BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS AT PALMERSTON NORTH

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions on Palmerston North City Council's Proposed Plan Change I (Increasing Housing Supply and Choice)**

LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA HOMES AND COMMUNITIES (SUBMITTER 199)

15 AUGUST 2025

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MAY IT PLEASE THE COMMISSIONERS:

1. INTRODUCTION

1.1 These submissions are made on behalf of Kāinga Ora – Homes and Communities ("**Kāinga Ora**"). Kāinga Ora is a submitter on Proposed Plan Change I which deals with increased housing supply and choice within Palmerston North City ("**Plan Change**").

1.2 These legal submissions respond directly to Minute 2 dated 28 July 2025 which notes that the Section 42A Report refers to several submitters being potentially out of scope or not 'on' the Plan Change in terms of the relief sought. Kāinga Ora is listed as being one of those submitters. Specifically, the Section 42A Report states in respect of the issue of scope:

> *"Kāinga Ora (SO199.2) seeks the rezoning of a significant number of properties from Residential Zone to MRZ – if accepted this would increase the zone extent by nearly 16% or an additional 1,743 properties. Informed by legal advice from CR Law, who will address this matter in legal submissions, I recommend rejecting the relief sought as not being 'on' the plan change.*
>
> *Only 26% of the properties are owned by Kāinga Ora. This creates a natural justice issue which reinforces why the submission is not 'on' the plan change associated with the relief sought – the owners of these properties may not know of the relief sought in the Kāinga Ora submission and will not have had the opportunity to comment on whether they should be in, or out, of the MRZ. Relying on the further submission process as the mechanism for that is insufficient, per Motor Machinists Limited."*
>
> (Section 42A Report, p 13)

1.3 In short, the Section 42A Report seems to suggest that it is not the extension of the proposed zone that is at issue. As will be noted below, the Council in its heading to its introductory paragraphs to the Plan Change states that: "*We're wanting more feedback from you about where we're proposing to encourage medium density housing in the city*" –the Kāinga Ora submission ("**Submission**") is clearly 'on' the subject matter of the Plan Change. Rather the Section 42A Report suggests that the Submission is problematic because of the scale of the amendments proposed (i.e.: an increase of nearly 16% of the current zone extent) and the fact that only 26% of those properties subject to the extension are owned by Kāinga Ora. That, the Section 42A Report says, raises natural justice issues as per *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.

1.4 It is the case of Kāinga Ora that there is no issue as to scope with its mapping relief. The Section 32 Report describes the Plan Change in these terms:

> *"PCI seeks to enable medium density housing on land within Palmerston North city considered appropriate for intensification. It would rezone relevant areas of the Residential zone as Medium Density Residential and introduce new objectives, policies and rules that apply specifically to the zone"* (p.48).

As such, the relief sought in the submission addresses head on the Plan Change, being where in the City the proposed new medium density housing zone should be.

1.5 For that reason, it follows there can be no natural justice issues either. It cannot be the case that for a Plan Change which introduces a new zone for a city (including new objectives and policies), a submitter is delimited to a reduction in the proposed zoning sought by the Council without falling foul of the second limb of the *Motor Machinists* test. If the Plan Change itself asks where in the City a new zone is to apply, and the original Council notification of the plan change is valid, then the submission is also valid.

1.6 That is, the notification of the plan change itself – in this case the introduction of a new zone and where it should be located in the City – in much the same way as was considered in the *Albany North Landowners v Auckland Council* [2017] NZHC 138 decision and in other jurisdictions such as Whangārei and Hastings, would be considered to be sufficient notice to the public that there is a likelihood that the plan change might introduce changes impacting on the person.

2. CASE LAW 'ON' THE PLAN CHANGE

2.1 Jurisprudence on this matter, until the *Albany North Landowners* decision, adopted a strict bipartite approach, departing from the *Countdown* test of 'fair and reasonably raised'. For a submission to be within the scope of the Plan Change under the *Motor Machinists* decision, it must:

(a) Address the proposed plan change itself. That is, it must address the extent of the alteration to the status quo which the plan change entails, and;

(b) Consider if there is a real risk that any person who may be potentially directly affected by the relief sought in the submission has been denied an effective opportunity to respond.

(*Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at 80-82).

2.2 With respect to the first limb, the High Court held in *Motor Machinists* that whether or not the submission falls within the ambit of the plan change is a matter of analysis. What is to be avoided, as described in the earlier *Clearwater Resort Ltd v Christchurch City Council* (HC Christchurch AP34/02, 14 March 2003) decision, was whether or not the relief was 'coming out of left field' and whether or not the submission: *"…is not readily foreseeable, is unusual in character or potentially leads to the plan change being something different from what was intended"*. Or, as William Young J stated in *Halswater Holdings Ltd v Selwyn District Council* (1999) 5 ELRNZ 192 (EnvC), a strong factor against finding that a submission was on the plan change was a submission that is *"proposing something completely novel"*. That is, whether or not the submission is *"suggesting something radically different from a proposed plan as notified"* (at para 42).

2.3 This may be determined by considering whether or not the matter was raised in the section 32 report or whether or not the management regime in the plan for a particular resource is altered by the plan change. The decision notes that some extensions to a plan change are permissible, namely incidental or consequential extensions if they require no substantial section 32 analysis.

2.4 These cases, as will be discussed below, create a threshold against which a decision-maker must assess a submission, but were all made in relation to confined amendments to the plan. As will be discussed below, Kāinga Ora says that the Plan Change concerns the introduction of a new MDR zone and where that should be located within the City (quite different from the extension of an existing zone with no material changes to objectives and policies as was the case in *Motor Machinists*) meaning that the more nuanced approach of *Albany North Landowners,* which deals with plan amendments with greater breadth (i.e.: new or substantive changes to objectives and policies), should be applied.

2.5 In terms of the second limb, the *Motor Machinists* test asks whether or not there is a real risk that a person potentially directly affected by the additional changes proposed in the submission has been provided with an effective opportunity to respond to those additional changes in the plan change process. This is a natural justice issue. In the more recent *Albany North Landowners* decision the High Court noted that such natural justice issues of potentially affected persons must be considered alongside the natural justice of submitters, noting: "*The important matter of protecting affected persons from submissional side- winds raised by Kós J must be considered alongside the equally important consideration of enabling people and communities to provide for their wellbeing...via the submission process"* (*Albany North Landowners* at para 133).

