

Before the Independent Hearing Commissioners

Hamilton City Council - Proposed Plan Change 6

Under the Resource Management Act 1991 (**RMA**)

In the matter of A submission by Kāinga Ora Homes and Communities (formerly Housing New Zealand Corporation) on Proposed Plan Change 6 - Regulatory Efficiency and Effectiveness Plan Change

Joint statement of planning evidence of Craig Sharman and Matt Lindenberg on behalf of Kāinga Ora Homes and Communities (submitter 30)

Date: 11 May 2020

Executive Summary

- 1 Our full names are Craig Melville Sharman and Matthew Armin Lindenberg. We are both planners and respectfully hold the positions of Senior Associate and Principal at Beca Limited. We are providing evidence on behalf of Kāinga Ora Homes and Communities (**'Kāinga Ora'**), successor of Housing New Zealand Corporation, in relation to its submission on Plan Change 6 (**'PC6'**).

- 2 In summary, the key points addressed in our evidence are:
 - A discussion regarding Kāinga Ora's submission points 30.29 and 30.30 in relation to Rule 4.4.7 Interface Between Public and Private and Rule 4.4.8 Fences and Walls within Chapter 4 Residential Zones;

 - A discussion regarding Kāinga Ora's submission point 30.38 in relation to Rule 23.3.4 iv) Activity Status Table within Chapter 23 Subdivision;

 - A discussion regarding Kāinga Ora's submission points 30.46, 30.47 and 30.48 in relation to Rules 25.14.4 1a Vehicle Crossings, 25.14.4.1h Vehicle Crossings – Internal Vehicle Access Widths, and 25.14.4.1i Vehicle Crossings – Internal Vehicle Access Widths, within Chapter 25.14 Transportation.

- 3 Our evidence largely supports the recommendations in the Section 42A Report in respect of PC6. The evidence addresses the fundamental purpose of PC6, being to clarify provisions with unclear meaning, remove excessive and unreasonable rules which go beyond what the corresponding objectives and policies aim to achieve, remove unnecessary prescription and provide additional flexibility while appropriately managing potential adverse environmental effects.

- 4 We consider that despite this being the overarching intent of

PC6 that there are several amendments proposed that are poorly targeted to the issues the plan change is seeking to remedy and/or will increase the level of complexity of the provision. Further that additional regulatory complexity can of itself lead to creation of further ambiguity and confusion that leads to additional costs for applicants.

- 5 We consider that Council needs to ensure that the complexity of each rule or provision remains proportional to the potential adverse environmental effects being managed by that provision. I consider that the stated purpose of PC6 would be more appropriately better achieved through acceptance of the relief sought by Kāinga Ora as described in this statement of evidence.

Qualifications and experience

Craig Sharman

- 6 My full name is Craig Melville Sharman. I have practised as a planning professional for over 20 years. I hold a Bachelor of Resource and Environmental Planning from Massey University (1996) and a Master of Philosophy (Geography) from Massey University (1998). I have been a full member of the New Zealand Planning Institute since 2003.
- 7 I am currently employed by Beca Limited (**'Beca'**) in the position of Senior Associate – Planning. I have been employed in this capacity since 2017. Prior to 2017 I worked in a variety of planning roles within private consultancies and local government. This includes working as a consents and policy planner at Hamilton City Council from 2004-2006 and having worked in Hamilton as a planning consultant since 2006. I am highly familiar with the contents of the Hamilton City District Plan and urban planning within Hamilton.
- 8 In preparing my evidence, I have reviewed the following documents to the extent that they relate to the relief sought by Kāinga Ora and I refer to them where relevant:
- Resource Management Act 1991 (RMA);

- Operative Hamilton City District Plan;
- Section 42A Planning Report for PC6;
- Section 32 Evaluation Report – PC6;
- Plan Change 6 - Regulatory Efficiency and Effectiveness Plan Change.

Matt Lindenberg

- 9 My full name is Matthew Armin Lindenberg. I am a Planner and hold the position of Principal at Beca Limited. I hold a Master of Science in Geography (Second Class Honours) and a Bachelor of Science, both from the University of Auckland. I am an Associate member of the New Zealand Planning Institute.
- 10 I have 15 years' planning and resource management experience, providing technical direction on a number of key projects, particularly focusing on land development projects and policy planning. I have been involved in a number of plan review and plan change processes, including the recent Independent Hearings Panel ("IHP") hearings on the proposed Auckland Unitary Plan ("PAUP"). In particular, I have been a member of planning teams for policy planning projects including:
- The Kaipara District Plan review and development of objectives and policies (for the 'Land Use and Development Strategy' and 'Residential' chapters) for the notification of that plan;
 - The Plan Variation for the site known as 'The Landing' at Hobsonville Point (undertaking through the Housing Accords and Special Housing Areas legislative process) on behalf of Hobsonville Land Company;
 - The Kerikeri-Waipapa Structure Plan (2007) on behalf of the Far North District Council; and

- The preparation of the Local Development Framework and Core Strategy (the 'Spatial Plan') during my time working at the London Borough of Bexley in the United Kingdom, including leading the 'Affordable Housing' and 'Sustainability/Climate Change' workstreams as part of the plan development process.
- 11 I have also prepared and presented evidence on numerous PAUP hearing topics on behalf of Kāinga Ora in front of the IHP. I subsequently prepared and presented evidence in the Environment Court on behalf of Kāinga Ora in relation to appeals on the PAUP related to the carparking and transport provisions as well as the Residential zone provisions. Most recently, I have also prepared and presented evidence on behalf of Kāinga Ora as part of the ongoing Waikato District Plan Review hearing process.
- 12 Specific to PC6, I have been involved in assisting Kāinga Ora with the preparation of their submission on the plan change and have also been involved more recently in the review of this evidence statement. Mr Sharman has had the more detailed involvement recently in the review of the Council's s42A report and preparation of this statement of joint planning evidence. I can confirm I support the conclusions drawn in this statement.

