

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS  
AT WELLINGTON**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE  
O TE WHANGANUI-A-TARA**

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

**IN THE MATTER** of the hearing of submissions on Te Mahere ā-Rohei  
Tūtohua the Wellington City Proposed District Plan

**HEARING TOPIC** **Stream 3 – Heritage**

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**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA - HOMES  
AND COMMUNITIES**

**Dated: 5 May 2023**

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## **MAY IT PLEASE THE COMMISSIONERS**

### **1. INTRODUCTION**

- 1.1 These submissions and the evidence to be called are presented on behalf of Kāinga Ora - Homes and Communities (**Kāinga Ora**) in relation to Te Mahere ā-Rohei Tūtohua the Wellington City Proposed District Plan (**PDP**) in relation to Hearing Stream 3 – Heritage.
- 1.2 These submissions should be read together with the legal submissions presented on behalf of Kāinga Ora for:
  - (a) Hearing Stream 1: Strategic Overview, which set out the Kāinga Ora statutory mandate and provided initial comments on the statutory assessment framework; and
  - (b) Hearing Stream 2: Residential, which set out the Kāinga Ora position on Council's assessment process for the use of a Qualifying Matter to manage character and other amenity values through Precincts proposed in the Medium Density Residential Zone.
- 1.3 These legal submissions will:
  - (a) Outline the Kāinga Ora position on the Mount Victoria North Townscape Precinct given the potential historic heritage values within this area that Kāinga Ora considers have not been appropriately assessed;
  - (b) confirm any submission points that have been resolved to the satisfaction of Kāinga Ora by recommendations made in the section 42A report;
  - (c) identify and discuss issues arising from Kāinga Ora submission points that remain in contention following the council's section 42A report, including specific legal commentary on those issues; and
  - (d) introduce the Kāinga Ora witnesses for this hearing.

## 2. THE MOUNT VICTORIA NORTH TOWNSCAPE PRECINCT

- 2.1 As discussed in Hearing Stream 2,<sup>1</sup> the PDP has applied Character Precincts, Mount Victoria North Townscape Precinct and Oriental Bay Height Precinct (**Precincts**) as a qualifying matter to exempt these areas from aspects of the Medium Density Residential Standards (**MDRS**), and exempt the areas from the intensification requirements of Policy 3 of the National Policy Statement on Urban Development 2020 (**NPS-UD**) (where the areas are located within a walkable catchment of the City Centre Zone, and the Kāinga Ora proposed Newtown Town Centre Zone). Kāinga Ora considers the Council's assessment of the identified Precincts does not satisfy the assessment requirements set out in sections 77J and 77L of the RMA.
- 2.2 As Kāinga Ora worked through its evaluation of the Precincts and the assessment completed by the Council during the Hearing Stream 2 process, it became apparent that the PDP proposes to manage important and iconic townscape values in the Mount Victoria North Townscape area, through the use of: a Character Precinct; the Mount Victoria North Townscape Precinct (**Townscape Precinct**); and the use of Viewshaft VS15.
- 2.3 Ms Woodbridge notes that the Townscape Precinct focuses on townscape values, recognising the important and iconic townscape views and the proximity of the Mount Victoria North area to St Gerald's Monastery and the escarpment below. This differs from the Character Precincts (as discussed in Hearing Stream 2) which instead focus on streetscape characteristics from a predominance of buildings constructed prior to 1930.
- 2.4 From this, it is clear that these tools have been used to 'manage' the amenity values that the Mount Victoria North Townscape area provides. However, the PDP does not protect the historic heritage values that may be present in the Townscape Precinct from inappropriate subdivision, use, and development.
- 2.5 As outlined in Hearing Stream 2, Kāinga Ora considers the Precincts have not been appropriately assessed and as a result, the Hearing

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<sup>1</sup> See the evidence of Victoria Woodbridge, 16 March 2023, sections 4-7; Legal submissions for Kāinga Ora dated 24 March 2023, sections 2 and 5.

