

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 001
Auckland-wide
July 2016**

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1. Hearing topic overview

1.1. Topic description

Topic 001 addresses the whole plan and General matters of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
	Whole Plan and General matters	Whole Plan and General matters

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. 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.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

Most of the submissions for this Topic had either already been addressed in previous hearing topics, or requested extensive but non-specific changes to the Plan, or had been miscoded and therefore not been listed for hearing with the relevant topic.

Other than corrections and minor changes identified by the Council to topics already heard, the Panel has not recommended any additional changes to the Plan as a result of the submissions coded to Topic 001. The reasons for this are addressed below.

1.3. Overview

As addressed above most of the submissions for this Topic had either already been addressed in previous hearing topics, requested extensive, but non-specific changes to the Plan or had been miscoded and therefore those submitters had not had the opportunity to present their submissions to the Panel.

As stated above, the only changes made as a result of the submissions coded to Topic 001 are corrections and minor changes identified by the Council to topics already heard.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 13 Reference documents.

2. Corrections to the Plan

2.1. Statement of issue

Making corrections to and minor amendments to the Plan provisions identified by the Council in reviewing the proposed plan provisions submitted to the Panel and as presented in its closing statements.

2.2. Panel recommendation and reasons

The Panel has considered the corrections and minor amendments requested to be made by the Council. These were set out in evidence in chief by Mr Bayliss (various issues), Ms Coombes (coastal matters) and Ms Yan (in relation to electoral signs). Mr Bayliss, Ms Coombes and Ms Yan are all expert planning witnesses for the Council.

Where appropriate those corrections and minor amendments have been made in the relevant sections of the Plan. These include the residential, subdivision, coastal and artworks, signs and temporary activities. The reasons for the changes are set out in the relevant topic reports including, for example, the Report to Auckland Council - Hearing topic 033 and 034 Coastal zones July 2016 for all coastal matters, and in relation to the electoral signs Report to Auckland Council – hearing topic 027 Artworks, signs and temporary activities July 2016.

3. The parts of the plan that comprise a regional coastal plan

3.1. Statement of issue

Whether the Plan should list those provisions of the Unitary Plan that comprise the regional coastal plan.

3.2. Panel recommendation and reasons

The Panel acknowledges that the Minister of Conservation, supported by the Council, sought a list of the provisions in the Plan that make up the regional coastal plan. It is the Minister of Conservation who approves the regional coastal plan.

The identification of those parts of the Plan that relate to the regional coastal plan, regional plan and district plan is achieved through the 'tagging' of the provisions. This includes the provisions in the individual chapters of the Plan, as well as all of the precincts. It is clear that when a provision is tagged [rcp] it is a regional coastal plan provision. Other tagging is [rp] and [dp] and, where provisions are both regional and district, they are tagged [rp/dp].

The Panel is mindful that in making recommendations to the Council in relation to the Plan, any list identifying the regional coastal plan provisions may change if the Council's recommendations to the Minister of Conservation are different to those made by the Panel. The Panel notes that the Council may decide to provide a list of the regional coastal plan provisions, either as part of the Plan or separately, once the Council has determined its response to the Panel's recommendation; but that is a matter for the Council to decide.

For those reasons the Panel does not think it appropriate to provide a list in the Panel's recommended Plan as requested.

4. Housing New Zealand's approach to the Plan

4.1. Statement of issue

Housing New Zealand Corporation's overall approach to the Plan.

4.2. Panel recommendation and reasons

Housing New Zealand Corporation's legal submissions summarised Housing New Zealand's overall approach to the Plan, including that the lower order plan provisions should give effect to the regional policy statement provisions for urban growth and intensification, and that overlays should not be used to impose unreasonable restrictions on development capacity.

These matters have been fully set out in the following Reports to Auckland Council July 2016: Overview of recommendations; Hearing topic 005 Regional policy statement issues; Hearing topic 013 Urban growth.

5. Alignment of transport and land use

5.1. Statement of issue

The extent to which there is alignment of transport and land use.

5.2. Panel recommendation and reasons

The New Zealand Council for Infrastructure Development and Institute of Professional Engineers - New Zealand presented to the Panel on the benefits of aligning land use and transportation. The material they presented included: the desirability of providing for increased intensification along transport routes; the need to provide for growth in a compact urban form, including limiting the extent of urban extensions into rural areas; and the benefits of focused increases in density and the negative transport effects of uncontrolled urban expansion.

