

Under the Resource Management Act 1991

In the matter of the Central Hawkes Bay Proposed District Plan

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## Submissions on behalf of Kāinga Ora – Homes and Communities

30 March 2022

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Hearing Stream 2



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# Submissions on behalf of Kāinga Ora – Homes and Communities

1 These brief legal submissions relate to legal issues arising in Hearing Stream 2.

2 Kāinga Ora's evidence is focused on two sub-topics: urban form and development issues, and noise issues.

## **Urban Form and Development**

3 As to urban form and development issues, the evidence of Nick Rae (urban design) and Michael Campbell (planning) address a number of points that I do not need to address from a legal perspective. While Kāinga Ora acknowledges that Central Hawkes Bay is not a tier 3 local authority for the purpose of the NPS-UD, the recommendations of the Kāinga Ora witnesses will improve the outcome of any intensification of urban development in the district's towns.

## **Noise**

4 I do not intend to address in detail Kāinga Ora's submission points about alterations to wording in the objectives and policies in the noise chapter. These have been addressed by Jon Styles and Michael Campbell in their evidence.<sup>1</sup>

5 These submissions focus on the proposed plan's approach to managing noise adjacent to the road in rail corridor. The approach is generally to impose noise mitigation requirements on landowners within 100m of the State Highway or Rail Network. This shifts the burden of mitigating land transport noise effects entirely on to the occupants of the receiving environment.

6 In the context of Kāinga Ora's wide mandate with respect to urban development, it is concerned to avoid the undue discouragement or restriction of existing and future urban activities by a planning framework that overly emphasises reverse sensitivity effects and that imposes

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<sup>1</sup> Jon Styles' Evidence at Parts 3 to 11; Michael Campbell's (Noise) Evidence at [2.14]-[2.55].

obligations on receivers of effects rather than the generators in the context of these infrastructure networks.

- 7 Kāinga Ora says that the Council and the transport authorities have failed to provide a sufficient basis for this Panel to conclude that provisions are the most appropriate in this case.
- 8 The controls will impact on the rights of landowners and occupiers and in practice will both restrict and add cost to the activities that can be undertaken on land. That land has not been designated and the transport authorities are not proposing to mitigate effects at source or through funding improvements to existing dwellings.
- 9 Given that the transport authorities have elected not to acquire the land in proximity to their networks that they say is affected, it is appropriate for any regulation to be applied only where there is an evidential basis that establishes a need for that regulation. That is not satisfied by a blanket control proposed over a substantial amount of land within a specified distance of the road and rail corridor, where that specified distance is not supported by evidence. Indeed, Waka Kotahi's own generic s 32 analysis concludes that its preferred approach is a modelled contour – it just has not done it in this case.<sup>2</sup> In effect, a blanket control is proposed in lieu of doing an appropriate s 32 analysis to determine what the most appropriate control, and its extent, should be.
- 10 The purpose of s 32 is to provide a check on the necessity of including policies and rules in a plan, to ensure that over-regulation does not occur, and costs and benefits are properly considered. This is a classic example of an inadequate s 32 analysis. Kāinga Ora recognises that s 32 imposes no burden or evidential onus on any party, but there has been no attempt by the Council or Waka Kotahi/Kiwirail to quantify the benefits and costs of these provisions despite it plainly being practicable to do so – as Mr Styles' evidence demonstrates.

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<sup>2</sup> Evidence of Jon Styles at [9.2]-[9.4]; evidence of Brendon Liggett at [7.6]-[7.7]. The evidence of Andrew Sowersby confirms that it is doing noise modelling countrywide, but it has not yet been done for the Central Hawkes Bay.

- 11 Given that s 32 imposes no onus it was surprising to read in the s 42A report that it was for Kāinga Ora to assist the Panel by demonstrating that its preferred relief would be more efficient and effective.<sup>3</sup>
- 12 On the contrary, the Panel must determine the most appropriate provisions based on the information before it. If there is inadequate information before the Panel to justify imposing potentially significant costs and otherwise imposing on receivers of noise instead of the emitters, then another approach must be taken. And for the avoidance of doubt, s 32(2)(c) cannot enable the approach the Council and Waka Kotahi prefer when, if there is a lack of information to justify these provisions, it is because of their acknowledged failure to provide it.<sup>4</sup>
- 13 In making this assessment of appropriateness it is significant that the operative district plan contains no controls for noise sensitive activities adjoining the railway corridor and there is no indication in the Council's s 32 analysis (or even the evidence from Waka Kotahi) that there have been issues arising on adjoining landowners in terms of reverse sensitivity or health and safety effects on adjacent land.
- 14 Instead, the evidence of Jon Styles provides compelling reasons and information to support the relief sought by Kāinga Ora.

Date: 30 March 2022



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<sup>3</sup> Section 42A Report: Noise and Signs at para [4.3.24].

<sup>4</sup> See the evidence of Andrew Sowersby for Waka Kotahi which acknowledges that it could undertake, but has not done so, noise modelling to justify these provisions.