Code of conduct

- 13 We have read the code of conduct for expert witnesses in the Environment Court Practice Note. We agree to comply with this code of conduct. The evidence in our statement is within our area of expertise, except where we state that we are relying on the evidence of another person. We have not omitted to consider material facts known to us that might also detract from the opinions we express.

Scope of Evidence

- 14 Our evidence addresses:
- Kāinga Ora's submission and further submissions on PC6;

- The recommendations included in the Section 42A Evaluation Report (**'S42A Report'**) for PC6 that are relevant to the relief sought in Kāinga Ora's submission; and
- The extent to which we agree or disagree with those recommendations.

15 It is acknowledged that Hamilton City Council withdrew certain notified plan change provisions within PC6 on 19 March 2020. The plan change provisions which have been withdrawn in full that are relevant to Kāinga Ora are:

- 30.06 – 6.4.7g Residential Development
- 30.16 – 7.5.3 Residential Standards – Residential Unit Size
- 30.20 – 4.3.1a Activity Status table
- 30.21 – 4.3.1g Activity Status Table
- 30.22 – 4.3.1h Activity Status Table
- 30.34 – 4.4.12 Residential Size Unit
- 30.35 – 4.7.11 Integrated Residential Development
- Further submissions FS1.03, FS1.05, FS1.06, FS1.13, FS1.18

16 This evidence does not address these points and it is acknowledged that the Hearing Commissioners will not be making decisions on these points.

Background and Statutory Considerations

17 The background to the formation of Kāinga Ora in 2019, and the statutory objectives of the organisation stated within the Kāinga Ora–Homes and Communities Act 2019 are provided within the

evidence of Mr. Liggett. We will not repeat that here.

18 As discussed in the evidence of Mr. Liggett, Kāinga Ora is interested in all issues that may affect the supply and affordability of housing. In relation to PC6 therefore, Kāinga Ora has a broad interest relating to the proposed changes of the District Plan, including provisions relating to residential development, business and commercial activities, subdivision, earthworks, transport, and definitions, as well as information requirements. Kāinga Ora have already signalled their desire to engage with Hamilton City Council over the scope of provisions being considered in a comprehensive review, now that Plan Change 11 – Residential Density has been withdrawn, and that parts of the notified PC6 are withdrawn.

19 In the remainder of our evidence we specifically address the relief sought in Kāinga Ora's submission and further submission, in respect of matters covered by the S42A Report for PC6.

Kāinga Ora's Submission

20 In seeking to meet its statutory obligations, Kāinga Ora (as successor to Housing New Zealand Corporation) made a submission generally supporting PC6 subject to certain matters to be addressed and relief sought.

21 It is acknowledged that the Housing New Zealand Corporation submission was submitted late, as described at section 2.20 of the S42A Report. This was reflective of the transformation process that Housing New Zealand Corporation was undergoing at that time, and acceptance from the Hearing Commissioners as a late submission is accordingly sought.

22 Kāinga Ora's submission recognises the importance of ensuring the Council's regulatory functions are delivered in an effective, efficient and customer focused manner, so therefore supports the

broad intent of PC6 to make the District Plan more enabling and workable.

- 23 Kāinga Ora's submission supports many of the amendments proposed as part of the plan change insofar as they clarify provisions with unclear meaning, remove excessive and unreasonable rules which go beyond what the corresponding objectives and policies aim to achieve, remove unnecessary prescription and provide additional flexibility while appropriately managing potential adverse environmental effects. These changes will better facilitate the reconfiguration of existing housing stock within Hamilton and enable Kāinga Ora to deliver state, social and affordable housing in an efficient and effective manner, so as to better contribute to the social and economic wellbeing of the community, including the health and safety of their tenants.
- 24 While the intent of PC6 is to remove unnecessary complexity and broadly make the district plan provisions more enabling and workable, we consider that there are several amendments proposed that are poorly targeted to the issues the plan change is seeking to remedy; or that increase the level of complexity of the provision and thus create potential for a cumulative increase in the scale of regulation leading to additional costs and complexity; and that add further restrictions and/or create further ambiguity and confusion. Many of the specific points described below fall in this category and are addressed for this reason.

Out of Scope Submission Points

- 25 The S42A report states that there are several Kāinga Ora submission points out of scope. These being:
- a) 30.54 – Definitions - Net Site Area
 - b) 30.55 – Definitions - Net Site Area for Duplex Dwellings in the Residential Intensification Zone

c) 30.56 – Definitions - Outdoor Living Area

- 26 We concur with the reporting officer's conclusion that these submission points are outside the scope of PC6. However, the definitions that the submission points relate to will be points that Kāinga Ora want to raise with Council as it progresses the comprehensive review of density matters in replacement of Plan Change 11 (which was recently withdrawn). The amendments to the definitions of 'net site area', 'net site area for duplex dwellings in the Residential Intensification Zone' and 'outdoor living area' were all to achieve alignment with national planning standards and to enhance clarity of meaning.

