

Memorandum on Proposed Plan Change 20 to the Auckland Unitary Plan



To: Independent Hearing Commissioners
From: David Wren – Reporting planner
Hearing date: 19th^h of November 2019

1. Commissioners' Request

The chair of the hearing panel for PC20 has requested the following additional information for the hearing.

1. *A number of submissions (i.e. Submissions 405, 406, 478) refer to the recommendation of the Independent Hearing Panel (IHP) with regard to the activity status for 'activities not provided for' as a discretionary activity. We understand that this is in the IHP Report to Auckland Council – Hearing Topic 0004 – General Rules. We note that this recommendation was accepted by the Council in its Decision Report.*

We would like the Council reporting planner to address this recommendation and its reasoning in light of the proposed change in activity status and the submissions that have been received on this matter.

2. *The Panel would like to know how other zones in the Unitary Plan treat 'activities not provided for'. Which zones default to Rule C1.7 and which zones have the same or similar approach adopted in PC20.*
3. *The section 32 analysis refers to the protection of elite and prime soils as a justification for the plan change. The Panel would like to know how the Unitary Plan categorises Elite and Prime soils and whether there is a plan or map that shows the spatial distribution of these soils within the rural areas of the Auckland region.*

2. IHP Report

The IHP reasons for maintaining the discretionary activity status for 'activities not provided for' is set out below.

Activities not provided for

5.1. Statement of issue

Status of an activity where it is not provided for in the Unitary Plan.

5.2. Panel recommendation and reasons

The recommended rule dealing with activities that are not otherwise provided for in the Unitary Plan makes such activities discretionary, consistent with section 87B(1)(b) of the Resource Management

Act 1991 rather than non-complying as proposed in the Plan as notified.

While it may be possible to make such activities non-complying, the Panel considers that such an approach could create unnecessary difficulties when assessing applications for truly novel or unforeseen proposals under section 104D of the Resource Management Act 1991, given the nature of the threshold tests in that section. A truly novel or unforeseen proposal would be unlikely to be contemplated by the objectives and policies in the Plan and so could be considered contrary to them because of that novelty rather than for any explicit policy reason. Such a proposal may also have adverse effects that are more than minor, but the opportunity to consider it on its merits to evaluate whether it was appropriate would be foreclosed because of the statutory constraint on assessing non-complying activities.

The scope for evaluation and consideration of a discretionary activity under section 104B of the Resource Management Act 1991 normally provides sufficient breadth of control in such circumstances to enable any truly novel or unforeseen proposal to be considered on its merits, including in terms of its effects on the environment and having regard to any relevant objectives and policies.

In circumstances where the Panel considers it would be appropriate to require an activity to be subject to the threshold assessment in section 104D, the relevant activity tables do classify any activity that is not otherwise provided for in that activity table as a non-complying activity. Examples include the activity tables for residential zones, where the maintenance of residential amenity values warrants the use of that threshold assessment

The Council at the time of the recommendation from the IHP accepted this.

While I agree that the discretionary activity status perhaps does allow for the truly novel or unforeseen activity being granted consent more readily than a non-complying activity, the experience of the actual operation of the AUP is that other activities that are not truly novel or unforeseen are also being granted consent. For example retirement villages have been granted consent in rural zones (there are currently two applications in the northern area for retirement villages, one in the Countryside Living Zone and one in the Mixed Rural Zone). These are neither novel or unforeseen. I do not know whether the IHP considered this possibility, but this does appear to be the outcome of the recommendation in practice.

I also consider that the non-complying activity threshold tests provide significant scope for novel or unforeseen activities provided that they are either not contrary to the relevant objectives and policies or have environmental effects that are minor. This is reinforced by the very small number of resource consents that are refused consent in Auckland with less than 0.5% of all consents being refused by Council. The table below sets out data from the last 5 years.

	2013/14	2014/15	2015/16	2016/17	2017/18
Total Resource consents received	19,148	20,114	22,855	22,021	20,485
Notified %	1.4%	1.4%	1.8%	1.6%	1.0%
Refused (#)	40	39	29	38	24

I accept that this is a matter of balance between allowing for the truly novel or unforeseen and preventing other activities that are neither of those things. While the change to a non-complying activity status for 'activities not provided for' may also prevent truly novel or unforeseen activities that are contrary to the objectives and policies of the plan and have effects that are more than minor, the change also raises the bar for other activities.

3. Other Zones

I have attached a table in Appendix 1 to this memorandum that sets out the approach taken in other zones in the AUP as requested.

4. Prime and Elite Soils

The terms prime soils and elite soils are both defined in the AUP. These definitions are set out below;

Land containing prime soil

Land identified as land use capability classes two and three (LUC2, LUC3) with slight to moderate physical limitations for arable use.