2.6 In *Motor Machinists,* the Court referred to the notification requirements of clause 5, Schedule 1, as the means by which a Council communicates proposed plan changes with the public. In that regard, clause 5(1A)(a) requires the Council to send a copy of the public notice, and such further information as the Council thinks fit relating to the Plan Change to every ratepayer for the area that is likely to be directly affected by the Plan Change, or, under clause 5(1A)(b) to include the public notice and such further information as the Council thinks fit relating to the Plan Change, in any publication or circular which is issued or sent to all residential properties in the affected area, and send a copy of the public notice to any other person who in the Council's opinion, is directly affected by the plan change.

2.7 Clause 5(1A) predates the widespread use of the internet and it is noted that it is the recent experience of Kāinga Ora that it is no longer common practice for Councils to send direct notification where the potential adverse effects are city wide.

2.8 A careful reading of the *Motor Machinists* decision reveals that it is not guaranteeing that a person potentially adversely by a plan change will receive direct notification. The Act only requires direct notification by the Council in Clause 5(1A)(b) if it decides it is necessary. It is open to the Council to consider that the public notice is sufficient by virtue of the wording 'and send a copy of the public notice to <u>any other person</u>, in the territorial authority's opinion, is likely to be directly affected'.

2.9 Further, Clause 5, Schedule 1 only requires direct notification to every ratepayer and not every person potentially affected by the Plan Change under clause 5(1A)(a) (i.e.: potentially excluding occupiers of dwellings); or public notice to all residential properties under Clause 5(1A)(b) (i.e.: potentially excluding landowners). This means that direct notification of the plan change under either Clause 5 option cannot guarantee that all those persons potentially adversely affected by a plan change are indeed notified in any case. In that regard, it is submitted that some pragmatism should be applied both in the original notification of the plan change and in the second limb of the *Motor Machinists* test. Indeed, in the *Motor Machinists* decision, the Court refers only to those persons potentially affected being 'adequately informed' of what is proposed. This may be via public notice and may require some further inquiry on their part.

2.10 It is also worth noting that a failure by a Council to properly notify a plan change under clause 5(1A) is not a valid reason for finding that a submission is not 'on' the plan change. That is, non-

compliance by the Council of the notification provisions of the Act goes to the lawfulness of the Plan Change itself and not the submission. Further, a failure by Council to comply with the public notice requirements of the Act cannot then be used by Council to delimit the scope of the Plan Change or declare invalid submissions which were properly made.

2.11 As noted above, the more recent High Court case of *Albany North Landowners* provides a more nuanced consideration of the issue of scope modifying a strict interpretation of *Motor Machinists*. Given this case represents a departure by the High Court of a strict interpretation of the Motor Machinists test, it is worth quoting relevant passages from the decision:

> *"Some of the appellants emphasised that the two step Clearwater test as applied by Kos J (as he then was) in Motor Machinists, not the Countdown[1] test, provided the better frame for scope. I disagree to the extent that it is said to depart from the Countdown orthodoxy. Given the significance of this aspect to the parties, I will address the Clearwater approach in some detail". (para 119)*

2.12 By way of background, *Motor Machinsts* involved an extension of an existing zone within the city, but did not *"materially alter the objectives and policies applying to that zone"* (para 10). In contrast, the *Albany North Landowners* decision involved a whole plan review, which included the introduction of new objectives and policies, and new zoning.

2.13 In developing a more nuanced approach when considering scope in relation to full plan reviews, in this case, Whata J continued by outlining the approach adopted in *Motor Machinists* and why the *Countdown* test of 'fair and reasonably raised' was more appropriate in terms of considering scope. With respect to the two limb test, Whata J noted:

> *The first limb was said to be the dominant consideration, namely the extent to which there is a connection between the submission and the degree of notified change proposed to the extant plan. This is said to involve two aspects: the breadth of the alteration to the status quo entailed in the plan change and whether the submission addressed that alteration. The Judge noted that one way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If not the submission is unlikely to fall within the ambit of the plan change. The Judge added that incidental or consequential extensions of zoning change proposed in the plan change are permissible provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. The second limb is then directed to whether there is a real risk that*

[1] *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC)

persons directly affected by the additional change, as proposed in the submission, have been denied an effective response". (para 127)

Kós J also disapproved the approach taken by the Environment Court in Naturally Best New Zealand Ltd v Queenstown Lakes District Council, noting that Countdown was not authority for the proposition that a submission "may seek fair and reasonable extensions to a notified variation or plan change". (para 128)

2.14 The decision goes on to note that the Auckland Unitary Plan planning process is far removed from the relatively discrete variations or plan changes under examination in *Clearwater*, Option 5 and *Motor Machinists*, concluding that: *"The issues as framed by the s 32 report, particularly relating to urban growth, also signal the potential for great change to the urban landscape. The scope for a coherent submission being "on" the PAUP in the sense used by William Young J was therefore very wide". (para 129).*

2.15 As such Whata J states that:

"Furthermore, I do not accept that a submission on the PAUP is likely to be out of scope if the relief raised in the submission was not specifically addressed in the original s 32 report. I respectfully doubt that Kós J contemplated that his comments about s 32 applied to preclude departure from the outcomes favoured by the s 32 report in the context of a full district plan review. Indeed, Kós J's observations were clearly context specific, that is relating to a plan change and the extent to which a submission might extend the areal reach of a plan change in an unanticipated way. A s 32 evaluation in that context assumes greater significance, because it helps define the intended extent of the change from the status quo." (para 130)

By contrast a s 32 report is, in the context of a full district plan review, simply a relevant consideration among many in weighing whether a submission is first "on" the PAUP and whether the proposed change requested in a submission is reasonably and fairly raised by the submission. (para 131)

To elaborate, the primary function served by s 32 is to ensure that the Council has properly assessed the appropriateness of a proposed planning instrument, including by reference to the costs and benefits of particular provisions prior to notification. Section 32 does not purport to fix the final frame of the instrument as a whole or an individual provision. The section 32 report is amenable to submissional challenge and there is no presumption that the provisions of the proposed plan are correct or appropriate on notification. On the contrary, the schemes of the RMA and Part 4 clearly envisage that the proposed plan will be subject to change over the full course of the hearings process, including in the case of the PAUP, a further s 32 evaluation for any proposed changes which is to be published with (or within) the recommendations on the PAUP. While it may be that some proposed changes are so far removed from the notified plan that they are out of scope (and so require "out of scope" processes), it cannot be that every change to the PAUP is out of scope because it is not specifically subject to the original s 32 evaluation. To hold otherwise would

effectively consign any submission beyond the precise scope of the s 32 evaluation to the Environment Court appellate procedure. This is not reconcilable with the streamlined scheme of Part 4. (para 132)

