

31 October 2016

The Registrar
Environment Court
DX CX10086
AUCKLAND

**MAN O' WAR FARM LIMITED – NOTICE OF APPEAL REGARDING PROPOSED
AUCKLAND UNITARY PLAN AND APPLICATION FOR WAIVER**

I act for Man O' War Farm Limited.

I enclose for filing:

- (a) A late notice of appeal regarding certain provisions of the proposed Auckland Unitary Plan; and
- (b) Covering memorandum; and
- (c) Application for waiver.

A cheque for the filing fee is also enclosed.

I confirm that the appellant does not wish to present evidence in Maori.

With reference to the enclosed memorandum and application for waiver, counsel looks forward to directions regarding service of the appeal (with reference to paragraph 11 of the memorandum enclosed).

Yours faithfully



Martin Williams

Copy to:
unitaryplan@aucklandcouncil.govt.nz

311016 ec

Shakespeare Chambers

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BEFORE THE ENVIRONMENT COURT

ENV-2016-_____

IN THE MATTER

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

AND

IN THE MATTER

of an appeal under s156(3) of the Act

AND

IN THE MATTER

of Hearing Topics 22 (Natural Hazards and Flooding) and 65 (Definitions)

BETWEEN

MAN O' WAR FARM LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

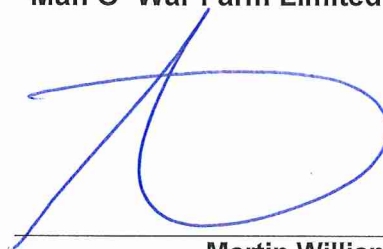
NOTICE OF APPLICATION FOR WAIVER TO FILE LATE APPEAL

**TO: The Registrar
Environment Court
Auckland**

1. **MAN O' WAR FARM LIMITED** ("Man O' War") hereby seeks a waiver under s281 of the Resource Management Act 1991 for the late filing (by 30 working days) of an appeal lodged under s156(3) of the Local Government (Auckland Transitional Provisions) Act (**the Act**).
2. The waiver is sought **upon the following grounds**.
 - (a) No party would be unduly prejudiced by the granting of the waiver sought, as while Auckland Unitary Plan matters have been assigned to the Court's Priority Track, case management steps are at a preliminary stage; and
 - (b) It would be reasonable and in the interests of justice (in the exercise of the Court's discretion) to grant the waiver sought given uncertainty regarding which forum (High Court or Environment Court) the substantive matters raised in the late appeal to this Court fall to be addressed, with reference to s156(3) and s144(6) of the Act.

Signature:

Man O' War Farm Limited by its counsel:



Martin Williams

Date: 31 October 2016
Address for service: Mr Martin Williams
PO Box 754
NAPIER 4140
Telephone: 06 835 0665
Facsimile: 06 835 6269

Note to applicant

You must lodge the original and one copy of this application with the Environment Court. The application must be signed by you or on your behalf. You must serve a copy of this application on all other parties to the proceedings within three working days after lodging this application with the Environment Court.

Within 10 working days after lodging this application, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this application.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements in this form.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The **Auckland** address of the Environment Court is:

8th Floor
District Court Building
69 Albert Street
Auckland

Its postal address is: DX: CX10086
Auckland

Its telephone and fax numbers are: Tel: (09) 916 9091
Fax: (09) 916 9090

The **Wellington** address of the Environment Court is:

District Court Building
43-49 Ballance Street
Wellington

Its postal address is: PO Box 5027
Lambton Quay
Wellington

Its telephone and fax numbers are: Tel: (04) 918 8300
Fax: (04) 918 8480

The **Christchurch** address of the Environment Court is:

83 Armagh Street (cnr Durham Street)
Christchurch

Its postal address is: PO Box 2069
Christchurch

Its telephone and fax numbers are: Tel: (03) 962 4170
Fax: (03) 962 4171

IN THE MATTER

of the Local Government (Auckland Transitional Provisions) Act (2010) ("**the Act**") and the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of an appeal under s156(3) of the Act

