

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 042
Infrastructure
July 2016

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1. Hearing topic overview

1.1. Topic description

Topic 042 Infrastructure addresses the district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings panel reference
042 Infrastructure	Chapter C Auckland wide objectives and policies C1.1 Infrastructure C1.3 Use of designations within the road corridor	E26 Infrastructure Recommended for deletion
	Chapter E Overlay objectives and policies E1.3 City centre port noise E1.4 Electricity transmission corridor	D25 City Centre Port Noise Overlay D26 National Grid Corridor Overlay
	Chapter H Auckland wide rules H1.1 Network utilities and energy H4.2 Earthworks* H4.3 Vegetation management*	E26 Infrastructure
	Chapter J Overlay rules J1.3 City centre port noise J1.4 Electricity transmission corridor J2 Historic Heritage* J3 Special Character* J5.2 Sites and Places of Value to Mana Whenua* J6.1 Outstanding Natural Features (ONF)* J6.2 Outstanding Natural Landscapes (ONL) and Outstanding and High Natural Character (ONC and HNC)*	D25 City Centre Port Noise Overlay D26 National Grid Corridor Overlay E26 Infrastructure

	J6.3 Volcanic Viewshafts and Height-sensitive Areas* J6.4 Notable Trees*	
		E29 Emergency management area - hazardous facilities and infrastructure

*The activity tables, standards, matters and assessment criteria for network utilities and electricity generation have been moved from these overlays and Auckland-wide provisions into the combined infrastructure chapter.

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

The Panel is recommending the following key changes to the provisions covered by Topic 042:

- i. the grouping into one chapter of all of the infrastructure provisions used by network utility operators on a day to day basis;
- ii. amendments to the definition of infrastructure in the Plan so that it is essentially the same as the definition in the Resource Management Act 1991;
- iii. there be no distinction made of infrastructure based on ‘significance’;
- iv. the deletion of the objective and policies relating to the use of designations in roads;
- v. the National Grid Corridor Overlay be increased to the spatial extent sought by Transpower New Zealand Limited and the policy framework for the National Grid Corridor, the rules that apply to activities in the corridor and associated definitions be amended to give effect to the extended corridor;
- vi. a more stringent rule regime be adopted to ensure risks associated with sensitive activities locating within the National Grid Corridor are not increased and to manage new activities to minimise issues of reverse sensitivity;

- vii. the infrastructure Auckland-wide objectives and policies should not be included as regional coastal plan provisions;
- viii. the no-complaints covenant proposed by Ports of Auckland Limited should be included in the City Centre Port Noise Overlay;
- ix. recharging stations for electric vehicles should be provided for as permitted activities in roads and all zones subject to the conditions proposed by the Auckland Network Utility Operators Group;
- x. the adoption of the noise standards for substations proposed by the Auckland Utility Operators Group and the amendment of the provisions relating to external design and appearance of substations to limit the extent of Council's control over such matters;
- xi. provide for permitted activity status for amateur radio configurations in all zones subject to compliance with standards;
- xii. various amendments to the road network activity provisions to improve the overall usability of the Plan and address problems with interpretation and implementation of provisions;
- xiii. amendments to various provisions to ensure that activities with similar effects are treated in a similar manner and subject to similar standards and to ensure alignment of matters of control and discretion and assessment criteria.
- xiv. the Emergency Management Area – Hazardous facilities and infrastructure should be included in the Unitary Plan as Auckland-wide provisions and the inner and outer Emergency Management Area should be applied as generally proposed by Wiri Oil Services Limited.

1.3. Overview

The body of this report sets out the issues raised through the submission and hearing process, the Panel's response to these issues and the reasons for the response.

Both in this topic and in a number of other topics, the terminology associated with infrastructure is recommended to be changed. The definition of infrastructure in the Plan should be amended to be essentially the same as the definition in the Resource Management Act 1991, with the inclusion of bulk storage facilities for gas and petroleum, water supply storage and treatment facilities, municipal landfills, defence facilities and air quality and meteorological facilities. The term 'infrastructure' is used to describe works that enable other activities to occur rather than activities which may be undertaken for their own sake. On that basis, social facilities should not be called 'infrastructure'.

As well, no distinction is made of infrastructure based on 'significance'. Typically, and especially for inter-connected networks, the whole system is essential for its overall function. After watching many infrastructure providers, and other submitters, strive to demonstrate that their 'significance' is greater than others, the Panel found no resource management reason to differentiate infrastructure on such a basis.

The key parties involved with this topic have worked extensively to reach agreement on the structure of the infrastructure rules and the drafting of the provisions. The Panel greatly appreciates the hard work and commitment made by the parties.

Many of the matters that remain outstanding relate to matters of detail such as the status of a particular activity or the extent to which an activity should be controlled. For the main part these are matters that Auckland Council and the various network utility operators, in particular the Auckland Utility Operators Group, have not been able to reach agreement over. Because of the level of detail involved with many of these outstanding matters this report has taken more of an overview rather than addressing the individual changes sought by parties.