The important matter of protecting affected persons from submissional side- winds raised by Kós J must be considered alongside the equally important consideration of enabling people and communities to provide for their wellbeing, in the context of a 30 year region-wide plan, via the submission process. Take for example a landowner affected by a rule in a proposed plan that will remove a pre-existing right to develop his or her property in a particular way. The RMA does not envisage, via s 32, that he or she would be precluded from seeking by way of submission a form of relief from the proposed restriction that was not specifically considered by the s 32 assessment and report. (para 133)

A corollary of the foregoing analysis is that the IHP did not err by failing to determine scope strictly by reference to the options considered in the s 32 reports. Rather, the IHP was not constrained by the s 32 reportage for the purpose of establishing whether a submission was "on" the PAUP. (para 134)

In accordance with relevant statutory obligations, the IHP correctly adopted a multilayered approach to assessing scope, having regard to numerous considerations, including context and scale (a 30 year plan review for the entire Auckland region), preceding statutory instruments (including the Auckland Plan), the s 32 reportage, the PAUP, the full gamut of submissions, the participatory scheme of the RMA and Part 4, the statutory requirement to achieve integrated management and case law as it relates to scope. This culminated in an approach to consequential changes premised on a reasonably foreseen logical consequence test which accords with the longstanding Countdown "reasonably and fairly raised" orthodoxy and adequately responds to the natural justice concerns raised by William Young J in Clearwater and Kós J in Motor Machinists". (para 135)

[emphasis added]

2.16 As also noted by Whata J, the internal construct of planning instruments under the RMA means that higher order objectives and policies determine lower order rules and zoning:

"Submissions on the higher order objectives and policies inevitably bear on the direction of lower order objectives and policies and methods, including zoning rules...Provided the lower order recommendation is a reasonably foreseen logical consequence of the higher order submission, taking such an integrated approach to scope was lawful" (paras 113-114).

2.17 The Court goes on in para 117 to state that the 'top down' approach employed by the Panel

"*...is simply one way of expressing an acceptable method for achieving fairness to potentially affected persons*".

It should be noted in this case the bespoke legislation for the Auckland Unitary Plan, the LGATPA, adopted the Schedule 1 processes of the RMA, but did not require service on directly affected persons, yet still the High Court considered that natural justice requirements of notice were met. In this case, the argument by Council that the scope of the spatial application of the Plan Change is in essence fixed to what was notified effectively also predetermines the outcome on submissions on the objectives and policies of the Plan Change.

3. SCOPE OF THE PLAN CHANGE – THE FIRST LIMB

3.1 Kāinga Ora says that its submission is clearly within the ambit of the Plan Change, or to use the language of *Motor Machinists,* is on all fours with the Plan Change.

3.2 In that regard, the introduction to the Plan Change on the Council's website (set out below) is apposite. The heading begins by stating that: '*We're wanting more feedback from you <u>about where we're proposing to encourage medium density housing in the city'</u> (emphasis added).* Clearly, the extent and location of the new residential zone is on all fours with the subject matter of the Plan Change.

3.3 The introductory explanation to the Plan Change goes on to set out some clear parameters for the potential location of the new zone, namely '*where there is good access to things people need, like public transport, shops, schools and green space'.* The Introductory Explanation then goes on to say that the areas that have been identified thus far for inclusion in the new zone are based on their walkable distance to:

- bus stops (within 500m)
- parks or reserves (within 400m)
- schools (within 800m)
- a shopping centre (within 800m)

This is important, because the relief sought in the Kāinga Ora submission (as set out in our Amended Map) clearly adheres to these criteria.

3.4 The full Introductory Explanation for the Plan Change from the Council's website is as follows:

> ***We're wanting more feedback from you about where we're proposing to encourage medium density housing in the city.***
>
> *Back in 2022, we asked for feedback on some proposed areas we thought medium density housing could be. Since then, we've reviewed your suggestions and done a*

lot more technical work to refine our proposal. Now we're wanting more feedback from you on our proposal, which we're calling Plan Change I: Increasing Housing Supply and Choice. The proposed plan change aims to cut red tape and make housing more accessible by enabling more new homes close to the amenities and infrastructure we already have.

Housing in the proposed new zone could be taller, up to 11 metres (typically 3 storeys), and closer together. Section sizes could also be smaller. The types of housing within the Medium Density Residential Zone could include duplexes, multi-units, town houses and apartments. This would widen the range of housing options available from what we have today. See the photo gallery at the bottom of this page for examples.

Enabling more housing within the urban area we're already using could reduce our climate emissions by making it easier for people to walk, bus, scooter or bike to get around the city, instead of relying on cars. It would also reduce the amount we'd need to build outward into our rural environment.

Though neighbourhoods will change over the coming decades, it's unlikely this would happen quickly. Medium density housing is already allowed in many areas within 800 metres of the city centre and around some neighbourhood shopping centres. What we've seen in these areas is a gradual change, with some developers building more densely on each site and others sticking with traditional homes.

We've asked for your feedback on this topic twice in the past, resulting in 684 of you providing feedback through our website, and even more of you chatting to us at our drop-in sessions and commenting on our social media. This has been used to help shape the final draft of our proposal. Key feedback themes included:

- *Six units per site is too many*
- *Support for careful stormwater management*
- *The need to maintain residential amenity and character*

The main change we've made in response to public feedback is to reduce the number of buildings proposed to be allowed on each site, from six to three. This would still allow more homes to be built on sections within the zone, while reducing the possible impacts on neighbours.

We've also had more technical advice from stormwater specialists. That advice says there are areas in the city where we'll need to consider impacts on a case-by-case basis. This is to ensure we can manage the city's stormwater appropriately and that new developments don't pose any risk to the existing properties.

While these areas will still be part of the new zone, a resource consent will be required. All resource consent applications within the Stormwater Overlay must include a stormwater impact report for the property. This requirement covers around 75% of the proposed new zone. You can check this by viewing the Stormwater Overlay feature on our interactive map, which shows the areas that would have added stormwater requirements.

We think our Medium Density Residential Zone should be located where there is good access to things people need, like public transport, shops, schools and green space. Areas within 800 metres of our city centre are already enabled for medium density housing.

