

**In the High Court of New Zealand
Auckland Registry**

CIV-2016-

Under the Local Government (Auckland Transitional Provisions) Act 2010 and the Resource Management Act 1991

In the matter of an appeal under section 158 of the Local Government (Auckland Transitional Provisions) Act 2010

Between **Franco Belgiorino-Nettis** of 17a Sanders Avenue, Takapuna, mechanical engineer
Appellant

And **Auckland Council** a statutory body established under the Local Government (Auckland Council) Act 2009
Respondent

**Notice of Appeal
Dated: 16 September 2016**

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To: The Registrar of the High Court at Auckland

And to: The Respondent

And to: Other interested parties to the decision to which this appeal relates

This document notifies you that -

1. Franco Belgiorno-Nettis (**the Appellant**) gives notice that he is appealing to the Court against the decision of the Respondent (**the Council**) publicly notified on 19 August 2016 (**the Decision**).
2. The Appellant appeals against the Decision as being wrong in law.

Decision Appealed

3. This appeal is against a decision made by the Council on a provision or matter relating to the Proposed Auckland Unitary Plan (**PAUP**).
4. The provision or matter was the subject of separate primary and further submissions made by the Appellant on the PAUP.
5. The Council accepted a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**IHP**) which resulted in the provision or matter being included in the PAUP.

Parts of Decision Appealed against

6. The appellant appeals against those parts of the Decision by which the Council accepted rezoning related recommendations of the IHP in relation to the North.
7. Specifically that part of paragraph 51 of the Decision which records:

51. **Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH)”**

Panel recommendations accepted:

- 51.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts

(Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 51.2.

Grounds of Appeal

8. The specific grounds of the appellant's appeal are that the Council erred:

- a) In accepting the IHP's rezoning related recommendations in relation to the North when:
 - i) Section 144 (1) Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) required the IHP to make recommendations to the Council in respect of the PAUP following hearings into submissions; and
 - ii) Section 144(7) LGATPA required the IHP to provide its recommendations to the Council in one or more reports; and
 - iii) Section 144(8) LGATPA required each report issued by the IHP to include *inter alia*:
 - The recommendations of the IHP on the topic or topics covered by the report (s 144 (8)(a));
 - Its reasons for accepting or rejecting any submissions.

but the IHP did not provide the Council with adequate reasons for accepting or rejecting submissions.

Relief Sought

9. The Appellant seeks:

- a) That the appeal be allowed.
- b) A declaration that the Council erred in accepting by implication the IHP's rezoning related recommendations in relation to the Takapuna, Milford & Smales Farm when the IHP did not provide the Council with adequate reasons for accepting or rejecting any submissions.

- c) An order directing the Council to reconsider the PAUP zoning in relation to Takapuna (being part only of the Takapuna, Milford & Smales Farm subtopic) and to issue a further zoning related decision in relation to Takapuna with reasons adequate for affected persons to understand the basis of the decision.
- d) For such further or other relief as the Court deems fit.
- e) Costs

Dated this 16th day of September 2016



Stuart Ryan
Counsel for the Appellant

This document is filed by Timothy Goulding, solicitor for the plaintiff, of the firm of Daniel Overton & Goulding. The address for service of the plaintiff is at the offices of Daniel Overton & Goulding, 33 Selwyn Street, Onehunga, Auckland.

Documents for service on the plaintiff may be left at that address for service or may be:

1. Posted to Tim Goulding, Daniel Overton & Goulding, PO Box 13-017 Onehunga, Auckland 1643.
2. Transmitted to the solicitor by fax to 09 6222 555
3. E-mailed to the solicitor at tim@doglaw.co.nz



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Decisions Report

19 August 2016

Contents

1. Introduction	2
2. Statutory Context	2
3. The Panel's Recommendations	4
4. 'Out of scope' recommendations / decisions	5
5. Designations	6
6. Attachments to Decisions Report.....	8
7. Decisions of Auckland Council	9

1. Introduction

- 1.1 This “**Decisions Report**” sets out the decisions made by the Auckland Council (**Council**) on the recommendations for the Proposed Auckland Unitary Plan (**PAUP**) that were provided to the Council on 18 May 2016¹ and 22 July 2016² by the Auckland Unitary Plan Independent Hearings Panel (**Panel**).
- 1.2 This Decisions Report has been prepared in accordance with section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**). Section 148 sets out how the Council is to consider the “**Panel’s Recommendations**” and make and notify its decisions on them. In summary, the Council must decide whether to accept or reject each of the Panel’s Recommendations, and must publicly notify those decisions no later than 20 working days after it is provided with the reports containing the Panel’s Recommendations (or, if there is more than one report, the last of the reports). Where any of the Panel’s Recommendations are proposed for rejection, the Council must provide reasons supporting the rejection and an alternative solution to the Panel’s Recommendation that has been rejected.
- 1.3 The Council made its decisions on the Panel’s Recommendations during a series of Governing Body (**GB**) meetings held between 10 and 15 August 2016, at which the Panel’s Recommendations were considered alongside several reports which set out the proposed staff response to the Panel’s recommendations.
- 1.4 In accordance with section 148(4) of the LGATPA, the Council is required to:
 - a) publicly notify its decisions no later than 20 working days after it is provided with the reports containing the Panel’s Recommendations (or, if there is more than one report, the last of the reports).
 - b) electronically notify its decisions on designations to requiring authorities.

2. Statutory Context

- 2.1 The statutory context within which the Panel was required to provide recommendations on the PAUP to the Council, and which then requires the Council to make its decisions on the Panel’s Recommendations, is found in Part 4 of the LGATPA.
- 2.2 As outlined in earlier reports to the Council³, Part 4 of the LGATPA was enacted by the Government to provide a streamlined, unique process for the preparation of the PAUP. It is the Part 4 process which requires the Council to make and publicly notify its decisions on the Panel’s Recommendations, and notify requiring authorities of decisions on their designations, by way of this Decisions Report.

¹ In relation to a majority of designations, except for Auckland International Airport, Kiwirail designations heard on 2 May 2016, and NZ Transport Agency designation 6727 (Newmarket Viaduct) heard on 2 May 2016.

² In relation to the remaining designations and the balance of the PAUP.

³ Reports 1, 2 and 3 dated 10 August 2016. Report 1 provided information about the process used to develop the PAUP and the statutory framework around the PAUP process and the decision-making requirements placed on the Council by the LGATPA.

- 2.3 The Panel was required to provide its recommendation report(s) to the Council by no later than 22 July 2016.
- 2.4 After receiving the Panel's Recommendations the LGATPA requires the Council to make decisions, specifically deciding whether to accept or reject each recommendation made by the Panel⁴. Where the Council decides to reject any recommendation, there are additional requirements for the Council, including preparing an "alternative solution" which, in accordance with section 148(1)(b):
- a) may or may not include elements of both the PAUP as notified and the Panel's Recommendation in respect of that part of the PAUP; but
 - b) must be within the scope of the submissions.
- 2.5 After making its decisions, the Council must, by no later than 19 August 2016, publicly notify its decisions in a way that sets out the following information⁵:
- a) each Panel recommendation that it accepts; and
 - b) each Panel recommendation that it rejects and the reasons for doing so; and
 - c) the alternative solution for each rejected recommendation.
- 2.6 In relation to designations (discussed further below), the Council must, again by no later than 19 August 2016, electronically notify each requiring authority affected by the decisions of the Council of the information referred to in paragraph (2.5) above that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation concerned⁶.

Decision-making by the Council

- 2.7 In making its decisions the Council must either accept or reject the Panel's Recommendations.
- 2.8 For the Panel's Recommendations that it decides to **accept**, the Council will be able to fulfil its decision-making obligations by considering the Panel's Recommendations and reasons only. This is because the Panel, in making its recommendations, was required to comply with all the requirements of section 145 of the LGATPA, including obligations on the Panel to:
- a) ensure that if the Council accepts each/any/all of the Panel's Recommendations, all relevant requirements (and legal tests) of the RMA,

⁴ See section 148, LGATPA.

⁵ See section 148(4), LGATPA.

⁶ See section 148(4)(b), LGATPA. While this requirement also applies to heritage orders, all heritage orders in the PAUP 'rolled over' without modification or submissions, meaning that section 144(6) of the LGATPA applies (pursuant to that provision, the Panel must not make a recommendation on any existing designation or heritage order that is included in the PAUP without modification and on which no submissions were received).

and other enactments which apply to the Council's preparation of the PAUP, are complied with⁷; and

- b) prepare, and include with its recommendations, a further evaluation in accordance with section 32AA of the RMA⁸.

2.9 Where however, the Council decides to **reject** any of the Panel's Recommendations, there are additional requirements that must be satisfied before that decision can be publicly notified. If the Council decides to **reject** a recommendation, it must provide reasons supporting that rejection and also prepare an **alternative solution** for that rejected Panel recommendation⁹ (which, given the way in which the Panel's Recommendations have been formulated, could be any matter or provision recommended by the Panel), together with a **section 32AA assessment** supporting the rejection, where necessary. No new section 32AA assessment has been undertaken by the Council, where section 32 / 32AA assessment relating to all alternative solution has already been prepared as part of development of the PAUP¹⁰ and / or the Council's case team evidence for the hearings before the Panel.

2.10 There are specific requirements relating to the preparation of alternative solutions, which are set out in subsections (1) and (2) of section 148 of the LGATPA. In short, the Council must decide an alternative solution which:

- a) **May or may not** include elements of both the PAUP as notified and the Panel's Recommendations in respect of that part of the PAUP (and which therefore may be a combination of the two); **but**
- b) **Must** be within the scope of the submissions.

3. The Panel's Recommendations

3.1 As outlined in the background information report prepared by staff for the GB decision-making meetings¹¹, the Panel's Recommendations were provided to the Council in three parts:

- a) **Part 1** - The Panel's Recommendation Reports: these comprise an overview report dated July 2016, which generally addresses all of the Panel's Recommendations, and 58 separate recommendation reports, relevant to the topics that were heard before the Panel (albeit with some of those hearing topics being combined together in one Panel recommendation report). In addition, the Panel provided a series of designation reports, including a similar introductory / overview report on designations;
- b) **Part 2** - The Recommended Plan: which comprises a "clean" version of the Panel's recommended text for the PAUP; and

⁷ See section 145(1)(f), LGATPA.

⁸ See section 145(1)(d) and (f)(i) and (ii), LGATPA.

⁹ See section 148(1)(b), LGATPA.

¹⁰ E.g. in the Auckland Unitary Plan Evaluation Report prepared by the Council under section 32.

¹¹ Report 1.

- c) **Part 3** - The Recommended Maps / GIS Viewer: which comprises the Panel's recommended version of the PAUP planning maps, created in the Panel's GIS viewer.

Collectively, the above reports have been referred to by the Council as the "**Panel's Recommendations**".

