

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 077
Sustainable Design

July 2016

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1. Hearing topic overview

1.1. Topic description

Topic 077 addresses the district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
Topic 077 – Sustainable Design	Chapter C: Auckland wide objectives and policies C.7.7 Sustainable Design	NA
Topic 077 – Sustainable Design	Chapter G: General provisions G.2.7.2 Design Statements	NA
Topic 077 – Sustainable Design	Chapter H: Auckland wide rules H6.4 Sustainable Development	NA

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

- i. The Panel recommends that the Auckland-wide objectives, policies and rules for sustainable design be deleted.
- ii. The Panel recommends that the information requirements for design statements and provisions requiring resource consent applications to include design statements be deleted.

1.3. Overview

This topic covers the Auckland-wide objectives, policies and rules for sustainable design and the information requirements and provisions requiring mandatory design statements. In terms of both sets of provisions the Panel has not supported the Council's position that these matters require a regulatory response. The outcomes that Council is seeking through the inclusion of these provisions would, in the Panel's view, be better achieved through non-regulatory methods such as Council guidance and support and through Council's Auckland Design Manual.

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 5 Reference documents.

2. Sustainable design

2.1. Statement of issue

2.1.1. Appropriateness of the sustainable design provisions

The Council proposed including rules in Chapter H6.4 of the Unitary Plan requiring:

1. that all new residential buildings must either:
 - a) achieve a minimum 6-star rating from the New Zealand Green Building Council Homestar Tool Version 3 (2015); or
 - b) comply with sustainable building standards relating to double glazing, ceiling, wall and floor insulation, extraction ventilation, water efficiency ratings for taps and showers, light fittings and building materials; and
2. that all new office and industrial buildings over 5,000 m² gross floor area must achieve either:
 - a) achieve a minimum 4-star rating from the New Zealand Green Building Council Greenstar Office or Industrial Tool (2009); or
 - b) achieve certification under the Living Building Challenge (2013); or
 - c) a minimum 4 star level using the Australian Green Building Council Green Star Office tool (2008) or Industrial Tool (2011).

The proposed Auckland Unitary Plan includes Auckland-wide objectives and policies in Chapter C7.7 and general provisions for design statements in Chapter G2.7.2 to support these rules.

By the time of the hearing session for this topic the Council had decided not to pursue the rules and associated objectives and policies in relation to office and industrial buildings. It advised it considered these were no longer necessary as compliance was occurring on a voluntary basis.

However, in terms of residential development, the Council considered that relying on the Building Code would not deliver the necessary sustainable design outcomes it is seeking to achieve. This is because the Code prescribes minimal standards, not optimal standards, and it does not require compliance with other criteria that deliver sustainable design outcomes that the Council considers to be important.

A number of submitters opposed the inclusion of these rules and raised issues with including provisions in the Unitary Plan requiring compliance with building standards more restrictive than those of the Building Code. The submitters included the Minister of Business, Innovation and Employment, Housing New Zealand Corporation and Carter Holt Harvey Limited. These submitters presented extensive legal submissions on the inability of Council to introduce standards for buildings which are already provided for in the Building Act 2004, even if, in the Council's view, the Building Act does not deliver a satisfactory level of sustainability. The submitters also presented evidence on the practicalities of complying with and enforcing the requirements.

A number of submitters expressed general support for the sustainable design provisions, but considered that the requirements should not be mandatory and should be incentivised. The Auckland Regional Public Health Service supported applying sustainable design requirements for all new housing and agreed with Council that the Unitary Plan is an appropriate place for these issues to be addressed rather than through the limited scope of the Building Act 2004.

2.1.2. Suitability of Green Building Council tools as a regulatory rule

Housing New Zealand Corporation and Carter Holt Harvey Limited (legal submissions) raised concerns regarding the legality of requiring compliance with a third party accreditation process. Carter Holt Harvey Limited also raised issues about the way in which the New Zealand Green Building Council tools have been incorporated into the proposed Auckland Unitary Plan by reference and that the notified version of the proposed Auckland Unitary Plan refers to earlier versions of the New Zealand Green Building Council tools.

In response to the concerns raised by Housing New Zealand about the use of a third party accreditation process, the Council noted that it is not uncommon to demonstrate compliance with a district plan rule by way of the certification of a suitably qualified expert.

The Council considered that the New Zealand Green Building Council tools can validly be incorporated into the proposed Auckland Unitary Plan by reference. They meet the tests in clause 30 of the Resource Management Act 1991 for written material that may be incorporated into a plan by reference, being standards of a national organisation, the New Zealand Green Building Council. The Council also considered that although the updated tools were not available at the time the proposed Unitary Plan was notified, this did not prevent them from being incorporated into the Unitary Plan during the hearings process. The Council also noted that Ms Cutler, the Chief Executive of the New Zealand Green Building Council, advised the Panel that the amendments to the tools from the previous versions were not material and that the core standards have not changed.

2.2. Panel recommendation and reasons

The issue of whether the Unitary Plan can include rules requiring building work to be undertaken to a standard higher than that required by the Building Code has been addressed in a number of other topics and the Panel issued a direction on 8 October 2015 on this matter and sought the views of parties. This was followed by a judicial conference.

As set out in the Panel's Report to Auckland Council – Overview of recommendations July 2016, in section 5.3 on managing external effects, the Panel considers that controls on internal aspects of buildings under the Resource Management Act 1991, to the extent that they are appropriate at all, cannot exceed the requirements for such controls set by the Building Code.

As set out in the Panel's direction of 8 October 2015 on the Resource Management Act 1991 and the Building Act 2004 and proposed Auckland Unitary Plan rules, the Unitary Plan can control the location of the building on a site, or the overall height of the building so as to address the adverse effects of that location or height on the environment. However, it should not be controlling the manner in which a building is constructed. This type of controls addresses the function of the building rather than its effects on the environment around it

and is not appropriate to be included in a district plan which is concerned with land use planning.

