

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 003
Chapter A Introduction

July 2016

Report to Auckland Council – Hearing topic 003 Chapter A

Introduction

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1. Hearing topic overview

1.1. Topic description

Topic 003 addresses the plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
003 Chapter A Introduction	A Introduction	A Introduction

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

Chapter A has been substantially rewritten on the principle that the Plan should be focussed on what it actually does under the Resource Management Act 1991. That means limiting Chapter A to being an introduction for users of the Plan and not a wide-ranging and often discursive description of different matters, many of which are not directly relevant to the use of the Plan. The Panel recommends that Chapter A not include broadly descriptive material and instead is focussed on being an introduction to the use of the Plan for people who are unfamiliar with resource management planning.

Numerous submissions sought the deletion or amendment of statements in Chapter A based on corresponding submissions relating to other topics. The general approach to the purpose of Chapter A means that most if not all of the issues raised by these submissions do not require recommendations.

1.3. Overview

As notified, Chapter A was in four sections which have been amended generally as set out below.

- i. **Background** has been almost entirely deleted. It appears to repeat material which can mostly be found in the Auckland Plan. It is material which is not directly relevant to the functions of the Plan and the processes under the

Resource Management Act 1991. The subsection on operative district (legacy) plans has been kept but relocated within Chapter A.

- ii. **Statutory framework** has been entirely deleted. It appears to attempt to summarise the Resource Management Act 1991 and the principles of the Treaty of Waitangi/Te Tiriti o Waitangi in three pages. While this material is relevant to the use of a plan under the Resource Management Act 1991, it is too brief to be useful and is at risk of being overtaken by legislative amendments. Material of this sort would be better located outside the Plan, in printed or web-based materials that can be adapted and designed to meet particular audience requirements and be kept up to date.
- iii. **Strategic framework** has been almost entirely deleted. It appears to attempt to address the Auckland Plan, the Māori responsiveness framework and several high-level concepts (sustainable management, quality compact Auckland, responding to climate change and integrated management) in very brief descriptions. Like the statutory framework material, it is too brief and at risk of being overtaken by changes to the key concepts. It would also be better located outside the Plan for the same reasons. To the extent that the key concepts are the subject of objectives and policies in the Plan, then it is better that those Plan provisions be expressed clearly enough that they do not need any general explanation.
- iv. **Using the Unitary Plan** has been kept but substantially amended so that it functions more as an introduction for users who are unfamiliar with the purpose of resource management plans and the methods used in them. These amendments are based on a number of submissions that raised issues about how the Plan works and reflect the Panel's approach to sound resource management principles. The changes are addressed in more detail below.

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 7 Reference documents.

2. Background

2.1. Statement of issue

Whether or not the Unitary Plan should contain background material.

2.2. Panel recommendation and reasons

The Panel considers that the Plan is a substantial and detailed document which serves a number of important purposes under the Resource Management Act 1991. While the Panel agrees that background information about the Plan and about Auckland generally may be of interest to people, it does not consider it to be desirable to locate that information in the Plan itself, for several reasons.

First, the Plan is lengthy. Its sheer length can be daunting to users, especially if they are using it in hard copy. Reducing the physical size or the on-screen length of the Plan is generally desirable.

Second, the material duplicates the same or similar material which the Council already produces. In particular, the Auckland Plan is required to recognise and describe Auckland's role in New Zealand¹ and the Long-term Plan is required to describe the Council's activities, the community outcomes for the region and provide integrated decision-making and co-ordination of resources.²

Third, the inclusion of material of this kind in a Plan raises a question of whether it may be referred to in relation to an application for resource consent. While not truly in the form of objectives, policies, rules or other methods, its presence in the Plan can lead to it being relied on as though it were a 'plan provision'. This can create problems where such material has not been drafted with the same care as the actual plan provisions and is read as being inconsistent with it (whether more restrictive or more enabling).

Fourth, material of this kind can be readily produced, in hard copy or online, in a variety of ways that respond to different people's needs in terms of accessibility, language and level of detail. It is better to leave this material out of the Plan so that it does not require a plan change to amend it.

Instead of this sort of background material, the Panel recommends that Chapter A start with a summary of the purposes of the components of the Plan under the Resource Management Act 1991, and with the roles that the Plan plays.

The details about the currently operative (or 'legacy') plans that will be replaced by the Unitary Plan should be kept so that users can refer to a clear statement about which resource management plans apply in the region.

¹ See Section 79(4)(a), Local Government (Auckland Council) Act 2009

² See Section 93(6), Local Government Act 2002

3. Statutory framework

3.1. Statement of issue

Whether or not the Plan should contain statutory framework material.

3.2. Panel recommendation and reasons

The Panel recommends deletion of the statutory framework material from Chapter A. The section starts with section 5 of the Resource Management Act 1991, but then the nature of the framework peters out. The section also has a summary of the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, but that depends on case law which itself is complex. There is then a summary of the relationship of the Plan to other policy statements and plans and a diagram which is brief and unlikely to be helpful to a person who is unfamiliar with the planning and policy frameworks of both resource management and local government.

These summaries are too brief to cover the issues adequately. Readers who have some knowledge of these frameworks will disregard this section for that reason, but readers who have no knowledge of them are unlikely to be much better informed, and could be misled, by them.

To the extent that the Council considers that information of this kind would attract readers, it would be better to place this material outside the Plan and adapt its length, detail and complexity to suit likely readers or viewers.

4. Strategic framework

4.1. Statement of issue

Whether or not the Plan should contain strategic framework material.