- 3.2 The Panel's Recommendations (including on designations), Recommended Plan, and Recommended Maps / GIS Viewer can all be viewed on the Council's website: www.aucklandcouncil.govt.nz/unitaryplan.
- 3.3 It is noted that the Panel's Recommendations contain a number of separate hearing topic reports, and that recommendations are often provided throughout the body of each report (including the overview reports referred to at paragraph 3.1(a) above). As a result, where the Council has made a decision which accepts all of the Panel's Recommendations in relation to a specific hearing topic / designation, this Decisions Report will need to be read in conjunction with the related hearing topic report provided to the Council as part of the Panel's Recommendations as well as the decisions (and recommended) version of the PAUP text and maps.

4. 'Out of scope' recommendations / decisions

- 4.1 The Part 4 process for the preparation of the PAUP allowed the Panel to make recommendations that are beyond the scope of submissions made on the PAUP¹² ("out of scope recommendations"). Where the Council accepts any out of scope recommendations made by the Panel in relation to provisions / matters in the PAUP, there is a specific right of appeal to the Environment Court for any person that "is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter"¹³.
- 4.2 The overview report dated July 2016 included with the Panel's Recommendations contained a detailed section that addressed "scope" and, as required by section 144(8) of the LGATPA, the Panel identified recommendations that the Panel considered to be beyond the scope of submissions on the PAUP.
- 4.3 The identification of the Panel's out of scope recommendations was set out in Appendix 3 to the overview report dated July 2016 – "*Summary of recommendations out of scope*" – which listed the hearing topics where the Panel had provided out of scope recommendations to the Council, and identified the out of scope recommendations in question. The Panel's Appendix 3 is reproduced as **Attachment C** to this Decisions Report.
- 4.4 While the Panel's Appendix 3, as reproduced at Attachment C, should be referred to, in summary, the Panel has identified out of scope recommendations in relation to the following topics: 006 – *Natural Resources*, 027 – *Artworks, signs and temporary activities*, 028 – *Future Urban*, 032 – *Historic heritage schedules*, 080 – *Rezoning and precincts (general)* and 081 – *Rezoning and precincts (geographical areas)*, with numerous individual precincts containing out of scope recommendations.

¹² Section 144(5), LGATPA.

¹³ Section 156(3), LGATPA.

- 4.5 In order to identify out of scope recommendations as they relate to the GIS Viewer (the PAUP spatial component, e.g. zoning) the Panel outlined the properties associated with out of scope recommendations with a bold black line on the GIS Viewer. This outline can be seen on the Panel's recommended version of the GIS Viewer.
- 4.6 In order to identify the Panel's out of scope spatial (zoning) recommendations that have been accepted, the Council has retained the same bold black line on its decisions version of the GIS Viewer.
- 4.7 For ease of reference for users of this Decisions Report the Council has also printed and **attached** ten separate maps showing the accepted Panel out of scope recommendations as they relate to the GIS Viewer. These maps, which are included as **Attachment C**, show out of scope decisions made in the following areas: Albany; Glen Eden, Greenlane, Mangere Bridge, Milford, Newmarket, Otahuhu, Te Atatu South, Warkworth and Whangaparoa. The address details of the properties associated with those decisions have not been provided by the Council.

5. Designations

- 5.1 Under the RMA (and the special legislation applying to the PAUP), while designations included as part of a plan review are subject to submissions and a hearing, there is a different process for who makes the decisions on the recommendations from the Panel.
- 5.2 For the Council's own designations, the Council must make a decision on the recommendations provided by the Panel. For designations owned by other requiring authorities however, the Council's decisions are treated as recommendations to those requiring authorities on their designations¹⁴. The requiring authorities themselves will make the final decisions (subject to appeal) on whether they will accept or reject the Council's recommendations.
- 5.3 In relation to designations included in the PAUP, the Council's GB made decisions on the following aspects:
- a) decisions relating to Chapter G1.3 and Part 7 Designations of the PAUP;
 - b) decisions relating to the Council's own designations included in the PAUP; and
 - c) decisions relating to the recommendations it will make to other requiring authorities in respect of their designations included in the PAUP.
- 5.4 The Council did not oppose any designations included in the PAUP, and did not have an active role in the assessment of third party submissions on designations; other

¹⁴ See section 151(1), LGATPA. As noted at paragraph 2.3(i) above, the Council is required to electronically notify each requiring authority affected by the decisions of the Council of the information that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation.

than where the Council's own designations were involved, or where the Council was also a submitter. In addition, the LGATPA did not allow the Panel to make recommendations on designations (or heritage orders) that were 'rolled over' without modification that did not attract any submissions and the Council does not have a decision making role in relation to those 'rolled over' designations (and heritage orders¹⁵). These 'rolled over' designations will be included in the Council's decisions version of the PAUP and are deemed to have been approved by the Council¹⁶.

- 5.5 Council staff recommended that the GB, in making its decision on the Panel's Recommendations as they relate to designations, accept all the Panel's Recommendations on designations. Those designations were identified in an attachment to a report entitled "Proposed Auckland Unitary Plan Report 3 - Response to Recommendations from the Auckland Unitary Plan Independent Hearings Panel Relating to Designations" which was prepared for committee meetings on 10 August 2016. That same attachment has been included as Attachment E to this Decisions Report as it contains the Council's decisions in relation to designations.

¹⁵ As noted earlier, all heritage orders rolled over without modification / submissions.

¹⁶ Under clause 17(1) of Schedule 1 to the RMA. See s152(5) of the LGATPA.

6. Attachments to Decisions Report

- 6.1 A number of attachments have been included as part of this Decisions Report, as follows:
- a) **Attachment A** - The alternative solutions prepared by the Council for any rejected recommendations (which includes: text, diagram and map alternative solutions).
 - b) **Attachment B** – The section 32AA assessment reports prepared, where necessary, as part of any rejection.
 - c) **Attachment C** – A list of the Panel's out of scope recommendations that have been accepted by the Council, including maps which show the out of scope recommendations within the GIS Viewer.
 - d) **Attachment D** – A list of the Panel's Recommendations that have been rejected by the Council.
 - e) **Attachment E** – Designations (Parts 1, 2 and 3).

Approved for release:

John Duguid - General Manager - Plans and Places



Penny Pirrit - Director Regulatory Services



7. Decisions of Auckland Council

- 7.1 The Council's decisions on the Panel's Recommendations are set out below, addressed in relation to each hearing topic report provided by the Panel in numerical order.
- 7.2 The Council's Decisions Report addresses those Panel Recommendations which have been accepted by the Council first, with the Panel Recommendations that have been rejected following.
- 7.3 A full list of the Panel's Recommendations that have been rejected by the Council is attached to this Decisions Report as **Attachment D**.

1. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 001 (Auckland-wide), July 2016"

Panel recommendations accepted:

- 1.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 001 (Auckland-wide), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

2. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 002 (ePlan and miscellaneous), July 2016"

Panel recommendations accepted:

- 2.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 002 (ePlan and miscellaneous), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

3. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 003 (Chapter A Introduction), July 2016"

Panel recommendations accepted:

- 3.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 003 (Chapter A Introduction), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

4. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 004 (General Rules), July 2016”

Panel recommendations accepted:

- 4.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 004 (General Rules), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

5. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 005 (Issues of Regional Significance), July 2016”

Panel recommendations accepted:

- 5.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 005 (Issues of regional significance), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

6. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 006 and 035 (Air quality), July 2016”

Panel recommendations accepted:

- 6.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topics 006 and 035 (Air quality), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 6.2.

Panel recommendations rejected:

- 6.2 The Council has rejected the Panel recommendations in relation to Hearing Topics 006 and 035 (Air quality) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **Deletion of the Auckland Ambient Air Quality Standards**

Reasons	
(i) The limits and criteria for a number of pollutants which may adversely affect air quality will not exist.	
(ii) Outcomes outlined in the Regional Policy Statement Objectives B7.5.1(1) and B7.5.1(3) and the Auckland wide objectives E14.2(1) and E14.2(3) will not be achieved.	
(iii) There will be uncertainty and inefficiency in the processing of resource consent applications	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

7. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topics 006 (Natural resources) and 010 (Biodiversity), July 2016”

Panel recommendations accepted:

- 7.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 006 (Natural resources) and Hearing Topic 010 (Biodiversity), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

8. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 007 (RPS climate change), July 2016”

Panel recommendations accepted:

- 8.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topics 007 (RPS climate change), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

9. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 008 (Coastal Environment), July 2016”

Panel recommendations accepted:

- 9.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 008 (Coastal environment), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

10. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 009 (Mana Whenua) and Topic 036/037 (Maori land and treaty and Mana Whenua sites), July 2016”

Panel recommendations accepted:

- 10.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 009 (Mana Whenua) and Hearing Topic 036/037 (Maori land and treaty and Mana Whenua sites), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

11. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 010 (Historic Heritage), July 2016”

Panel recommendations accepted:

- 11.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topics 010 (Historic heritage), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

12. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 010/029/030/079 (Special character and pre 1944), July 2016”

Panel recommendations accepted:

- 12.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 010/029/030/079 (Special character and

pre 1944), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 12.2.

Panel recommendations rejected:

12.2 The Council has rejected the Panel's recommendations in relation to Hearing Topic 010/029/030/079 (Special character and pre 1944), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The deletion of the objective that provides for management of heritage values in the Regional Policy Statement**

Reasons	
(i) The Special Character Areas overlay – Residential and Business District Plan provisions and character statements recommended by the Panel identify the amenity and heritage values of the areas that are to be addressed in the District Plan provisions. However the cascade down from the RPS to District Plan is not evident, with no corresponding RPS objective, resulting in a disconnect between the RPS and District Plan.	
Alternative solution	See Attachment A

13. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 011 (Rural environment), July 2016”

Panel recommendations accepted:

13.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topics 011 (Rural environment), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 13.2.

Panel recommendations rejected:

13.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 011 (Rural environment) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The deletion of objectives and policies for rural subdivision that:**

- (i) Prevent inappropriate subdivision
- (ii) Promote the significant enhancement of indigenous biodiversity

(iii) Facilitate transfer of titles only into the Countryside living zone.

Reasons	
The Panel's recommended approach would:	
(i) Enable inappropriate subdivision of the rural area through a proliferation of rural-residential lots across the production focussed rural zones (resulting in loss of rural production, reverse sensitivity, rural character and amenity and potential additional demands on infrastructure in remote locations).	
(ii) Undermine the Auckland Plan's strategic direction for rural areas.	
(iii) Does not support the concept of the compact city that inherently has as a benefit the retention and protection of rural areas (rather than their subdivision for rural-residential uses).	
(iv) Undermine focus of rural lifestyle living in the Countryside Living zone	
Alternative solution	See Attachment A

14. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 012 (Infrastructure, energy and transport), July 2016"

Panel recommendations accepted:

14.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 012 (Infrastructure, energy and transport), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 14.2.