AND

IN THE MATTER

of Hearing Topics 22 (Natural Hazards and Flooding) and 65 (Definitions)

BETWEEN

MAN O'WAR FARM LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

NOTICE OF APPEAL AGAINST DECISIONS ON PROPOSED PLAN

Dated 31 October 2016

TO: The Registrar
Environment Court
AUCKLAND

1. The Appellant appeals against decisions made by Auckland Council ("**the Respondent**") on the proposed Auckland Unitary Plan ("**Unitary Plan**") whereby provisions which:
 - (a) were beyond the scope of submissions made; and
 - (b) unduly prejudice the Appellant,

were included in the Unitary Plan.

2. The Appellant is a submitter to the provisions of the Unitary Plan subject of this appeal (in the form those provisions were included in the Unitary Plan when notified). The Appellant also made further submissions regarding other submissions of relevance to the provisions subject of this appeal.
3. The Appellant is not a trade competitor for the purposes of s308D of RMA.
4. The Appellant received notice of the decisions on 19 August 2016.
5. The decisions appealed are those numbered 19 and 43 in the Respondent's decisions of 19 August 2016 regarding provisions of the Unitary Plan relating to:
 - (a) Natural Hazards and Flooding – Part E36 of the Unitary Plan (Hearing Topic 022);
 - (b) Definitions – Part J of the Unitary Plan (Hearing Topic 065).

("the Decisions")

Reasons for Appeal

6. The Decisions include provisions regarding the management of coastal hazards, as triggered by an amended definition of "*Land which may be subject to coastal hazards*" as recommended by the Independent Hearings Panel ("**Hearings Panel**") under s 144 of the Act, which are *ultra vires* for lack of certainty, because a reader of the Unitary Plan cannot determine whether any new building or structure can be established with or without resource consent approval, on the face of those provisions.
7. The aspect of the definition of "*Land which may be subject to coastal hazards*" that creates this uncertainty was included in the Unitary Plan based on a recommendation of the Hearings Panel that was beyond the scope of submissions on the Unitary Plan, but without the requirements of s144(6) of the Act being met.

8. In particular, the Hearings Panel recommended the inclusion of the following words within the definition:

“Any land which may be subject to erosion over at least a 100 year timeframe”

9. These words were not sought in any submissions to the definition of *“Land which may be subject to natural hazards”* within the Unitary Plan as notified, nor do they come fairly and reasonably within the ambit of submissions on any other relevant provisions of the Unitary Plan as notified (for example as set within Section C5.12 of the Unitary Plan as notified).
10. The Appellant is unduly prejudiced through the amended definition of *“Land which may be subject to coastal hazards”*, being the owner of land on Waiheke Island some 24.5 kilometres of which bounds the coastal marine area, and so potentially falls within the amended definition.
11. The specific provisions of the Unitary Plan of concern to the Appellant as triggered by the amended definition of *“Land which may be subject to coastal hazards”* include Rules A1 to A5 of Table E36.4.1 of the Unitary Plan and the relevant matters of discretion and assessment criteria in E36.8.1 and E36.8.2.
12. The Appellant has raised this issue (of scope) in Part C of its appeal to the High Court (*Man O’ War Farm Limited v Auckland Council – CIV-2016-404-002331*). If the High Court determines that the amended definition which triggers application of these provisions was beyond the scope of submissions made on the Unitary Plan, and should have been identified as such by the Hearings Panel, the Environment Court would have jurisdiction to address the matter under s156 (3) of the Act.

Relief sought

13. The Appellant seeks deletion of the revised definition of *“Land which may be subject to coastal hazards”* or at least that part of it which

refers to “Any land which may be subject to erosion over at least a 100 year timeframe.

14. In the alternative, the appellant seeks that the relevant provisions of the Unitary Plan identified in paragraph 11 above be amended to address the issue of *vires* and uncertainty pleaded in this appeal, including (without limitation) through amendments to the Unitary Plan maps to identify those areas that fall within the definition.