Panel is not in a position to recommend the retention of these Precincts. However, recognising the detrimental impact this outcome could have on the area around St Gerald's Church and Monastery, Kāinga Ora engaged Ms Cassin to consider whether:

- (a) Council completed an appropriate assessment of the historic heritage values within the Townscape Precinct area; and
- (b) historic heritage values are indicated within the Townscape Precinct.

*Council has not completed an appropriate assessment of historic heritage values*

2.6 To determine whether there are potential historic heritage values within the Townscape Precinct, Ms Cassin reviewed a number of assessments conducted by or on behalf of the Council. Through her review process, Ms Cassin considers there to be flaws with the assessment completed to date:

- (a) The assessment methodologies used were not appropriate or too limited to determine historic heritage values. For example:
  - (i) The Mount Victoria North Townscape Urban Design Review, April 2022 did not assess historic heritage values or townscape quality as it relates to historic heritage values;
  - (ii) Some aspects of the methodology used in the reports may not have been suitably sequenced, thereby restricting the ability to identify historic heritage values; and
  - (iii) Some assessments were completed from the street rather than on the site or investigating the feature(s), therefore affecting the overall accuracy of the assessment and its findings;
- (b) The focus of the assessments appears to be on visual amenity rather than on historic heritage values or townscape quality as it relates to historic heritage values; and

(c) The Council prepared historic heritage evaluations for other areas which are publicly available, no assessment of historic heritage was available for the Townscape Precinct.

2.7 Overall, it appears that Council has focused on amenity values only, rather than conducting a full assessment of historic heritage values for Mount Victoria North when preparing the PDP. As a result, the Council has failed to ensure that the PDP has been prepared in a way that gives effect to the matter of national importance in section 6(f) and therefore Part 2 of the RMA.<sup>2</sup>

*Historic heritage values located within the Townscape Precinct*

2.8 Following her site visit, Ms Cassin considers there are strong historic heritage values within the Townscape Precinct, with specific areas of interest being:

- (a) St Gerald's Church and Monastery;
- (b) Oriental Terrace;
- (c) Part of Roxburgh Street;
- (d) The lower side of McFarlane Street and Princes Street; and
- (e) The upper side of McFarlane Street.

2.9 Ms Cassin considers these potential historic heritage values are afforded a high degree of public recognition and prominence and the opportunity to recognise and protect these values should not be lost.

2.10 As a result, Ms Woodbridge considers the Council has not considered all reasonably practicable options for protecting the townscape values in the Mount Victoria North area. Instead, the PDP focusses on the management of amenity values only, rather than considering the need to protect the significant historic heritage values that Ms Cassin considers are strongly indicated within the area.

*Kāinga Ora Submission on the Mount Victoria North Townscape Precinct*

2.11 The Kāinga Ora submissions have focused on critical drivers of successful urban development including density, height, proximity to transport and other infrastructure services and social amenities, as well

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<sup>2</sup> See section 74(1)(b) of the RMA.

as those factors that can constrain development in areas that need it, either now or as growth forecasts may project.

- 2.12 As demonstrated in Hearing Stream 1 and 2, Kāinga Ora has a strong interest in the implementation of the MDRS and NPS-UD. This has included extensive expert review and evidence of the urban environment, particularly within walkable catchment of centres, identifying areas the most appropriate for intensification to support a well-functioning urban environment.
- 2.13 However, the Kāinga Ora approach to applying the NPS-UD is not to simply enable intensification at the expense of everything else. Kāinga Ora does not oppose the inclusion of qualifying matters where these protect (or manage) natural and physical resources that have been appropriately identified and assessed. The key issue is that Council has not appropriately identified and assessed historic heritage values. Kāinga Ora considers this work should be completed before any development restrictions are placed on the planning framework.
- 2.14 In its submission,<sup>3</sup> Kāinga Ora sought that any areas identified as Character Precincts (or Areas) be removed if they were subject to historic heritage, and have the heritage areas applied. The specific focus on the Mount Victoria North Townscape Precinct arises because of the Kāinga Ora view that Policy 3(c) of the NPS-UD should be applied. Applying a strict interpretation of Policy 3(c) (and without the consideration of any qualifying matters), Kāinga Ora considers the Townscape Precinct area is an ideal location for intensification.
- 2.15 However, Kāinga Ora recognises that the area within the proposed Mount Victoria North Townscape Precinct is likely to have historic heritage values present, and in accordance with section 6 of the RMA, an appropriate assessment of heritage values should be undertaken. Where heritage values are identified, they should be protected in accordance with the Act. On that basis, Kāinga Ora considered it appropriate to bring the identified lack of heritage assessment to the Panel's attention.