Panel recommendations rejected:

14.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 012 (Infrastructure, energy and transport) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **The deletion of policies which encourage land use and transport integration and in particular, the location of higher intensity activities where those activities are served by key public transport services and routes.**

Reasons	
(i) The Panel's recommended policy framework does not adequately address land use and transport integration which is a key consideration in the management of growth and the efficient use of the transport network.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B (under 043-044 Transport)

15. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 013 (Urban growth), July 2016"

Panel recommendations accepted:

- 15.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 013 (Urban growth), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 15.2.

Panel recommendations rejected:

- 15.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 013 (Urban growth) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **The deletion of objectives and policies that seek to focus growth within the existing metropolitan area**

Reasons
(i) The lack of a specific objective and policy that indicates the primary location for growth is within the existing metropolitan area means there is little or no guidance for where future growth should be enabled and encouraged

(ii) The Panel's recommendation does not have sufficient regard to the Auckland Plan's Development Strategy resulting in a misalignment with the Council's strategic directions.	
(iii) Focusing intensification within the existing urban area delivers the benefits of a quality compact urban form, which include better public transport, proximity to amenity and services, efficient infrastructure servicing, environmental protection and a reduced carbon footprint.	
Alternative solution	See Attachment A

(b) **Amendments to the policy that guides the location of the Rural Urban Boundary**

Reasons	
(i) To support the Rural Urban Boundary at the District Plan level the policy framework needs to be sufficiently clear and certain of the outcomes to enable inappropriate proposals to be turned down	
(ii) The recommended policy does not include either providing a quality compact urban form or the importance of land use and transport integration	
(iii) Reliance on the structure plan guidelines in Appendix 1 to achieve these outcomes is inadequate because the guideline is not a policy	
(iv) The Panel's recommended policy does not reflect the Panel's position in its report that the policy applies to requests to amend the Rural Urban Boundary and must follow the structure plan guidelines in Appendix 1.	
Alternative solution	See Attachment A

(c) **The enablement of commercial activities within centres and corridors**

Reasons	
<p>(i) The 'centres-plus' commercial growth strategy has been removed. The strategy is considered to be an appropriate method to achieve land use, transport and infrastructure integration in centres, and provides a release valve that enables commercial activities in out-of-centre areas where this is appropriate.</p>	
<p>(ii) The District Plan provisions have some objectives and policies that recognise the importance of centres but there is no vertical alignment to any objective or policies in the Regional Policy Statement provisions.</p>	
<p>(iii) The absence of a Regional Policy Statement objective and related policies greatly weakens the ability to assess the effects of dispersed commercial activity (for example, land use and transport integration, effects on centres and community social and economic wellbeing).</p>	
<p>(iv) The Panel has not provided reasons why the centres-plus strategy has been deleted.</p>	
<p>(v) The centres-plus commercial strategy reflects the PAUP mediation, where the commercial and industrial growth provisions were agreed to by all parties present, except for one. The parties agreeing to the mediated position included the 'Key Retail Group' which has been heavily involved in the centres-plus strategy formation since the notification of Change 6 to the legacy Regional Policy Statement in 2005.</p>	
Alternative solution	See Attachment A

16. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 018 (Monitoring and environmental results anticipated), July 2016”

Panel recommendations accepted:

- 16.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 018 (Monitoring and environmental results anticipated), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

17. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 019 (Natural features, landscapes and character), July 2016”

Panel recommendations accepted:

- 17.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 019 (Natural features, landscapes and character), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

18. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 020 (Viewshafts), July 2016”

Panel recommendations accepted:

- 18.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 020 (Viewshafts), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

19. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 022 (Natural hazards and flooding and 026 – General others), July 2016”

Panel recommendations accepted:

- 19.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 022 (Natural hazards) and flooding and

Hearing Topic 026 (General others), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 19.2.

Panel recommendations rejected:

19.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 022 – Natural hazards and flooding and Hearing Topic 026 – General others as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Replacing the 1 per cent annual exceedance probability (AEP) flood hazard with the 2 per cent annual exceedance probability (AEP) flood hazard in urban areas

Reasons	
(i) The 1 per cent annual exceedance probability (AEP) flood hazard is identified as posing a level of risk warranting management in the Auckland region. This was supported by the majority of relevant experts during the hearing process.	
(ii) Off-site effects - the displacement of flood waters onto adjoining properties from buildings in floodplains, and changes to flood depths and velocities experienced by upstream and downstream properties. These are matters that go beyond the Building Code.	
Alternative solution	See Attachment A

(b) No controls for buildings within floodplains to prevent the exacerbation of flood hazards

Reasons	
(i) The Panel's recommended text provides for the management of fences, storage of goods, above ground parking and hazardous substances within the 1 per cent annual exceedance probability (AEP) floodplain area but does not provide a management response for buildings or structures within these areas.	
Alternative solution	See Attachment A

(c) No controls to manage a change of use to more vulnerable activities in existing buildings within floodplains

Reasons	
(i) The Panel's recommended rule remains silent on the change of use within existing buildings. It is unclear from the report that this is an intentional omission or otherwise but the result is the creation of a Plan workability issue.	
(ii) Amending these provisions will ensure that the control applies to both new buildings and structures as well as to a change of use in an existing building to accommodate a more vulnerable activity and not be in conflict with the Building Act in respect of controlling specific aspects of building works.	
Alternative solution	See Attachment A

(d) Amending the definition of coastal storm inundation 1 per cent annual exceedance probability plus 1 metre of sea level rise to not include reference to maps

Reasons	
(i) The definitions for coastal storm inundation area 1per cent annual exceedance probability (AEP) and Coastal storm inundation area 1per cent annual exceedance probability (AEP) plus 1m sea level rise should be amended to ensure that they align with the Panel's recommended inclusion of the Coastal storm inundation area 1per cent annual exceedance probability (AEP) plus 1m sea level rise maps	
Alternative solution	See Attachment A

(e) No consent requirements for new buildings in the activity table for the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre of sea level rise area

Reasons	
(i) The Panel's recommended rule requires Discretionary Activity consent for additions and alterations to existing buildings. However, no consent	

requirements are included for new buildings within the same area (of any size). This is inconsistent with the Policy (9) which refers to both new buildings and substantive alterations to existing buildings.	
(ii) The application of the rule to only additions and alterations to existing buildings and not new buildings will pose problems for implementing the policy and rule framework. No explanation of this is given in the Panel's report. Given the issues that the rule in its current form will cause when applied to development within this area, an amendment is proposed to ensure it applies consistently	
Alternative solution	See Attachment A

20. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 023 (Significant ecological areas and vegetation management), July 2016”

Panel recommendations accepted:

20.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 023 (Significant ecological areas), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

21. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 024 (Genetically Modified organisms), July 2016”

Panel recommendations accepted:

21.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 024 (Genetically modified organisms), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

22. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 025 (Trees), July 2016”

Panel recommendations accepted:

22.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topics 025 (Trees), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 22.2.

Panel recommendations rejected:

22.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 025 (Trees) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) The deletion of scheduled items from the Schedule of Notable Trees which do not comply with section 76(4A) – (4D) of the Resource Management Act 1991**

Reasons	
(i) 85 of the trees recommended to be deleted have the required information which was inadvertently left out of the PAUP	
Alternative solution	See Attachment A

- (b) The deletion of 18 scheduled items from the Schedule of Notable Trees with no explanation or reasoning.**

Reasons	
(i) This appears to be an error as the deletion of these trees is not supported by evidence and no reasons have been given by the Panel.	
Alternative solution	See Attachment A

- (c) **The trimming of up to 20 per cent of a notable tree’s live growth as a permitted activity, subject to complying with specific standards.**

Reasons	
(i) Increasing as a permitted activity, the trimming of up to 20 percent of a notable tree’s live growth may have adverse effects on the health and viability of notable trees.	
Alternative solution	See Attachment A

23. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 027 (Artworks, signs and temporary activities), July 2016”

Panel recommendations accepted:

- 23.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 027 (Artworks, signs and temporary activities), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

24. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 028 (Future urban zone), July 2016”

Panel recommendations accepted:

24.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 028 (Future urban zone), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 24.2.

Panel recommendations rejected:

24.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 028 (Future urban zone) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Changing the activity status of subdivision in the Future Urban zone from a Prohibited activity to a Discretionary activity.

Reasons	
(i) It is an important that the PAUP does not facilitate the fragmentation of land within the Future Urban zone, which might prevent or hinder efficient and well planned urbanisation with good urban form and efficient and orderly provision of infrastructure.	
(ii) By allowing discretion, the recommended wording of the subdivision provisions in the Future Urban zone is unclear about the types of subdivision that could be promoted.	
Alternative solution	See Attachment A

- (b) **Changing the activity status of landfills in the Future Urban zone from a Non-complying activity to a Discretionary activity.**

Reasons	
(i) Landfills create significant long term adverse effects over a wide area, potentially irreversible changes and require detailed and careful management and should be assessed as a Non-complying activity.	
(ii) Changing the recommended Discretionary activity status to Non-complying activity status is consistent with the relevant objectives and the consistent management of this activity across the PAUP.	
Alternative solution	See Attachment A

25. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 031 (Historic heritage), July 2016”

Panel recommendations accepted:

- 25.1 The Council has accepted all the recommendations of the Panel as contained in the Panel report for Hearing Topic 031 (Historic heritage), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

26. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 032 (Schedule of historic heritage), July 2016”

Panel recommendations accepted:

26.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 032 (Schedule of historic heritage), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 26.2.

Panel recommendations rejected:

26.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 032 (Schedule of historic heritage) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The deletion of the Symonds Street flats, 44 Symonds Street, City Centre from the schedule

Reasons	
(i) Heritage experts agree that the Symonds Street flats have outstanding national value and warrant remaining scheduled as a Category A place.	
(ii) Inclusion of the Symonds Street flats in the Schedule of Historic Heritage as a Category A place will not place undue burden on the ability to use and develop the site, particularly given its national heritage significance.	
(iii) Transferable development rights may be utilised to transfer ‘lost’ development capacity to other landholdings in the CBD, and future development of this site can be appropriately considered through the resource consent process.	
(iv) Structural reports concluded ‘...that much of the concrete was sound and did not display cracking or spalling of sufficient magnitude to compromise the structural integrity or potential longevity of the building.’	
Alternative solution	See Attachment A

27. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 033/034 (General coastal marine zone), July 2016”

Panel recommendations accepted:

27.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 033/034 (General coastal marine zone), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 27.2.

Panel recommendations rejected:

27.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 033/034 (General coastal marine zone) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Amendments to the activity table for identifying which standards apply to the discharges of hull bio-fouling organisms.