In many cases the Panel has preferred the evidence of the Auckland Utility Operators Group. This is because the network utility operators have an in-depth knowledge of their networks, operational requirements and associated effects. These works and activities provide essential services to the public and they need to be delivered as efficiently as possible. It is the Panel's view that many of the changes sought by the Auckland Utility Operators Group will give better effect to the objectives and policies in the Regional Policy Statement and that activities should only be regulated where effects are of a scale and significance that they need to be managed.

From the outset, the Auckland Utility Operators Group had requested that all provisions used by network utility operators on a day-to-day basis should be grouped together in one chapter. Towards the end of 2015 Council agreed to this approach and has worked with the Auckland Utility Operators Group, Transpower New Zealand Limited, the New Zealand Transport Agency and Housing New Zealand on the preparation of a combined chapter.

This chapter now also contains the Auckland-wide rules that generally apply to network utilities and electricity generation facilities (Chapter H Auckland wide rules and 1.1 Network utilities and Energy in the notified version of the proposed Auckland Unitary Plan), being the rules that apply to network utilities relating to trees, vegetation management and earthworks both generally and as those network utility activities may affect natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character. The full range of matters is set out in Table E26.1.1.1.

The Panel supports the restructuring of the provisions into a combined chapter for the reasons set out in the Auckland Utility Operators Group Memorandum of Counsel (Combined Chapter H1.1) dated November 2015.

The Panel notes that its recommendations and reasons relating to the treatment of infrastructure in the provisions that have been imported into the combined chapter (trees, vegetation management, and earthworks provisions and the scheduled resources listed above) are contained in the reports on those topics and are not addressed in detail in this report for Topic 042.

This topic also includes the City Centre Port Noise Overlay and the National Grid Corridor Overlay.

The provisions of the City Centre Port Noise Overlay have largely been agreed between the Council and Ports of Auckland Limited. The only outstanding matter is the inclusion of a no-complaints covenant as proposed by Ports of Auckland Limited. The Council has raised potential natural justice and fairness issues regarding these provisions. As discussed in the hearing and set out in its opening legal submissions (Auckland Council Legal submissions (E1.3, J1.3, C1.3, C1.1, H1.1 and Activity Table 1.2)) dated 24 June 2015, the Council will abide by the decision of the Panel as to whether the no-complaints covenant provisions as

sought by Ports of Auckland Limited are included as part of the overlay. This matter is more fully addressed in section 5 below.

There is significant disagreement between the Council and Transpower New Zealand Limited over the extent of the Electricity Transmission Corridor Overlay and its provisions. This matter is addressed in section 3 below. Transpower New Zealand Ltd has sought that this corridor be renamed the 'National Grid Corridor' Overlay as the provisions apply to National Grid assets only. The Panel agrees with the name change and the overlay will be referred to in this report as the National Grid Corridor.

The Panel heard evidence in this topic from the New Zealand Refining Company Limited (Refining NZ) regarding a request for an overlay in respect of the Refinery to Auckland Pipeline. Ongoing discussions have continued between Refining NZ and the Council regarding planning mechanisms to manage the risk of adverse effects on activities located in proximity to the pipeline. Refining NZ, Wiri Oil Services Limited and Auckland Council have agreed in principle on a suite of proposed provisions (Emergency Management Area – Hazardous Facilities and Infrastructure) under hearing Topic 081. These new provisions are Auckland-wide provisions and not precinct provisions and because the matter was first raised in this topic, the issues associated with these new provisions have been considered as part of Topic 042. A number of parties raised issues with the extent of the proposed Emergency Management Area and these matters are addressed in section 10 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 section 2 to 9) 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 12 Reference documents.

2. Use of designations in roads

2.1. Statement of issue

The appropriateness of including a policy framework that seeks to ensure that designations in the road corridor are used only where necessary.

The Council has proposed an objective and policies (Chapter C, Auckland Wide Objectives and Policies, 1.3 Use of Designations in the notified version of the proposed Auckland Unitary Plan) to manage the use of designations in road corridors. The purpose of the objective and policies is to set up a clear policy framework on the use of designations in the road corridor. The provisions seek to ensure that designations in the road corridor are used only where necessary and to manage conflict by ensuring that all requiring authorities carefully consider the potential effect on other users of the road, before seeking to designate. The Council considers that applying these provisions may result in a decision not to seek to designate, or if not, to make sure any conflicts are addressed.

These provisions were developed as a result of discussion between the Auckland Utility Operators Group and Auckland Transport, following the lodgement of a Notice of Requirement in June 2012 by Auckland Transport to designate all existing formed roads in Auckland. As far as the Panel is aware, this Notice of Requirement has not proceeded further.

Transpower New Zealand Limited opposed the inclusion of these provisions in the proposed Auckland Unitary Plan. The key reasons for their opposition include that the provisions seek to alter the normal statutory designation process, they are highly unusual provisions that should have been subject to a section 32 analysis, and that designations play an important role for Transpower New Zealand Limited in providing route security, operational efficiency and protection from damage.

Transpower noted that it already has existing arrangements in place with Auckland Transport to manage section 176 Resource Management Act approvals and road disruption for projects and these arrangements are clear and satisfactorily manage the interests of Transpower New Zealand Limited and the road controlling authority.