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<sup>3</sup> Submission 391.3.

### **3. KĀINGA ORA SUBMISSIONS POINTS RESOLVED**

3.1 A summary table of the Kāinga Ora submissions relevant to Hearing Stream 3 and the final Kāinga Ora position on those submission points is attached at **Appendix A**.

3.2 Kāinga Ora considers the following matters to be resolved following consideration of the section 42A report recommendations for this hearing stream:

- (a) Bulk and shading controls at, and near, the boundary of sites adjoining heritage listed sites to be managed through the provisions of relevant zone chapters, rather than through additional provisions within the Historic Heritage Chapter;
- (b) The exclusion of a heritage demolition control to all areas identified in the pre-1930s character area review as 'Primary', 'Contributory' or 'omitted' as well as additional areas identified by Heritage New Zealand in its submission;
- (c) Rule HH-R2 to be retained as notified.

### **4. KĀINGA ORA SUBMISSION POINTS IN CONTENTION**

4.1 Following review of the Council's section 42A report and the evidence lodged by other submitters, Kāinga Ora considers the following key submission points remain unresolved from its perspective, and these will be the focus of the evidence that follows:

- (a) Role and status of Design Guides; and
- (b) Various amendments to the PDP provisions to provide for greater clarity to plan users.

### **5. DESIGN GUIDES**

5.1 As outlined in Hearing Stream 2, Kāinga Ora seeks that Design Guides sit outside of the District Plan as a non-statutory document to guide plan users in an informed manner during the design process for proposals and to assist applicants with an understanding of how to achieve the planned outcomes of the plan. Ms Woodbridge supports the Kāinga Ora position, and considers it is inappropriate to require consistency with Design Guides as a matter for consideration as part of the actual policy or rules framework.

- 5.2 The reporting officer did not agree with the Kāinga Ora approach as they consider the removal of Design Guides from a statutory context would lead to confusion and a complex transition.
- 5.3 Ms Woodbridge considers that in order to best achieve a high-quality urban environment, the outcomes should be clearly expressed directly within the provisions of the district plan – directly through amendments to the key policies, and then strengthened through matters of discretion within the relevant rules. This approach should only apply to critical outcomes that a Design Guide is seeking to achieve. The extent to which a proposal achieves those outcomes can be measured against the Design Guide itself, in reference to the relevant matters of discretion.
- 5.4 In its submission, Kāinga Ora sought the deletion of the phrase "fulfils the intent of the Heritage Design Guide" from policies HH-P7; HH-P8 and HH-P14. Ms Woodbridge recommends amendments to these provisions to provide clear direction for decision makers and Plan users.

## **6. VARIOUS AMENDMENTS TO THE PDP PROVISIONS TO PROVIDE FOR GREATER CLARITY TO PLAN USERS.**

- 6.1 Kāinga Ora seeks a number of amendments to the PDP to provide plan users with greater clarity and ease of use of the plan. For example:
- (a) The deletion of the 'demolition' definition, together with clarity on whether the definition (if it is to remain) applies to the terms 'demolition'; 'total demolition' and 'partial demolition' used in the Historic Heritage Chapter. The policies for the Chapter only apply 'total demolition' and 'partial demolition', which have their own definitions. Clarity is required to remove this confusion;
  - (b) Amendments to Policy HH-P11 to ensure the unique heritage values of a heritage area are respected while recognising that the surrounding areas is likely to be subject to change due to the NPS-UD requirements;
  - (c) The application of consistent terminology. For example, the term 'non-scheduled buildings and structures' is not defined in the PDP but used in some Historic Heritage Chapter rules, whereas 'heritage building', 'heritage structure' and 'non-heritage



buildings or structures' are defined but not used in the same rules;