Reasons	
(i) All of the listed bio-fouling Permitted activities must now meet every standard. This does not recognise that different combinations of controls should be applied to different risk-based scenarios.	
(ii) This creates an unworkable situation that fails to meet the purposes the PAUP is trying to achieve (i.e. “encouraging” low-risk in-water cleaning, but imposing increasingly onerous standards as the level of cleaning risk increases).	
(iii) Overly onerous requirements (i.e. capture all material to 50 microns) are now applied to low risk hull cleaning.	
(iv) The controls are unworkable for higher risk bio-fouling as they are required to use gentle, non-abrasive methods.	
Alternative solution	See Attachment A

(b) **Including in the definition of marine and port facilities the reference to ‘sea walls’**

Reasons	
(i) It creates confusion and uncertainty to include seawalls in two terms which are used in different rows of activities tables.	
(ii) In the Minor Port zone, Port precinct and Gabador Place precinct these have a different activity status (Permitted and Restricted Discretionary).	
(iii) The Panel accepted other proposals to explicitly include hard protection structures in these areas but also included seawalls in the definition of marine and port facilities. They should be only within the definition of hard protection structures.	
Alternative solution	See Attachment A

28. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 038 (Contaminated land), July 2016”

Panel recommendations accepted:

28.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 038 (Contaminated land), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 28.2.

Panel recommendations rejected:

28.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 038 (Contaminated land), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The inclusion of contaminated land in accidental discovery control provisions

Reasons	
(i) Contaminated land is not sensitive material that requires inspection from Heritage New Zealand and/or Mana Whenua representatives.	
(ii) Inclusion of contaminated land in the accidental discovery control has created an overlap between responses to the discovery of human remains and kōiwi, archaeological sites, Māori cultural artefacts/taonga, protected New Zealand objects as defined in the Protected Objects Act 1975, and lava caves, and the management of discharges from contaminated land.	
Alternative solution	See Attachment A

(b) Changes to rules for discharges of contaminants from disturbing soil on land containing elevated levels of contaminants

Reasons	
(i) The Panel's recommended Permitted activity standard will allow very large amounts of contaminated soil disturbance on large sites with no contaminant discharge controls. This may lead to significant adverse effects from discharges to the environment and ineffective management of contaminated land.	
(ii) It will also mean small amounts of soil disturbance on small sites that are very unlikely to have more than minor adverse effects will require discharge consents.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

(c) The deletion of the definition of land containing elevated levels of contaminants

Reasons	
(i) Land containing elevated levels of contaminants is a unique definition that is necessary for the use and interpretation of the rules.	
(ii) The definition recognises that discharges from land with low levels of contamination above background levels do not need to be subject to expert assessment and oversight through regulations in the PAUP.	
Alternative solution	See Attachment A

29. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 039 (Hazardous substances and industrial and trade activities), July 2016”

Panel recommendations accepted:

29.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 039 (Hazardous substances and industrial and trade activities), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 29.2.

Panel recommendations rejected:

29.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 039 (Hazardous substances and industrial and trade activities), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Amendments to the definition of clean fill material which removes differentiation between clean fill and managed fills

Reasons	
(i) The changes recommended by the Panel significantly undermine the effectiveness and differentiation between ‘cleanfill’ and ‘managed fill’ material which may result in issues and ambiguity in the determining human health and environmental risks.	
Alternative solution	See Attachment A

30. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 040 (Lighting, noise and vibration), July 2016”

Panel recommendations accepted:

30.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 040 (Lightening, noise and vibration), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

31. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing topic 041 (Earthworks and minerals), July 2016”

Panel recommendations accepted:

31.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 041 (Earthworks and minerals), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 31.2.

Panel recommendations rejected:

31.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 041 (Earthworks and minerals), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The deletion of kauri dieback provisions

Reasons	
(i) It is internationally recognised that pathogens responsible for kauri dieback are spread by movement of soil. It is important that there are clear standards for development and earthworks around kauri trees, and a mechanism for the Council to manage the spread of the disease.	
Alternative solution	See Attachment A

32. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 042 (Infrastructure), July 2016”

Panel recommendations accepted:

32.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 042 (Infrastructure), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the Plan and the maps, except as listed below at paragraph 32.2.

Panel recommendations rejected:

32.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 042 (Infrastructure), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Increase the extent of the National Grid Corridor overlay, as it relates to the area 32m each side of 110kv lines and 37m each side of the centerline of 220kv lines

Reasons	
(i) The appropriate corridor width to give effect to Policy 11 of the National Policy Statement on Electricity Transmission 2008 (NPSET) is as notified in the PAUP, being 24m (12m either side of the transmission lines centreline), which enables control of activities sensitive to the lines, access to the national grid infrastructure for operation, maintenance and upgrade purposes and compliance with the relevant clearances required under the NZECP 34:2001.	
(ii) There is insufficient evidential basis to identify and assess the potential development implications associated with the broader corridor.	
Alternative solution	See Attachment A

(b) No objective to manage the adverse effects of infrastructure in the District Plan provisions for infrastructure

Reasons	
(i) An objective seeking to manage the adverse effects of infrastructure at a District Plan level is necessary to give effect to the Regional Policy Statement.	
Alternative solution	See Attachment A

(c) The tagging of the infrastructure objectives and policies as regional coastal provisions

Reasons	
(i) The Auckland-wide infrastructure objectives and policies are not Regional Coastal Plan provisions.	
Alternative solution	See Attachment A

(d) Electric vehicle charging stations should be Permitted activities in roads

Reasons	
(i) Allowing electric vehicle charging stations as a Permitted activity on arterial roads would remove the ability to manage their location and ensure the efficient use of arterial roads provision.	
Alternative solution	See Attachment A

(e) Deletion of the standards for minor infrastructure upgrading in the standards for activities in roads

Reasons	
(i) There are no recommended standards for minor infrastructure upgrading within roads and unformed roads. This results in an unworkable provision.	
Alternative solution	See Attachment A

- (f) **No default activity status for minor infrastructure upgrading where an upgrade to an existing network utility exceeds the specified standard**

Reasons	
(i) Any upgrade works or activities beyond the specified standards for minor infrastructure upgrading should be treated as equivalent to a new application for the same activity.	
Alternative solution	See Attachment A

- (g) **Increasing the permitted threshold for the trimming and alteration of trees in streets and public open spaces subject to meeting specific standards including an agreed tree management plan**

Reasons	
(i) While the increase in the permitted threshold is accepted, the requirement for an agreed tree management plan introduces an element of discretion and should be deleted.	
Alternative solution	See Attachment A

- (h) **Extending standards on vegetation removal within a Significant Ecological Area to roads**

Reasons	
(i) The Panel recommendations do not sufficiently recognise that roads run through many Significant Ecological Areas and the works required to maintain, repair and renew those roads	
Alternative solution	See Attachment A

(i) The inclusion of standards relating to earthworks (filling) within a floodplain associated with road works

Reasons	
<p>(i) The Panel recommendations do not sufficiently recognise the function roads perform as drainage systems for stormwater management and flood management. Standards for earthworks (including filling) within a 100 year AEP flood plain should exclude road network activities, as roads are also stormwater management systems.</p>	
Alternative solution	See Attachment A

(j) The inclusion of standards relating to earthworks (filling) within overland flow paths associated with road work

Reasons	
<p>(i) The Panel's recommendations do not sufficiently recognise the function roads perform as drainage systems for stormwater management and flood management.</p>	
<p>(ii) Standards for earthworks (including filling) within overland flow paths should exclude road network activities, as roads are also stormwater management systems and overland flow paths. This would not prevent a network discharge consent being required for alternative stormwater discharges.</p>	
Alternative solution	See Attachment A

(k) Specific limitations on earthworks within overlays for road network activities

Reasons	
(i) The Panel's recommendations do not sufficiently recognise the overall area that roads cover	
(ii) Earthworks area and volume limits are insufficient for routine road network activities within the road, including maintenance of water tables, renewal of road and resealing.	
Alternative solution	See Attachment A

33. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 043/044 (Transport), July 2016”

Panel recommendations accepted:

33.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 043/044 (Transport), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 33.2.

Panel recommendations rejected:

33.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 043/044 (Transport), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **Amendment of the parking rates for the Metropolitan Centre, Town Centre, Local Centre, Mixed Use and Terrace Housing and Apartment Buildings zones to remove maximum and minimum parking rates for all activities within these zones with the exception of retail and commercial service activities.**

Reasons	
(i) Not including minimum parking rates for retail and commercial service activities would result in a more efficient use of land, better urban design outcomes and greater support for the public transport network.	
(ii) Including maximum parking rates would result in better management of oversupply of parking and associated adverse effects on the transport network (e.g. congestion).	
(iii) Including maximum parking rates would result in better urban design and amenity outcomes.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **Parking rates for residential and non-residential activities in the City Centre zone of 1:125m² for non-residential activities within a proposed ‘Outer core’ parking area while applying a rate of 1:200m² within a proposed ‘Inner core’ parking area. A maximum rate of 1.5 car parks per dwelling (regardless of dwelling size) is proposed for residential activities.**

Reasons	
(i) The Panel’s recommendations will provide more accessory parking and residential parking in the City Centre zone, which is an already congested road network with high levels of public transport accessibility.	
(ii) The Panel’s recommendations are higher than the rates currently applied and are considered to be less efficient and effective in achieving transport objectives around managing travel demand in the City Centre.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

34. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 045 (Airports), July 2016”

Panel recommendations accepted:

- 34.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 045 (Airports), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

35. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 046/047/048/049 (Water quality and quantity, lakes, rivers and streams, aquifers and ground water and discharges of stormwater and wastewater), July 2016”

Panel recommendations accepted:

35.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 046/047/048/049 (Water quality and quantity, lakes, rivers and streams, aquifers and ground water and discharges of stormwater and wastewater), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 35.2.

Panel recommendations rejected:

35.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 046/047/048/049 (Water quality and quantity, lakes, rivers and streams, aquifers and ground water and discharges of stormwater and wastewater), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) Inserting a permitted activity land use rule for stormwater runoff into the stormwater network and combined sewer network.

