

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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Report to Auckland Council  
Hearing topic 074 Designations

Minister for Courts

Designation 4101  
Auckland High Court

May 2016

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**Report first prepared by Murray Kivell in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 142 of the Local Government (Auckland Transitional Provisions) Act 2010, on 31 August 2015 and updated on 7 October 2015 and 15 December 2015.**

**Adopted as Auckland Unitary Plan Independent Hearings Panel recommendations in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 144 of the Local Government (Auckland Transitional Provisions) Act 2010 on date of signature.**

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## 1. Introduction

The purpose of this report is to provide an assessment and recommendation in relation to designations, modifications and new designations classified by the Independent Hearings Panel as moderately complex. This classification will generally apply where there is a:

- i. rollover of a designation with no modifications and a submission lodged by third party;
- ii. modification to a designation that will result in more than minor effects and with or without submissions;
- iii. notice of requirement for a new designation for existing works with or without submissions.

## 2. Assessment

The assessment will address:

- i. effects on the environment of allowing the modification or requirement;
- ii. mitigation measures proposed by requiring authority including any proposed conditions;
- iii. other section 171 matters or section 168A(3) (if the requiring authority is Auckland Council) matters where relevant;
- iv. whether land is owned by the requiring authority.

See section 9 of this report for the assessment of each modification and requirement.

On the basis of the assessment, the report concludes that:

- the following modification concerning the designation purpose should be confirmed;
- the following condition to the designation should be modified as recommended in the section 9 assessment checklist.

## 3. Expert input

Not applicable

## 4. Mediation required

Based on the response of the requiring authority as detailed in section 9, the following matter has been identified that would benefit from mediation:

the rationale for securing a maximum floor area ratio entitlement without providing bonus features.

It is estimated that one-half day of mediation will be required.

## 5. Hearing required

Based on the responses of the requiring authority as detailed in section 9, the following matters have been identified to progress to a hearing:

to be determined pending the outcome of any mediation.

## 6. Recommendation to Panel

That the Panel:

- i. modify the designation;
- ii. agree to schedule mediation with the requiring authority to address the matters identified in section 4 above; and (if required)
- iii. agree to hear matters identified in section 5 above.

<b>Author</b>	Murray Kivell
<b>Author's Signature</b>	
<b>Date</b>	31 August 2015 and updated on 7 October 2015 and 15 December 2015 with changes

## 7. Panel recommendations to Auckland Council

The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the notice of requirement for the modifications to designation 4101 included in the Proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1.

## 8. Panel reasons

The reasons for the Panel's recommendation are set out in section 9 below.

<b>Panel Chair</b>	David Kirkpatrick
<b>Chair's Signature</b>	
<b>Date</b>	18 May 2016

## 9. Assessment of modifications and submissions

Requiring authority	Minister for Courts
Designation number	4101 (Auckland High Court)
Designation purpose	Auckland High Court
Location	24 Waterloo Quadrant, Auckland Central
Designation given effect to	Yes
Lapse date in operative plan	NA
Rollover designation with no modifications	NA
Description of the modifications: purpose statement	<p>Amend purpose statement, to:</p> <p>Judicial, court, tribunal and related purposes including collection of fines and reparation, administration, support, custodial services, and ancillary activities. Works include development and operation of land and buildings for the aforementioned purposes.</p> <p>There are three existing conditions that apply to the designation. Underlined indicates proposed additions and strikethrough indicates deletions in accordance with the Form 18 Notice.</p> <p><del>Development to be in accordance with the following:</del>  <del>(i) That development of the site shall comply with the underlying development controls for the site.</del></p> <p>1. Development of the site shall be in accordance with the underlying development controls for the site except in the following circumstances:</p> <p>a. The maximum <u>total</u> Floor Area Ratio <u>of 8:1</u> can be sought without requiring the inclusion of bonus features within the development; and</p> <p>b. Future development of the site is not subject to any development control related to the provision of glazing on road frontages.</p> <p>2. No alteration shall be made to the interior or exterior of the original courthouse building other than in accordance with an outline plan submitted and processed in terms of Section 176A of the Resource Management Act 1991.</p> <p>3. In light of the fact that security remains a paramount consideration within the Courthouse, nothing in these conditions shall preclude the alterations and works necessary for maintaining security except that with respect to the original courthouse building, early consultation with the Council is required in order that the heritage impact of the alterations and works may be determined.</p> <p>The new condition was further modified to that provided in</p>