- (d) Guidance on whether new rules HH-R15 through to HH-R18 apply to heritage buildings and heritage structures, non-heritage buildings and structures or all.

## **7. EVIDENCE**

7.1 Evidence by the following witnesses has been exchanged in support of submissions by Kāinga Ora for this hearing topic:

- (a) Victoria Woodbridge - planning; and
- (b) Veronica Cassin – built heritage.

Dated

2023

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**Jennifer Caldwell**  
Counsel for Kāinga Ora – Homes  
and Communities

## Appendix A - Proposed Wellington District Plan – Hearing Stream 3 – Heritage Submission Summary

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
391.34	Interpretation Subpart / Definitions / DEMOLITION	Opposes the definition of 'demolition' and sought to delete reference to demolition throughout the Plan.	Section 42A report rejects the deletion. Section 42A report states that 'demolition' is a commonly used definition and rule trigger applied to Plans across the country to assess effects on heritage values. Kāinga Ora seeks deletion of the definition of 'demolition'.
391.163 & 391.164	Historical and Cultural Values / Historic Heritage / General HH	Opposes in part the Historic Heritage Chapter and seeks amendments to provide definitions of a scheduled heritage building, non-scheduled contributing building and non-schedule non-contributing buildings.	Section 42A report supports the inclusion of additional text in the Introduction section of the chapter. Kāinga Ora supports this approach and recommends chapter headings to be amended so it is clear which policies/rules apply. Kāinga Ora recommends the definition for 'non-scheduled buildings and structures' to be used in HH-R2 and HH-R5.
391.165 & 391.166	Historical and Cultural Values / Historic Heritage / HH-P7	Support in part. Kāinga Ora sought an amendment to focus on identified heritage values and to use the Heritage Design Guide as a reference document.	Section 42A report rejects amendment and does not consider renaming heritage buildings as 'scheduled heritage buildings' is necessary. Considers that the Heritage Design Guide should be included as a statutory part of the PDP.  Kāinga Ora seeks amendments to HH-P7: <i>Additions, alterations and partial demolition of <u>scheduled</u> heritage buildings and structures</i>  <i>Provide for additions and alterations to, and partial demolition of <u>scheduled</u> heritage buildings and heritage structures where it can be demonstrated that the work does not detract from the identified heritage values, having regard to:</i>

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
			<p>1. The extent to which the work: ... <del>j. Fulfils the intent of the Heritage Design Guide;</del></p> <p>2. The visibility of the work from street frontages; ...</p> <p>6. The identified heritage values of the heritage area, where located within a heritage area.</p> <p><u>Note - Please refer to the Heritage Design Guide for further guidance</u></p>
391.167 & 391.168	Historical and Cultural Values / Historic Heritage / HH-P8	Support in part. Kāinga Ora sought an amendment to focus on the identified heritage values and to use the Heritage Design Guide as a reference document.	<p>Section 42A report rejects amendment and does not consider renaming heritage buildings as 'scheduled heritage buildings' is necessary and considers that the Heritage Design Guide should be included as a statutory part of the PDP.</p> <p>Kāinga Ora seeks amendments to HH-P7: Provide for new buildings and structures, and modifications to existing non-scheduled buildings and structures on the same site as <u>scheduled</u> heritage buildings or heritage structures where it can be demonstrated that the work does not detract from the identified heritage values, having regard to:</p> <p>1. The extent to which the work:</p> <p>a. Is compatible with the scale, form, proportion and materials of the <u>scheduled</u> heritage building or heritage structure;</p> <p>b. Respects the identified relationship of the heritage building or heritage structure with its setting; and</p> <p><del>c. Fulfils the intent of the Heritage Design Guide.</del></p>