The Panel recommends that a consistent view should be taken across the Plan on this issue and for the reasons set out above the Panel recommends against the inclusion of the rules relating to sustainable design in the Unitary Plan. Without any rules to implement the objectives and policies relating to sustainable design, the Panel does not support the retention of the objectives and policies.

The Panel also has similar concerns to those expressed by submitters over the use of the New Zealand Green Building Council tools and their incorporation into the proposed Unitary Plan. The Council has a range of non-regulatory mechanisms and other methods available which could be used to promote the adoption of the tools without making that a mandatory requirement under the Unitary Plan.

The Panel observes that if the need for regulation is no longer necessary in relation to office and industrial buildings, then that may provide a basis for demonstrating to residential builders and homeowners the benefits of voluntary use of the New Zealand Green Building Council's Homestar tool.

3. Design statements

3.1. Statement of issue

3.1.1. Appropriateness of design statements and whether they should be mandatory

Council proposed that design statements be required for the majority of new development that requires resource consent. It was the Council's view that mandatory design statements will ensure a thorough design process that will achieve better design outcomes.

Submitters have raised a number of issues with design statements. These include that the statements:

- i. duplicate material already routinely provided in assessments of environmental effects;
- ii. enable Council to take an active and early role in the design process of private proposals;
- iii. impose additional costs on applicants;
- iv. duplicate information requirements already set out in Schedule 4 of the Resource Management Act 1991 or elsewhere in the Plan.

Submitters have sought the deletion of the requirements for design standards or the removal of them as a mandatory requirement.

Council's planning witness, Ms Miller, in her evidence in chief considers that a design statement and an assessment of environmental effects are separate tools and have different functions. A design statement is primarily a visual document presenting the design process from the beginning when the context is analysed and used to inform the final proposal. An

assessment of environmental effects occurs at the end of the design process. It relies on information within an application to provide an assessment of the development's residual effects. A design statement provides information to enable an assessment of environmental effects to be carried out.

3.2. Panel recommendation and reasons

The Panel shares similar concerns regarding design statements as those raised by the submitters. The Panel agrees with the joint planning statement of evidence prepared by Mr Foster, Mr McGarr, Mr Norwell, Mr Smith, and Mr Thompson on behalf of multiple parties. The Panel considers that non-regulatory methods such as the Auckland Design Manual and other guidance materials and processes will be a more effective and targeted way of achieving good design than mandatory design statements.

The Panel is also concerned that the requirements of the design statements could open up the risk of Council exercising undue influence on the design of a proposal. It is the Panel's view that applicants should be able to design the proposal they wish to build provided it meets the relevant tests of the Plan and the Resource Management Act 1991. It is the Council's role to assess the applicant's proposal against the provisions of the Plan and the requirements of the Act. It is not Council's role to redesign a proposal. If a proposal fails to meet the relevant standards identified in the Unitary Plan then it may be declined consent.

For this reason and those set out in the joint planning statement, the Panel recommends that all the provisions relating to design statements should be deleted from the Unitary Plan.

4. Consequential changes

4.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below.

- i. The deletion of the special information requirement for design statements throughout the Unitary Plan, including the Auckland-wide provisions, zones and precincts, and the subdivision provisions.

4.2. 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.

5. 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.)

5.1. General topic documents

Panel documents

[077 - Submission Points Pathway Report - 7 May 2015](#) (7 May 2015)

[077 - Parties and Issues Report – 17 August 2015](#) (17 August 2015)

[077 - Mediation Joint Statement - C7.7 Sustainable Design and H6.4 Sustainable Development - 6 July 2015](#) (8 July 2015)

[077 - Mediation Joint Statement - G2.7.2 Design Statements - 13 July 2015](#) (15 July 2015)

Auckland Council marked up version

[077 - Auckland Council - MARKED UP version for mediation - C.7.7 Sustainable Design, and H6.4 Sustainable Development](#) (29 June 2015)

[077 - Auckland Council - MARKED UP version for mediation- G.2.7.2 - Design Statements](#) (29 June 2015)

[077 - Auckland Council - Powerpoint presentation for G.2.7.2 Design Statements mediation - 7 July 2015](#) (8 July 2015)

Auckland Council closing statement

[077 - Hrg - CLOSING STATEMENT - Design Statements](#) (12 October 2015)

[077 - Hrg - CLOSING STATEMENT – Sustainable Design - C7.7 and H6.4](#) (27 October 2015)

Panel Interim Guidance

[022, 50, 59-63, 64 and 77 - Panel direction on the Resource Management Act 1991 and the Building Act 2004 in the PAUP](#) (8 October 2015)

[022, 50, 59-63, 64 and 77 – Relationship between the Resource Management Act 1991 and the Building Act 2004 - Legal Submissions](#) (5 November 2015)

[077 – Auckland Council - Memorandum](#) (23 November 2015)

[077 - Ports of Auckland - Memorandum](#) (2 November 2015)

[077 Pre-Hrg - Auckland Council - Memorandum of Counsel - Re-allocation of submissions](#) (12 May 2015)

5.2. Specific evidence

Argosy Property Limited et al

[077 Hrg - Joint Planning Statement on behalf of multiple parties \(Foster, McGarr, Norwell, Smith and Thompson\)](#) (11 August 2015)

Housing New Zealand Corporation

[077 Hrg - LEGAL SUBMISSIONS](#) (1 September 2015)

Carter Holt Harvey Limited

[077 Hrg - LEGAL SUBMISSIONS](#) (31 August 2015)