Kāinga Ora's Further Submissions

- 27 Kāinga Ora also lodged a further submission in support of/in opposition to original submissions submitted on PC6 by:
- Waikato Farmers Trust (07) - 07.14
 - Gallagher (08) - 08.04
 - CKL (10) - 10.01, 10.06, 10.09, 10.12, 10.14, 10.15, 10.16, 10.17, 10.20
 - Peter Bos (15) - 15.01
 - Assured Construction (17) - 17.02, 17.08, 17.12
 - Hamilton City Council (23) 23.01
 - Property Council NZ (26) - 26.05, 26.11, 26.38, 26.39
 - MG Solutions (27) - 27.06, 27.56, 27.57, 27.62, 27.68, 27.73, 27.75, 27.29
 - Ministry of Social Development (28) - [28.03

- Habitat for Humanity (29) - 29.01

28 Kāinga Ora submitted further submissions on the above submission points for the same reasons as expressed in paragraphs 18 – 20 above. The relief sought in those submissions we also consider to be appropriate as an alternative means of achieving the overarching intent of PC6.

Section 42A Report

Submission Points Accepted

29 We have reviewed Council's S42A report and concur with the assessment and recommendations of Council's section 42A reporting officer, in so far as they relate to the Kāinga Ora submission points set out below.

30 The section 42A reporting officer's report has recommended acceptance of 39 out of 66 of Kāinga Ora submissions points. These being submission points 30.01, 30.04, 30.10, 30.11, 30.12, 30.13, 30.14, 30.15, 30.18, 30.19, 30.23, 30.24, 30.25, 30.26, 30.31, 30.32, 30.33, 30.36, 30.37, 30.40, 30.41, 30.42, 30.43, 30.44, 30.45, 30.49, 30.50, 30.51, 30.52, 30.53, 30.57, 30.58, 30.59, 30.60, 30.61, 30.62, 30.63, 30.64, and 30.65. Therefore, no further assessment on these submission points have been discussed below.

Submission Points Accepted in Part

31 The S42A Report has recommended that several of Kāinga Ora's submission points be accepted in part. These are 30.02, 30.03, 30.05, 30.07, 30.17, 30.27, 30.28, 30.39 and 30.66. Broadly these are points where Kāinga Ora supported amendments to provisions as proposed within PC6, where minor amendments have been made in response to other submissions received. We have no

concern with these minor amendments and consider they achieve the intent of the Kāinga Ora submission. Accordingly, we support the section 42A reporting officer's recommendations on these points.

- 32 In respect of submission points 30.02 and 30.03 in relation to Policy 6.2.2b Suburban Centres and Policy 6.2.3c Neighbourhood Centres, we support the reporting officer's recommendation based on the amendments to the policies. The notified version of the wording was considered open to interpretation and was overly prescriptive. We consider it important to reiterate that the expectation of 'quality on-site amenity' will differ depending on the characteristics of individual areas and will 'look different' in the variety of urban environments that exist in Hamilton. The recommendation recognises this sufficiently through the wording recommended in the S42A report.

Submission Points Rejected

Chapter 7 Central City Zone

30.08 – 7.2.6h Downtown Precinct and 30.09 7.2.8e Ferrybank Precinct

- 33 Whilst listed as being rejections within the S42A report, these submission points are effectively accepted in part. Kāinga Ora's submission on these two points supported the additional policies 7.2.6h and 7.2.8e proposed within PC6 as Kāinga Ora supports the encouragement for provision of quality, living environments. The minor amendments to remove the word 'high' as recommended by the section 42A reporting officer are supported as it is agreed that the resulting wordings will still achieve the intent of the Kāinga Ora submission. Accordingly, we concur with the recommendations of the section 42A reporting officer.

Chapter 4 Residential Zones

30.29 – 4.4.7 Interface between public and private

- 34 Kāinga Ora's submission on Rule 4.4.7 opposed the PC6 amendments to the rule. The proposed wording introduces numerous additional requirements, including the inclusion of prescribed minimum thresholds for the extent of windows on front facades, and a maximum threshold that an accessory building located between a dwelling and the transport corridor can 'cover' of the dwelling to ensure visibility of the dwelling from the street. The submission states that as long as the principles of good design are followed, the presence of windows and exact location of the accessory building on the site is a matter which can be decided on a site-specific basis. The proposed restrictions and requirements are too prescriptive and will not enable the development of accessory buildings in an efficient and timely manner.
- 35 In response to submissions received on this rule provision the reporting officer has considered and in some cases recommended accepting various amendments in response to other submitters.
- 36 Whilst Kāinga Ora is neutral on many of those specific changes, the level of complexity of the rule as now recommended in the S42A Report still appears to be well in excess of the significance of the environmental effects the rule is seeking to manage. We are concerned that despite the intent of the plan change, that the recommendations still create a large amount of additional complexity being added to the rule, with likely misinterpretation issues and unintended outcomes as a result. The rule has potential to generate an increase in resource consent applications being required without a corresponding environmental benefit.
- 37 In this sense the proposed rule is likely to have the opposite outcome to that which PC6 was promulgated to achieve. From my perspective this will contribute to a more complex rule framework and render the design and consenting of affordable housing a more challenging, time consuming and costly process. We reiterate that it is important that Council ensures that the complexity of a rule remains proportional to the potential adverse

environmental effects being managed by that rule.

- 38 We consider that retention of the rule as it existed prior to PC6 would better achieve the intent of PC6, rather than the numerous and complex amendments recommended by the section 42A reporting office.