Reasons	
(i) The recommended rule allows stormwater to be discharged to the combined sewer without control. The policy position that has been recommended by the Panel (consistent with council’s case position) is that land use should be required to avoid increasing discharges to the combined network unless they are minor and there is no practicable alternative.	
(ii) Diverting more stormwater to the combined sewer network will reduce the capacity of the combined sewer network and the Mangere Wastewater Treatment Plant. It may lead to an increase in combined sewer overflows, despite current initiatives undertaken by Watercare Services, with resulting adverse effects on the community and the environment.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **Amending to a Permitted activity status for sites that do not discharge to a stream or discharge below RL 2m in a Stormwater Management Areas Flow (SMAF).**

Reasons	
(i) This blanket reclassification has resulted in a situation where a Restricted Discretionary consent would still need to be obtained, but due to site or discharge circumstances, no stormwater management or mitigation would be required.	
(ii) This situation is not considered to be efficient or effective and will require consents to be obtained when there is no mitigation or environmental benefit.	
Alternative solution	See Attachment A

- (c) **Amending the activity status for roads within a Stormwater Management Areas Flow (SMAF).**

Reasons	
(i) It is not efficient to require a Discretionary Activity resource consent where the required standard of mitigation is met.	
Alternative solution	See Attachment A

- (d) **Deleting the default activity status for roads/motorways within a Stormwater Management Areas Flow (SMAF).**

Reasons	
(i) It is more appropriate to include a default activity status for roads/motorways that is consistent with other activities.	
Alternative solution	See Attachment A

- (e) Amending the general standards in E10.6.11 and associated rules in E10.6.3.1 to refer to “site” which, as defined, does not include a road.

Reasons	
(i) A minor change is required to clarify the intention of the rules in respect of a road/motorway to reduce confusion regarding the application of the rules to roads and motorways.	
Alternative solution	See Attachment A

- (f) Amending the hydrology mitigation requirements for some roading projects.

Reasons	
(i) To recognise the Panel’s recommendation that certain roading projects may have difficulty in meeting hydrology mitigation requirements, the hydrology mitigation requirement in Rule E8.6.4.1 specifying volume reduction and temporary storage should be removed and replaced with a reference to Table E10.6.3.1.1 Hydrology mitigation requirements.	
Alternative solution	See Attachment A

- (g) Deleting the definition of “redevelopment of a road”.

Reasons	
(i) Reinserting the definition of “redevelopment of a road” in line with the amended rules provides for the ongoing routine maintenance, repair and resurfacing of roads.	
Alternative solution	See Attachment A

36. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 050-054 (City centre and business zones), July 2016”

Panel recommendations accepted:

36.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 050-054 (City centre and business zones), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 36.2.

Panel recommendations rejected:

36.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 050-054 (City centre and business zones) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **Wynyard Precinct – the deletion of framework plans has resulted in a consequential amendment to the height and gross floor area controls in the Wynyard Precinct.**

Reasons	
	(i) The recommended deletion of the post-framework plan height and site intensity provisions significantly reduces the development potential of Wynyard Precinct expressly enabled in the notified PAUP and may potentially result in the inefficient use of this City Centre land and public infrastructure
	(ii) The recommended deletion of all assessment criteria previously relating to framework plans results in a disconnect between the objectives and policies, and the rules of the Precinct
	(iii) The recommendation will prevent the development of sites fronting Jellicoe Street for non-marine uses (i.e. apartments and retail) contrary to the Wynyard Quarter Urban Design Strategy and the objectives and policies for Wynyard Precinct.
	(iv) The recommended changes to provisions were not sought by any submitter to the Wynyard Precinct.
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **Queen Street Valley Precinct – the deletion of the pre – 1940 building demolition control from the Queen Street Valley Precinct.**

Reasons	
(i) The maintenance and enhancement of the pre-1940 buildings in the Queen Street Valley Precinct is integral to maintaining its special character	
(ii) The retention and protection of special character buildings constructed prior to 1940 maintains the integrity and coherence of the built form and architecture, and the streetscape within this area.	
(iii) The pre-1940 trigger and its application was determined as a result of survey work.	
Alternative solution	See Attachment A

- (c) **The deletion of the minimum dwelling size standard in the City Centre and business zones.**

Reasons	
(i) The Building Act does not address social or design quality effects associated with small dwellings. It is therefore necessary to manage these through the District Plan	
(ii) Intensive living environments require internal living spaces which are functional and which provide for amenity to meet the day- to-day needs of residents.	
(iii) This will assist to maintain the social wellbeing of the community, support social cohesion and thereby support further intensification within urban environments as these areas become desirable places to live.	
Alternative solution	See Attachment A

- (d) **The application of a Height in Relation to Boundary control within the Mixed Use Zone and between the Mixed Use Zone and the General Business Zone.**

Reasons	
<p>(i) an internal Height in Relation to Boundary control in the Mixed Use zone is not considered appropriate as:</p> <ul style="list-style-type: none"> • it could unduly constrain development on Mixed Use zone sites; • other controls protect the amenity of adjoining Mixed Use zoned sites; and • no other business zones have an internal height in relation to boundary control. 	
<p>(ii) In addition, it is considered unnecessary to provide a Height in Relation to Boundary control on sites in the Mixed Use zone in favour of adjacent General Business zone sites. The anticipated amenity in the Mixed Use zone is higher than that anticipated in the General Business zone so it is unnecessary to 'protect' General Business zoned sites from the potential effects of sites zoned Mixed Use.</p>	
Alternative solution	See Attachment A

- (e) **A recession plane indicator diagram which is inconsistent with the Height in Relation to Boundary controls in all business zones**

Reasons	
<p>(i) This appears to be a technical error. While the diagrams are similar, the Panel's recommended diagram shows a 55 degree and 35 degree notation shown for the north and south boundaries respectively. These recession planes are not reflected in the Panel's recommended provisions, as shown in Table H.6.2.1 in each business zone. Consequently, the diagram and tables are inconsistent, which will lead to confusion and potential error.</p>	
<p>(ii) In addition, the diagram has been included in the General Business zone, which does not contain an orientation-based rule. It should therefore be deleted from the General Business zone.</p>	
Alternative solution	See Attachment A

- (f) **The deletion of specific standards to manage development within natural hazards areas within the Port Precinct.**

Reasons	
(i) The lack of bespoke port provisions result in them being unworkable in relation to enabling the port activities to take place within natural hazard areas in the Port precinct.	
Alternative solution	See Attachment A

37. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 055 (Social facilities), July 2016”

Panel recommendations accepted:

- 37.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 055 (Social facilities), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

38. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 056,057 (Rural zones), July 2016”

Panel recommendations accepted:

- 38.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topics 056, 057 (Rural zones), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

39. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 058 (Open space), July 2016”

Panel recommendations accepted:

39.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 058 (Open space), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 39.2.

Panel recommendations rejected:

39.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 058 (Open space) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **Amending the activity status for new buildings and additions, and the height and gross floor area standards for the Open Space zones**

Reasons	
(i) The recommendation does not appropriately balance the need to use public open space effectively (and manage pressure to use open spaces as population increases), with the need to manage impacts on neighbours.	
(ii) The recommendation imposes a single approach across all Open Space zones and does not appropriately recognise the values and purpose of each zone.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

40. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 059 to 063 (Residential zones), July 2016”

Panel recommendations accepted:

40.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 059 - 063 (Residential zones), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 40.2.

Panel recommendations rejected:

40.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 059 to 063 (Residential zones) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **That Integrated Residential Developments are provided for as a Restricted Discretionary activity within the Single House Zone**

Reasons	
(i) The assessment of this intensity of development in the Single House zone as a Restricted Discretionary activity is contrary to the stated purpose and associated objectives and policies of the zone.	
(ii) A full assessment as a Discretionary Activity is a more appropriate approach for the assessment of Integrated Residential Developments in the Single House zone.	
Alternative solution	See Attachment A

(b) **Amending the threshold for requiring resource consent from three or more dwellings to five or more dwellings in the Mixed Housing Suburban and Mixed Housing Urban zones**

Reasons	
<p>(i) The Panel’s recommended controls manage the bulk and location of buildings to provide for privacy, daylight access, and ratio of buildings to open space. However, the recommended development controls do not manage quality residential outcomes such as:</p> <ul style="list-style-type: none"> • amenity and safety of the street or public open spaces • the quality of building appearance, including modulation and articulation (e.g. the avoidance of large blank walls facing the street, parks or neighbouring properties) • the interrelationship between a number of amenity attributes including safety, daylight, sunlight, privacy, functionality, and visual amenity associated with multi-unit development 	
<p>(ii) Submitters who presented evidence at the hearing supported the two dwelling permitted threshold (i.e. resource consent required for three or more dwellings). These submitters included a broad cross-section of community groups and developers (Auckland 2040, Housing NZ, Property Council, Fletcher Residential, Herne Bay Residents Association, Todd Property and Ockham developments).</p>	
<p>(iii) No evidence was provided at the hearing stating that requiring a resource consent for three or four dwellings would be a disincentive to development.</p>	
<p>(iv) There is a high risk that permitting four dwellings without resource consent will result in poor design outcomes, particularly at the street interface.</p>	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

(c) **The deletion of the minimum dwelling size standard.**

Reasons	
(i) In the Residential zones it is considered that the minimum dwelling size standard should still be applied to developments of three or more dwelling units	
(ii) The Building Act does not address social or design quality effects associated with small dwellings. It is therefore necessary to manage these through the District Plan	
(iii) Living environments associated with three or more dwelling units require internal living spaces which are functional and which provide for amenity to meet the day- to-day needs of residents	
(iv) This will assist to maintain the social wellbeing of the community, support social cohesion and thereby support further intensification within urban environments as these areas become desirable places to live	
Alternative solution	See Attachment A

(d) **Amending the Height in Relation to Boundary Controls in the Mixed Housing Suburban, Mixed Housing Urban and Terrace Housing and Apartment Building zones.**

Reasons	
(i) The Alternative Height in Relation to Boundary Rule is more enabling than the Height in Relation to Boundary control and should be assessed as a Restricted Discretionary Activity.	
Alternative solution	See Attachment A

- (e) **Amendments to apply the Height in Relation to Boundary Control and the Alternative Height in Relation to Boundary Control to the front boundary within the Terrace Housing and Apartment Building zone. The Height in Relation to Boundary adjoining lower intensity zones is recommended to apply to the front boundary within the Mixed Housing Urban and Terrace Housing and Apartment Building zones.**

Reasons	
(i) Applying the Height in Relation to Boundary Control and the Alternative Height and Relation to Boundary Control to the road boundary will result in the upper floors of buildings being set back from the street, which is the part of the site most able to absorb the effects of additional building bulk and where outlook is available.	
Alternative solution	See Attachment A

- (f) **The deletion of a standard relating to reticulated water supply and wastewater network capacity and moving the matter to assessment criteria.**

Reasons	
(i) The recommended assessment criteria relating to on site wastewater systems appears to be a drafting error, as this is applied to zones that do not rely on on-site wastewater systems.	
(ii) The criteria as drafted could create issues for Watercare as some applicants may think they can build septic tank systems within serviced urban areas, contrary to legislation.	
(iii) It is important to allow for an assessment of wastewater network capacity for multi-unit developments.	
Alternative solution	See Attachment A

(g) **The deletion of the definition of building coverage.**

Reasons	
(i) The definition of building coverage in the PAUP clarified that eaves of buildings are not included in the calculation of building coverage. The deletion of the definition would result in the inclusion of eaves in the coverage calculation which may discourage the provision of eaves.	
Alternative solution	See Attachment A

(h) **The deletion of the front fence rule and deleting policies relating to streetscape from the Single House, Mixed Housing Suburban, Mixed Housing Urban and Terrace House and Apartment Building zones.**

Reasons	
(i) Permitting front fences up to 2.5m will result in poor streetscape outcomes.	
(ii) This matter is not addressed in the Panel report and may be a drafting error given that the amenity of the street is still included in the residential zone objectives.	
Alternative solution	See Attachment A

41. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 064 (Subdivision – urban), July 2016”

Panel recommendations accepted:

- 41.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 064 (Subdivision - urban), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

42. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 064 (Subdivision – rural), July 2016”

Panel recommendations accepted:

- 42.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 064 (Subdivision - rural), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 42.2.