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
			<i>Note - Please refer to the Heritage Design Guide for further guidance</i>
391.169 & 391.170	Historical and Cultural Values / Historic Heritage / HH-P11	Support in part. Kāinga Ora but sought an amendment to remove 'form' and 'scale' and to introduce the concept of development being undertaken within zones where intensive development occurs.	Section 42A report retains 'form' in HH-P11. Section 42A report rejects Kāinga Ora proposed amendment. Kāinga Ora seeks amendments to HH-P11: <i>Manage the height of development to recognise and respect the <u>unique setting of the form and scale</u> of heritage areas <u>in conjunction</u> with the City Centre Zone, Centre Zones and the Waterfront Zone <u>in which the development occurs.</u></i>
391.171 & 391.172	Historical and Cultural Values / Historic Heritage / HH-P14	Support in part. Kāinga Ora sought amendment to focus on identified heritage values and to use the Heritage Design Guide as a reference document.	Section 42A report rejects amendment and considers that Heritage Design Guide should be included as a statutory part of the PDP. Section 42A report does not consider that it is necessary to include a link to the role and function of the zone within the policy. Kāinga Ora seeks amendments to HH-P14: <i>Provide for new buildings and structures within heritage areas where it can be demonstrated that the works will not detract from the identified heritage values of the heritage area, having regard to:</i> 1. <i>The extent to which the work:</i> a. <i>Respects any valued neighbourhood patterns of the heritage area including any predominant architectural style or design;</i> b. <i>Is compatible with the scale, form, proportions, design and materials of the heritage area and <u>the role and function of the Zone</u>; and</i> c. <i>Is sited to maintain a consistent pattern of front façade alignment; and</i>

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
			<del>d. Fulfils the intent of the Heritage Design Guide.</del>  <u>Note - Please refer to the Heritage Design Guide for further guidance.</u>
391.173	Historical and Cultural Values / Historic Heritage / HH-R2	Generally supportive of HH-R2, retain as notified	Retain as notified - no changes made in section 42A report.
391.174 & 391.175	Historical and Cultural Values / Historic Heritage / HH-R4	Oppose in part. Kāinga Ora sought amendment to remove reference to HH-S2 because the requirement for buildings to be smaller than 10m <sup>2</sup> is unnecessary if structures are to the rear of heritage buildings	Section 42A report rejects proposed amendment. Kāinga Ora seeks amendments to HH-R4: 1. Activity status: Permitted <del>Where:</del> <del>a. Compliance with HH-S2 is achieved.</del>
391.176 & 391.177	Historical and Cultural Values / Historic Heritage / HH-R5	Oppose in part. Kāinga Ora sought amendment to remove reference to HH-S3 because HH-S3 limits modifications to less than 10% and where there are no additional storeys to the existing building. It is unnecessary to control additions to buildings because it is covered by other general rules and standards in the Heritage Overlay or underlying zone.	Section 42A report rejects amendments. Kāinga Ora seeks amendments to HH-R5: 1. Activity status: Permitted <del>Where:</del> <del>a. Compliance with HH-S3 is achieved.</del>
391.178 & 391.179	Historical and Cultural Values / Historic Heritage / HH-R11	Oppose in part. Kāinga Ora sought amendment to improve clarity for application of the rule.	Section 42A report agrees in part, that the application of the rule can be made clearer with respect to non-heritage buildings but does not agree that additions and alterations to non-heritage buildings within heritage areas should be permitted in all cases as these can increase the height, bulk and form of buildings in ways that can result in adverse effects on heritage values if not considered through the resource consent process. Section 42A report amends HH-R11 to require RDA for all amendments except – temporary works,