4.2. Panel recommendation and reasons

The Panel recommends deletion of the strategic framework material from Chapter A. The section includes very brief material about the Auckland Plan, the Māori responsiveness framework and four high-level concepts (sustainable management, quality compact Auckland, responding to climate change and integrated management). Like the statutory framework material, this section is too brief to be of use to readers who are already familiar with the Council's strategic planning documents or to adequately explain to those who are unfamiliar with those documents what they say and do.

The brief discussion of high-level concepts raises again the third issue identified above in relation to the background information: is this material intended to supplement the objectives, policies and rules or otherwise be referred to when considering an application for resource consent? To the extent that the issues are significant resource management issues for Auckland, they are already addressed in the regional policy statement and in relevant sections of the Plan and are therefore unnecessary in this chapter.

A primary strategic plan which is missing from the section (and Figure 3) is the regional land transport plan³ which, together with the integrated transport programme, are meant to be consistent with the Auckland Plan. The Panel considers it essential that the strategic framework for resource management planning includes transport planning so that transport can be properly integrated with land use.

This omission serves to illustrate the kind of problems that come from putting brief summaries of complex arrangements into the Plan. As with the statutory framework, a better approach would be to place this material outside the Plan and adapt its length, detail and complexity to suit likely readers or viewers.

5. Using the Unitary Plan

5.1. Statement of issue

Whether or not the Plan should contain material about how to use it.

5.2. Panel recommendation and reasons

The Panel considers that an appropriate purpose for an introduction to a complex document is to set out information about how to use that document. On that basis, the Panel recommends keeping this section. Given the recommended deletion of the rest of Chapter A, this section will be its sole focus.

The Panel recommends that the section start with relevant statements of purpose of the Resource Management Act 1991 and of the component parts of the combined Plan. There follows the summary of the current operative or legacy plans which this Plan replaces, which has been relocated from the background section.

The structure of the Plan is set out but this does not include brief descriptions of the contents of each chapter. This avoids problems of miss-description and errors of omission.

This is followed by a description of the methods used to identify which provisions in the Plan are provisions of the regional policy statement, regional coastal plan, regional plan or district plan as required under section 87(8) of the Resource Management Act 1991. This information is important, especially in a combined Plan, as it specifies which statutory provisions apply to which provisions of the Plan.

This section then records that the regional coastal plan consists of all the Plan provisions that apply to activities or resources in the coastal marine area. During the hearing sessions, the Council and the representative of the Minister of Conservation (who together have responsibility for making the regional coastal plan operative) sought that a schedule of the provisions in the Plan which make up the regional coastal plan be appended. The Panel is sympathetic to that request, but in putting all of the Plan provisions together in an integrated combined plan, has come to the conclusion that such a schedule would be incomplete and

³ Made under the Land Transport Management Act 2003 and the Local Government (Auckland Council) Act 2009

therefore misleading. The Panel has recommended that the rules for activity tables clearly state which type of resource consent⁴ is required for each activity, so that a user of the Plan can understand which statutory provisions may apply. The Panel notes that the operative Regional Plan: Coastal, which applies to activities in the coastal environment and therefore includes controls on land uses above the line of mean high water springs, adopted a similar approach and was approved by the Auckland Regional Council and the Minister of Conservation at the time on that basis.

There is a section that sets out the types of Plan provisions, noting the differences between general rules, overlays, Auckland-wide provisions, zones, precincts and standards. Descriptions are included here to assist readers in understanding the basis on which these types of provisions are different. A number of submissions on this topic sought to clarify the interrelationship between these Plan provisions and, especially, which provisions took precedence over others. This issue has been addressed and is the subject of specific recommendations in relation to Topic 004 Chapter G – General rules (now Chapter C).

The section in the notified version of the Plan relating to area-based planning tools has been deleted as structure plans are addressed in the regional policy statement and appendix 1, framework plans are recommended to be deleted in their entirety, concept plans are limited to certain precincts rather than being a Plan-wide method and integrated Māori development plans are really a type of resource consent.

The section on the legal effect of proposed Plan provisions is recommended to be deleted as it will no longer have any effect once this Plan is made operative.

The section concludes with a description of the different types of activity status or classification as set out in the Resource Management Act 1991.⁵ The Panel considers that this information is likely to be useful for users of the Plan, both by setting out a summary of the consenting requirements for each class or status and by indicating generally the basis on which each class has been applied to different activities.

6. Consequential changes

6.1. Changes to other parts of the plan

The following consequential changes to other parts of the Plan are as a result of the Panel's recommendations on this topic:

- i. in all topics, the addition of a description of the type of resource consent required at the beginning of each activity table is a consequential change resulting from the Panel's recommendations about the tagging of these provisions.

⁴ In terms of section 87, Resource Management Act 1991

⁵ See section 87A, Resource Management Act 1991

6.2. Changes to provisions in this topic

The following changes to provisions in this topic are as a result of the Panel's recommendations on other hearing topics:

- i. in Topic 004, the deletion of provisions for framework plans from Chapter G – General rules (now Chapter C) and the consequential deletion of related provisions in numerous precincts is a substantial reason for the deletion of the subsection on place-based planning provisions in this topic.

7. 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.)

7.1. General topic documents

Panel documents

[Submission Point Pathway Report- 23 January 2015](#)

[Parties and Issues Report - 23 January 2015](#)

[003- Mediation Joint Statement \(4 February 2015\)](#)

[003- Chapter A Introduction- Mediation Track Changes Record \(4 February 2015\)](#)

Auckland Council marked up version

[Auckland Council marked-up version - Topic003- Chapter A Introduction \(30 Jan 2015\)](#)

Auckland Council closing statement

[Auckland Council Closing Statement and Points of Clarification \(20 March 2015\)](#)

7.2. Specific evidence

See the hearings page on the aupihp website for evidence submitted on Topic 003.