exceed 57 dB LAeq(24hr) outside the most affected part of the building exterior.*
 2. *The following applies to all buildings that contains a noise sensitive activity within 100 metres of the sealed edge of a State Highway or the Rail Network Boundary:*
 - a. *Where new habitable spaces with openable windows are proposed, a positive supplementary source of fresh air ducted from outside is required at the time of fit-out. The supplementary source of air is to achieve compliance with the Building Act to ensure adequate ventilation and fresh air.*
6. Compliance with this standard is a permitted activity; non-compliance requires resource consent as a restricted discretionary activity.
7. This standard was opposed by Kāinga Ora, which considered that any requirements for noise within proximity of a State Highway or railway should be based on modelling to define specific setbacks according to the particular circumstances, rather than a blanket 100m delineation.
8. At the hearing on 30 March, the planning and acoustic advisers for the Council, Kāinga Ora and Waka Kotahi NZ Transport Agency were invited by the panel to attend the hearing together, virtually, so we could have the benefit of hearing expert advice from the three parties collectively. Arising from questions, it appeared that there was some level of agreement among the acoustic advisers that a staggered setback approach may be an acceptable alternative to a single setback standard. The staggered setbacks would be based on the speed limits applying to the relevant sections of State Highway. It was accepted that

lower speeds generally generate less noise, and thus the setbacks in such areas could be reduced, particularly in urban areas.

9. The following process to reflect the parties' agreement in wording for the PDP is proposed:
- The reporting planner is to prepare draft wording for the setback rule and provide it to Kāinga Ora, and Waka Kotahi NZ Transport Agency, together with a draft recommendation as to whether and how the setback would be included in the PDP planning maps, by 29 April 2022;
 - Kāinga Ora and Waka Kotahi will have the opportunity to provide comment on the draft by 13 May 2022; and
 - The reporting planner is to take any comments from Kāinga Ora and Waka Kotahi into account when finalising her recommendation for inclusion in the right-of-reply to be filed on 27 May 2022. The reply should detail whether there was agreement, and to the extent that there was not, should provide sufficient detail to enable the commissioners to have a clear understanding of the areas and extent of, and reasons for disagreement.
10. A possible outcome is that the setbacks will be required to be mapped on the PDP planning maps. Acknowledging the extent of that task, and that the Panel has not yet reached a view as to whether mapping will be required, the reporting planner is not required to produce maps as part of her right of reply. After considering the reporting planner's recommendations and any comments from Kāinga Ora and Waka Kotahi, the Panel may make a preliminary decision as to the requirement for maps at a later stage, and they may be required at a future date to be determined.

Scope for Relief sought by Kāinga Ora

11. At the hearing on 30 March 2022, I indicated that there were several questions relating to the scope of Kāinga Ora in relation to some of the relief being sought in their evidence to the Hearing. These questions are in relation to the expert evidence of Mr Styles, Kāinga Ora's acoustic adviser as follows:
- *Paragraph 12.3 (iv) Noise-S2 Vibration: there were no submissions made on this standard*
 - *Paragraph 12.3(v) All noise standards: not all standards have submissions relating to them*
 - *Para 12.3(vii) Assessment Matter Noise-AM3 Vehicle Noise: no submissions have been made on assessment matters other than AM1.*
12. In addition, in relation to paragraph 12.3(vi) of Mr Styles' evidence, it is unclear whether the comments in relation to the following are within scope: construction/ prospecting and exploration) temporary events/ emergency aviation movements. Kāinga Ora sought to have the entirety of standard NOISE-S5 deleted and reconsidered but it is not clear from the original submission whether its concern is only in relation to NOISE-S5(24):

Kāinga Ora generally supports the intent of the standard to the degree that it enables identified noise generating activities where they provide a critical function and/or are

established within zones where increased noise levels are appropriate for the types of activities reasonably anticipated to be established and are compatible with the predominant character and amenity values of the zone.