Service

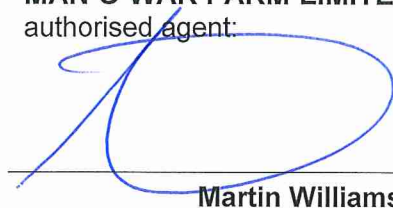
15. An electronic copy of this notice is being served today by email on Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

Attachments

16. I attach the following documents to this notice:
- (a) A copy of the relevant Decisions.
 - (b) A list of names and addresses of persons served/ to be served with a copy of this notice
 - (c) The Appellant’s submissions on coastal hazards (Section C5.12 of the Unitary Plan as notified)
 - (d) Definition of “Land which may be subject to coastal hazards” in Part J1 of the Unitary Plan (as recommended by the Hearings Panel).

Signature:

MAN O’WAR FARM LIMITED by their
authorised agent:



Martin Williams

Date:

31 October 2016

Address for service: Mr Martin Williams
Shakespeare Chambers
PO Box 754
Napier 4140

Telephone: (06) 835 0665

Facsimile: (06) 835 6269

Email: martin@shakespearechambers.co.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees and Procedure) Regulations 2003).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

ATTACHMENT A

Relevant Decisions



**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.

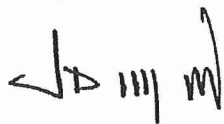
¹⁶ Under clause 17(1) of Schedule 1 to the RMA. See s152(5) of the LGATPA.

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.

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.

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

ATTACHMENT B

**List of persons to be served with a copy
of this notice of appeal**

Auckland Council

ATTACHMENT C

Relevant part of appellant's submissions

SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN

TO: Auckland Council

Name of submitters: Man O War Farm Limited and Clime Asset Management Limited

This is a submission on the proposed Auckland Unitary Plan notified on 30 September 2013 ("Unitary Plan").

The submitters could not gain an advantage in trade competition through this submission.

The submission relates to the entire contents of the proposed Auckland Unitary Plan (including appendices and maps) but in particular (and without limitation) those provisions referred to below.

Man O War Farm Limited and Clime Asset Management Limited submit as follows:

INTRODUCTION AND BACKGROUND

1. These submissions are made on behalf of Man O' War Farm Limited ("MOWF") and Clime Asset Management Limited.
2. MOWF and its associated companies own Man O' War Farm located on Waiheke and Ponui Islands. Clime Asset Management Limited represents the owners of residentially zoned land located at Stanley Point which is subject of the Special Character Residential North Shore overlay addressed in J.3.4 of the Unitary Plan.
3. Man O' War Farm was acquired over 30 years ago. There is a significant pastoral usage but also an increasingly diversified horticultural element on the 1785 hectare Waiheke block, with 68.5 hectares in grapes, and a smaller area of land in olives, developed over the past 20 years.
4. The ongoing viability of Man O' War Farm is dependent on the viticulture component. The substantial investment in that element of the overall operation will be continued into the future, with a new winery building (tasting room) recently established, and wine related tourism activities to be enhanced over time.
5. MOWF's activities during its ownership of Man O' War Farm exemplify the ethic of stewardship encoded within Section 7(aa) of RMA.