Mr Easte sought the upgrading of suburban rail level crossings in areas to avoid inappropriate development of land. The Panel understands the concerns of Mr Easte. However the Panel agrees with Mr Bayliss who considered the identification of specific infrastructure projects within the Plan was inappropriate as the formation, decision-making and implementation of these projects is generally achieved outside of the Plan.

The Panel found the evidence on these issues informative and helpful. However no additional changes have been made to the plan provisions, as a direct result on this evidence. The issues of growth and the integration of land use and transport had been dealt with at the earlier regional policy statement and plan hearings. The evidence presented aligns with the recommendation made by the Panel in relation to those earlier hearings.

These matters raised by these submitters have been fully set out in the Panel's Reports to Auckland Council: Overview of recommendations; and Hearing topic 013 Urban growth as referenced above.

6. National policy statements

6.1. Statement of issue

Whether an additional policy or policies should be included in the regional policy statement in relation to the agreed position between Transpower and the Minister of Conservation on giving effect to the National Policy Statement on Electricity Transmission 2008 and the New Zealand Coastal Policy Statement 2010 in the Plan.

6.2. Panel recommendation and reasons

A joint memorandum lodged by Transpower New Zealand Limited and the Minister of Conservation dated 21 April 2016 was received by the Panel outlining their agreed position on giving effect to the National Policy Statement on Electricity Transmission 2008 and the New Zealand Coastal Policy Statement 2010 in the Plan. This memorandum was addressed at the 001 hearing.

The memorandum addressed the overlap between the policy statements where the New Zealand Coastal Policy Statement (Policies 13 and 15) requires that activities "avoid adverse effects" on areas of outstanding natural character, outstanding natural landscapes and outstanding natural features, while the National Policy Statement on Electricity Transmission (Policy 8) requires that planning and development of the transmission system should "seek to avoid adverse effects" on outstanding natural landscapes and areas of high natural character

The Minister and Transpower sought that the following policy be added into the regional policy statement B3.2 Significant infrastructure:

New development of the National Grid should seek to avoid adverse effects on characteristics and qualities of Outstanding Natural Character, High Natural Character and Outstanding Natural Landscape areas, recognising that in the coastal environment in some circumstances adverse effects on those areas must be avoided.

The Panel does not consider that the policy is necessary. The regional policy statement needs to be read as a whole. The Panel considers that the regional policy statement, as recommended by the Panel, already addresses the issues raised by the Minister and Transpower. The National Grid is specifically addressed in the policies of B3 Infrastructure, transport and energy, while other sections (e.g. B4 Natural Heritage and B8 Coastal environment) address issues relating to outstanding and high natural character and outstanding natural landscapes.

The Plan must give effect to all relevant policy statements and the National Policy Statement on Electricity Transmission and the New Zealand Coastal Policy Statement in the Plan need be read together. The Panel considers that the recommended Plan addresses these national policy statements.

7. Subdivision and density controls for 234 Matakana Valley Road

7.1. Statement of issue

Whether the subdivision and density controls for 234 Matakana Valley should be amended

7.2. Panel recommendation and reasons

Mr Hessell, expert planner filed evidence in chief and a hearing statement on behalf of Ms Shelbourne and Mr Smyth supporting their submission seeking more permissive subdivision and higher density development controls in relation to their property at 234 Matakana Valley Road.

Mr Mosley, expert planner for the Council, in his evidence in rebuttal considered and responded to Mr Hessell's evidence, including outlining the recent planning history of the area in which similar requests were rejected. Mr Mosley did not consider that any of the planning amendments options proposed by Mr Hessell for the property aligned with the existing density, rural character and amenity of the underlying Rural - Countryside Living Zone. Mr Mosley did not recommend any changes.

The Panel agrees with Mr Mosley. The reasons for this are set out in Mr Mosley's evidence but also the Panel's reasons addressed in a number of other hearing topic Reports to Auckland Council July 2016. These include: Hearing topic 056 and 057 Rural zones; Hearing topic 064 Subdivision – rural; and Changes to the Rural Urban Boundary, rezoning and precincts.

8. Zoning of land on Pukekohe Hill

8.1. Statement of issue

Whether land on Pukekohe Hill should be rezoned from Residential - Large Lot Zone to Residential - Single House Zone.