The evidence of Mr Karma on behalf of Auckland Transport explained that the Utilities Access Act 2010 required the preparation of a national code of practice for utility operators' access to transport corridors. This Code sets out the processes and procedures for network utility operators to exercise their right of access to the road corridor for the placement, maintenance, improvement and removal of utility structures, and for corridor managers to exercise their right to apply reasonable conditions on working in the corridor. Auckland Transport has a Corridor Access Request process for implementing the Code.

2.2. Panel recommendation and reasons

The Panel has similar concerns to those raised by Transpower New Zealand Limited regarding the inclusion in the Plan of objectives and policies to manage the use of designations in road corridors.

As a threshold matter, it is not apparent what purpose would be served by designating land as a road when it is already a road in terms of the Local Government Act 1974 and subject to the special regime under that Act with its powers, controls and offence provisions, as well

as being subject to the rights conferred on certain network utility operators by the Gas Act 1992, the Electricity Act 1992 and the Telecommunications Act 2001.

Of particular concern to the Panel are the risks of complicating the designation process for requiring authorities, other than Auckland Transport, and establishing higher thresholds than those required by section 171 of the Resource Management Act, other legislation that applies to utilities and practice established through case law. The Panel agrees with Transpower New Zealand Limited that the ability to designate within the road corridor must be retained, unencumbered by process constraints and the complexities of the proposed provisions.

The Panel was not convinced by the submissions of Council that requiring approvals under section 176 of the Resource Management Act 1991, in addition to the corridor access request process, would not have the potential to complicate and slow down the process for undertaking activities within the road corridor. The Panel therefore does not accept that the inclusion of provisions in the Plan to discourage designations in the road corridor would be appropriate.

It is for these reasons that the Panel is recommending the deletion of the objective and policies in Chapter C, Auckland Wide Objectives and Policies, 1.3 Use of Designations.

3. National Grid Corridor Overlay

3.1. Statement of issue

The spatial extent of the National Grid Corridor Overlay and the scope of controls.

As set out in the closing remarks of the Council, there was significant disagreement between Transpower New Zealand Limited and other parties (including Ports of Auckland Limited, CDL Land New Zealand Limited, Jackson Electrical Industries Limited, Selwyn Street Properties Limited, Onehunga Enhancement Society, Manukau Harbour Restoration Society, Housing New Zealand Corporation, the various business associations), and in particular the Council, regarding the National Grid Corridor Overlay. The matters of disagreement are:

- i. the appropriate corridor width to control subdivision and development within the vicinity of national grid transmission lines and substations;
- ii. the scope of the objectives and policies that apply to the corridor;
- iii. the notification rule for activities within the corridor overlay; and
- iv. the activities controlled within the corridor.

3.1.1. National Grid Corridor Overlay width

The Council considered that the appropriate corridor width should be 24 metres (12 metres either side of the transmission lines centre line). This was the width of the corridor in the notified version of the Plan.

The Council did not support the two additional corridors proposed by Transpower New Zealand Limited in relation to subdivision under transmission lines (64 metres or 74 metres

in width) or substations (12 metres from site boundary of national grid substations and 250-500 metres along specific roads adjacent to ten of Transpower's substations).

Council's planning witness Ms Dimery set out in her rebuttal evidence that there was nothing she had read in Transpower's evidence that had persuaded her that an additional corridor beyond the 24 metre corridor for transmission lines was required or that the 250-500 metre corridor in relation to roads adjacent to substations and the 12 metre corridor in relation to substation boundaries was necessary. She remained unclear as to what the purpose of the controlling subdivision is in the area beyond 12 metres of the centreline of transmission lines.

A number of the other parties who opposed the National Grid Corridor Overlay had similar views and concerns to those expressed by Council.

The evidence of Mr Noble explained why Transpower New Zealand Limited has sought an increased corridor width in relation to transmission lines. The distance of 32 metres from the centrelines of 110kV lines and 37 metres from the centrelines of 220kV lines relates to the potential for line swing and has been calculated conservatively for Auckland conditions. Mr Noble considered that the wider corridor is required to manage future subdivision to ensure structures and activities within the Corridor are within safe electrical distances in high winds.

The evidence of Mr Renton explained why Transpower New Zealand Limited is seeking a corridor in roads adjacent to substations and a corridor around substations. Potential underground cable routes into critical substations need to be preserved to ensure that additional capacity can be provided to these substations in the future. Mr Renton was of the view that if underground cable route options are foreclosed, then Transpower and local distribution lines companies may not be able to meet Auckland's future energy needs.

Mr Renton considered that a 12 metre corridor is appropriate around the boundaries of Auckland's substations in order to effectively manage the reverse sensitivity effects of the substation and the small earth potential rise risk. Mr Renton explained that the likelihood of an earth potential rise event occurring and injuring a person near a substation is extremely low, however the potential consequences are high. He considered that in order to mitigate the risks of earth potential rise events it would be prudent to manage subdivision and new sensitive land use around substations.