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
			<p>seismic investigation, internal works, replacement windows with double or triple glazing.</p> <p>Kāinga Ora seeks amendments to HH-R11:</p> <p>1. <i>Activity status: Permitted</i></p> <p><u>Where:</u></p> <p><u>a. Non-heritage buildings and structures are affected;</u> <u>or</u> <u>b. For heritage buildings and structures - Compliance with HH-S1 is achieved</u></p>
391.180-391.181	Historical and Cultural Values / Historic Heritage / HH-R13	Oppose in part. Kāinga Ora sought amendment to remove reference to HH-S2 because it restricts new buildings and structures that are at the rear of the primary residential building as this will hinder development potential in high medium and high-density areas where this will not affect heritage area values.	<p>Section 42A report rejects amendment and does not agree that the qualifier on the size of accessory buildings and a height limit on new structures should be removed.</p> <p>Kāinga Ora seeks amendments to HH-R13:</p> <p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><del>a. Compliance with HH-S2 is achieved</del></p>
391.182-391.184	Historical and Cultural Values / Historic Heritage / HH-S2	Opposes in part. Kāinga Ora sought amendment to remove the size and height limits for accessory buildings in order to not restrict development on heritage sites. Given that the additional buildings are to the rear of, and accessory to, the primary residential building it is considered that the 10m <sup>2</sup> limit should be removed as this will generally avoid the building being visible from the street and interfering with the heritage character	<p>Section 42A report rejects amendment and recommends standard HH-S2 be deleted and its content (modified to reflect my recommendation in the previous paragraph) be incorporated into the relevant rules.</p> <p>Kāinga Ora seeks amendments to HH-S2:</p> <p><i>Medium Density Residential Zone and High Density Residential Zone:</i></p> <p>1. <i>Any new building or structure must be:</i></p> <p>a. <i>Accessory to the primary residential building; and</i></p> <p>b. <i>Located to the rear of the primary residential building; and</i></p>

Submission Number	Plan Provision	Submission summary	Kāinga Ora position following section 42A report
			<del>c. Smaller than 10m2.</del> <del>2. Any new structure (excluding buildings provided for in HH-S2.1) must have a maximum height of 1.5m</del>
391.185-391.186	Historical and Cultural Values / Historic Heritage / HH-S4	Opposes in part. Kāinga Ora sought amendment to align height limits with other relief relating to Zone provisions as the heights of buildings should be comparable with the underlying zone rather than the heritage provisions particularly at the interface with the underlying zone.	Section 42AA report rejects the amendment. Kāinga Ora seeks amendments to HH-S4 to: <ul style="list-style-type: none"> <li>- Align height limits with amended Historic Heritage Standards,</li> <li>- Amend underlying zoning according to Appendix 4,</li> <li>- Amend Residential and Centre Zones heights and Heights in relation to boundary standards</li> </ul>
391.769	Schedules Subpart / Schedules / SCHED5 – Schedule of Viewshafts	Seeks amendment to create and identify a viewshaft managing significant public views to St Gerard's Monastery and Mt Victoria	Kāinga Ora no longer actively pursues this submission point.
<b>Further submissions</b>			
F89.77	Part 2 / Historical and Cultural Values / Historic Heritage / New HH  Further submission on Historic Places Wellington (182.14)	Opposes the submission to amend the PDP to include bulk and shading controls at, and near to, the boundaries of sites which are near to each heritage listed site where special height and design controls apply to protect context and curtilage setting of heritage listed buildings	Section 42A report accepts further submission in part and is of the opinion that inclusion of further bulk and location controls in the Historic Heritage chapter would result in interpretatively confusing and unnecessary duplication. Kāinga Ora supports this approach.
F89.78 & F89.79	Part 2 / Historical and Cultural Values / Historic Heritage / New HH  Further submission on Historic Places Wellington (182.15-16)	Opposes the submission to include 'heritage demolition control' provision that applies to all pre-1930s buildings.	Section 42A report rejects the submission and rejects the further submission because there is no compelling reason for this requirement as it is covered by hearing stream 2. Kāinga Ora supports this approach.