

Memorandum on behalf of Kāinga Ora in support of application for waiver under s 281

May it please the Court:

1 Summary

- 1.1 Kāinga Ora—Homes and Communities (**Kāinga Ora**) has filed a section 274 notice on the appeal by Transpower New Zealand Limited (**Transpower**), along with an application for waiver of the statutory time period.
- 1.2 In a memorandum of 23 March 2020, Transpower advised that it opposes Kāinga Ora’s waiver application. The Court has directed Kāinga Ora to respond in particular to:
 - (a) paragraph 3(a) of Transpower’s memorandum, which relates to the reason for the delay in lodging the section 274 notice; and
 - (b) paragraph 3(b) of Transpower’s memorandum, which objects that the section 274 notice does not identify specific provisions in which Kāinga Ora has an interest.
- 1.3 As described more fully below:
 - (a) Kāinga Ora advises that its interest in the appeal is limited to only two provisions: P13A (Topic 6); and P24 (Topic 7);¹
 - (b) the reason for the delay in filing the appeal is that, due to the period for filing section 274 notices coinciding with the formation of Kāinga Ora, the Transpower appeal was simply but regrettably overlooked; and
 - (c) Kāinga Ora representatives have been present and participated in the two mediations on P13A and P24. Granting the waiver would simply formalise Kāinga Ora’s participation to date. Accordingly, there will be no delay or other prejudice to Transpower.

¹ It is possible that resolution of Transpower’s appeal on P13A or P24 will require consequential amendments to other provisions, such as P25 (Topic 7). For completeness, Kāinga Ora notes that its interest in Transpower’s appeal extends to any consequential amendments.

2 Kāinga Ora's interest in the appeal

- 2.1 Kāinga Ora's section 274 notice sought to join the appeal as it related to Topics 6, 7 and 8. Having further considered the matter, Kāinga Ora clarifies that it is interested in the appeal only as it relates to:
- (a) P13A (Topic 6); and
 - (b) P24 (Topic 7).
- 2.2 Kāinga Ora is a Crown Entity and has an interest in the proceeding that is greater than the interest of the general public because it has significant housing and urban development interests in the Greater Wellington Region, including in the vicinity of the National Grid and areas of outstanding natural character.
- 2.3 The Kāinga Ora Act requires² Kāinga Ora to contribute to sustainable, inclusive, and thriving communities that provide people with good quality, affordable housing choices that meet diverse needs, support good access to jobs, amenities and services and otherwise sustain or enhance the overall economic, social, environmental and cultural well-being of current and future generations.
- 2.4 In relation to urban development, Kāinga Ora's functions include:
- (a) initiating, facilitating or undertaking urban development (whether on its own account, in partnership, or on behalf of others). This includes the development of public housing, affordable housing, homes for first home buyers and market housing, as well as the development and renewal of urban environments more generally (ie not necessarily including housing development) as well as the development of related commercial, industrial, community, or other amenities, infrastructure, facilities, services or works;
 - (b) providing a leadership or coordination role in relation to urban development, including by supporting innovation, capability and scale within the wider urban development and construction sectors and leading and promoting good urban design and efficient, integrated mixed use development; and

² Section 12 of Kāinga Ora – Homes and Communities Act 2019.

(c) understanding, supporting and enabling the aspirations of communities and Māori in relation to urban development.

2.5 Kāinga Ora’s interest in the appeal is not limited to its property interests. It also has a sufficient interest in the appeal, greater than that of the public generally, flowing from its statutory responsibilities,³ which include to:⁴

(a) facilitate any urban development, on its own or in partnership with other persons, including through the development or renewal of housing, urban environments, and other infrastructure and services; and

(b) provide a leadership or co-ordination role in relation to urban development, including by:

(i) supporting innovation and capacity within the wider urban development sector; and

(ii) by leading and promoting good urban design and efficient, integrated, mixed-use development.

3 Reason for the delay

3.1 Kāinga Ora was established as a Crown Entity when the Kāinga Ora Act came into force on 1 October 2019. Kāinga Ora was formed by the consolidation of Housing New Zealand Corporation, HLC (2017) Limited, and parts of the KiwiBuild Unit of the Ministry of Housing and Urban Development. Kāinga Ora has a broader area of responsibility than those predecessor entities combined.

3.2 Section 274 notices on appeals were due to be filed by 9 October 2019, only 6 working days later. In that short timeframe, Kāinga Ora was able to identify its interest in, and file section 274 notices on, eight appeals, but Kāinga Ora’s interest in the present appeal was regrettably overlooked.

3.3 An associated difficulty with this timing was that Kāinga Ora has a much broader function in relation to urban development generally (outlined above), than any of the three entities that were merged to form Kāinga Ora. We also note that Kāinga Ora’s interests in urban development generally (beyond properties or

³ *Te Runanga O Taumarere v Northland Regional Council*, Planning Tribunal, A081/95.

⁴ Kāinga Ora–Homes and Communities Act 2019, s 13.

developments in which Kāinga Ora has a direct interest) were and are evolving, with the Urban Development Bill still before the Environment Select Committee.

3.4 The initial oversight of Kāinga Ora’s interest in the Transpower appeal came to light only during mediation on 6 and 10 March 2020. Kāinga Ora filed the present application for waiver filed as soon as was possible.

4 There will be no undue prejudice to Transpower

4.1 Kāinga Ora now only seeks to join the appeal in relation to two provisions, P13A and P24. Kāinga Ora’s representatives have been present at mediation on these provisions, and are up to date on the discussions between the parties. There will be no delay from any need for Kāinga Ora to ‘come up to speed’. If the application is granted, Kāinga Ora’s representatives will be able to contribute to and hopefully conclude those discussions.

4.2 Transpower’s appeal has been joined by other section 274 parties, in relation to both provisions, so it cannot be said that Kāinga Ora becoming a party to the appeal will expand the scope of the issues to be resolved.

4.3 It is Kāinga Ora’s wish to continue to participate in mediation discussions, and to contribute to a mediated settlement that best gives effect to the statutory and planning framework.

4.4 For the reasons above, Kāinga Ora respectfully requests that the Court grant its application for waiver. In the alternative, should the Court not yet be in a position to make a definitive ruling on the application, Kāinga Ora requests that the Court grant the application to allow Kāinga Ora to participate in mediation and, to the extent that Kāinga Ora’s interests have not resolved in mediation, make a final determination on the application at the substantive hearing.

Date: 15 April 2020



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