Notwithstanding the above, Kāinga Ora considers that in its current form the standard creates ambiguity about what it seeks to manage i.e. noise-generating activities or internal noise levels for noise sensitive activities (refer NOISE-S5(24)).

13. We request that, by Friday 6 May 2022, counsel for Kāinga Ora advise his view as to whether the above is within scope of the submission, identify the part of the submission relied on, and set out the precise amendments sought. The reporting planner should then address those matters as part of her reply on noise matters by Friday 27 May 2022.

Use of Modelling for Noise Standards

14. Subsequent to the hearing, and in response to questions at the hearing, we helpfully received a copy of a spreadsheet forwarded to the Council by the Waka Kotahi NZ Transport Agency that comprehensively identifies all of the District Plan provisions relating to the management of noise for reverse sensitivity along road corridors across New Zealand.
15. In response, the Panel seeks additional information from Waka Kotahi NZ Transport Agency, about how many local authorities have used noise modelling as the basis upon which their District Plan provisions for defining setbacks for managing sensitive land uses along road corridors have been set. This is requested to be provided by Friday 29 April 2022 so it can be addressed in the reporting planner's reply by Friday 27 May 2022.

Shading Examples

16. At Hearing 2, we were provided with illustrative shading diagrams by Kāinga Ora's urban design expert, Mr Rae, as part of his evidence to demonstrate the differences in shading between that created by compliance with the residential development controls in the PDP and those being sought by Kāinga Ora. Mr Rae used two flat or near flat sites in Waipukurau to base his shading examples.
17. In response to questions from the Panel, Mr Rae agreed that he would prepare and submit comparable illustrative shading diagrams for sloping sites. Accordingly, we request that the following sites be used:
 - 20 Rose Street, Waipawa – Lot 1 DP 7610, Area: 1000m²
 - 87 Porangahau Road, Waipukurau – Lot 6 DP 9858, Area: 800m²
18. Preferably, this information should be supplied to the Council by close-of-business on Friday 29 April 2022 so it can be addressed in the reporting planner's reply by 27 May 2022.

Site Inspection

19. Arising from a submission heard during Hearing 1, we consider it would be useful to have the Council's landscape planning adviser, John Hudson, undertake a site visit to proposed Significant Amenity Feature SAF-6, Tangarewai Stream, upstream from the Ashley-Clinton Road bridge, not including that area identified as a SNA. The Panel specifically seek advice on whether the attributes of this section of Tangarewai Stream warrant being a SAF, given the mix of exotic and indigenous vegetation and the weedy nature of much of the existing vegetation in this section. Any such advice should be reported by 29 April 2022.

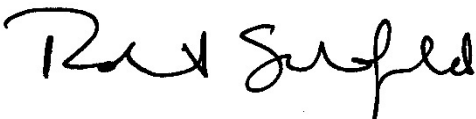
Hearing Procedures and Schedule

20. In our Minute #5, we noted that "the Hearings Panel will monitor progress on the first two hearings and whether changes are required to the hearing procedures before making directions on the timetabling of subsequent hearing streams". As a result of our review following Hearing 2, we do not propose to make any changes to the hearing procedures at this point in time.
21. In consultation with the Council's management team, a confirmed schedule for some or all of the remainder of the hearings will be issued shortly. As noted in Minute #5, that schedule will not be a formal notice – formal notices for each hearing will be issued prior to each hearing.

Communications

22. As a reminder, the primary point of contact for all matters relating to the hearings is Jessie Williams, who can be contacted at districtplan@chbdc.govt.nz, phone (06) 857 8060, or email her at districtplan@chbdc.govt.nz).
23. The key location for up-to-date information on the hearings is the PDP Hearings Page currently located at <https://www.chbdc.govt.nz/services/district-plan/proposed-district-plan/>.

Dated 12 April 2022



Robert Schofield

Chair of the Central Hawke's Bay District Council District Plan Hearings Panel