Transpower's planning witness Ms Allan considered the extent of National Grid Corridor Overlay to be appropriate in terms of planning and urban design considerations and that within the corridor, subdivision and new sensitive land use can be carefully designed and planned. Ms Allan noted however, that reverse sensitivity effects may be experienced over much greater distances.

A number of parties sought the removal of the National Grid Corridor Overlay either in part or in full from the proposed Auckland Unitary Plan and some proposed New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) should be relied upon rather than the corridor.

Mr Noble provided evidence on the limitations of NZECP 34:2001. He explained that the minimum safety requirements in NZECP34:2001 neither seek to protect the integrity of the National Grid from the effects of third parties, nor prevent development (including sensitive and intensive development) from occurring directly underneath transmission lines. NZECP

34:2001 does not ensure the operation, maintenance, upgrade and development of the National Grid is not compromised and it does not adequately account for earth potential rise hazard contours.

3.1.2. National Grid Corridor Overlay provisions

The differences over the drafting of the National Grid Corridor Overlay policies and the status of activities, generally relate to the differing views of the parties over the extent of the corridor.

Transpower New Zealand Limited sought non-complying activity status activity for new or extended sensitive activities including external building extensions for these activities. This was not supported by a number of parties and in particular Housing New Zealand Corporation. Transpower also sought greater restrictions for both sensitive and non-sensitive activities within the National Grid Yard in urban areas which have not yet developed and in rural areas. This was not supported by a number of parties including the Council.

3.2. Panel recommendation and reasons

To avoid increasing risks to public health and safety and to enable the operation, maintenance and upgrading of existing national grid assets the Panel recommends that the National Grid Corridor Overlay be increased to the extent sought by Transpower New Zealand Limited. This includes a corridor in roads adjacent to substations, a corridor around substations and the extended corridor around transmission lines and grid structures. As a consequence of this recommendation, the policy framework for the National Grid Corridor, the rules that apply to activities in the corridor and associated definitions need to be amended to support the extended corridor.

The Panel also supports a more stringent rule regime to ensure risks associated with sensitive activities locating within the National Grid Corridor are not increased and to manage new activities to minimise issues of reverse sensitivity especially in areas that will be urbanised in the future.

Mr Noble and Ms Fincham provided a number of examples that clearly demonstrated the problems Transpower New Zealand Limited faces in obtaining access and adequate working space to undertake repairs and maintenance where development has occurred under and around the national grid. In some cases the under-build has severely restricted and compromised Transpower's ability to undertake maintenance or project work. The need to ensure that these issues do not arise in the future, together with issues associated with the health and safety of people and property and with reverse sensitivity, are key reasons for the Panel's recommendations on the extent of the National Grid Corridor Overlay.

In terms of the wider corridor and the restrictions placed on activities, the Panel does not share the same level of concern as those parties opposed to the wider corridor. The corridor rules for activities outside the National Grid Yard do not restrict land use. The rules are designed to manage subdivision. This includes ensuring electricity transmission lines and conductor swing are taken into account at the time of subdivision, orientating building platforms to minimise reverse sensitivity effects and considering options for siting roads, services and open space within the corridor.

The Panel agrees with Ms Allan's assessment that the status of subdivision within the National Grid Corridor Overlay is generally the same as the status of the type of subdivision within the relevant zone. In some (rare) cases, it may be non-complying rather than

restricted discretionary. The main implications are that either an additional matter (effects on the national grid) has been added for consideration of restricted discretionary subdivisions, or that additional relevant policies will apply to non-complying activities.

The Panel is also mindful of the need to have some level of consistency across the Unitary Plan with similar overlays that impose constraints on activities to enable the operation of key infrastructure and to address issues of health and safety of people and property and reverse sensitivity. For example the Aircraft Noise Overlay as recommended by the Panel includes similar approaches to managing sensitive activities and subdivision, particularly in the moderate aircraft noise areas. However, a more restrictive activity status (including prohibitive activities) has been adopted in the high aircraft noise areas.

The Panel considers that its recommendations in respect of the National Grid Corridor Overlay provisions give effect to the National Policy Statement on Electricity Transmission and the regional policy statement and provide for safe and efficient electricity transmission for the well-being of people and communities.

4. Inclusion as regional coastal plan provisions

4.1. Statement of issue

Whether the Infrastructure Auckland wide objectives and policies should also be regional coastal plan provisions

Ports of Auckland Limited was of the view that infrastructure objectives and policies should also be identified as regional coastal plan provisions. The Council did not agree with Ports of Auckland Limited's position.

The Council considered that the regional coastal plan provisions have been specifically designed to provide for infrastructure in the coastal marine area in recognition of the policy direction of the New Zealand Coastal Policy Statement 2010 and the regional policy statement.

4.2. Panel recommendation and reasons

The Panel agrees with the Council's position and considers that the regional coastal plan's infrastructure objectives and policies appropriately provide for these activities. Making the Auckland-wide infrastructure objectives and policies part of the regional coastal plan would add an unnecessary level of complexity to the Unitary Plan, create potential conflict and plan implementation issues and potentially result in the New Zealand Coastal Policy Statement not being given effect to.

The regional coastal plan has been amended to remove any cross references to the Auckland-wide infrastructure objectives and policies.