The outline of our proposed Medium Density Residential Zone can be seen in yellow on our interactive zone map. The Stormwater Overlay is in blue. These areas have been identified for inclusion in the new zone based on their walkable distance to:

- *bus stops (within 500m)*
- *parks or reserves (within 400m)*
- *schools (within 800m)*
- *a shopping centre (within 800m)*

3.5 The Plan Change itself notes that its purpose is to introduce a new Medium Density Residential Zone in order to "*increase housing supply and provide for housing choice*" for the City. Again, it is noted that the spatial location of the zone is informed by connection to: "...*the city's public transport, walking and cycling networks*" (Proposed Plan Change I: Introduction).

3.6 In a similar vein, the Section 32 Report commences by stating that "*PNCC needs to take steps to ensure that sufficient housing capacity is available to meet the growth needs of the community*" and that *"[a] different approach is required to enable the mix of attached and detached dwellings and low-rise apartments at higher densities*" (Executive Summary p.1). The Section 32 Report goes on to note that "*The extent of the MRZ is informed by connectivity to the city's public transport, walking and cycling networks*" (Executive Summary p.1).

3.7 The Section 32 Report, under the heading 'Scope of PC:I' describes "*the primary purpose of the Plan Change as rezoning part of the Residential zone to create a Medium Density Residential zone in those parts of the city which*:

- *Have good accessibility between housing, jobs, education, neighbourhood centres, community services;*
- *Support a range of densities and forms in the plan change area with a good level of both onsite and offsite amenity and safety outcomes;*
- *Support reductions in greenhouse gas emissions and are resilient to the likely current and future effects of climate change;*
- *Mitigate increased stormwater discharges as a result of intensification;*
- *Mitigate the effects of medium density residential development on adjoining properties and sites of significance;*

- *Respond to the surrounding environment's land uses and site constraints, in particular those areas that abut significant infrastructure or have infrastructure and natural hazard constraints that need to be addressed.*

3.8 The Section 32 Report goes on to note that this is not a full plan review, but as noted above, it is a review of the Residential zone and which parts of that existing zone should be rezoned as MDR (p.2). As will be discussed later, this is important because the Kāinga Ora submission only seeks to rezone land which is already residentially zoned in the City.

3.9 As the Section 32 Report further notes:

> *"The plan change will enable medium density housing across those parts of the city which are not impacted by existing storm-water constraints and provide for medium density housing across those parts of the city where site-specific mitigation for flooding and stormwater are likely to be required" (p.2)*

3.10 That is the Section 32 Report makes clear that we are looking at the introduction of a new medium density residential zone within the City; that the potential location of this new zone is delimited to existing residentially zoned land, with regard being had to infrastructure constraints when determining the future location of the new zone. This is reinforced in the Overview section of the Section 32 Report, which states that:

> *"PCI seeks to enable medium density housing on land within Palmerston North city considered appropriate for intensification. It would rezone relevant areas of the Residential zone as Medium Density Residential and introduce new objectives, policies and rules that apply specifically to the zone"* (p.48).

3.11 The Section 32 Report then goes on to note that:

> *"The scope of the plan change excludes:*
>
> - *Zoning new greenfield areas outside the existing Residential zone.*
> - *Enabling as a permitted activity residential intensification in those parts of the existing Residential zone which are currently impacted by flooding, stormwater capacity and management constraints."* (p.3)

3.12 With respect to National Direction, the Section 32 Report states:

> *"PCI gives effect to the NPS-UD as the policy direction within the NPS-UD is largely the basis for the plan change. PCI will assist in providing development capacity to meet expected housing demand. Where the zone is proposed along with the proposed provisions have been based on delivering a well-functioning urban environment that is well-served by active and public transport, employment, neighbourhood centres and parks and open spaces"* (p.24) (emphasis added)

3.13 As a matter of law, it must be available for a Submitter to a plan change introducing a new medium density residential zone, in order to give effect to National Direction, to be able to challenge whether or not the Plan Change does provide for sufficient development capacity and allows for the delivery of a well-functioning urban environment, and therefore whether or not the Council's proposed spatial zoning is correct.

3.14 The Section 32 Report then goes on to note with respect to the Regional Planning Documents that:

> *"The extent of the MRZ has been identified because of access to public and/or active transport. Given the proximity of the areas to employment, reserves, public transport, schools and neighbourhood centres, a range of transport options are viable in the plan change areas. PCI has been designed to provide opportunities for better utilisation of existing transport corridors and greater uptake of public transport". (p.26) (emphasis added)*

Again, the spatial extent of the Plan Change is at the core of the Plan Change itself and as a matter of logic must be able to be challenged.

3.15 With particular reference to social housing, the Section 32 Report notes in relation to the Plan Change's alignment with the Housing Plan 2024 that the Plan Change contributes to the following outcomes:

- *Provide social housing and support community-led housing initiatives – PCI proposed to give greater choice and density for Council-owned sites intended for social housing, as well as locations that other community housing providers own or may be attractive to develop for social housing (p.28)*

[Comment: As a social housing provider, it must be open to Kāinga Ora as the state social housing provider to be able to argue that locations other than those proposed in the notified Plan Change are required in order for the Council to meet this social housing objective].

- *Rezone enough land and provide infrastructure to accommodate residential growth – PCI proposed to increase the possible housing supply in areas with existing infrastructure, which are likely to enable housing supply to be developed more quickly relative to greenfield sites with no existing infrastructure capacity (p.28)*

[Comment: Again it must be open for a submitter as a matter of law to be able to argue that the Plan Change has not rezoned enough land to accommodate residential growth, in the same way that the Section 42A Report suggests that a submitter can argue that the Council has rezoned too much].

3.16 In terms of the statutory evaluation required under Section 32, the Section 32 Report notes that the option selected by the Council was to identify areas appropriate for medium density housing and to introduce specific provisions enabling and providing for residential intensification in this new zone (p.66).

3.17 In the Conclusion, the Section 32 Report states that: *"The extent of the MRZ is informed by connectivity to the city's public transport, walking and cycling networks. This facilitates mode shift from private vehicles to public or active modes of transport and supports access to a range of housing, jobs and community services, natural spaces and public open space"* (p.83). This suggests that the primary criteria of focus for the Council is access to public transport, walking and cycling networks.

3.18 Clearly this Plan Change is about the introduction of a new residential zone and where in the City that zone should be located. There can be no argument therefore that it is not within the imprimatur of a submitter to suggest another location may be appropriate, even more so where the Council's criteria for selection set out in the Plan Change and supporting documentation (i.e.: the accessibility criteria and only rezoning existing residentially zoned land) are adhered to.