6. MOWF has been responsible for the positive transformation of Man O' War Farm through a range of voluntary initiatives including (for example) the planting of over 90,000 native trees and shrubs on the Waiheke Island property, as well as the establishment of the horticulture and viticulture activities. In the 12 years to 2010, in excess of \$2 million had been spent on amenity planting alone, with five permanent staff employed in carrying out that activity.
7. These activities have been neither driven nor compelled by RMA regulation.
8. The transformation achieved through the overall investments made has yielded a number of positive consequences that are considered to be directly relevant within the Unitary Plan context.
9. Environmentally, both ecological and landscape benefits have been realised in enhancing the range of significant ecological resources and landscapes falling within Man O' War Farm, including as identified on the 'legacy' District and Regional Plan and Policy Statement maps.
10. There is then the economic dimension, in securing a more diverse and productive use of the land resources than could be achieved through pastoral farming on its own. The end result of these initiatives not only sustains the stewardship approach, but there are now 20 permanent staff employed on Man O' War Farm with an annual salary contribution of over \$1.5 million made to the local economy.
11. An independent assessment by Dr Warren Hughes (economist) in 2008 estimated that farming operations on Man O' War Farm contribute to 139 jobs within the Auckland economy, and to 0.05% of Auckland's total economic output, which is extremely high for a single agricultural business unit. This assumes that there would be no (including planning) impediments upon the full capacity of the farming operations being achieved.
12. Dr Hughes' evaluation provides a concrete example as to application of B.8.1 Rural activities Objective 1 which is supported by MOWF, namely that:

Rural areas are a significant contributor to the wider economic productivity of Auckland.
13. MOWF also supports B.8.1 Rural activities Policy 1; namely to "*Encourage the economic development potential of rural areas by supporting a diversity of rural activities....*" Without the substantial investment in diversification of productive uses on Man O' War Farm, it would not have remained viable. Unless the ability to realise a return on that investment is sustained, the owners will be compelled to progress alternative land uses (including through subdivision, and residential development), as may not give effect to B.8.3 Rural subdivision.

14. MOWF's fundamental concern behind these submissions is to ensure that the proposed policy and regulatory framework adopted through the Unitary Plan is both reasonable and appropriate including for the particular nature of its properties, and does encourage and support a diversity of rural activity. B.8.1 Rural activities Objective 1 would be undermined through inappropriate, excessive or inefficient regulatory intervention against rural activity, creating conflict or tension within the Unitary Plan, including at Regional Policy Statement ("RPS") level.

HAURAKI GULF ISLANDS PROVISIONS

15. MOWF understands that the Auckland Unitary Plan will not, at least in the interim, replace the Auckland Council District Plan (Hauraki Gulf Islands Section) ("HGI Plan"), nor the regional planning instruments relative to the Hauraki Gulf Islands (A:1.1).
16. Further, MOWF understands that the 'district level' overlay rules (in Chapter J of the Unitary Plan) will not apply to the Hauraki Gulf Islands during the interim period.
17. By contrast, RPS provisions (Part 1, Chapter B) will apply from the outset, along with the regional plan provisions in Parts 2 and 3.
18. These submissions nevertheless address all provisions and overlays considered to be of current or potential future relevance.
19. This is because MOWF is concerned that any future plan change (to bring the HGI Plan within the ambit of the Unitary Plan) will not provide an opportunity to 'engage' with those provisions of the Unitary Plan that do not currently apply to the Islands. They would by then be effectively 'settled' as between the Council and other submitters, and determined by the Hearings Panel.

SUMMARY OF SUBMISSIONS

20. By way of summary, MOWF submits that:
- (a) The Outstanding Natural Landscape overlay (Landscapes 78 and 85) applied to its MOWF (Waiheke and Ponui Islands) property must be either deleted or substantially amended in line with the Environment Court decision¹ on the equivalent overlay applied under Change 8 to the operative Auckland Regional Policy Statement, and the relevant RPS objectives and policies must be amended to be (at least) consistent with those ultimately determined under Change 8 (including by agreement between the Council and all relevant stakeholders).

¹ Pending at time of preparation of this submission.

