

30 April 2024

9(2)(a)

[fyi-request-26168-f59ffa02@requests.fyi.org.nz](mailto:fyi-request-26168-f59ffa02@requests.fyi.org.nz)

Dear 9(2)(a)

Thank you for your request of 20 March 2024, to Kāinga Ora - Homes and Communities, requesting further information under the Official Information Act 1982 (the Act), for:

- 1. What has been the cost to Kāinga Ora so far of legal fees associated with Winton Land's lawsuit over their Sunfield development?*
- 2. How many staff hours have been spent on the lawsuit? If you cannot provide an estimate please explain what actions have been undertaken to address the lawsuit and how many staff were involved?*
- 3. Over the past five years how much has Kāinga Ora paid to Winton or its associated companies? And, what were these payments for?*
- 4. Please provide copies of any reports, emails, briefings or other documents Kāinga Ora provided to Minister Bishop or his Office about the Winton lawsuit.*

I will address your requests in order.

- 1. What has been the cost to Kāinga Ora so far of legal fees associated with Winton Land's lawsuit over their Sunfield development?*

Winton Land Limited, and one of its subsidiaries Sunfield Developments Limited, commenced a proceeding against Kāinga Ora in the High Court claiming that Kāinga Ora has breached section 36 of the Commerce Act 1986 in relation to its urban development functions. The litigation commenced in November 2022 and Kāinga Ora has filed its defence strongly denying the claims made.

As at 31 March 2024, the total cost to Kāinga Ora associated with this case has been \$4,996,407 (ex GST).

This cost is a reflection of the large number of documents Kāinga Ora has collated and disclosed to the plaintiffs in accordance with its discovery obligations - which was a significant task. In addition to external discovery provider fees, significant time and resourcing was required by our external counsel to review the 7.5 million documents within the discovery timeframes set by the High Court.

The cost also covers procedural steps taken in the litigation so far, including preparing our defence together with initial disclosure, negotiating a timetable with the other parties, and preparing for and attending case management conferences. The next steps in this litigation include inspection of discovered documents and preparation of evidence.

*2. How many staff hours have been spent on the lawsuit? If you cannot provide an estimate please explain what actions have been undertaken to address the lawsuit and how many staff were involved?*

This part of your request is refused under section 18(g) of the Act as the information requested is not held by Kāinga Ora. We have not recorded the number of staff, nor the number of hours, involved in responding to the Winton Litigation.

While Kāinga Ora hasn't recorded staff hours involved in responding to the litigation, for the discovery process we have some relevant information. Discovery covered an extremely broad range of document categories which required more than 100 custodians (people at Kāinga Ora that, because of their role or the work that they do, were likely to hold relevant information) to search for, and collate, documents. The custodians reported spending more than 1,200 hours retrieving 5.1 terabytes of data, including approximately 7.5 million potentially discoverable documents. That did not include the time involved in meetings that were held to facilitate the discovery process, or time spent by non-custodians (such as members of the Kāinga Ora technology team, support staff, or in-house legal team members) who supported the discovery process.

*3. Over the past five years how much has Kāinga Ora paid to Winton or its associated companies? And, what were these payments for?*

On 26 March 2024 we contacted you to clarify what you meant by associated companies, and if you were referencing the companies involved in the litigation. We did not receive a response from you. We have searched our records for payments to Winton Land Limited or Sunfield Developments Limited in the past five years, and there have been no payments.

While conducting those searches, we did find results for payments to Winton Capital Limited. I can confirm that over the past five years Kāinga Ora has paid \$345,431.32 to Winton Capital Limited. These were contributions to maintenance costs for the Lakeside Development in Te Kauwhata, Waikato. These are business as usual payments as per the Land Supply Partnership Agreement for the Lakeside Development, and are unrelated to the litigation.

*4. Please provide copies of any reports, emails, briefings or other documents Kāinga Ora provided to Minister Bishop or his Office about the Winton lawsuit.*

We provided some information in the Briefing to the Incoming Minister, which is publicly available here: <https://kaingaora.govt.nz/en/NZ/publications/minister-publications/briefing-to-the-incoming-minister/>. We also sent an update to the Minister on 1 February in the Weekly Report, which is attached.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that Kāinga Ora proactively releases our responses to official information requests where possible. Our response to your request may be published at <https://kaingaora.govt.nz/publications/official-information-requests> with your personal information removed.

Yours sincerely



Gareth Stiven  
**General Manager – Strategy, Finance and Policy**

## **Extract from Weekly Report to the Minister, week ending 2 February 2024**

### **Commerce Commission's application to intervene in the Winton litigation**

In our Briefing for the Incoming Minister (BIM), we informed you about our litigation with Winton Land Limited. We are providing this further briefing on a recent development – we expect the Commerce Commission will apply to the Court to intervene, and Kāinga Ora will consent to this.

Neither the Crown nor Ministers are party to the proceedings. The litigation is being managed by Kāinga Ora as an operational matter.

#### Background

In October 2022, Winton Land Limited, and its subsidiary, brought legal proceedings against Kāinga Ora, alleging that our organisation is engaging in anti-competitive behaviour in breach of section 36 of the Commerce Act 1986 (misuse of market power). Kāinga Ora is alleged to have done this by restricting access to the Specified Development Project (SDP) process – allegedly only selecting greenfield developments that advantage Kāinga Ora; by

- outbidding private sector developers like Winton for suitable land; and
- forcing private sector developers like Winton to participate only in particular aspects of a development (for example, by purchasing already consented land from Kāinga Ora, constructing houses and on-selling them).

Kāinga Ora strongly rejects the claims of anti-competitive behaviour and is defending the proceedings. We continue our urban development work in increasing housing availability for all New Zealanders, providing a range of housing options to enable more people to own their own homes in locations close to jobs, transportation, education, and other amenities. The focus is on creating thriving communities to benefit all New Zealanders, generally achieving over and above what the private market is able, or willing, to do.

#### Recent development

The Commerce Commission has advised the parties that it wishes to intervene in the litigation. This means it asks the Court if it can provide submissions at the hearing (set to commence on 1 September 2025) in relation to legal and economic principles to assist the Court. It is not the role of an intervenor to express a view on the merits of a party's case. The Commerce Commission is doing so given its role as the independent agency that administers and enforces the Commerce Act and because this proceeding is likely to be the first proceeding under section 36 of the Commerce Act since its recent amendment. Section 36 is the provision under which Winton is suing Kāinga Ora (alleging misuse of market power).

The Commerce Commission's request to intervene is understandable given its position as the expert regulator and interest in section 36 generally. We expect that the Commerce Commission will file its application seeking leave of the Court to intervene shortly, given that there is a case management conference set for 20 February 2024.

Kāinga Ora intends to consent to the application, so it is very likely the Court will allow the Commerce Commission to intervene. Following such a decision (on or around 20 February 2024), we expect the Commerce Commission, and possibly also Winton, will issue a media statement.

Kāinga Ora will respond to any media enquiries it receives noting:

- Kāinga Ora welcomes the expert assistance the Commerce Commission can provide to the Court with legal and economic advice in respect of the recently amended section 36 of the Commerce Act.
- We understand the importance of correctly interpreting legislation, particularly when that legislation is fairly new.
- As the independent agency that administers and enforces the Commerce Act, the Commerce Commission is well placed to explain the recent changes to section 36 of the Act.

Greg Groufsky  
DCE Sector Engagement