3.19 As a matter of legislative policy and public participation, a submitter cannot be limited to only being able to reduce the spatial extent of a proposed new zone as notified by Council. That would be a subjugation by Council of the ability for submitters to participate in the plan change process. That is, it would be a breach of natural justice to say that for a submission introducing a new zone into the City that a member of the public can have no say in the spatial extension of that proposed new zone. It also effectively prevents consideration of amendments to relevant objectives and policies, given these inform the relevant rules and zoning, as well as running counter to a number of recent findings by the Environment Court in relation to similar plan changes (to be discussed below).

3.20 In that regard, the Kāinga Ora submission has sought an extension to the areas to be rezoned MDRZ, limited to rezoning of existing residential land, and has strictly adhered to compliance with the walkable catchment/accessibility criteria outlined by the Council. For clarity, however, it is noted that Kāinga Ora does not consider that adherence to these preconditions would be necessary in order to establish that the relief sought within the submission was 'on' the Plan Change.

4 NATURAL JUSTICE ISSUES – THE SECOND LIMB

4.1 Firstly, the submission clearly raises issues that directly relate to the Plan Change. The Plan Change is about the introduction of a new residential zone and where it should be located. The Kāinga Ora submission responds directly to that issue. Kāinga Ora therefore says there can be no natural justice issue in relation to the understanding by members of the public as to the purpose of the Plan Change being where in the General Residential zone the MDRZ should be located and therefore no natural justice issues arise from the Kāinga Ora submission which deals directly with that issue. As such, the public notification of the Plan Change itself, being the introduction of a new zone and where it should be located in the City would be considered to be sufficient notice to the public at notification stage that there is a likelihood that the Plan Change might ultimately introduce changes that might impact on them. Given the scale of the changes sought under the Plan Change, it could be argued that there would be few in the City that would not be affected, even if the effect is limited to a change in the general amenity of City and its central areas. Furthermore, as noted above, a failure by a Council to properly notify a plan change under clause 5(1A) is not a valid reason for finding that a submission is not 'on' the plan change. That is, non-compliance by the Council of the notification provisions of the Act, goes to the lawfulness of the Plan Change itself and not the validity of a submission.

4.2 The *Albany North Landowners* decision's departure from the strict application of the bipartite test in *Motor Machinists* is one that has been accepted by the Environment Court numerous times in the last few years in relation to the introduction of new medium density residential zones throughout the country.

4.3 In Whangarei, for example, the Environment Court in ENV-2020-000133 approved rezoning large areas of Whangarei from General Residential Zone to Medium Density Residential Zone (MDRZ). As noted in the decision: "*Kāinga Ora has a wide interest in the spatial extent of the MRZ throughout Whangarei city"* (para 7). This was in circumstances where the notified plan change proposed 214ha of MDRZ and as a result of the Court decisions on the Kāinga Ora appeal 604ha was zoned MDRZ. This was despite areas of the city, including Otangarei, not being identified by Council in its notified plan change as being suitable for MDRZ zoning. The Court also applied the zoning principles developed from the Kāinga Ora submission rather than those derived from the notified plan change: "*This represents a continuation of the 'principles-based' approach to the rezoning which Kāinga Ora sought through their original submission (and as set out in their evidence presented at the hearings), albeit with agreed refinements to the original 'rezoning*

principles' initially proposed by Kāinga Ora" (para 41). The mapped extent of General Residential Zoning as notified by the Council in Otangarei, as an example, and the extent of the MDRZ zoning in this part of Whangarei as authorised by the Court is shown in Figure 1. On appeal no party, including Judge Smith, raised a lack of scope as an issue preventing the zoning changes.

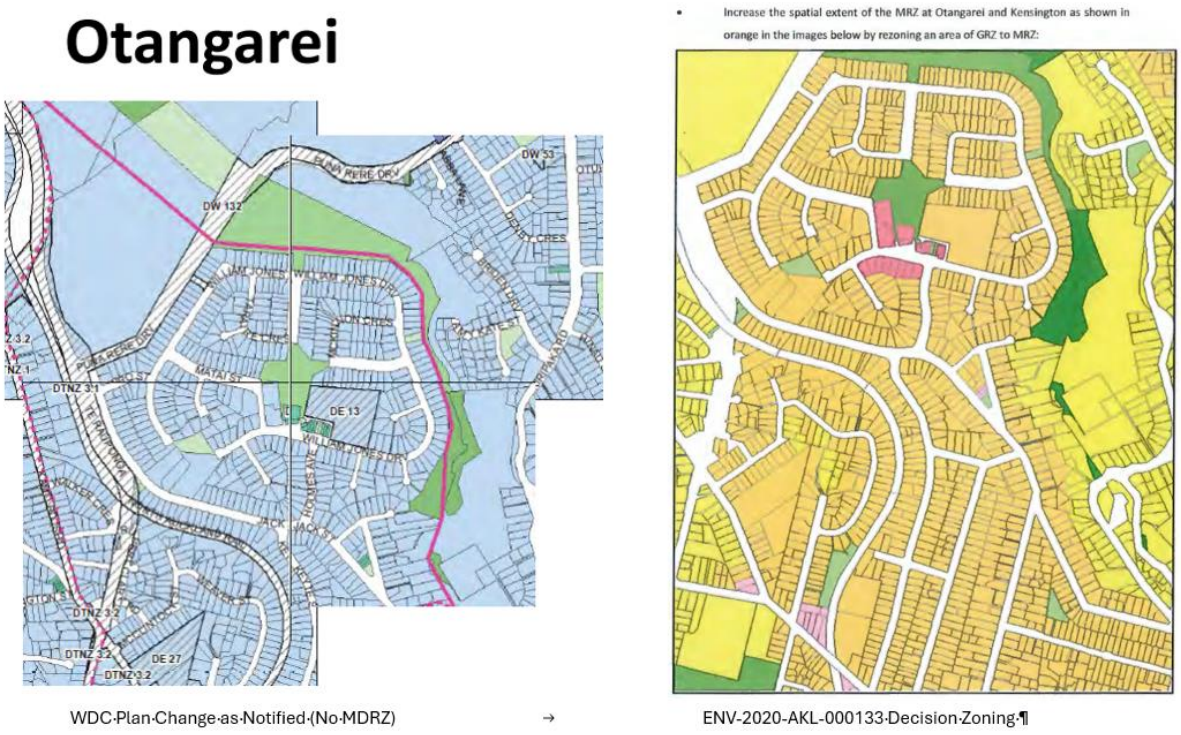

Figure 1 - Extent of MDRZ zoning notified by Whangarei District Council (nil) and extent of MDRZ zoning following appeal (shown in orange).

