

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2016-404-**

**UNDER** the Local Government (Auckland Transitional Provisions) Act 2010, the Resource Management Act 1991 and Part 20 of the High Court Rules

**IN THE MATTER** of an Appeal under Section 158 of the Local Government (Auckland Transitional Provisions) Act 2010

**BETWEEN** **ALBANY NORTH LANDOWNERS' GROUP** a submitter on the Proposed Auckland Unitary Plan

**Appellant**

**AND** **AUCKLAND COUNCIL** a Local Authority established under the Local Government (Auckland Council) Act 2009

**Respondent**

---

**NOTICE OF APPEAL  
16 September 2016**

---

---

**ANDERSON LLOYD  
LAWYERS  
QUEENSTOWN**

Solicitor: M A Baker-Galloway / S J  
Eveleigh  
(maree.baker-galloway@andersonlloyd.co.nz  
/ sarah.eveleigh@andersonlloyd.co.nz)

Appellant's Solicitor  
Level 2,  
13 Camp Street,  
Private Bag 201,  
QUEENSTOWN 9348  
DX ZP 95010  
Tel 03 450 0700  
Fax 03 450 0799

**TO:** The Registrar of the High Court at Auckland

**AND**

**TO:** The Respondent

**This document notifies you that:-**

- 1 Albany North Landowners' Group (**ANLG**), the Appellant in the proceeding identified above, gives notice that it is appealing to the Court under section 158(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (**Act**) against the decision of the Respondent to accept recommendations of the Auckland Unitary Plan Independent Hearings Panel (**the Panel**) on the Auckland Proposed Plan (**Proposed Plan**).

**Matters appealed against**

- 2 The Appellant appeals against the Respondent's decision (**the Decision**) to accept the recommendation in the Panel's July 2016 report on Hearing Topic 028 (Future Urban Zone), that land identified in the table below (**the ANLG site**) be zoned as Future Urban Zone (**FUZ**) (**the Recommendation**).

<b>Address</b>	<b>Land Area</b>	<b>Title Reference</b>
300 Dairy Flat Highway	3,245m <sup>2</sup>	CT 311072
310 Dairy Flat Highway	6,078m <sup>2</sup>	CT NA451/11
316 Dairy Flat Highway	4,005m <sup>2</sup>	CT NA53D/727
318 Dairy Flat Highway	6,289m <sup>2</sup>	CT NA54A/1179
350 Dairy Flat Highway	15.3592 ha	CT NA89B/49
8 Stevensons Cres	2.4281 ha	CT NA1B/809
16 Stevensons Cres	4.1050 ha	CT NA21B/229

- 3 A copy of the Recommendation and the Decision are attached as **Appendix 1**.

### **Standing and jurisdictional issues**

- 4 It is unclear whether the correct appellant pathway is to the Environment Court under section 156(3) or the High Court under section 158(1) of the Act. This is because while the matter was outside the scope of submission, the Panel failed to identify this, and this identification is arguably required to create jurisdiction in the Environment Court under section 156(3)(b). The Appellant has filed in both Courts to protect its position and will seek directions concerning the correct appellant pathway.

### **Grounds**

- 5 The Proposed Plan as notified proposed that ANLG site be zoned a mix of Large Lot Residential and Countryside Living.
- 6 The submission by ANLG sought that the ANLG site be rezoned either:
- (a) A mix of Mixed Housing Suburban and Single House Zones;
  - (b) Or, if that zoning was not successful, FUZ.
- 7 By legal submissions dated 29 April 2016, ANLG formally withdrew its alternative relief seeking FUZ. This was confirmed by letter dated 2 May 2016.
- 8 No other submissions sought FUZ for the ANLG site or specifically addressed zoning of the ANLG site.
- 9 The ANLG site is the only land in this location to be zoned FUZ. Accordingly, the zoning is not consequential to zoning of adjacent land or required in order to achieve a coherent zoning pattern.
- 10 There is no general submission or further submission which would provide scope for the FUZ zoning of the ANLG site.
- 11 The specific grounds of appeal are:
- (a) the Panel erred in failing to identify the Recommendation as being beyond the scope of submissions.
  - (b) the Panel erred in making the Recommendation, by failing to have proper regard to the scope of submissions.

- (c) the Respondent erred in making the Decision, by accepting a recommendation which was beyond the scope of submissions.

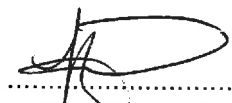
**Questions of law**

- 12 The Appellant submits that the following questions of law are to be resolved by the High Court in this appeal:
  - (a) Should the Recommendation to zone the ANLG site as FUZ have been identified as beyond the scope of submissions?
  - (b) Did the Panel, in recommending that the ANLG site be zoned FUZ, fail to have proper regard to the scope of submissions?
  - (c) Did the Council err in accepting a Recommendation which was beyond the scope of submissions but was not identified as such?

**Relief sought**

- 13 The Appellant seeks from the High Court:
  - (a) an Order setting aside the Respondent's decision and the Panel's recommendations and remitting relevant matters for reconsideration;
  - (b) any other relief the Court sees fit; and
  - (c) costs.