30.30 – 4.4.8 Fences and Walls

- 39 Kāinga Ora's submission on Rule 4.4.8 supports the rule subject to removing clause c) such that retaining walls higher than 1.5 metres in height and load bearing should not be considered as 'buildings' for the purpose of this rule in their own right. The reason stated in the submission is that this may trigger building and engineering requirements for relatively small retaining walls. Instead, Kāinga Ora sought that retaining walls be subject to the other provisions in Rule 4.4.8 but not be considered as 'buildings'.
- 40 The reporting officer rejects this submission point on the basis that it is considered appropriate for a retaining wall 1.5 metres or higher to be considered a 'building' due to the implications around building within a natural hazard area. The report goes on to state that adequate assessment of retaining walls in the Gully Hazard Area is needed to ensure stability of the gully is maintained and minimise risk on people, property and the environment. The Section 32 Evaluation Report also links the amendment to clause c) to the associated definition for the term 'building'.
- 41 Having now recognised that the definition of 'building' includes the same wording to that proposed within the rule (and that the definition is not being amended through PC6) we consider retention of clause c) within the rule is appropriate and we concur with the section 42A reporting officer's recommendation.

Chapter 23 Subdivision

30.38 – 23.3.4 iv) Activity Status Table

- 42 Kāinga Ora's submission supported the introduction of a separate activity status for fee simple subdivision for apartments, however sought that the activity status in all zones be a restricted discretionary activity instead of a default discretionary activity status. This is on the basis that fee simple subdivision around an existing or consented apartment development is a well understood process, sharing many of the same characteristics of a unit title subdivision.
- 43 In rejecting the relief sought, the reporting officer considers that the discretionary activity status proposed for apartments indicates that they are generally undesired due to ongoing management and maintenance issues that comes with creating management structures at the time of subdivision, which is complex and requires information that is not normally known at the time of subdivision.
- 44 The Section 32 Evaluation Report describes this more fully stating that fee simple subdivision for apartments is not appropriate as structures are interconnected and require common management for maintenance and upgrading purposes; that insurance problems and maintenance issues can arise where there are no common management structures; that fee simple subdivision does not have common management arrangements and there is limited ability for this to be achieved without the creation of complex company structures, easements and covenants which are not generally known at the time of subdivision.
- 45 The Section 32 Evaluation Report further states that the existing district plan provisions for fee simple subdivision are listed as a restricted discretionary activity, including fee simple subdivision around apartments. The Section 32 Evaluation Report states that existing provisions do not achieve the district plan objectives as they enable fee simple subdivision of apartments which is not sustainable without appropriate management structures and legal mechanisms to enable effective ongoing management, maintenance and operation.

46 Presumably this reflects some Council experience of situations where fee simple subdivision has been undertaken, although the detail of that experience is not documented in order to consider such matters in more detail. We consider that a restricted discretionary activity status for all forms of fee simple subdivision is appropriate. This is on the basis that the District Plan can include rules and or matters of discretionary to manage the issues of concern raised in the Section 32 Evaluation Report when considering a fee simple subdivision consent for an existing or consented apartment development. Accordingly, we are unable to reach a conclusion as to why this form of fee simple subdivision should be treated differently to other forms of fee simple subdivisions.

47 Our opinion is also based upon the Auckland Unitary Plan which contains provisions in Chapter E (Part E38 – Subdivision-Urban) that enable subdivision around existing buildings and development, and subdivision in accordance with an approved land use resource consent, as a restricted discretionary activity. An extract from Chapter E (Part E38) of the Auckland Unitary Plan is attached as **Annexure A** to contrast the activity status applied to subdivision in Auckland versus that proposed in PC6. The corresponding matters that discretion is restricted to in the Auckland Unitary Plan provisions are clearly articulated as being:

- a) whether the design and layout of the proposed sites result in new or increased non-compliance with Auckland-wide and zone rules;
- b) whether there is appropriate provision made for infrastructure; and
- c) whether there is appropriate creation of common areas over parts of the parent site that require access by more than one site within the subdivision.

- 48 Enabling apartments and higher density forms of housing is important to achieving FutureProof Sub-Regional Growth Strategy density targets, providing housing choice for the community at varying price-points. Given that apartments and comprehensive residential developments are likely to play an increasingly important role in the provision of housing in Hamilton City; and given the fact that the primary concern of the Council appears to be primarily around maintenance and legal issues; I maintain the opinion that these issues could be readily addressed through provisions in the District Plan. To assist the panel, we append a set of recommended provisions to address this issue as **Annexure B**, as an appropriate way to give effect to the relief sought in the submission through Rule 23.8. In summary, the overarching objectives, policies and rules framework within the district plan is enabling of apartments and higher density forms of development, yet this particular provision is contrary to that intent. Provisions that discourage apartments and higher density forms of living potentially constrict the delivery of a variety of high- density housing options.
- 49 We consider there is no sound resource management reason to restrict or discourage this form of subdivision from occurring around existing or consented apartments by imposing a discretionary activity status when such an issue can be managed through appropriate provisions in the District Plan.
- 50 The Section 32 Evaluation Report and plan change documentation do not establish to a robust extent why the application of a restricted discretionary status would result in adverse economic, social and environmental effects from fee simple subdivision occurring around apartment developments. A robust rationale has not been articulated for the amendment to Rule 23.3.4 in this respect.