8.2. Panel recommendation and reasons

Mr Madsen, surveyor, represented a number of land owners on Pukekohe Hill who were seeking a rezoning from Residential - Large Lot Zone to Residential - Single House Zone.

Mr Bayliss, Council's expert planner, addressed this issue in his rebuttal evidence. Mr Bayliss referred to the zoning evidence of Mr Cairncross, also Council's expert planner, from Topic 081.

A number of submitters sought changes to zoning and precinct provisions for Pukekohe Hill, similar to those sought by Mr Madsen. The Council comprehensively addressed the planning, stormwater and landscape issues related to this area in Topic 081 and relied on the evidence to support the conclusion that no changes to the notified zoning are required.

The Panel's recommendation on the zoning of this land, and other land in Pukekohe is addressed in the Panel's report to Auckland Council – Changes to the Rural Urban Boundary, rezoning and precincts July 2016

9. Competitive design provisions.

9.1. Statement of issue

Whether competitive design provisions can be introduced to the Plan as a regulatory method.

9.2. Panel recommendation and reasons

Mr Hollenstein, an architect, presented to the Panel on several occasions, including at the hearing for Topic 013 Regional policy statement - urban growth, Topics 059-063 Residential zones and the hearing on this topic (001).

His submission and evidence sought a voluntary process for proposed developments to obtain a permitted activity status, in urban design terms, through a competitive design process. Mr Hollenstein set out that this approach would be an option to the traditional application process and would strengthen the Unitary Plan as it would offer applicants an alternative route to obtaining a permitted activity status.

It was Mr Hollenstein's contention that "excellence in design cannot be achieved via the plan rules alone. Experience has shown that over and over again. And that is where our "Competitive Design Provisions" come into play" (section 4 of Mr Hollenstein's Hearing Statement).

The Panel agrees that excellence in design cannot be achieved through the plan rules alone, and that design is an important element in a quality urban environment. However a competitive design process cannot be a regulatory method in terms of the Resource Management Act 1991. The Unitary Plan can, and has, set out what may be developed as of right (permitted) subject to certain bulk and location standards (rules). No discretion can be provided for within these rules; the rules must be clear and certain. On this basis a competitive design process would require a judgment to be made as to whether the proposed development complied or not.

If a proposed development is not a permitted activity, it can only proceed if a resource consent is obtained. Any resource consent will be assessed in terms of the matters over which the Plan has retained control or discretion. The Council is required to assess the proposal for which consent is sought. Again a competitive design process would not be able to be used to assess or determine the outcome of an application.

The Panel notes that the Urban Design Forum, set up by the Council, regularly considers development proposals from an urban design perspective. This is a non-statutory and voluntary process.

The Panel has set out its recommendation on how the Unitary Plan should address design and residential development in its Report to Auckland Council – Hearing topics 059-063 residential zones July 2016. In summary it is proposed that some development, subject to a

number of rules seeking to achieve a quality development, is permitted, while most other proposed development is a restricted discretionary activity with a clear focus on outcomes based on good design.

10. Structure of the Unitary Plan and how provisions are written.

10.1. Statement of issue

The extent to which the Plan needs to be restructured and rewritten.

10.2. Panel recommendation and reasons

Ms Cole presented to the Panel on a number of occasions and sought a range of outcomes and changes to the Plan as set out in her submission and evidence. Ms Cole sought a number of fundamental changes to the Plan's structure and how many of the provisions were drafted. In summary this included the clear identification and separation of the regional policy statement, regional plan provisions (including the regional coastal plan) and district plan provisions. She also sought that the Plan's provisions be clearly written, including that the objectives to be rewritten as objectives rather than statements.

The Panel has recommended a number of changes to the Unitary Plan. To understand all of the changes recommended requires all of the Panel's reports to be read, as well as the Plan itself. However the Panel's report, Overview of recommendations (as referenced above), sets out all the major policy shifts as well as recommended structural changes. These include that the regional policy statement is not tagged as regional plan (including coastal) and district plan; it is only the regional policy statement. The regional policy statement has been substantially redrafted to be clear and directive. The Plan provisions, including the precincts, have been clearly tagged so it is clear if the provisions are regional and/or district plan provisions. This is appropriate in a combined plan.

The Panel considers that many of the changes sought by Ms Cole and other submitters seeking greater plan clarity have been addressed through its recommendations.