Panel recommendations rejected:

- 42.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 064 (Subdivision – rural) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The inclusion of objectives, policies and rules that enable sporadic and scattered rural subdivision**

Reasons	
(i) The Panel's recommended provisions will enable inappropriate subdivision of the rural area through a proliferation of rural-residential lots across the production focussed rural zones (resulting in loss of rural production, reverse sensitivity, rural character and amenity and potential additional demands on infrastructure in remote locations).	
(ii) The provisions undermine the Auckland Plan's strategic direction for the rural areas.	
(iii) The provisions do not support the concept of the compact city that inherently has as a benefit the retention and protection of rural areas (rather than their subdivision for rural-residential uses).	
(iv) The provisions do not make it clear that the focus of rural lifestyle living is the Countryside Living zone.	
Alternative solution	See Attachment A

(b) **The inclusion of provisions that allow for minimal environmental benefits to be accepted in exchange for rural-residential subdivision**

Reasons	
(i) The provisions would enable potentially inappropriate subdivision of the rural area with the minimal environmental gains.	
(ii) The provisions enable subdivision of sites with Significant Ecological Area (SEA) factors as opposed to identified SEAs. The SEA factors are not suitable to be used for rural subdivision assessment as they: <ul style="list-style-type: none"> • Were made for a different purpose (assessing significance for vegetation protection – not for assessing whether the ecological value of an area would mitigate rural subdivision). • Were designed to be applied in a single, comprehensive manner across the region, not in isolation on a case by case basis. Site by site assessment in isolation will result in over-estimation of the significance of sites. 	

(iii) The provisions will enable a potentially significant increase in the number of rural-residential lots that can be generated (particularly in relation to wetland and revegetation planting subdivision).	
Alternative solution	See Attachment A

(c) Absence in recommending specific site sizes for Countryside Living subdivision in the Caldwell's Road area in Whitford.

Reasons	
(i) The minimum site size for the Caldwell's Road area was agreed with the submitter (Camperdown Holdings Limited) during the hearings process as an appropriate alternative mechanism to a Precinct.	
(ii) The Panel's report is silent on this matter and it may be an omission.	
Alternative solution	See Attachment A

43. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 065 (Definitions), July 2016”

Panel recommendations accepted:

43.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 065 (Definitions), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps, except as listed below at paragraph 43.2.

Panel recommendations rejected:

43.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 065 (Definitions), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **Amendment to the definition of ‘Height’ makes the structures exempted from the definition subject to width and height limits that are unworkable for some structures.**

Reasons	
(i) The Panel’s recommended amendment to the definition of Height makes the structures exempted from the definition subject to width and height limits that are unworkable for some structures.	
Alternative solution	See Attachment A

44. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 074 (Designations), July 2016”

Panel recommendations accepted:

- 44.1 The Council has accepted all the recommendations of the Panel on designations contained in the Panel reports for Hearing Topic 045 – Airports and Hearing Topic 074 – Designations (dated May and July 2016), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

The specific decisions made by the Council on designations are set out below. These must be read in conjunction with Attachment E Part 1, Part 2 and Part 3 to this decisions report. The Council:

- (a) accepts the Panel’s recommendations in the Introductory Designations Report set out in Attachment E Part 1, including the Independent Hearings Panel’s recommended amendments to the explanatory text in the PAUP relating to designations, together with the further amendment to the explanatory text set out in Attachment E Part 1 (to ensure the correct map colours are referred to).
- (b) accepts the Independent Hearings Panel’s recommendations on Auckland Council designations set out in the Specific Designation Reports listed in Attachment E Part 2.
- (c) accepts the Independent Hearings Panel’s recommendations on the designations of other requiring authorities set out in the Specific Designation Reports listed in Attachment E Part 3, with the minor typographical corrections to the Independent Hearings Panel’s recommendation on Counties Power designation R3008 noted in Attachment E Part 3, and adopts them as the Council’s recommendations to those requiring authorities.

Panel recommendations rejected: none.

45. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 075 (Waitakere ranges), July 2016”

Panel recommendations accepted:

45.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 075 (Waitakere Ranges), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 45.2.

Panel recommendations rejected:

45.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 075 (Waitakere Ranges) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **Double-tagging [rp/dp] the activity tables in the Rural – Waitakere Ranges Foothills zone and the Rural – Waitakere Ranges zone sites.**

Reasons	
(i) As a result of the Panel’s recommendations, the activity tables for both of the recommended new zones is now a Regional Plan rule or an unspecific part of the activity table is a Regional Plan rule, which leads to uncertain interpretation.	
(ii) Activities tagged as “rp” but which do not relate to functions of a regional council are arguably ultra vires	
(iii) Tagging the entire activity table will result in significant consequences for landowners generally and requiring authorities in particular.	
Alternative solution	See Attachment A

46. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 076 (Major recreation facility zone and precincts), July 2016”

Panel recommendations accepted:

- 46.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 076 (Major recreation facility zone and precincts), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

47. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 077 (Sustainable design), July 2016”

Panel recommendations accepted:

- 47.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 077 (Sustainable design), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

48. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH)”

Panel recommendations accepted:

48.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 48.2.

Panel recommendations rejected:

48.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **Removal of the Rural Urban Boundary at Crater Hill and Pukaki Peninsula, Puhinui**

Reasons	
<p>(i) The Crater Hill area is not suitable for urban development because it lies within the Outstanding Natural Feature (ONF) overlay, it is a significant geological feature and has significant cultural heritage and landscape value to Mana Whenua. It also contains prime soils.</p>	
<p>(ii) The Pukaki Peninsula is not suitable for urban development because it has significant cultural heritage and landscape value to Mana Whenua, lies partly within the ONF overlay for Pukaki Crater, and contains significant areas of elite soils, all of which would be extensively compromised by urban development.</p>	
<p>(iii) Part of the Pukaki Peninsula is under the proposed High Aircraft Noise Area (HANA) and Moderate Aircraft Noise Area (MANA) for the future northern runway as proposed by Auckland International Airport. These noise areas restrict the establishment of urban activities sensitive to aircraft noise such as dwellings.</p>	
Alternative solution	See Attachment A

49. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST)”

Panel recommendations accepted:

49.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 49.2.

Panel recommendations rejected:

49.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) No mechanisms within the Redhills precinct relating to the provision of transport infrastructure

Reasons	
(i) While the urban zoning and the creation of a precinct is accepted, the specific provisions relating to transport infrastructure provision need to be revised, and associated text amended to clarify the transport requirements for Redhills, both within the area and in the context of the wider transport networks	
Alternative solution	See Attachment A

(b) No indicative roading pattern required to achieve an effective transport network in the Westgate Precinct.

Reasons	
(i) While the Council supports the removal of sub-precinct F, its removal has had the effect of deleting the indicative roading pattern for this part of Westgate.	
(ii) The indicative roading pattern is vital to achieve an efficient and effective transport network, and should therefore be re-included in the precinct.	
(iii) As a consequence, text in the precinct requires amendment to correctly reference the re-instated indicative roads.	
Alternative solution	See Attachment A

50. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in RODNEY)”

Panel recommendations accepted:

50.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in RODNEY), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 50.2.

Panel recommendations rejected:

50.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in RODNEY) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **No mechanisms within the new Wainui precinct for the provision of transport infrastructure.**

Reasons	
<p>(i) The specific provisions should be amended to clarify that wider transport network upgrades and staged development may be necessary. The principal reason that these amendments are required is that the evidence presented by the Council to the Panel demonstrates the Wainui precinct has transport infrastructure constraints including the need to connect to an already at or very near capacity transport network. A range of significant projects, including upgrades to State Highway 1 that are currently unplanned and unfunded, may be required to service development within the precinct.</p>	
Alternative solution	See Attachment A

(b) **The rezoning of the Kumeu Showgrounds from Mixed Rural to Countryside Living.**

Reasons	
<p>(i) The resulting change in underlying zoning has resulted in many activities provided for under the Kumeu District Agricultural and Horticultural Society Act, which align with the objectives of the Society, being given a more restrictive activity status. This undermines the objectives of both the precinct and the Society.</p>	
<p>(ii) The Society was the only submitter on the precinct. The Society sought inclusion of the precinct to provide for the activities enabled by the Act.</p>	
Alternative solution	See Attachment A

(c) **The application of the Large Lot zone at 47-61 Dawson Road, Snells Beach**

Reasons	
<p>(i) The land at 47-61 Dawson Road has very recently been rezoned to Medium Intensity Residential in the Operative Auckland Council District Plan (Rodney Section) as part of Private Plan Change 179.</p>	
<p>(ii) The Medium Intensity Residential in the Operative Auckland Council District Plan (Rodney Section) is most directly equivalent to the Single House zone.</p>	
<p>(iii) Any wastewater and stormwater management issues and urban design and landscaping matters can be adequately addressed by the Single House zone and Auckland-wide standards.</p>	
Alternative solution	See Attachment A

51. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH)”

Panel recommendations accepted:

51.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 51.2.