- (b) A number of amendments need to be made to the specific provisions (objectives, policies and rules) of the Unitary Plan to ensure that they give effect to the proposed Chapter B RPS objectives regarding the economic significance of rural activities, which encourage and seek to support a diverse range of activities in rural zones.
- (c) As they stand, various provisions of the Unitary Plan particularly regarding natural character, landscape, biodiversity, water quality management, natural hazards, and rural (including earthworks) activities, would not give effect to or achieve the RPS objectives in relation to the rural environment, along with the general objectives and policies set for the rural economy in D.6.1.1 Rural economy objectives and policies.
- (d) Proposed regulation regarding stock access to water bodies would preclude continued viable operation of MOWF's island farming operation, given the unique nature of the property and that activity (in an island context) as explained in these submissions.
- (e) The proposed regulatory framework for subdivision within rural coastal zones (as would likely apply to MOWF's property in the future) is strongly opposed; there being no basis on any "urban" containment" or landscape pretext to prohibit subdivision within all coastal and rural areas of the Hauraki Gulf Islands. MOWF seeks incorporation of at least the extent of provision for subdivision applied under the HGI Plan, including as to be determined by the Environment Court at the time this submission was prepared.
- (f) Before the Hauraki Gulf Islands are brought within the Unitary Plan through any future plan change, MOWF requests an opportunity to develop, on a collaborative basis with Council, a tailored planning framework for its Waiheke and Ponui Island properties, given the diverse range, extent and value of the natural and physical resources on the property, such that a specific rural precinct would better promote their sustainable management.
- (g) The zoning and overlay provisions applying to the Stanley Point land identified at J.3.4 (Special Character Residential North Shore) of the Unitary Plan are supported, as consistent with the equivalent provisions of the operative North Shore City District Plan, as determined by the Environment Court in the context of Plan Change 21.
- (h) MOWF submits that in promoting the Unitary Plan in its current form, and having regard to the issues raised in these submissions, the Council has failed to discharge its obligations under s32 of the RMA, including

as revised by the Resource Management Amendment Act 2013 (as applies to the Auckland Unitary Plan process).

HISTORY OF INVOLVEMENT IN RESOURCE MANAGEMENT PLANNING AND PROCESSES

21. Since 2006, MOWF has been involved in plan preparation processes at every level of the resource management hierarchy including:
 - New Zealand Coastal Policy Statement 2010 ("NZCPS")
 - The proposed National Policy Statement on Biodiversity
 - Change 8 to the operative Auckland Regional Policy Statement ("ARPS") (outstanding natural landscapes) ("**Change 8**")
 - The Auckland Plan
 - The HGI Plan
 - Now and most recently, the Unitary Plan
22. At the same time MOWF has been progressing two resource consent applications for dwellings in discrete bays located within its 1750 hectare Waiheke Island property; with the relevant applications first lodged in November 2007 (neither application is yet concluded).
23. MOWF has incurred substantial costs in these processes. This includes legal costs, expert planning advice, and retaining specialist archaeological, ecological, landscape and resource mapping expertise. MOWF is reluctant to divulge the figures, but they are in the order of many hundreds of thousands of dollars.
24. MOWF's involvement with the HGI Plan and Change 8 has comprised the dominant component of the overall costs of its participation in RMA processes to date.
25. To fully set the scene for MOWF's submissions on the Unitary Plan, these processes and the issues MOWF has had to address in each case are now explained in more detail. This is not simply to 'rake over old ground', but to demonstrate MOWF's significant concern at needing to "re-litigate" issues that have been successfully resolved, including to Council's satisfaction, and that of all other parties and stakeholders through the preceding processes.

- (a) Questions the practical ability to apply C.5.11 Policy 3(b), in terms of determining what the "assimilative capacity" of soil and vegetative cover is in any given case, such that the policy can be administered effectively; and
 - (b) Opposes C.5.11 Rural Production Discharges Policy 4 to the extent that it seeks to avoid the discharge of contaminants generated from rural production activities directly into water bodies and artificial water courses. Complete avoidance, particularly of discharges into artificial water courses (including farm drains) may be not be possible in all cases, and the policy should be qualified with "practicability" aspect.
181. C.5.11 Rural Production Discharges Policy 5(b) is unworkable to the extent that it would only provide for discharges to land (that could run overland into water) where there are *no* adverse effects on Mana Whenua values associated with fresh water. The absolute nature of the policy (*no* adverse effects) along with the broad compass of what would be caught within the policy (Mana Whenua values associated with fresh water resources) makes the policy problematic if not unrealistic.
182. Furthermore, if Policy 5(a) is adhered to, it is likely that Mana Whenua values would be provided for, and the policy item (b) could be deleted accordingly.