5. No-complaints covenant

5.1. Statement of issue

Appropriateness of including a no-complaints covenant as proposed by Ports of Auckland Limited in the City Centre Port Noise Overlay.

The provisions of the City Centre Port Noise Overlay have largely been agreed between the Council and Ports of Auckland Limited. The only outstanding matter is the inclusion of a no-complaints covenant as proposed by Ports of Auckland. The Council had potential natural justice and fairness issues regarding these provisions. It did not however, oppose the inclusion of the provisions and stated it would abide by the decision of the Panel as to whether the no-complaints covenant provisions as sought by Ports of Auckland are included as part of the overlay.

5.2. Panel recommendation and reasons

The Panel heard from both Ports of Auckland Limited and the Council that no-complaints covenants are an accepted planning tool to address reverse sensitivity effects. Ms Singh, Council's planning witness, confirmed that such covenants are a recognised planning tool and noted that no-complaints covenants are used in the Britomart Precinct (in both the operative plan and the proposed Auckland Unitary Plan). Mr Arbuthnot, the planning witness for Ports of Auckland Limited, agreed with Ms Singh in that regard.

The Panel agrees with Ports of Auckland Limited and Council that no-complaints covenants are an accepted planning tool and does not share the Council's concerns regarding potential natural justice and fairness issues. Ms Singh when questioned by the Panel on this matter stated that she did not see any issues in respect of natural justice and fairness.

The Panel notes that the covenant is limited to not complaining about noise affects generated by the lawful operation of the port at the time the covenant is entered into. However, if the levels of noise that could be lawfully generated by the port were to be reconsidered in the future under either a resource consent or a plan change process, then the parties who had signed a no complaints covenant would not be prevented by the covenant from making submissions and participating in those processes.

The Panel agrees with the inclusion of a no-complaints covenant as proposed by Ports of Auckland Limited in the City Centre Port Noise Overlay.

6. Status of activities and extent of controls

6.1. Statement of issue

6.1.1. Recharging stations for electric vehicles

Activity status for recharging stations for electric vehicles (EV chargers).

The Council's view was that the appropriate activity status for EV chargers undertaken by third parties in roads is restricted discretionary. This is because of the potential adverse road network effects that could arise. However, Council proposed that EV chargers for non-commercial use be provided for as permitted activities in residential, rural, Māori Purpose, and Future Urban zones.

The Auckland Utility Operators Group considered that EV chargers should be a permitted activity in both roads and zones on the basis that they generate little, if any, adverse environmental effects and in relation to roads can be managed by Auckland Transport's Corridor Access Request process.

6.2. Panel recommendation and reasons

6.2.1. Recharging stations for electric vehicles

The Panel considers that the installation of EV chargers should be enabled whether they are located in roads or zones. As set out in a number of other topics, the Panel is concerned about the effects of activities and not who owns or operates the activity. The standards proposed by Auckland Utility Operators Group will limit the scale of the EV chargers and the Corridor Access Request process provides the ability for reasonable conditions to be imposed by the road controlling authority to manage works in the road.

6.3. Statement of issue

6.3.1. Substation noise, design and appearance

Appropriate noise limits for substations and the extent to which the design of substations should be controlled.

In relation to substation noise, there remained a difference of opinion between Auckland Utility Operators Group's acoustic expert Mr Robinson and Council's acoustic expert Mr Styles in respect of both zone substations and distribution substations.

Mr Styles considered that the noise limits applying to substations should be those that apply in the zone in which the substation is located. If the substation is in the road reserve, then the noise limit should be the same as that for the zone in which the receiving property is located.

In terms of zone substations Mr Robinson considered the controls proposed by Mr Styles are unlikely to provide any noticeable acoustic benefit given the background noise in these zones. He considered that the acoustic environment in residential areas is changing and it is not reasonable to consider residential properties as passive noise receivers but as noise sources that contribute to the overall ambient noise level.

With regard to distribution substations, Mr Robinson explained that there are some 30,000 located on roads around Auckland and that he was not aware of any significant complaints regarding noise emission. All distribution substations are designed to comply with an Australian/New Zealand Standard (AS/NZS 60076) which includes a sound power limit for the equipment. He considered this to represent compliance with the best practicable option to ensure that the emission of noise does not exceed a reasonable level as required by section 16 of the Resource Management Act 1991. Mr Robinson noted however, that distribution substations that meet this standard are unlikely to comply with the Council's recommended noise limit.

Mr Robinson has recommended a noise limit that is similar to the national environmental standard for telecommunications facilities located on roads.

The extent to which the external design and appearance of substations should be subject to scrutiny by the Council is a matter that was unresolved between the Council and Auckland Utility Operators Group.

Auckland Utility Operators Group is concerned that the proposed matter of control "external building appearance and design" provides the Council the opportunity to seek changes to the bulk and form of the substation which could be incompatible with its functional

requirements. The Auckland Utility Operators Group has sought changes to the matters of control and discretion and assessment criteria to limit Council's ability to control the appearance and design of substations. Council's urban design witness Ms Weeber opposed any limit on controls as she considered such limits will not deliver the design and amenity outcomes required to successfully integrate substations into residential, town centre and mixed use zones.