Panel recommendations rejected:

51.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 (recommendations in the NORTH) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The deletion of the Akoranga precinct and reliance upon the Auckland University of Technology (AUT) designation (Designation 6010)

Reasons	
(i)	The removal of the precinct removes important enabling aspects and controls that were important to the ongoing use of the site.
(ii)	The inclusion of the precinct will ensure integrated development of the precinct, particularly in the instance that the land is not needed by Auckland University of Technology.
(iii)	The precinct provides for a range of activities within the site, including complementary tertiary activities which are not accessory to tertiary education and, therefore, are not provided for by the designation. It also enables additional building height which is important to support the development within the precinct.
(iv)	The provisions proposed to be included in the precinct will enable potential adverse effects on the amenity and function of nearby town centres of Northcote and Takapuna and on the local road network to be

considered through more directive assessment enabled by the inclusion of the precinct.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **The deletion of the Takapuna 2 precinct and reliance upon the provisions of the underlying zones (Terraced House and Apartment Buildings and Business – Metropolitan)**

Reasons	
(i) Deletion of the precinct means that less intensive development is provided for, contrary to the intent of the Panel's recommendation to provide for intensification around the Takapuna metropolitan centre.	
(ii) It is also contrary to the recommended provisions of the RPS, and is inconsistent with the application of Height Variation Controls across the rest of the Terrace Housing and Apartment Building zone surrounding the Takapuna Metropolitan Centre.	
Alternative solution	See Attachment A

(c) **The extension of the Rural Urban Boundary north of the Vaughans Road ridgeline into the Okura catchment at a location east of Okura village**

Reasons	
<p>(i) The Okura catchment drains into the Okura Estuary which forms part of the Long Bay-Okura Marine Reserve. Stormwater contaminants from urbanisation are likely to result in adverse effects on indigenous biological diversity within the Long Bay-Okura Marine Reserve.</p>	
<p>(ii) Policy 11 of the New Zealand Coastal Policy Statement 2010 (NZCPS) requires adverse effects of activities on areas set aside for full or partial protection of indigenous biological diversity under other legislation, such as the Long Bay-Okura Marine Reserve, to be avoided. Moving the Rural Urban Boundary from its notified position into the Okura catchment and the proposed urban development will not give effect to the NZCPS.</p>	
<p>(iii) Including the Okura Holdings Limited land within the Rural Urban Boundary and the proposed urban development is likely to result in adverse effects on the water quality, ecology and hydrology of the streams and rivers on the Okura Holdings Limited land. This is unlikely to give effect to the provisions of the National Policy Statement for Freshwater Management 2014.</p>	
<p>(iv) The Vaughans Road ridgeline is a strong landscape feature and is the boundary between two catchments. Retaining the Rural Urban Boundary in this location therefore gives better effect to the PAUP regional policy statement than relocating the Rural Urban Boundary into the Okura catchment as recommended by the Independent Hearings Panel.</p>	
<p>(v) Substantial upgrades to wider transport network would be required to service urban development within the Okura precinct. The recommended Okura Precinct does not include appropriate provisions to address transportation infrastructure requirements, the provisions of open space and the extent of sub-precincts.</p>	
Alternative solution	See Attachment A

- (d) **The application of a new precinct to the land north of Vaughans Road, Okura and rezoning of approximately 130ha of land from Countryside Living to Mixed Housing Suburban, Large Lot, Open Space Conservation and Open Space Informal Recreation zones for the reasons outlined in c) above.**
- (e) **The rezoning of approximately 30ha of land from Countryside Living to Future Urban zone on land to the north of Vaughans Road/east of Okura Village for the reasons outlined in c) above.**

Consequential Amendments

- (f) **As a consequential change amend Table E39.6.5.2.1 Minimum and minimum average net site areas, to include a minimum net site area and average net site area without transferable rural site subdivision, of 4ha to land known as Okura East**

Reasons	
<p>(i) For amending Table E39.6.5.2.1 Minimum and minimum average net site areas, and adding the Control: Subdivision Variation Control - Rural, Okura East Countryside Living – if the Countryside Living zone is to be applied instead of Independent Hearings Panel recommended "live" zoning and Future Urban zoning, the minimum 4ha site control for Okura East needs to be included in the plan to carry over the Operative Auckland Council District Plan: North Shore Section Countryside Living minimum site sizes. This is in line with the approach the Independent Hearings Panel has taken for other Countryside Living zoned areas.</p>	
Alternative solution	See Attachment A

- (g) **As a consequential change add the Control: Subdivision Variation Control - Rural, Okura East Countryside Living to the land know as Okura East for the reason outlined in f) above.**

52. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in CENTRAL)”

Panel recommendations accepted:

- 52.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in CENTRAL), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 52.2.

Panel recommendations rejected:

- 52.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 (recommendations in CENTRAL) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **Deletion of the Sylvia Park precinct and reliance on the underlying Metropolitan Centre zone**

Reasons	
<p>(i) Sylvia Park has undergone a recent plan change which incorporates the most up to date provisions that provide for the ongoing development and operation of the site as well as site-specific development and land-use standards. A number of provisions in the precinct are more enabling and cannot be controlled by overlays.</p>	
<p>(ii) Removing the precinct provisions removes the delivery of three separate height areas that provide a more granular approach to bulk on the site.</p>	
<p>(iii) Removing the precinct provisions also removes specific information requirements.</p>	
<p>(iv) In removing the precinct, Appendix 11.2.2 Sylvia Park is also deleted and this contains statutory provisions that form an interrelated and fundamental part of the precinct.</p>	
<p>(v) Retaining the precinct will ensure a better overall outcome for the long-term development of Sylvia Park.</p>	
Alternative solution	See Attachment A

The High Court of New Zealand
Auckland Registry

CIV-2016-404-

Under the Judicature Amendment Act 1972

In The Matter of Section 159 Local Government (Auckland Transitional Provisions) Act 2010

Between **Franco Belgiorno-Nettis** of 17a Sanders Avenue, Takapuna, mechanical engineer

Plaintiff

And **Auckland Unitary Plan Independent Hearings Panel** a statutory body established under the Local Government (Auckland Transitional Provisions) Act 2010

First Defendant

And **Auckland Council** a statutory body established under the Local Government (Auckland Council) Act 2009 having its principal office at 135 Albert Street, Auckland

Second Defendant

Statement of Claim

Dated: 16 September 2016

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The plaintiff by his solicitor says:

1. **Parties**

- 1.1 The plaintiff lives in Takapuna. He is a submitter in respect of the proposed Auckland Unitary Plan.
- 1.2 The first defendant (**the IHP**) is a hearings panel established by the Minister for the Environment and the Minister of Conservation under s 161 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**).
- 1.3 The second defendant (**the Council**) is the local government council and Unitary Authority for the Auckland area established under the Local Government (Tamaki Makaurau Reorganisation) Act 2009, the Local Government (Auckland Council) Act 2009 and the LGATPA. It became operational on 1 November 2010.

2. **Statutory Framework for Preparation of Auckland Unitary Plan**

- 2.1 Part 4 of the LGATPA provides a bespoke process for the preparation of the initial Auckland Unitary Plan which differs from the regular plan making process specified in schedule 1 of the Resource Management Act 1991 (**RMA**).
- 2.2 Part 4 of the LGATPA provides for the notification of the Proposed Auckland Unitary Plan (**PAUP**), the lodging of submissions, hearings held before the IHP and, following the hearings recommendations by the IHP to the Council including any recommended changes to the PAUP (s 144 (1) LGATPA).
- 2.3 Section 144(7) LGATPA required the IHP to provide its recommendations to the Council in one or more reports.
- 2.4 Section 144(8) LGATPA required each report issued by the IHP to include *inter alia*:
- a) the recommendations of the IHP on the topic or topics covered by the report, and the identification of any recommendations that were beyond the scope of the submissions made in respect of that topic or those topics (s 144 (8)(a));
 - b) the reasons for accepting or rejecting submissions. For this purpose,

the IHP was permitted to address submissions by grouping them according to the provisions of the PAUP to which they were related or the matters to which they were related (s 144 (8)(c)).

- 2.5 Section 144(10) LGATPA stipulated that for the avoidance of doubt the IHP was not required to make recommendations addressing each submission individually.
- 2.6 Section 145 LGATPA required the IHP in formulating its recommendations to include a further evaluation of the PAUP undertaken in accordance with s 32AA RMA.
- 2.7 Section 32AA RMA requires *inter alia* that a further evaluation must be:
- a) undertaken in accordance with section 32(1)-(4) RMA (s 32AA(1)(b) RMA);
 - b) either contained in a separate report or referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with s32AA (s32AA(d)(ii) RMA).
- 2.8 Section 32(1)-(4) RMA states:
- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
 - (2) An assessment under subsection (1)(b)(ii) must—
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced;

and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—

(a) the provisions and objectives of the amending proposal; and

(b) the objectives of the existing proposal to the extent that those objectives—

(i) are relevant to the objectives of the amending proposal; and

(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

2.9 Section 148 LGATPA required the Council to decide whether to accept or reject each recommendation of the IHP. For each rejected recommendation the Council was required in terms of s 148(1)(b) LGATPA to decide an alternative solution which may or may not include elements of both the PAUP as notified and the Hearing Panel's recommendation in respect of that part of the PAUP but which must be within the scope of the submissions.

3. **LGATPA Limited Appeal Rights to Environment Court**

3.1 The usual plan making process specified in schedule 1 of the Resource Management Act 1991 provides for rights of appeal *de novo* to the Environment Court for submitters to a proposed plan.

3.2 Sections 155-158 LGATPA limits the submitter's rights of appeal to the Environment Court in respect of the PAUP. Other than in respect of designations and heritage orders, a right of appeal to the Environment Court is available only:

a) to a person who made a submission on the PAUP which addressed a provision or matter relating to the PAUP and in relation to which the Council rejected a recommendation of the IHP and decided an

alternative solution, which resulted in:

- i) a provision being included in the proposed plan; or
 - ii) a matter being excluded from the proposed plan (s 156(1) LGATPA); or
- b) to a person who is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter where the Council's acceptance of a recommendation of the IHP resulted in:
- i) the provision being included in the proposed plan; or
 - ii) the matter being excluded from the proposed plan; and
 - iii) the IHP had identified the recommendation as being beyond the scope of the submissions made on the proposed plan (s 156(3) LGATPA).

4. **Auckland Unitary Plan Development Process**

- 4.1 The PAUP was notified for submissions on 30 September 2013. Submissions closed on 28 February 2014 following which the Council prepared a Summary of Decisions Requested report which was published on 11 June 2014.
- 4.2 The further submissions period which allowed for submissions in support or opposition to original submissions closed on 22 July 2014.
- 4.3 The points raised in submissions to the PAUP were then categorised by the Council into topics which related to various elements of the PAUP.
- 4.4 The IHP adopted the Council's categorisation of submissions and submissions were allocated to hearing topics numbered 001 to 081. Topic 081 concerned re-zoning and precincts in geographic areas.
- 4.5 A Submission Point Pathway Report (**SPPR**) was prepared for each hearing topic showing the allocation of submissions to that topic.
- 4.6 The SPPR for Topic 081 categorised submissions according to themes, topics and subtopics based on the geographic areas to which the

submissions related.

- 4.7 The IHP published a Parties and Issues Report for each hearing topic which included information on the matters included in the topic, key dates, preparing evidence and the hearing process. The Parties and Issues Report for Topic 081 included a diagram of the geographic area groupings from the SPPR. This diagram is **Appendix A** to this statement of claim.
- 4.8 Hearings on submissions were held before the IHP in respect of each hearing topic between September 2014 and May 2016. Some of the topics were heard together because of logical connections between the topics.
- 4.9 Following the hearings the IHP delivered its recommendations on the PAUP to the Council on 22 July 2016 in accordance with s 144 LGATPA (**the IHP's Recommendations**).
- 4.10 On 19 August 2016 in accordance with s 148 LGATPA the Council publicly notified its decisions on the IHP's Recommendations.