Chapter 25.14 Transportation

30.46 - 25.14.4 1a, b, c Vehicle Crossings

- 51 Kāinga Ora opposed the separation distances set out in the proposed PC6 changes as they have the potential to unnecessarily constrain development on sites which adjoin transport corridors with higher posted speed limits. The amendments sought were to allow for flexibility within the rule to allow for non-compliance with the separation distances where visibility from the crossing point is good and vehicle safety can be demonstrated.
- 52 The reporting officer considers that the standard as proposed does provide for the flexibility for joint crossings and provides clarification on local roads where separation standards cannot be met.
- 53 Kāinga Ora does support the majority of the proposed amendments, particularly the text acknowledging that where the separation distances may not be achievable, that this is acceptable where the proposed vehicle crossing shall be separated as far as possible from any other existing or proposed crossing.
- 54 We acknowledge that the rule cannot be amended to introduce subjective judgement, as the submission point does promote relying on the phrase ‘as long as good visibility from the crossing point for vehicles can be achieved’. However the intent of the submission point can be achieved through use of the same phrase as proposed within clause a) (iii) of the same rule, being “the proposed vehicle crossing shall be separated as far as possible from any other existing or proposed crossing.” We consider this to provide a suitable level of flexibility within the rule, without introducing a level of subjectivity that is inappropriate.
- 55 The amended provision we recommend reads as follows:

25.14.4.1 Vehicle Crossings and Internal Vehicle Access

(a)

...

iv. On roads with a posted speed above 50km/h where compliance with i. or ii. above cannot be achieved as part of any land use activity the proposed vehicle crossing shall be separated as far as possible from any other existing or proposed crossing.

- 56 We consider that the above amendment to Rule 25.14.4 1a to include a clause (iv) should be considered by the Hearing Commissioners for inclusion as it will assist in enabling the consideration of development proposals on a more overtly provide for better achieving the flexible and effects-based approach which aligns with the intent of PC6.

30.47 - 25.14.4.1h Vehicle Crossings – Internal Vehicle Access Widths

- 57 Kāinga Ora opposed the proposed introduction of the new clause (iv) which requires vehicle accessways serving more than 6 residential units to be formed and vested with Council as a public road. It is considered impractical that every vehicle access to a multi-unit development of 6 or more dwellings is to be vested as a public road, and this would also likely place a potentially unsustainable ongoing operations and maintenance burden on Council in relation to many such potential 'public roads'.
- 58 The reporting officer notes that access via a public road is only required for more than 20 allotments. Options for a 16 metre public road or 6 metre private way are provided for access to 7-20 allotments. A transition in cross-section width at 6 lots and 20 lots is consistent with NZS4404 and allows for the carriage way, footpaths, recessed parking and service berms.

- 59 We acknowledge that clause (iv) only relates to fee simple subdivision and will have no impact on other forms of land tenure (with unit title subdivision of 7-20 units for apartments able to provide a 6.0m wide private accessway). As with the above discussion on Rule 23.3.4 iv) Activity Status Table (submission point 30.38), the concern is with provisions that seek to treat different forms of land tenure differently, with no robust reason for doing so on an effects basis.
- 60 A fee simple subdivision with an access serving more than six residential units is being required by the additional clause to form and vest a public road. We consider this a threshold that is far too low to warrant the standard required by clause iv and that there is no compelling resource management basis for this.
- 61 By contrast, we note that a unit title subdivision servicing 7-20 residential units is not subject to this requirement which we consider creates an inconsistent planning framework to manage this issue.
- 62 We do not consider that there is a material difference that can be identified in terms of an environmental effect between the two forms of tenure.
- 63 For the above reasons we consider that the deletion of clause (iv) will not give rise to any operational and efficiency issues which are the overarching intent of PC6 and that there is no compelling planning rationale for its inclusion in the District Plan.

30.48 - 25.14.4.1i Vehicle Crossings – Internal Vehicle Access Widths

- 64 Kāinga Ora's submission opposed the proposed PC6 amendment to this rule and preferred the existing wording of the standard. The proposed wording is considered to be overly prescriptive and complex.
- 65 The reporting officer states that the current rule has led to

circumstances where the internal access has not been fit for purpose and it is considered necessary to provide more prescriptive requirements within the rule. A required free height of 4 metres is also required for Fire and Emergency New Zealand emergency vehicles.

66 Whilst the circumstances that the reporting officer is referring to are unknown, the PC6 response is to add a much more prescriptive and detailed rule requiring added assessment during a design process. The amendments effectively replace the phrase “sufficient clearance from the edge of the formation of...” with prescriptive distances and calculation methods within the rule. I see benefits in achieving clarity of rules and also acknowledge the important of emergency service vehicles being able to access properties. However, the level of prescription now proposed is considered far in excess of the extent of likely adverse effects occurring from the existing rule.

67 We support the Kāinga Ora position that the existing rule should be retained as it existed prior to PC6. We consider the existing rule is fit for purpose, simple, concise and with a level of complexity and detail proportional to the modest extent of adverse environmental effects being managed by the provision.

Conclusions

68 Our evidence largely supports the recommendations in the Section 42A Report in respect of PC6. The section 42A reporting officer’s report has recommended acceptance of 39 out of 66 of Kāinga Ora submissions points. There are nine submission points accepted in part where the recommendations from the reporting officer are also supported, and three submission points acknowledged to be out of scope. There are also seven submission points now on portions of PC6 that have been withdrawn. Of the eight remaining submission points, two are where the recommendations from the reporting officer are supported, with this evidence addressing the remaining six

submission points.