11. Rejecting the entire Unitary Plan

11.1. Statement of issue

Whether the entire Unitary Plan should be rejected

11.2. Panel recommendation and reasons

A number of submitters sought that the entire Unitary Plan be rejected. In terms of the 001 hearing Mr Clasen filed evidence in chief and a summary statement in support of his submissions that the whole plan be rejected. The Panel notes that Mr Clasen appeared a number of times before the Panel to express his concerns about the Plan, the process of its development and the hearings process.

At 1.1 of his summary statement Mr Clasen stated:

Point 1: That I firmly and resolutely reject the complete PAUP - in its present form, for stated, detailed reasons, and also, because it is in part unnecessary, unjustified and unreasonable;

Point 2: That there is insufficient democratic or moral mandate for Auckland Council to proceed with the PAUP (that few Auckland residents are familiar with).

At section 1.4 of his Summary statement, Mr Clasen stated:

While it is not my expectation or sought remedy to ask the Independent Hearings Panel and Auckland Council, to simply reject or abandon the whole Plan, as had been suggested, I am deeply concerned and unhappy with Council's present position, certainly in those areas, where I already expressed particular concerns. Therefore I oppose the Plan in its notified and also now amended form, which reflects mostly the position taken by Council and a few large, influential submitters. It ignores many valid concerns of less vocal other submitters and further submitters. I consider the altered PAUP needs to be reconsidered and in many parts rewritten, to meet the expectations that I and I believe a fair number of other Aucklanders have.

The Panel has not recommended the rejection of the entire Plan, but has recommended an amended plan, having reviewed the submissions and heard the evidence tabled or presented to the Plan. The Panel's report, Overview of recommendations (as referenced above), sets out all of the major policy shifts as well as recommended structural changes. Other reports addressing each hearing topic set out the more detailed changes recommended.

12. Consequential changes

12.1.Changes to other parts of the plan

There are no consequential changes to other parts of the Plan as a result of the Panel's recommendations on this topic.

12.2.Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

13. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

13.1. General topic documents

Panel documents

[001 Submission Point Pathway Report - 11 Mar 2016](#)

[001 Parties and Issues Report - 11 Mar 2016](#)

Auckland Council closing statement

[001 Auckland Council - Closing statement](#)

13.2. Specific evidence

Auckland Council

[001 Auckland Council \(I Bayliss\) - Planning \(11 April 2016\)](#)

[001 Auckland Council \(I Bayliss\) - Planning - REBUTTAL - LATE \(9 May 2016\)](#)

[001 Auckland Council \(K Coombes\) - Coastal - Hearing evidence \(13 May 2016\)](#)

[001 Auckland Council \(K Coombes\) - Planning - Coastal Errors and Omissions \(10 April 2016\)](#)

[001 Auckland Council \(D Yan\) - Planning - Regulation of Election Signage \(4 May 2016\)](#)

[001 Auckland Council \(B Mosley\) - Planning - REBUTTAL - LATE \(9 May 2016\)](#)

[081f Ak Cncl - South - Precincts \(Pukekohe Hill\) \(C Cairncross\) - Planning \(26 January 2016\)](#)

Hartwig Clasen

[001 Hartwig Clasen \(23 April 2016\)](#)

[001 Hartwig Clasen - Hearing statement \(13 May 2016\)](#)

Housing New Zealand Corporation

[001 Housing New Zealand Corporation - Legal Submissions \(12 May 2016\)](#)

Minister of Conservation and Transpower New Zealand Limited

[Joint memorandum between Transpower and Min of Conservation 21 April 2016 \(21 July 2016\)](#)

New Zealand Council for Infrastructure Development

[001 NZ Council for Infrastructure Development \(H Glenn\) - Transport Solutions for a Growing City \(13 May 2016\)](#)

Penelope Shelbourne and Tim Smyth

[001 Penelope Shelbourne and Timothy Smyth \(L Hessel\) - Planning \(22 April 2016\)](#)

Peter Hollenstein Associates Limited

[001 Peter Hollenstein Associates Ltd \(4 April 2016\)](#)

Pukekohe Hill East Group

[001 Pukekohe Hill East Group \(D Madsen\) - Planning](#) (28 April 2016)

Valerie Cole

[001 Valerie Cole](#) (22 April 2016)