6.4. Panel recommendation and reasons

6.4.1. Substation noise, design and appearance

The Panel is not convinced that the noise effects generated by substations are significant enough to justify the imposition of the more stringent controls as proposed by Council's expert. The Panel is concerned that the impositions of the more stringent standards proposed by Council could unnecessarily restrict the efficient operation of the substations and result in compliance issues.

In terms of noise from distribution substations in roads, the Panel considers that there is no reason to require these activities to meet more stringent standards than those for telecommunication facilities imposed by the national environmental standard for telecommunications facilities.

For the above reasons the Panel is recommending the adoption of the noise standards for substations proposed by the Auckland Utility Operators Group.

As set out in other topics, where buildings have specialist functions, such as hospitals, schools and substations, those responsible for these facilities and their experts have specialist experience in designing, building and operating these facilities. It is the view of the Panel that they are generally best placed to assess the design needs of their developments so they can function and perform in a way that meets the requirements of the people who work, live and visit these facilities and to ensure health and safety requirements are met. The Unitary Plan should set limits within which designers must work, but in these circumstances should not attempt to control the design itself.

Because substations have specific functional requirements particularly for health and safety reasons that influence their design and appearance, the Panel does not consider it appropriate for the Council as the consent authority to determine their design and external appearance. The Panel was not persuaded by the evidence from Council's witness that regulatory intervention is desirable. Council has a range of non-regulatory methods available to influence the design and appearance of buildings.

6.5. Statement of issue

6.5.1. Amateur radio configurations

Activity status for amateur radio configurations in all zones.

The New Zealand Association of Radio Transmitters Incorporated sought permitted activity status for a range of amateur radio configurations in all zones subject to compliance with standards.

The Council considered that it had made adequate provision for amateur radio configurations in the Residential - Large Lot Zone, rural zones, the Future Urban Zone and

the Residential - Rural and Coastal Settlement Zone. It remained of the view that the size and scale of the amateur radio configurations sought as permitted activities in other more intensive residential areas is inappropriate in terms of amenity effects.

6.6. Panel recommendation and reasons

6.6.1. Amateur radio configurations

The Panel considers that the imposition of standards similar to those approved by the Environment Court in its decisions on Plan Change 74 to the Wellington City District Plan (*NZ Assn of Radio Transmitters and others v Wellington City Council* [2012] NZEnvC 8 (interim decision) and [2013] NZEnvC 38 (final decision)) will adequately address any adverse effects of amateur radio configuration activities. There is no evidence to show that the environment in Auckland is so different from that in Wellington to justify different controls for these activities. Therefore, the Panel recommends that these activities be provided for as permitted activities in all zones within specified standards. Where the activities fail to comply with the standards they are to be assessed as discretionary activities.

7. Road network activities

7.1. Statement of issue

Lack of clarity and alignment in the drafting of the road network utility provisions.

The infrastructure objectives, policies and rules provide a framework to enable the development, operation, maintenance, repair, renewal and upgrading of infrastructure while managing effects of infrastructure and effects on infrastructure (reverse sensitivity). There are a number of road network policies relating to integrated transport systems, place-making, road typologies etc. that are addressed in other parts of the proposed Auckland Unitary Plan e.g. the transport and subdivision chapters. This raises issues of unnecessary duplications, risks of inconsistent implementation and potential for confusion.

Some parts of the road network utility policies do not appear to implement the infrastructure objectives and in many cases there are no rules to implement the policies given the permissive approach of providing for road network activities as permitted activities.

The definition of road network activities is problematic. In addition to defining the activities that comprise road network activities the definition also provides for their construction, operation and maintenance. This is confusing as these are matters that are specified in the Plan's activity tables which set out the activity's classification i.e. permitted, controlled etc. The drafting of the road network activity definition is not consistent with best practice in the drafting of definitions.

The Plan defines roads, and roads are also included in a number of the Plan's definitions including road network activities, network utilities and infrastructure. This is confusing and greater clarity is required regarding the use of these terms and when they are applied.

Included in the infrastructure chapter are provisions relating to pedestrian and cycle overpasses and underpasses that provide connections between buildings and vehicle underpasses into buildings. The Council has sought to control these activities because they can cause many negative effects to a centre's vitality, result in visual blockages within streets, reduce the place-making functions of streets and create safety issues.

Council's urban design witness is of the opinion that the creation of building-to-building pedestrian overpasses has the potential to undermine the Council's aims of establishing active and vibrant streetscapes with a high level of amenity, and place-making.

Precinct Properties New Zealand Limited, SkyCity Auckland Limited and the Auckland Utility Operators Group opposed the extent to which the provisions sought to control overpasses and underpasses.

7.2. Panel recommendation and reasons

The Panel recommends that the policies relating to the road network be amended to better align with the infrastructure objectives and the rules relating to roads and road network activities. Policies that address matters covered in other parts of the Plan should be deleted.