4.4 Further, whilst not an Environment Court decision, Kāinga Ora sought more extensive areas of residential land to be rezoned Medium Density Zone (MDZ) within the New Plymouth Proposed District Plan (PNPDP) process. The extensions of the zone were discussed in regard to natural justice with the s42A reporting officer recommending that the submission be rejected for the following reasons:

a. *The PNPDP as notified enables sufficient short, medium and long term feasible land supply, and the submission provided no evidence to demonstrate that the extent of rezoning sought was needed.*
b. *The Council and community should scrutinise a zoning change of such scale and have an appropriate opportunity to consider the implications (implying that the Proposed Plan would have to be re-notified to achieve this).*

c. *The request would have time and cost implications for the wider PNPDP process (again, implying that this would need to be resolved by re-notifying this aspect of the Proposed Plan).*

4.5 The Panel challenged this and noted that *"it could see no procedural or natural justice impediments to considering the relief requested in the Kāinga Ora submission on its face: it was clearly expressed and summarised for further submission."* The Panel agreed that 63ha of land proposed by Kāinga Ora be rezoned from General Residential Zone to Medium Density Residential Zone.

4.6 Likewise, in the past few weeks, the Environment Court approved rezoning of a site at Karamu Road as part of Plan Change 5 by Hastings District Council (see *Bay Planning Ltd v Hastings District Council* [2025] NZEnvC 261). As noted in the decision, Plan Change 5 was notified in response to Policy 5 which relates to the district plans of Tier 2 authorities. It involved amendments to the plan to introduce a new Medium Density Residential zone with a more enabling rule framework for residential intensification in areas identified as suitable for greater housing densities (para 3). Even though the Karamu site was not within the areas identified by Council as suitable for rezoning, the site met the general expectations set out by the relevant objectives that land will be identified for higher density where it is within a 400 walkable catchment of public open space, commercial centres and public transport (para 14(b)). No issue of lack of scope was raised by any party, including the Judge.

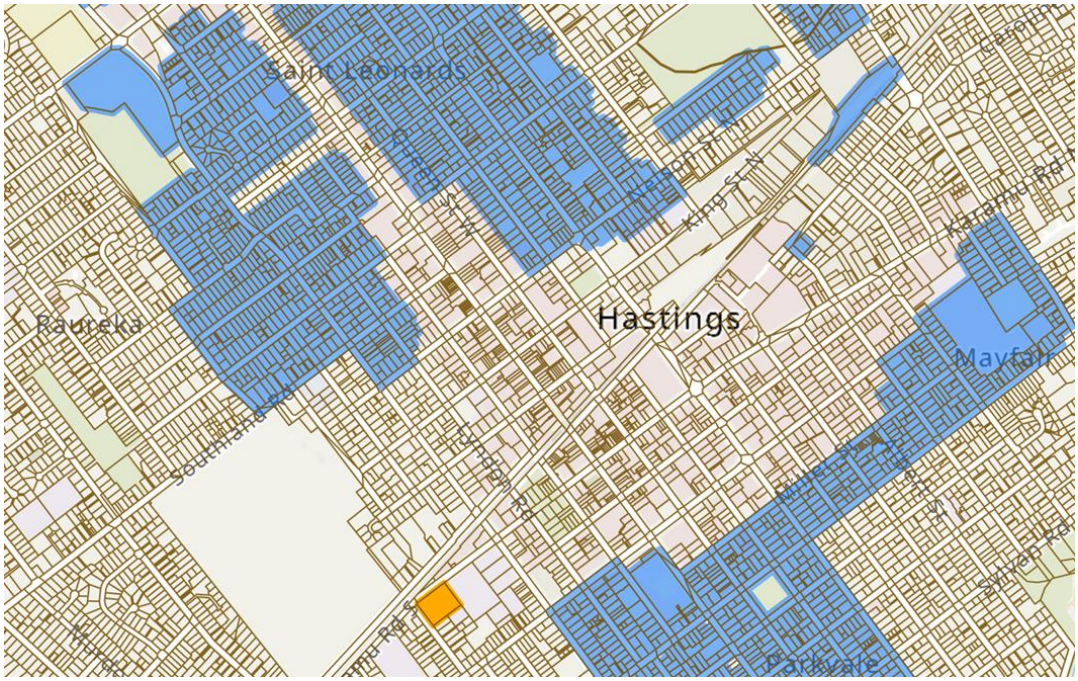

Figure 2 - Extent of land rezoned following appeal (shown in orange).

4.7 Second, the Plan Change sets out criteria used by the Council for the potential rezoning of residentially zoned land within the city to the new MDR zone, namely being within a walkable distance of a bus stop (within 500m); a park or reserve (within 400m); a school (within 800m); or a shopping centre (within 800m). These criteria are clearly stated in the supporting documentation, although do not appear in the Plan Change itself, nor are stated in the relevant objectives and policies.

4.8 Although Kāinga Ora would argue that adherence to these criteria is not a precondition for establishing scope to its mapping relief (i.e.: refer to Whangarei decision), as is demonstrated on the map below, the rezoning sought by Kāinga Ora is within the requisite walkable distance set out in the Plan Change as being used to determine the potential location of the new zone in any case. In that regard, the relief sought by Kāinga Ora clearly meets the requirements of the relevant objective of the Plan Change being MRZ-O2 Built Development in the Medium Density Residential Zone - which states that built development in the new zone positively contributes to achievement of a predominantly residential urban environment that (*inter alia*) enables a mode shift to public transport and active transport modes; connects with open space and the natural environment, and integrates with existing and planned infrastructure.

4.9 Kāinga Ora would consider it arguable, however, that a submitter is limited to seeking additional zoning of land which is currently zoned General Residential. For this reason, Kāinga Ora has amended its zoning relief to exclude any land that is not currently zoned General Residential.