	the Proposed Auckland Unitary Plan and is notated with underlining.
Notice of requirement	Requirement to include existing designation subject to above modifications.
Land ownership	NA
Land owned by the requiring authority	All land subject to the designation is owned by the requiring authority.
Submitter	No submissions.
Matters addressed in submission	NA
Engagement by requiring authority with report writer	The requiring authority provided further information dated 21 August 2015 promoting the further amendments to the condition sought and these are recorded above.
Assessment and reasons	<p>The deleted condition related to the designation in the operative plan and provided an entitlement to the redevelopment of the site 'in accordance with the underlying development controls for the site'.</p> <p>Its deletion and replacement with the inclusion of a similar general condition provided for two specific exemptions, namely: being able to maximise the floor area ratio without the obligation to provide for bonus features; along with an exclusion from providing for windows at street level.</p> <p>My assessment is made in the absence of knowing the underlying zoning that will apply to the site or a familiarity with the site and general locality.</p> <p>The proposed substituted and amended condition remains a generic condition that affords maximum flexibility and at the same time uncertainty too, to the requiring authority regarding the site's future development entitlement.</p> <p>The purpose of a designation and any customised development entitlement is not constrained by the provision of district plan or an operative plan in this case. Any alterations to the development already approved on the site would presumably require an application pursuant to section 181 of the Resource Management Act 1991. More significant works would presumably require the submission of a new outline plan. The requirements for any new outline plan that might be required in respect of any future works on the sites of these designations are set out in section 176A of the Resource Management Act 1991.</p> <p>Functioning as a high court the building has its own public safety and security issues. In this context, it would seem reasonable to exclude future court redevelopment from requiring ground level windows as general public amenity values are likely to be displaced by the need to maintain public safety. This exclusion is appropriate.</p> <p>This exclusion is appropriate as the modification will avoid</p>

	<p>any adverse effects that the imposition of this development control may have on the safe and efficient operation of the courthouse.</p> <p>I am less clear of the reasons why the floor area ratio entitlement should be provided when a redevelopment does not provide bonus features within the development yet seeks to take up that entitlement. The rationale for the 8:1 floor area ratio has not been explained.</p> <p>The stated justification that this approach will recognise ‘a critical public good’ by enabling the site’s development potential to remain consistent with the total development potential of neighbouring sites is not a credible conclusion to reach in resource management terms.</p> <p>I am not satisfied of the planning merits to support this modification. I recommend that the designation be rolled over without this attached condition that the requiring authority has requested.</p>
Recommendation	<p>That the condition now recommended reads:</p> <ol style="list-style-type: none"> <li>1. Development of the site shall be in accordance with the underlying development controls for the site except in the following circumstances: <ol style="list-style-type: none"> <li>a. <del>The maximum total Floor Area Ratio of 8:1 can be sought without requiring the inclusion of bonus features within the development; and</del></li> <li>b. Future development of the site is not subject to any development control related to the provision of glazing on road frontages.</li> </ol> </li> <li>2. No alteration shall be made to the interior or exterior of the original courthouse building other than in accordance with an outline plan submitted and processed in terms of Section 176A of the Resource Management Act 1991.</li> <li>3. In light of the fact that security remains a paramount consideration within the Courthouse, nothing in these conditions shall preclude the alterations and works necessary for maintaining security except that with respect to the original courthouse building, early consultation with the Council is required in order that the heritage impact of the alterations and works may be determined.</li> </ol>
Recommendation to Panel	<ol style="list-style-type: none"> <li>1. That the Panel recommends that the requirement be amended to include the amended purpose statement as recorded above.</li> <li>2. That the Panel recommends that the requirement be amended to include Condition 1 with the further modification that (a) be deleted.</li> </ol>