- 69 The above discussion highlights the remaining areas of concern relating to several provisions, and my opinion on those points. Subject to further consideration by the Hearing Commissioners in respect of the above points and dependent on those resulting decisions, we consider that PC6 will be effective in achieving the original intent of the plan change. That being to clarify provisions with unclear meaning, removal of excessive and unreasonable rules which go beyond what the corresponding objectives and policies aim to achieve, remove unnecessary prescription and provide additional flexibility while appropriately managing potential adverse effects.
- 70 In this evidence we conclude that it is important that the complexity of each rule or provision remains proportional to the potential adverse environmental effects being managed by that provision. Further that adding unnecessary complexity to provisions, or provisions that are poorly targeted to the issues the provision is seeking to address, can create further ambiguity and confusion and creates additional costs and complexity for parties seeking to undertake development within the city.
- 71 We consider that adopting the amendments set out in this statement will better enable variety, innovation and flexibility in the provision of urban development within Hamilton City (in the context that a wider review of density and urban form is being advanced). Accordingly, the matters addressed in this statement will better enable the sustainable management of natural and physical resources in a manner consistent with Part 2 of the RMA.

Date:

11 May 2020



Matt Lindenberg



Craig Sharman

Annexure A

Key - Yellow highlight denotes RD status for subdivision activities



Auckland Unitary Plan - Chapter E.38 - Relevant Provisions – Subdivision - Urban

Activity Table E38.4.1 Subdivision for specific purposes

	Activity	Activity Status
(A1)	Lease in excess of 35 years of a building or part of a building where a cross-lease, company lease, or unit title subdivision is not involved	P
(A2)	Subdivision for a network utility	P
(A3)	Conversion of a cross lease to a fee simple title	C
(A4)	Cross lease, company lease, unit title and strata-title subdivision	C
(A5)	Amendments to a cross lease or unit title, including additions and alterations to buildings, accessory buildings and areas for exclusive use by an owner or owners	C
(A6)	Boundary adjustments which do not exceed 10 per cent of the net site area of each site	C
(A7)	Subdivision of a site with two or more zones or subdivision along an undefined zone boundary	RD
(A8)	Subdivision establishing an esplanade reserve	RD
(A9)	Subdivision establishing an esplanade strip	D
(A10)	Any reduction or waiver of esplanade reserves or strips	D
(A11)	Subdivision of land within any of the following natural hazard areas: § 1 per cent annual exceedance probability floodplain; § coastal storm inundation 1 per cent annual exceedance probability (AEP) area; § coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise area; § coastal erosion hazard area; or § land which may be subject to land instability.	RD
(A12)	Any subdivision listed in this activity table not meeting the standards in E38.6 General standards for subdivision	D
(A13)	Any subdivision listed in this activity table not meeting the permitted, controlled, or restricted discretionary activities standards in E38.7 Standards for subdivision for specific purposes	D

Activity Table E38.4.2 Subdivision in residential zones

	Activity	Activity Status
(A14)	Subdivision in accordance with an approved land use resource consent complying with Standard E38.8.2.1	RD

(A15)	Subdivision around existing buildings and development complying with Standard E38.8.2.2	RD
(A16)	Vacant sites subdivision involving parent sites of less than 1ha complying with Standard E38.8.2.3	RD
(A17)	Vacant sites subdivision involving parent sites of less than 1ha not complying with Standard E38.8.2.3.	D
(A18)	Vacant sites subdivision involving parent sites of 1ha or greater complying with Standard E38.8.3.1	D
(A19)	Vacant sites subdivision involving parent sites of 1ha or greater not complying with Standard E38.8.3.1	NC
(A20)	Subdivision of sites identified in the Subdivision Variation Control complying with Standard E38.8.2.4	RD
(A21)	Subdivision of sites identified in the Subdivision Variation Control not complying with Standard E38.8.2.4	NC
(A22)	Subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay complying with Standard E38.8.2.5	RD
(A23)	Subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay not complying with Standard E38.8.2.5	NC
(A24)	Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business complying with Standard E38.8.2.6	RD
(A25)	Subdivision of sites identified in the Special Character Areas Overlay – Residential and Business not complying with Standard E38.8.2.6	NC
(A26)	Subdivision of a minor dwelling from the principal dwelling where the proposed sites comply with the minimum site size requirement for subdivision in the applicable zone	RD
(A27)	Subdivision of a minor dwelling from the principal dwelling where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	Pr
(A28)	Subdivision of a converted dwelling established from the conversion of a principal dwelling existing as at 30 September 2013 where the proposed sites comply with the minimum site size requirement for subdivision in the applicable zone	RD
(A29)	Subdivision of a converted dwelling established from the conversion of a principal dwelling existing as at 30 September 2013 where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	Pr
(A30)	Any subdivision listed in this activity table not meeting E38.6 General standards for subdivision	D
(A31)	Any subdivision listed in this activity table not meeting the standards in E38.8 Standards for subdivision in residential zones	D
(A32)	Any subdivision not otherwise provided for in Tables E38.4.1 and E38.4.2	D

E83.8.2 Standards - residential restricted discretionary activities**E38.8.2.1. Subdivision in accordance with an approved land use resource consent**

(1) Any subdivision relating to an approved land use consent must comply with that resource consent.

E38.8.2.2. Subdivision around existing buildings and development

(1) Prior to subdivision occurring, all development must meet one of the following:

- (a) have existing use rights;
- (b) comply with the relevant overlay, Auckland-wide and zone rules; or
- (c) be in accordance with an approved land use resource consent.