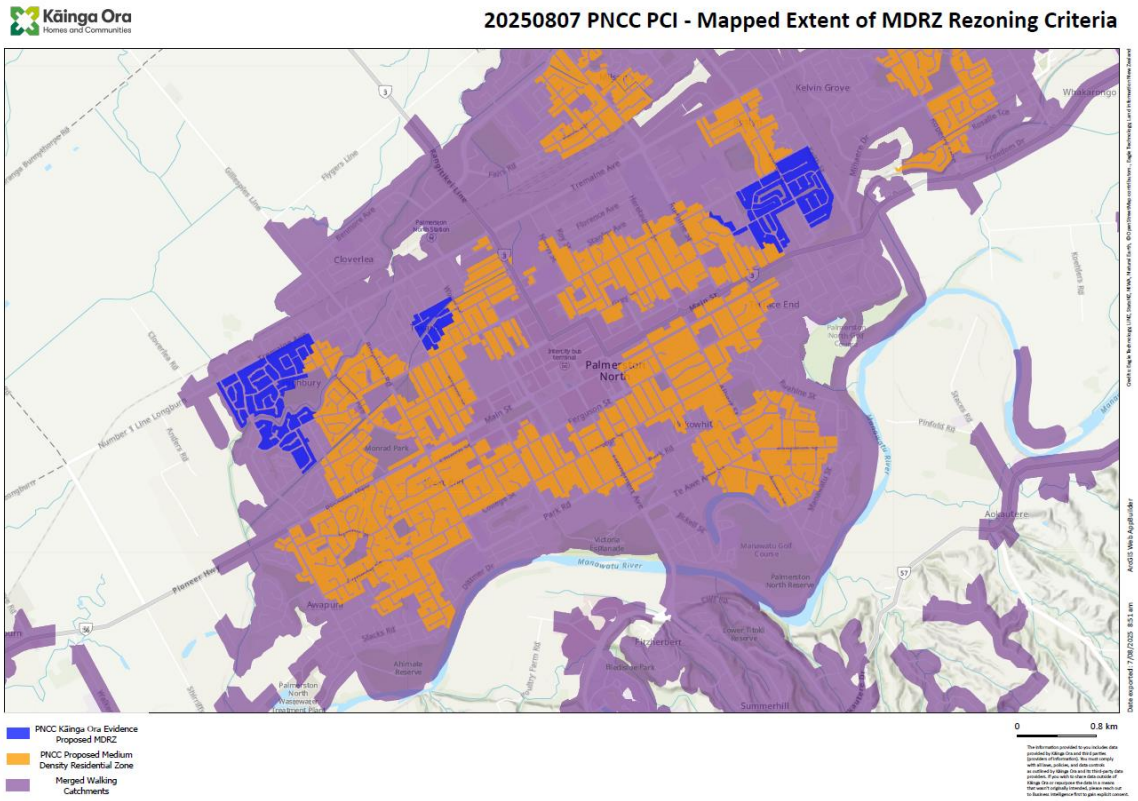

Figure 3 - Extent of zoning proposed meeting accessibility criteria (shown in purple).

4.10 Third, Kāinga Ora is not aware of any case law where there is a limitation on the scale of the change that can be sought where the above preconditions of being 'on' the plan change are met. In any case, the extent of the changes sought by Kāinga Ora are modest, as demonstrated in the mapping below.

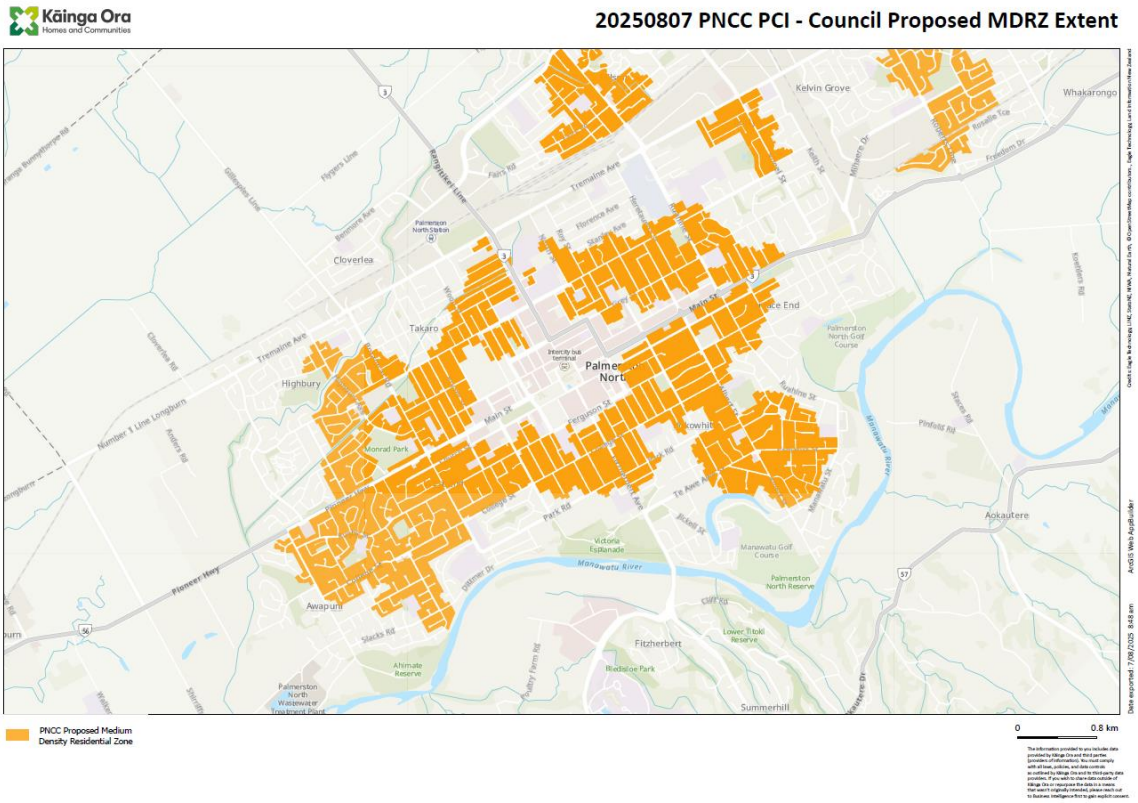

Figure 4 - PNCC MDRZ extent as notified.