5. **Plaintiff's IHP Submissions**

- 5.1 On 19 February 2014 the plaintiff lodged a primary submission (#1667) with the IHP in respect of the PAUP as notified on 30 September 2013 including submissions concerning zone rules and seeking rezoning in the Takapuna area where the plaintiff resides.
- 5.2 Subsequently the plaintiff filed further submissions (#507).
- 5.3 The plaintiff's submission points concerning rezoning were allocated to hearing topic 081 in the SPPR. Within the Topic 081 the SPPR allocated the plaintiff's submissions to the subtopic Takauna, Milford & Smales Farm. The Submission Point Pathway Report is relied on by the plaintiff as if set out *in extenso*.
- 5.4 The plaintiff subsequently attended mediation sessions, appeared before the IHP, presented evidence and made oral submissions in support of his written submissions at hearings for topic 081 on 28 April 2016.

6. **The IHP's Recommendations to the Council**

- 6.1 The IHP's recommendations to the Council comprised three parts:

- a) Part 1 - The IHP's report which set out its recommendations and purported to set out its reasons for the recommendations of the IHP;
- b) Part 2 - The IHP's recommended version of the Unitary Plan provisions;
- c) Part 3 – The IHP's recommended version of the Unitary Plan maps, presented in GIS viewer
(<https://unitaryplanmaps.aucklandcouncil.govt.nz/uprecommendation/>).

6.2 Part 1 of the IHP's Recommendations comprised:

- a) an overview report which explained the IHP's overall approach and direction; the main changes to the Unitary Plan in terms of plan structure and major policy shifts and the IHP's approach to interpreting the scope of submissions and to meeting section 32AA RMA reporting requirements (**the Overview Report**);
- b) reports on the individually numbered hearing topics numbered 001 to 081 or groups of hearing topics providing recommendations and purporting to provide reasons for the recommendations.

6.3 The Overview Report addressed (at 2.2) the requirements of section 32AA RMA:

The Panel is required to include in its recommendations a further evaluation of the proposed Auckland Unitary Plan in accordance with section 32AA of the Resource Management Act 1991. **This evaluation is only for the changes that the Panel recommends be made and is undertaken at a level of detail that corresponds to the scale and significance of the changes.**

The entire hearing process and the Panel's deliberations have constituted its review for the purposes of section 32AA of the Resource Management Act 1991. The hearing sessions for each topic enabled the Panel to test possible amendments to the provisions of the Unitary Plan as notified.

The Panel's evaluation is based primarily on the Council's original section 32A report, any section 32AA evaluation provided by Council or other submitters during the course of the hearings, and the information and analysis contained in submissions, responses and questions, and supporting evidence presented to the hearings.

During this process the Panel issued interim guidance on the topics for the regional policy statement and certain other topics. Submissions and evidence at subsequent hearings sessions included responses to that guidance and this has also been considered by the Panel.

For certain topics (residential and business capacity, the provisions for the

Waitākere Ranges, and the assessment of the volcanic viewshafts) the Panel directed that certain specific investigations be undertaken and reported on, and has taken these reports into account. Copies of the reports are available on the Panel's website.

The Panel's evaluation is contained in the body of its recommendation report for each topic where changes are proposed to the Unitary Plan as notified. A summary of the main changes recommended by the Panel is contained in this Overview and is part of but not the full evaluation.

(Emphasis added)

- 6.4 The IHP's reports on the individually numbered hearing topics included a report entitled "*Changes to the Rural Urban Boundary, rezoning and precincts*" which provided recommendations and purported to provide reasons for the recommendations in relation to hearing topics 016, 017 Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas) (**the IHP's Rural Urban Boundary, Rezoning and Precincts Report**).

7. The Rural Urban Boundary Rezoning and Precincts report

- 7.1 The IHP's Rural Urban Boundary, Rezoning and Precincts Report set out (at page 4) the requirements in terms of s144(8)(c)(i) and (ii) LGATPA that report must include the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to the provisions of the proposed plan to which they relate or the matters to which they relate.
- 7.2 The IHP's Rural Urban Boundary, Rezoning and Precincts Report stated (page 4) that:

This report covers all of the submissions in the Submission Points Pathways report (SPP) for these topics. **The Panel has grouped all of the submissions in terms of (c) (i) and (ii)** and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

Because the Panel has grouped matters rather than addressed individual submission points, submitters need to read this report to understand the Panel's approach and how this has been applied, then read the relevant sections in the annexures to this report and refer to the maps in the GIS viewer which forms part of the Panel's recommendation and report to Auckland Council.

(Emphasis added)

7.3 Further the IHP's Rural Urban Boundary, Rezoning and Precincts Report stated (page 5) that:

The topics addressed in this report are collectively referred to as the site specific topics and received the largest number of submissions, had the most submitters attending a hearing, the highest rate of submitter participation in the hearings and the most hearing days.

7.4 The IHP's Rural Urban Boundary, Rezoning and Precincts Report addressed:

- a) issues of capacity (page 18);
- b) constraints (page 18);
- c) residential zoning (page 19);
- d) business zoning (page 20);
- e) countryside living (page 21).

7.5 However the IHP's Rural Urban Boundary, Rezoning and Precincts Report failed to adequately provide reasons in terms of s144(8)(c)(i) and (ii) LGATPA for accepting or rejecting submissions whether by grouping submissions according to the provisions of the proposed plan to which they relate or the matters to which they relate or otherwise.

7.6 The IHP's Rural Urban Boundary, Rezoning and Precincts Report included significant changes from the notified PAUP.

7.7 The IHP's Rural Urban Boundary, Rezoning and Precincts Report and the Overview Report failed to record any section 32AA RMA evaluation in sufficient detail to demonstrate that a further evaluation was undertaken in accordance with s 32AA RMA that corresponded to the significance of the zoning changes.

8. Council's Decisions on the IHP's Recommendations

8.1 The Council's decisions on the IHP's Recommendations included:

- a) the Council's decisions report (**the Decisions Report**); and

- b) a GIS maps viewer
(<https://unitaryplanmaps.aucklandcouncil.govt.nz/upproposed/>).

- 8.2 In relation to rezoning the Decisions Report divided the recommendations contained in the IHP's Rural Urban Boundary Rezoning and Precincts Report into separate geographical areas described as "the South", "the West", "Rodney", "Central" and "the North".
- 8.3 The geographic area described as "the North" included Takapuna, Milford and Smales Farm.
- 8.4 At paragraph 51.1 of the Decisions Report the Council accepted all the IHP's Rezoning Recommendations as they relate to "the NORTH" except as listed at paragraph 51.2. None of the exceptions listed at paragraph 51.2 relate to rezoning in Takapuna.

9. **Grounds of Review – The IHP's Rezoning Recommendations Report**

The plaintiff repeats paragraphs 1 to 8 above and says further as follows.

- 9.1 The IHP's Rural Urban Boundary, Rezoning and Precincts Report constitutes the exercise of a statutory power which contained errors of law which materially affect the rights and interests of the plaintiff.

Error of law - failure to provide adequate reasons

- 9.2 In issuing the Rural Urban Boundary, Rezoning and Precincts Report the IHP erred in failing to provide adequate reasons in terms of s 144(8)(c) LGATPA for accepting or rejecting submissions as they relate to the Takapuna, Milford and Smales Farm area whether or not it addressed the submissions by grouping them according to:
- a) the provisions of the proposed plan to which they relate; or
 - b) the matters to which they relate.
- 9.3 Further the IHP in issuing the Rural Urban Boundary, Rezoning and Precincts Report erred in failing to provide adequate reasons for accepting or rejecting submissions as they relate to the Takapuna, Milford and Smales Farm to render rights of appeal to the High Court on questions of law effective. The IHP's failure to provide adequate reasons constitutes

procedural unfairness and a breach of the natural justice rights of submitters.

Error of Law – Misinterpretation of s 144(8)(c) LGATPA

9.4 In issuing the Rural Urban Boundary, Rezoning and Precincts Report on the basis that reasons were provided in terms s 144(8)(c)(i)-(ii) LGATPA, the IHP misinterpreted s 144(8)(c)(i)-(ii) which on its proper interpretation required the IHP to meaningfully:

- a) group submissions in terms of the provisions of the proposed plan or matter to which they relate; and
- b) provide reasons for accepting or rejecting submissions in terms of the grouping adopted by the IHP.

Error of Law - Failure to Comply with S 32AA RMA

9.5 The IHP's Rural Urban Boundary, Rezoning and Precincts Report and the Overview Report failed to record any section 32AA RMA evaluation in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with s 32AA RMA.

10. ***Relief Sought***

10.1 The plaintiff seeks:

- a) An order quashing or setting aside the IHP's recommendations as they relate to the Takapuna area.
- b) An order that the matter be remitted back to the Council for a re-hearing and reconsideration of submissions relating to the Takapuna area.
- c) Such further and/or alternative orders as the Court thinks fit;
- d) Costs.

11. ***Grounds for Review - the Decisions Report***

The plaintiff repeats paragraphs 1 to 8 above and says further as follows.

11.1 The Decisions Report constitutes the exercise of a statutory power of decision which contained errors which materially affect the rights and

interests of the plaintiff.

Error of Law - Adoption of IHP Report

11.2 The Council erred in accepting the IHP's Rural Urban Boundary, Rezoning and Precincts Report in paragraph 51.1 of the Decisions Report where those recommendations did not:

- a) provide adequate reasons in terms of s 144(8)(c) LGATPA for accepting or rejecting submissions as they relate to the Takapuna, Milford and Smales Farm area;
- b) provide adequate reasons for affected persons to understand the basis for those recommendations;
- c) correctly interpret s 144(8)(c) LGATPA;
- d) comply with the requirements of s 32AA RMA.

12. ***Relief Sought***

12.1 The plaintiff seeks:

- a) An order quashing or setting aside the IHP's recommendations as they relate to the Takapuna area.
- b) An order that the matter be remitted back to the Council for a re-hearing and reconsideration of submissions relating to the Takapuna area.
- c) Such further and/or alternative orders as the Court thinks fit;
- d) Costs.

This document is filed by Timothy Goulding, solicitor for the plaintiff, of the firm of Daniel Overton & Goulding. The address for service of the plaintiff is at the offices of Daniel Overton & Goulding, 33 Selwyn Street, Onehunga, Auckland.

Documents for service on the plaintiff may be left at that address for service or may be:

1. Posted to Tim Goulding, Daniel Overton & Goulding, PO Box 13-017 Onehunga, Auckland 1643.
2. Transmitted to the solicitor by fax to 09 6222 555
3. E-mailed to the solicitor at tim@doglaw.co.nz

Appendix A

Diagram 1: Rezoning and Precincts – Geographic: Area Groupings