Activity Table E38.4.3 Subdivision in business zones

	Activity	Activity Status
(A33)	Subdivision in accordance with an approved land use resource consent complying with Standard E38.9.2.1	RD
(A34)	Subdivision around existing buildings and development complying with Standard E38.9.2.2	RD
(A35)	Vacant sites subdivision complying with Standard E38.9.2.3	RD
(A36)	Vacant sites subdivision not complying with Standard E38.9.2.3	NC
(A37)	Any subdivision listed in this activity table not meeting the standards in E38.6 General standards for subdivision	D
(A38)	Any subdivision listed in this activity table not meeting standards in E38.9 Standards for subdivision in the business zones	D
(A39)	Any subdivision not otherwise provided for in Tables E38.4.1 and E38.4.3	D

E38.9.2. Standards – business restricted discretionary activities**E38.9.2.1. Subdivision in accordance with an approved land use resource consent**

(1) Any subdivision relating to an approved land use consent must comply with that consent, including all conditions and all approved plans.

E38.9.2.2. Subdivision around existing buildings and development

(1) Prior to subdivision occurring, all development must:

(a) have existing use rights;

(b) comply with the relevant overlay, Auckland-wide and zone rules; or

(c) be in accordance with an approved land use resource consent.

E38.12. Assessment – restricted discretionary activities

E38.12.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

- 1) subdivision of a site within the 1 per cent annual exceedance probability floodplain:
 - (a) the effects of the hazard on the intended use of the site or sites created by the subdivision and the vulnerability of the uses to flood hazard events.
- 2) subdivision of a site in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area or coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 m sea level rise area:
 - (a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events.
- 3) subdivision of a site in the coastal erosion hazard area:
 - (a) the effects of the erosion on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal erosion.
- 4) subdivision of a site subject to land instability including those areas defined in the Plan as “land which may be subject to land instability”, or other unstable soils as identified through a specific site assessment:
 - (a) the effects of remediating the land instability hazard and the effect of the hazard on the intended use.
- 5) subdivision establishing an esplanade reserve:
 - (a) the effect of the design, purpose and location of any esplanade reserve established by subdivision in terms of public access, and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features. subdivision around existing buildings and development; and

- 6) subdivision in accordance with an approved land use resource consent:
 - (a) the effect of the design and layout of the proposed sites created.
- 7) all other restricted discretionary activity subdivisions:
 - (a) the effect of the design and layout of sites to achieve the purposes of the zone or zones and to provide safe legible and convenient access to a legal road;
 - (b) the effect of infrastructure provision and management of effects of stormwater
 - (c) the effect on the functions of floodplains and provision for any required overland flow paths:
 - (d) the effect on historic heritage and cultural heritage items:
 - (e) the effect of the layout, design and pattern of blocks and roads in so far as they contribute to enabling a liveable, walkable and connected neighbourhood;
 - (f) the effect of layout and orientation of blocks and sites on the solar gain achieved for sites created, if relevant;
 - (g) the effects arising from any significant increase in traffic volumes on the existing road network;
 - (h) the visual effect on landscape and on topographical features and vegetation arising from subdivision of sites zoned Residential - Large Lot Zone and Residential - Rural and Coastal Settlement Zone;
 - (i) the provision made for the incorporation and enhancement of land forms, natural features and indigenous trees and vegetation;
 - (j) the effect on recreation and open space.
 - (k) the effect of the design and layout of sites on transport infrastructure and facilities within roads.
- 8) subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay:
 - (a) the matters in E38.12.1(7); and
 - (b) the effects on the significant ecological area.
- 9) subdivision of sites identified in the Subdivision Variation Control:
 - (a) the matters in E38.12.1(7); and
 - (b) the effects of the pattern and density of subdivisions on the low-density settlement pattern of those areas.

E38.12.2. Assessment Criteria

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- 1) subdivision of a site within the one per cent annual exceedance probability floodplain:

- (a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to flood hazard events:
 - (i) whether measures are proposed to ensure the long term protection of flood plain conveyance functions;
 - (ii) whether the location and design of development including building platforms and access ways are located to avoid the hazard;
 - (iii) the extent to which changes to the landform and the design of mitigation structures/features are necessary for the subdivision; and
 - (iv) refer to Policy E38.3(2).
- 2) subdivision of a site in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area or the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:
 - (a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events:
 - (i) whether the location and design of development including proposed and existing building platforms and access ways include the ability to relocate uses within the proposed site area, taking into account in urban and serviced areas a 1 metre rise in sea levels;
 - (ii) whether the use of defences to protect the land and any buildings or structures on the land from coastal storm inundation are necessary;
 - (iii) whether there is any residual risk posed by coastal storm inundation to the site(s) associated with any existing or proposed coastal defences;
 - (iv) whether there are effects on landscape values resulting from associated built and/or land form modifications required to provide for the intended use of the site; and
 - (v) refer to Policy E38.3(2).
- 3) subdivision of a site in the coastal erosion hazard area:
 - (a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal erosion:
 - (i) whether public access to the coast is affected;
 - (ii) the extent to which the installation of hard protection structures to be utilised to protect the site or its uses from coastal erosion hazards over at least a 100 year timeframe are necessary; and
 - (iii) refer to Policy E38.3(2).