C.5.12 Natural Hazards

183. C.5.12 Natural Hazard Risk Management Policy 1 is opposed for classifying that any land within a horizontal distance of 20 metres from the top of any cliff with a slope angle of greater than 1 in 3 may be subject to natural hazards.
184. Much of the north eastern coastline of Man O'War Farm is within what the HGI Plan defines as the "coastal cliffs" Landform, and would likely be caught by this policy.
185. The Council cannot simply assume that any land within 20 metres of a cliff, across all soil types and circumstances within the region, warrants classification as land potentially subject to a natural hazard. This aspect of the policy should be deleted, particularly given the implications of C.5.12 Natural Hazard Risk Management Policy 2, whereby an engineering assessment would be required for any development on such land.
186. Equally, as it triggers application of restricted discretionary activity status under H.4.11, without sufficient section 32 justification for that activity status, on such a blanket and generic basis. As matters stand Policy 2 is opposed and should be deleted.

187. C.5.12 Natural Hazard Risk Management Policy 4 item (c) is opposed in referring to the need to assess the consequences of natural hazards *in relation to more or less vulnerable activities*. There are a number of references to "vulnerable" activities within this policy framework and the term should be defined. That aside, the words "more or less" are unhelpful and should be deleted from Policy 4 item (c).
188. Item (f) of this policy is opposed (requiring assessment of effects on landscape values) as the relevance of such an assessment in a coastal hazards context is too remote, and this item should be deleted.
189. C.5.12 Natural Hazard Risk Management Policy 10 should be deleted as it replicates C.5.12 Bushfire Risk Mitigation Policy 11.
190. C.5.12 Coastal Inundation and Sea Level Rise Policy 15 is opposed for requiring avoidance of development and subdivision in greenfield areas affected by coastal inundation, taking into account a projected sea level rise by 2 metres over 100 years.
191. This exceeds any established projection of sea level rise within the forthcoming 100 year period including by the IPCC (Fifth Report) which projects a range between 0.26 and 0.96 metres. The policy should be amended to refer to 1 metre rather than 2 metres.
192. Similarly, Policy 16 should refer to 1 metre rather than 2 metres.

C.5.14 Lakes, Rivers, Streams and Wetland Management

193. C.5.14 Lakes, Rivers, Streams and Wetland Management Objective 2 is opposed in seeking to restore, maintain and enhance all of Auckland's lakes, rivers, streams and wetlands. Whether any such water body should be restored, maintained or enhanced would depend on its current resource value state (or attribute state under NPSFM amendment and National Objective Framework Proposals).
194. The objective should also be reframed to be consistent with Objective A2 of the NPSFM (overall quality to be maintained or improved) rather than requiring restoration, maintenance and enhancement across the board, and for all water bodies.
195. Similarly, C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 1 is opposed to the extent that it seeks to avoid "any" adverse effects of activities on water bodies within (and including) Natural Stream Management Areas. Complete avoidance may not be possible without significantly undermining existing activity in the extensive areas mapped with those overlays under the

ATTACHMENT D

- Bombay clay loam;
- Patumahoe clay loam;
- Patumahoe sandy clay loam; and
- Whatitiri soils.

Land containing prime soil

Land identified as land use capability classes two and three (LUC2, LUC3) with slight to moderate physical limitations for arable use.

Factors contributing to this classification are:

- readily available water;
- favourable climate;
- favourable topography;
- good drainage; and
- versatile soils easily adapted to a wide range of agricultural uses.

Land disturbance

The disturbance of the surface of land by earthworks, ancillary farming earthworks, or ancillary forestry earthworks.