	<p>The condition now recommended reads:</p> <ol style="list-style-type: none"> <li>1. Development of the site shall be in accordance with the underlying development controls for the site except in the following circumstances: <ol style="list-style-type: none"> <li>a. Future development of the site is not subject to any development control related to the provision of glazing on road frontages.</li> </ol> </li> <li>2. No alteration shall be made to the interior or exterior of the original courthouse building other than in accordance with an outline plan submitted and processed in terms of Section 176A of the Resource Management Act 1991.</li> <li>3. In light of the fact that security remains a paramount consideration within the Courthouse, nothing in these conditions shall preclude the alterations and works necessary for maintaining security except that with respect to the original courthouse building, early consultation with the Council is required in order that the heritage impact of the alterations and works may be determined.</li> </ol>
<p>Response from requiring authority</p>	<p>In correspondence from Opus International Consultants dated 12 September 2015:</p> <p>Agrees with the above recommendations to Panel: the site is not subject to the glazing control.</p> <p>Disagrees with the above recommendations to the Panel: to obtain maximum Floor Area Ratio without the inclusion of bonus features.</p> <p>Wishes to be heard on the following matters: to obtain maximum floor area ratio without the inclusion of bonus features.</p>
<p>Report writer's further comments</p>	<p>After further discussion with the requiring authority it has been agreed that given the site is developed condition 1 in its entirety has been given effect to. It therefore is irrelevant once the designation has been given effect to. It has been agreed that the condition 1 can be deleted.</p> <p>The requiring authority is to confirm that the Auckland Council is supportive of this further amendment to the conditions to the designation. This could be confirmed by a jointly signed memorandum.</p> <p>On the basis that this can be confirmed then my amended recommendation is:</p> <ol style="list-style-type: none"> <li>1. that the Panel recommend that the requirement be</li> </ol>

	<p>amended to include the amended purpose statement as recorded above;</p> <ol style="list-style-type: none"> <li>2. that the Panel recommend that the requirement be amended to delete Condition 1;</li> <li>3. that the Panel recommend that the requirement retain former conditions 2 and 3.</li> </ol>
Report writer's final comments	<p>At the hearing on this matter counsel for the Minister for Courts tabled legal submissions dated 30 November 2015 to confirm that the Minister and Heritage New Zealand have reached agreement on a modified or substituted condition 2 (which will be re-numbered) as follows:</p> <p>Where any construction works for a project on designated land involves the total or substantial demolition of, or modification to the interior or exterior of the original (1868) Courthouse building, any outline plan required shall include:</p> <ol style="list-style-type: none"> <li>a) An assessment of the effects on the historic heritage values of the place;</li> <li>b) A consideration of alternative methods and/or appropriate mitigation to prevent or avoid damage, loss or destruction of the values of the historic heritage place.</li> </ol> <p>This condition shall not apply in respect of repair or maintenance of the building, structure or feature. This condition shall not apply where there is a conservation plan or similar plan for the management of the scheduled historic heritage place and the proposed new works are in accordance with this conservation or similar plan.</p> <p>This provision is also confirmed in the statement of evidence by Duncan McKenzie for Heritage New Zealand dated 15 November 2015.</p> <p>In summary, this change reflects a common approach to the inclusion of a condition within each relevant designation to provide a level of protection for scheduled historic heritage within a designated area that Heritage New Zealand has adopted with other requiring authorities.</p> <p>The substituted condition is supported by the report writer for this reason.</p> <p>Auckland Council planning evidence (B Cross, 5 November 2015) confirmed that there are no outstanding matters.</p>
Recommendation from Panel	The Panel agrees with the report writer's recommendations.
Panel Reasons	The Panel agrees with the report writer's reasons.

## 10. Attachment 1 changes to text of Proposed Auckland Unitary Plan

### Conditions

- ~~1. Development of the site shall be in accordance with the underlying development controls for the site except in the following circumstances:
  - ~~a. The maximum Floor Area Ratio can be sought without requiring the inclusion of bonus features within the development; and~~
  - ~~b. Future development of the site is not subject to any development control related to the provision of glazing on road frontages.~~~~
  
2. ~~No alteration shall be made to the interior or exterior of the original courthouse building other than in accordance with an outline plan submitted and processed in terms of Section 176A of the Resource Management Act 1991.~~
  
- 1 Where any construction works for a project on designated land involves the total or substantial demolition of, or modification to the interior or exterior of the original (1868) Courthouse building, any outline plan required shall include:
  - a) an assessment of the effects on the historic heritage values of the place;
  - b) a consideration of alternative methods and/or appropriate mitigation to prevent or avoid damage, loss or destruction of the values of the historic heritage place.

This condition shall not apply in respect of repair or maintenance of the building, structure or feature.

This condition shall not apply where there is a conservation plan or similar plan for the management of the scheduled historic heritage place and the proposed new works are in accordance with this conservation or similar plan.

- 3.2 In light of the fact that security remains a paramount consideration within the Courthouse, nothing in these conditions shall preclude the alterations and works necessary for maintaining security except that with respect to the original courthouse building, early consultation with the Council is required in order that the heritage impact of the alterations and works may be determined.