- 4) subdivision of a site subject to land instability including those areas defined in the Plan as “land which may be subject to land instability”, or other unstable soils as identified through a specific site assessment:
 - (a) the effects of remediating the land instability hazard and the effect of the hazard on the intended use:
 - (i) the extent to which the proposed sites are stable and suitable;
 - (ii) the extent to which the site instability will affect the intended use, including the provision for onsite infrastructure (where applicable) and accessways; and
 - (iii) refer to Policy E38.3(2).
- 5) subdivision establishing an esplanade reserve:
 - (a) the effect of the design, purpose and location of any esplanade reserve established by subdivision in terms of public access, and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features:
 - (i) the extent to which the design purpose and location of the esplanade reserve enables public access and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features; and
 - (ii) refer to Policies E38.3(24), (25) and (26).
- 6) subdivision around existing buildings and development, and subdivision in accordance with an approved land use resource consent:
 - (a) the effect of the design and layout of the proposed sites created:
 - (i) whether the design and layout of the proposed sites create result in new or increased non-compliance with Auckland-wide and zone rules;
 - (ii) whether there is appropriate provision made for infrastructure;
 - (iii) whether there is appropriate creation of common areas over parts of the parent site that require access by more than one site within the subdivision; and
 - (iv) refer to Policies E38.3(1) and (6).
- 7) all other restricted discretionary activity subdivisions:
 - (a) the effect of the design and layout of sites to achieve the purposes of the zone or zones and to provide safe legible and convenient access to a legal road; (i) refer to Policies E38.3(1), (10), (12) and (13).

(b) the effect of infrastructure provision and management of effects of stormwater

(i) whether there is appropriate provision of and adequate access to existing and new infrastructure, and provision of appropriate management of effects of stormwater;

(ii) the extent to which drainage reserves are integrated into the layout of the subdivision and neighbourhood;

(iii) whether the design and implementation of any necessary physical works including those associated with site preparation works, infrastructure and access are carried out in accordance with recognised best engineering practice or in accordance with Section 2 - Earthworks and Geotechnical Requirements of the Auckland Council Code of Practice for Land Development and Subdivision Version 1.6 dated 24 September 2013.

(iv) refer to Policies E38.3(19) to (23).

(c) the effect on the functions of floodplains and provision for any required overland flow paths:

(i) refer to Policy E38.3(2).

(d) the effect on historic heritage and cultural heritage items:

(i) the extent to which any sites identified in the Historic Heritage Overlay, or Sites and Places of Significance to Mana Whenua Overlay are protected or avoided; and

(ii) refer to Policy E38.3(4).

(e) the effect of the layout, design and pattern of blocks and roads in so far as they contribute to enabling a liveable, walkable and connected neighbourhood;

(i) refer to Policy E38.3(10).

(f) the effect of layout and orientation of blocks and sites on the solar gain achieved for sites created, if relevant;

(i) refer to Policy E38.3(11).

(g) the effects arising from any significant increase in traffic volumes on the existing road network;

(i) refer to Policies E38.3(15) to (17).

(h) the visual effect on landscape and on topographical features and vegetation arising from subdivision of sites zoned Residential - Large Lot Zone and Residential - Rural and Coastal Settlement Zone;

(i) refer to Policy E38.3(3).

(i) the provision made for the incorporation and enhancement of land forms, natural features and indigenous trees and vegetation;

- (i) refer to Policy E38.3(14).
 - (j) the effect on recreation and open space:
 - (i) the extent to which reserves and open space are provided and their integration with the surrounding open space network and suitability for the intended function and future requirements of the area;
 - (ii) refer to Policy E38.3(18).
 - (k) the effect of the design and layout of sites on transport infrastructure and facilities within roads
 - (i) refer to Policy E38.3(15); and
 - (ii) the extent to which the location and design of driveways and vehicle crossings compromises access to and the operation of transport infrastructure and facilities in roads including on-street parking, bus stops, street trees, network utilities and stormwater infrastructure.
- 8) subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay:
 - (a) the matters in E38.12.1(7);
 - (i) the assessment criteria listed in E38.12.2(7); and
 - (b) the effects on the significant ecological area:
 - (i) whether the legal protection proposed for the significant ecological area is appropriate;
 - (ii) whether there are positive effects associated with the protection of the significant ecological area; and
 - (iii) refer to Policy E38.3(5).
- 9) subdivision of sites identified in the Subdivision Variation Control
 - (a) the matters in E38.12.1(7): and
 - (i) the assessment criteria listed in E38.12.2(7); and
 - (b) the effects of the pattern and density of subdivisions on the low-density settlement pattern of those areas:
 - (i) refer to Policies E38.3(27), (28) and (29).

Annexure B

Proposed Amendments to Chapter 23 Subdivision, Rule 23.8 and Appendix 1 District Plan Administration, 1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria

23.8 Restricted Discretionary Activities: Matters of Discretion and Assessment Criteria

a) ...

xiv. Fee simple subdivision – apartments * C – Character and Amenity

Appendix 1 District Plan Administration

1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria

C - Character and Amenity

...

C18 Fee simple subdivision of apartments

In assessing the suitability of a fee simple subdivision of either existing or consented apartments, regard shall be given to the following:

- a) Whether appropriate provision is made within the lot layout for access, services, open space and car parking.
- b) Whether any shared space or common 'elements' to the subdivision, including party walls or structures shared between lots, are appropriately provided for by means of easements, access lots, covenants or similar legal instruments.
- c) Whether there is appropriate provision made for infrastructure, particularly where shared between lots or crossing several lots.
- d) Whether the subdivision layout of the proposed sites result in new or increased non-compliance with other city-wide and/or zone rules, and the extent of compliance with an existing resource consent for the apartment development.