Land which may be subject to coastal hazards

Any land which may be subject to erosion over at least a 100 year time frame:

- (a) within a horizontal distance of 20m landward from the top of any coastal cliff with a slope angle steeper than 1 in 3 (18 degrees); or
- (b) at an elevation less than 7m above mean high water springs if the activity is within:
 - (i) Inner Harbours and Inner Hauraki Gulf: 40m of mean high water springs;
or
 - (ii) Open west, outer and Mid Hauraki Gulf: 50m of mean high water springs.

Any land identified as being subject to one per cent annual exceedance probability (AEP) coastal storm inundation (CSI).

BEFORE THE ENVIRONMENT COURT

ENV-2016-

IN THE MATTER

of the Local Government (Auckland Transitional Provisions) Act (2010) ("**the Act**") and the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of an appeal under s156(3) of the Act

AND

IN THE MATTER

of Hearing Topics 22 (Natural Hazards and Flooding) and 65 (Definitions)

BETWEEN

MAN O' WAR FARM LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

**MEMORANDUM OF COUNSEL FOR
MAN O' WAR FARM LIMITED**

Dated 31 October 2016

MAY IT PLEASE THE COURT

1. Filed herewith is a notice of appeal regarding certain provisions of the proposed Auckland Unitary Plan. The appeal is lodged with the Court (out of time) in the following circumstances.
2. Man O' War Farm Limited has filed an appeal in the High Court regarding (inter alia) the subject matter of this appeal (copy appended).
3. Part C of that appeal raises an issue as to whether a change to the definition of "*Land which may be subject to coastal hazards*"¹ which was recommended by the Independent Hearings Panel (and adopted by the respondent in its decisions) was beyond the scope of submissions made on the Unitary Plan.
4. Man O' War Farm's appeal requests that the High Court delete this aspect of the definition.
5. It may transpire that the High Court does not take that step but nevertheless declares that the Hearings Panel ought to have identified that change as being beyond scope, pursuant to s144(6) of the Local Government (Auckland Transitional Provisions) Act.
6. A declaration to that effect would be likely to engage s156(3) of the Act whereby Man O' War Farm would have a right of appeal to this Court regarding the provisions of the Unitary Plan at issue, being those that are triggered by application of the definition in question.² In the result, the High Court may determine that the Environment Court is the proper forum for the substantive issues regarding these provisions³ to be determined.
7. Out of caution therefore, and having become aware that other parties in a similar situation have lodged "provisional" appeals with the Environment Court (i.e. where issues of scope are being pursued with

¹ As set out at paragraph 8 of the notice of appeal filed herewith.

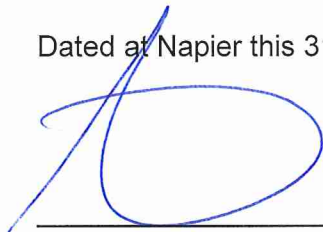
² As identified at paragraph 11 of the notice of appeal filed herewith.

³ As pleaded at paragraph 6 of the appeal filed herewith (and also raised in Part C of the High Court appeal) the issue of *vires* in particular.

the High Court), Man O' War Farm has prepared the enclosed notice of appeal for lodging with this Court.

8. Man O' War Farm would prefer to take that step now than face the prospect that the High Court may direct the correct forum is the Environment Court for resolution of this aspect of its appeal, and be forced to seek a waiver in the circumstances prevailing at that later point in time.
9. Conversely, should the High Court grant the principal relief requested in Part C of Man O' War Farm's appeal, it is possible that this appeal to the Environment Court could be withdrawn.
10. In these circumstances, Man O' War Farm requests that the Environment Court accept the lodgement of this appeal, with reference to the enclosed application for waiver.
11. Man O' War Farm respectfully suggests that in the event the waiver is granted by this Court, counsel liaise with Auckland Council and the Registrar to determine the most appropriate and efficient manner through which service of the appeal could be effected, such that potentially interested parties might in turn join under s274 of the RMA.

Dated at Napier this 31st day of October 2016



Martin Williams
Counsel for Man O' War Farm Limited