Factors contributing to this classification are:

- *readily available water;*
- *favourable climate;*
- *favourable topography;*
- *good drainage; and*
- *versatile soils easily adapted to a wide range of agricultural uses.*

Land containing elite soil Land classified as Land Use Capability Class 1 (LUC1). This land is the most highly versatile and productive land in Auckland. It is:

- *well-drained, friable, and has well-structured soils;*
- *flat or gently undulating; and*
- *capable of continuous cultivation.*

Includes:

- *LUC1 land as mapped by the New Zealand Land Resource Inventory (NZLRI);*
- *other lands identified as LUC1 by more detailed site mapping;*
- *land with other unique location or climatic features, such as the frost-free slopes of Bombay Hill;*
- *Bombay clay loam;*
- *Patumahoe clay loam;*
- *Patumahoe sandy clay loam; and*
- *Whatitiri soils.*

These soils are not mapped in the AUP. However I have attached a map in Appendix 2 to this memorandum that shows the general extent of these soils.

David Wren

A handwritten signature in blue ink, appearing to be 'DW', with a long horizontal stroke extending to the right.

Reporting planner
13 November 2019

Appendix 1 – Table of Zone ‘activities not provided for’.

Zone	Proposed Auckland Unitary Plan	Auckland Unitary Plan (Operative in Part)
General Provision: Activities not provided for	<i>Chapter G 2.2</i> (1) Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, discretionary or prohibited activity is a non-complying activity.	<i>Chapter C 1.7</i> (1) Any activity that is not specifically classed in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity is a discretionary activity unless otherwise specified by a rule for an overlay, zone or precinct or in an Auckland-wide rule.
Residential Zones	Relies on G2.2 (1)	<p><i>H1 Residential - Large Lot</i> H1.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H2 Residential – Rural and coastal settlement</i> H2.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H3 Single House</i> H3.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H4 Residential – Mixed Housing Suburban</i> H4.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H5 Residential – Mixed Housing Urban</i> H5.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H6 Residential – Terrace Housing and Apartment Buildings</i> H6.4.1 (A1) Activities not provided for is a Non-complying activity</p>
Open Space Zones	Relies on G2.2 (1)	<i>H7 Open Space Zones</i> H7.9.1 (A1) Activities not provided for is a Non-complying activity
Business Zones	Relies on G2.2 (1)	<p><i>H8 Business – City Centre</i> H8.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H9 Business – Metropolitan Centre</i> H9.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H10 Business – Town Centre</i> H10.4.1 (A1) Activities not provided for is a Non-complying activity</p>

		<p><i>H11 Business – Local Centre</i> H11.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H12 Business – Neighbourhood Centre</i> H12.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H13 Business – Mixed Use</i> H13.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H14 Business – General Business</i> H14.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H15 Business – Business Park</i> H15.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H16 Business – Heavy Industry</i> H16.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H17 Business – Light Industry</i> H17.4.1 (A1) Activities not provided for is a Non-complying activity</p>
Future Urban Zone	Relies on G2.2 (1)	<i>H18 Future Urban Zone</i> No relevant rules, relies on C1.7 (1)
Rural Zones	Relies on G2.2 (1)	<p><i>H19 Rural</i> No relevant rules, relies on C1.7 (1)</p> <p><i>H20 Rural – Waitakere Foothills</i> H20.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H21 Waitakere Ranges</i> H21.4.1 (A1) Activities not provided for is a Non-complying activity</p>
Strategic Transport Corridor	Relies on G2.2 (1)	<i>H22 Strategic Transport Corridor</i> No relevant rules, relies on C1.7.(1)
Special Purpose Zones	Relies on G2.2 (1)	<i>H23 Special Purpose – Airports and Airfields</i>

		<p>No rules in this chapter. All sites zoned Special Purpose – Airports and Airfields rely on precinct provisions.</p> <p><i>H24 Special Purpose – Cemetery</i> H24.4.1 (A1) Activities not provided for is a Discretionary activity</p> <p><i>H25 Special Purpose – Healthcare Facility and Hospital</i> No relevant rules, relies on C1.7 (1)</p> <p><i>H26 Special Purpose – Major Recreation Facility</i> There are no activities, standards or assessment criteria in this section. Sites zoned Special Purpose – Major Recreation Facility rely on precinct provisions.</p> <p><i>H27 Special Purpose – Maori Purpose</i> H27.4.1 (A1) Activities not provided for is a Non-complying activity</p> <p><i>H28 Special Purpose – Quarry</i> No relevant rules, relies on C1.7 (1)</p> <p><i>H29 Special Purpose – School</i> No relevant rules, relies on C1.7 (1)</p> <p><i>H30 Special Purpose – Tertiary Education</i> H30.4.1 (A1) Activities not provided for is a Discretionary activity</p>
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Appendix 2 – Soils Map