The Panel recommends that the definition of road network activities and the road activity table be amended to avoid confusion over how the construction, operation and maintenance of these activities are provided for in the Plan. An infrastructure nesting table should also be included in the definitions chapter to clarify the relationship between network utilities, roads and road network activities. Changes to the road network activity definitions will also assist in clarifying this relationship. The inclusion of an infrastructure nesting table will have wider benefits as it will assist in clarifying relationships between other activities provided for in the infrastructure chapter.

The provisions relating to pedestrian and cycle overpasses and underpasses and vehicle underpasses into buildings should not be included in E26 Infrastructure. The Panel considers these activities are best managed in the business zones as part of the resource consent process for new developments.

The reason for the Panel's recommended amendments is to improve the usability of the Plan by avoiding confusion and problems with interpretation and implementation of provisions.

7.3. Scope

There are no submissions that specifically request some of the amendments proposed by the Panel. However, there a number of submissions relating to the overall usability of the Plan and requesting the Panel improves the drafting of Plan provisions. The Panel has relied on these submissions in making its recommendations.

8. Matters of control and discretion and assessment criteria

8.1. Statement of issue

Need to improve the drafting and alignment of matters of control and discretion and assessment criteria.

There are a number of issues with the drafting of the provisions that relate to controlled and restricted discretionary activities. These include a lack of clarity and consistency of the drafting of matters of control and discretion, assessment criteria drafted as standards and assessment criteria that do not relate to matters of control or discretion.

This is an issue that applies across the Plan and is not limited to the Infrastructure chapter.

8.2. Panel recommendation and reasons

The Panel is recommending a range of amendments to matters of control in respect of controlled activities, to matters of discretion in respect of restricted discretionary activities and to the associated assessment criteria.

The reason for the Panel's recommended amendments is to improve the usability of the Plan by ensuring matters of control and discretion are clearly defined and that assessment criteria relate to the matters of control or discretion. These amendments are important in ensuring an efficient and effective consent process that minimises disputes over interpretation.

8.3. Scope

There are no submissions that specifically request the amendments proposed by the Panel. However, there are a number of submissions relating to the overall usability of the Plan and requesting the Panel improve the drafting of Plan provisions. The Panel has relied on these submissions in making its recommendations.

9. Inconsistent application of overlays and Auckland-wide rules

9.1. Statement of issue

Inconsistencies in how infrastructure activities are listed and classified in the various activity tables for overlays and Auckland-wide rules and inconsistencies regarding the standards to be complied with.

The 'combined chapter' includes activity tables and standards for a range of overlays and Auckland-wide rules. Incorporating these provisions into one chapter has highlighted a number of inconsistencies in how network utilities have been listed in the activity tables and their classification i.e. permitted, controlled etc. While it would not be appropriate that the same activities have the same activity classification across all the activity tables, it is expected that where activities have similar effects on similar values there would be a consistency across the activity tables and that the activities would be subject to similar standards.

9.2. Panel recommendation and reasons

The Panel is recommending a number of amendments to the activity tables and to the permitted activity standards. The reason for the Panel's recommended amendments is to ensure that activities with similar effects are treated in a similar manner and subject to similar standards.

10. Emergency management area – hazardous activities and infrastructure

10.1. Statement of issue

Extent of the emergency management area at Wiri.

Four principal issues were raised in submissions primarily between Wiri Oil Services Limited, Liquigas Limited, Fletcher Concrete and Infrastructure Limited (Fletcher), and Nga Mana Whenua o Tāmaki Makaurau:

- i. who should bear the cost of impositions arising from the emergency management area provisions;
- ii. whether the modelling basis for the inner and wider emergency management area is so conservative that the activity status of certain activities defined as sensitive under the Plan in the outer emergency management area should be relaxed;
- iii. whether the return of Matukutūruru/Wiri Mountain through the Crown Treaty settlement was sufficient reason to remove the outer emergency management area so that development of otherwise defined sensitive activities was not prevented; and
- iv. whether the requirements of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 effectively covered the purpose of the emergency management area.

On the first issue, Wiri Oil Services Limited submitted that costs should fall where they lay because it (and others) was operating lawfully within an appropriate heavy industry zone and was not accountable for new developments being authorised within the emergency management area. Fletcher submitted that as the reason for the emergency management area was created by a third party, it should effectively compensate for the effect mitigation required by the emergency management area.

On the second issue, Fletcher's evidence was that Wiri Oil Services Limited's modelling was unnecessarily conservative and that to prohibit defined sensitive activities (particularly residential) in the outer emergency management area was unreasonable. It sought an activity status that enabled application.

That issue was joined by Nga Mana Whenua O Tāmaki Makaurau in submitting that the emergency management area should be removed from Matukutūruru because that had been returned to it by way of Treaty settlement for traditional and cultural purposes – via Nga Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 - vested as a historic reserve in the Tūpuna Taonga Trust - which would include activities of a residential nature.

Finally Fletcher raised the question as to whether the health and safety at work regulations already covered the matter of emergency management plans sufficiently. Council and Wiri Oil Services Limited disagreed that this was sufficient as those only related to the facility itself and not to third party sites.

10.2. Panel recommendation and reasons

The Panel agrees with Wiri Oil Services Limited that the emergency management area, based as it is on a detailed risk analysis, appropriately terrain-modelled, should apply.