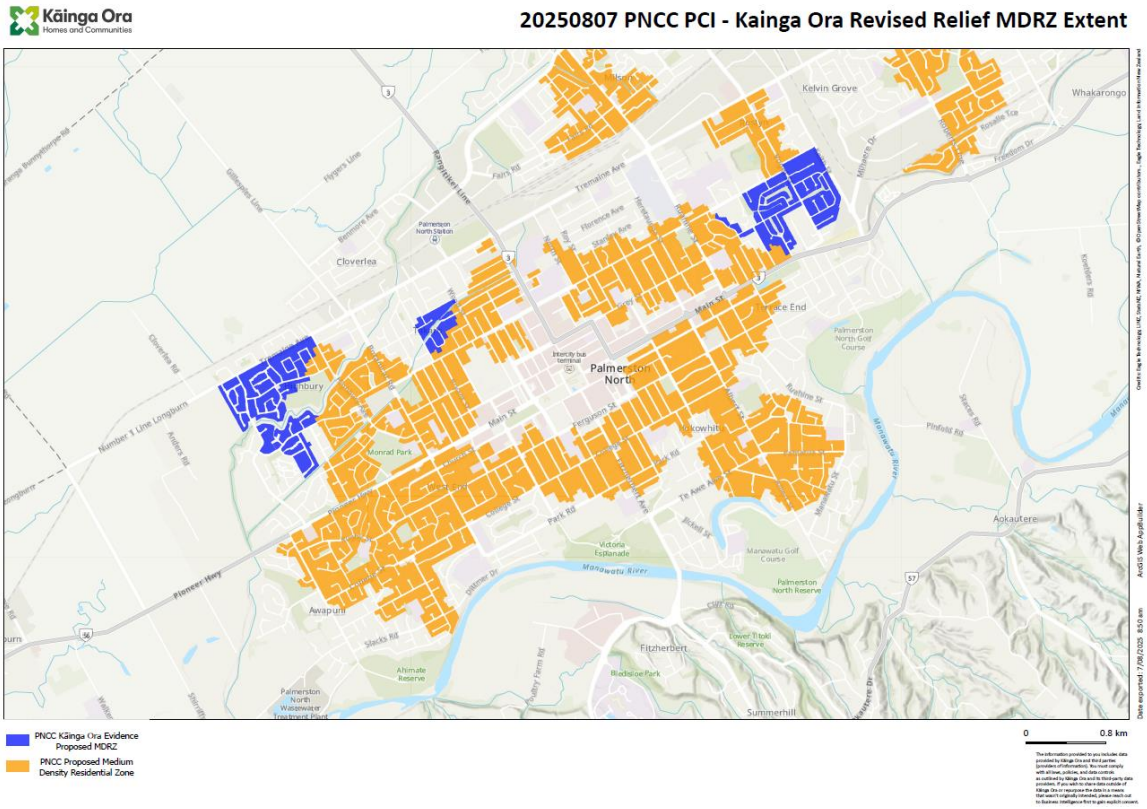

Figure 5 - Modified Kāinga Ora proposed MDRZ (shown in blue) in comparison to PCI MDRZ as notified.

4.11 The public notification states that the rezoning as notified represents approximately 32% of the existing Residential Zone land in the city. The Kāinga Ora submission, if accepted, would only increase that to 37%. Further, the amendments to the existing areas proposed to be zoned MDRZ are all extensions to the areas identified in the Plan Change as notified, which means these are properties that would already been included within an area where their local environment would be changing as a result of the zoning changes proposed by the Plan Change as notified.

4.12 Finally, there is arguably a much stronger natural justice and fairness argument with regards to the rights of the submitter. It cannot be the case that for a Plan Change which introduces a new zone for a City, including its spatial application, a submitter is delimited to a reduction in the proposed zoning sought by the Council in a plan change by virtue of where the Council elects to draw the boundary or because it restricts its direct notification (if that is indeed needed), without falling foul of the *Motor Machinists* test. If the Plan Change itself asks where in the City a new zone is to apply, and the original Council notification of the plan change is valid, then the submission (if it is clear as to its nature and scope) is also valid. The giving of public notice is outside the imprimatur of the submitter, and any failure by Council in this regard, cannot be remedied by unlawfully constraining the rights of the submitter to participate in a plan change process.

5 CONCLUSION

5.1 Plan Change I seeks to: *"[...] enable medium density housing on land within Palmerston North city considered appropriate for intensification. It would rezone relevant areas of the Residential zone as Medium Density Residential and introduce new objectives, policies and rules that apply specifically to the zone"* (Section 32 Report, p.48). In doing so it puts the following matters at issue:

- The ability of the Plan Change to give effect to the NPS-UD, and whether or not (with regard to the NPS-UD) sufficient capacity is being provided for;
- With regard to the above, the relevant objectives and policies for the new residential zone; and
- With regard to the above objectives and policies, where in the City the zone should be located.

5.2 Unlike *Motor Machinists*, the Plan Change involves the introduction of a new zone and new objectives and policies (i.e.: *Motor Machinists* was the extension of an existing zone with no material change to the existing objectives and policies). Those objectives and policies, once determined, will establish the spatial extent of the new zone.

5.3 There can be no question that the Kāinga Ora relief seeking amended mapping of the location for the new MDRZ is 'on' the Plan Change. As such there is no need for Kāinga Ora to rely on that part of the decision of *Albany North* which states that it is not absolutely necessary for such matters to be set out in the Section 32 Report, because the Section 32 Report clearly discusses these matters.

5.4 In terms of any issues of natural justice, a person reading the Plan Change would understand the breadth of what was being considered. As detailed in the Section 32 Report, this Plan Change had a long history of consultation with the community and coupled with posts on Facebook and LinkedIn and the statutory public notice requirements, the community would be well informed of the existence of the Plan Change.

5.5 Further, the Council set out some criteria for its proposed location of the new MDR zone, which not limiting of a submitter in terms of the relief they could seek, was very apparent from even a cursory reading of the Introductory Explanation of the Plan Change; namely that the new zone would be limited to land already zoned General Residential and would meet at least one of the walkable catchment/accessibility criteria. Although not necessary, the Kāinga Ora relief sought meets both preconditions.

5.6 To conclude, the decision by the High Court in *Albany North* requires this Panel to consider the natural justice and fairness argument with regards to the rights of the submitter. As noted in that decision, it cannot be the case that for a Plan Change which is broadly cast, such as the introduction of a new zone for a city as is the case here, a submitter is delimited to a reduction in the proposed zoning sought by the Council in a plan change by virtue of where the Council elects to draw the boundary in the notified version of the Plan Change or because it restricts its direct notification (if that is indeed needed) to a narrow group which aligns only with its proposed spatial application of the zone, without falling foul of the second limb of the *Motor Machinists* test. As noted above, such a position also effectively prevents submissions seeking to amend the new objectives and policies for the MDRZ as notified.

5.7 For all of the reasons set out above, Kāinga Ora says that its submission is without any doubt 'on' the Plan Change.

Dated 15 August 2025

Dr Claire Kirman/Brendon Liggett

Special Counsel for Kāinga Ora – Homes and Communities

/Representative for Kāinga Ora – Homes and Communities