While the expert modelling evidence was contested, and the Panel acknowledges the reservations expressed, that was not sufficiently persuasive in the Panel's conclusion to justify either deleting the outer emergency management area or selectively applying it.

While the Panel is mindful of its obligations under the Resource Management Act 1991 with respect to matters of concern to Māori, it agrees with the thrust of Wiri Oil Services Limited's legal submissions that the Redress Act 2014 provided no guarantee that residential-type activities of a cultural or traditional nature would be permitted on the land. That Act makes such activities explicitly subject to the Resource Management Act 1991 among other matters. Furthermore the Panel cannot see how it would be appropriate to endorse a lesser two-tier health and safety standard around such a major hazard facility. Finally the Panel notes that the emergency management area will not prevent activities of a non-residential nature being pursued.

Accordingly the Panel considers the inner and wider emergency management area should be applied as generally proposed by Wiri Oil Services Limited.

11. Consequential changes

11.1. Changes to other parts of the plan

As outlined above, the overlay and Auckland-wide activity tables, standards, matters and assessment criteria relating to network utilities and electricity generation listed in Section 1.1 Topic description have been relocated into the combined infrastructure chapter.

11.2. Changes to provisions in this topic

As outlined above, the overlay and Auckland-wide activity tables, standards, matters and assessment criteria relating to network utilities and electricity generation listed in Section 1.1 Topic description have been relocated into the combined infrastructure chapter.

12. 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.)

12.1. General topic documents

Panel documents

[042 Submission Point Pathway Report \(31 March 2015\)](#) (1 April 2015)

[042 Parties and Issues Report \(24 March 2015\)](#) (27 March 2015)

Mediation statements

[042 - Joint Mediation Statement - Activity tables and controls 2015-05-04](#) (11 May 2015)

[042 - Joint Mediation Statement - General infrastructure objectives and policies \(2015-04-21\)](#)
(01 May 2015)

[042 - Mediation Joint Statement - City Centre Port Noise \(2015-05-04\)](#) (11 May 2015)

[042 - Mediation Joint Statement - Electricity Transmission Corridor \(2015-05-05\)](#) (11 May 2015)

Auckland Council marked up version

[Markup version - City Centre Port Noise](#) (15 April 2015)

[Markup version - Designations within Roads](#) (15 April 2015)

[Markup version - Electricity Transmission Corridor](#) (15 April 2015)

[Markup version - Infrastructure and Network Utilities](#) (15 April 2015)

[REVISED Markup version - City Centre Port Noise](#) (4 May 2015)

Auckland Council closing statement

[Closing statement \(C1.1 & H1.1 \(Network Utilities\), E1.4 and J1.4\)](#) (3 August 2015)

[Closing statement \(C1.1 & H1.1 \(Network Utilities\), E1.4 and J1.4\) - Appendix A](#) (3 August 2015)

[Closing statement \(C1.1 & H1.1 \(Network Utilities\), E1.4 and J1.4\) - Appendix B](#) (3 August 2015)

[Closing statement \(C1.1 & H1.1 \(Network Utilities\), E1.4 and J1.4\) - Appendix C](#) (3 August 2015)

[Closing statement \(E1.3, J1.3, C1.3, C1.1, H1.1 and Activity Table 1.2\)](#) (13 July 2015)

12.2. Specific evidence

Auckland Council

[Legal submissions \(C1.1, H1.1, E1.4 and J1.4\)](#) (24 June 2015)

[Hearing evidence \(Jon Styles\) - Acoustics \(Port Noise\)](#) (19 May 2015)

[Hearing evidence \(Sukhdeep Singh\) - Planning \(Port Noise\)](#) (19 May 2015)

[LATE Hearing evidence \(Yvonne Weeber\) - Urban design](#) (22 May 2015)

[LATE Rebuttal evidence \(Rachel Dimery\) - Planning](#) (19 June 2015)

[LATE Hearing evidence \(Randhir Karma\) - AT operations](#) (20 May 2015)

Auckland Utility Operators Group Incorporated

[LATE Hearing evidence \(Curt Robinson\) - Acoustics](#) (5 June 2015)

[Memorandum of Counsel \(Combined Chapter H1.1\)](#) (13 November 2015)

[Memorandum of Counsel \(Combined Chapter H1.1\) - Attachment A \(Proposed combined provisions\)](#) (20 November 2015)

Ports of Auckland Limited

[Hearing evidence \(Mark Arbuthnot\) - Planning](#) (4 June 2015)

Transpower New Zealand Limited

[Hearing evidence \(Jenna Fincham\) - Environmental Planning](#) (4 June 2015)

[Hearing evidence \(Roy Noble\) - Transmission Lines](#) (4 June 2015)

[LATE Hearing evidence \(Andrew Renton\) - Substation & Underground](#) (8 June 2015)

[LATE Hearing evidence \(Sylvia Allan\) - Planning \(Part 1\)](#) (5 June 2015)

[LATE Hearing evidence \(Sylvia Allan\) - Planning \(Part 2\)](#) (8 June 2015)