Dated this 16<sup>th</sup> day of September 2016

  
.....  
M A Baker-Galloway / S J Eveleigh | JA Barnard  
Solicitor for Appellant

This document is filed by **Maree Anne Baker-Galloway**, solicitor for the Appellant, of the firm Anderson Lloyd, whose address for service is Level 2, 13 Camp Street, Queenstown. Documents may be:

- (1) Posted to the solicitor at Anderson Lloyd Lawyers, Private Bag 201, Queenstown 9348; or
- (2) Transmitted to the solicitor by email [maree.baker-galloway@andersonlloyd.co.nz](mailto:maree.baker-galloway@andersonlloyd.co.nz).

**APPENDIX 1 – HEARING PANEL RECOMMENDATION AND AUCKLAND  
COUNCIL DECISION**

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

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

---

**Report to Auckland Council**  
**Hearing topic 028**  
**Future Urban Zone**  
**July 2016**

---

# Report to Auckland Council - Hearing topic 028 Future Urban Zone

## Contents

1.	Hearing topic overview .....	3
1.1.	Topic description .....	3
1.2.	Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan.....	3
1.3.	Overview .....	4
1.4.	Scope .....	5
1.5.	Documents relied on .....	5
2.	Reasonable use .....	6
2.1.	Statement of issue.....	6
2.2.	Panel recommendation and reasons .....	6
3.	Capacity for urbanisation.....	7
3.1.	Statement of issue.....	7
3.2.	Panel recommendation and reasons .....	7
4.	Avoidance of pre-emptive urbanisation.....	7
4.1.	Statement of issue.....	7
4.2.	Panel recommendation and reasons .....	7
5.	Contestable methods of managing growth.....	8
5.1.	Statement of issue.....	8
5.2.	Panel recommendation and reasons .....	8
6.	Green Infrastructure Corridor Zone .....	10
6.1.	Statement of issue.....	10
6.2.	Panel recommendation and reasons .....	10
7.	Indicative roads and open space overlays.....	10
7.1.	Statement of issue.....	10
7.2.	Panel recommendation and reasons .....	10
8.	Consequential changes .....	11
8.1.	Changes to other parts of the plan .....	11
8.2.	Changes to provisions in this topic .....	11



9.	Reference documents .....	11
9.1.	General topic documents.....	11
9.2.	Specific evidence .....	12

# 1. Hearing topic overview

## 1.1. Topic description

Topic 028 addresses the district plan provisions of the proposed Auckland Unitary Plan relating to:

<b>Topic</b>	<b>Proposed Auckland Unitary Plan reference</b>	<b>Independent Hearings Panel reference</b>
028 Future Urban	D4 Future Urban zone I5 Future Urban zone Indicative Roads and Open Space overlay Green Infrastructure Corridor Zone	H18 Future Urban Zone

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 Future Urban Zone should be applied to land which does not have major constraints to urbanisation, although it may include areas with lesser constraints where those can be accommodated by appropriate subdivision and development.
- ii. Objectives and policies for the Future Urban Zone amended to make the transitional nature of the zone clear, enabling ongoing rural use while preventing subdivision, use and development which might prevent or hinder sustainable urbanisation at an appropriate time in the future.

- iii. Major constraints to urbanisation should be explicit in the Plan: that is, they should be mapped with clear boundaries and subject to clear controls on subdivision, use and development.
- iv. The rules for the Future Urban Zone are based closely on the corresponding rules for the Rural Production Zone, except intensive activities that will require substantial infrastructure and buildings to support are not provided for as such structures could prevent or hinder urbanisation.
- v. Additional subdivision controls for the Future Urban Zone to avoid pre-emptive urbanisation.
- vi. The primary method for managing the transition from rural to urban land use is to require careful planning of any substantial change, following the structure planning guidelines as set out in Appendix 1 to the Unitary Plan.
- vii. The Green Infrastructure Corridor Zone is deleted. Any such provision should be assessed during structure planning.
- viii. Deletion of indicative roads and open space overlays. Any such provision should be assessed during structure planning.

### 1.3. Overview

The Future Urban Zone is applied to over 11,000 ha of land on the periphery of existing urban areas. The most extensive areas are located on the edge of the metropolitan area:

- i. in the north along State Highway 1 at Dairy Flat, Silverdale and Wainui
- ii. in the northwest:
  - a. adjacent to the metropolitan area at Redhills, Westgate, Birdwood, Hobsonville and Whenuapai;
  - b. further out at Kumeu, Huapai and Riverhead;
- iii. in the south:
  - a. along the southern edge of Flat Bush
  - b. on the eastern side of Takanini;
  - c. to the south and west of Papakura and around Drury at Hingaia, Karaka and Runciman.

There are also significant areas around the satellite towns of Warkworth and Pukekohe (including Paerata). There are smaller areas adjacent to rural towns and settlements of Wellsford, Algies Beach, Helensville, Kingseat, Clark's Beach, Glenbrook Beach. There are some infill areas at Red Beach and Māngere.

For the areas at the edge of the metropolitan area and around the satellite towns, the outer boundary of the Future Urban Zone coincides with the Rural Urban Boundary. The smaller areas were notified without a Rural Urban Boundary and the infill areas do not require one.

#### **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.

Matters considered by the Panel to be beyond the scope of submissions are:

- i. deletion of the Green Infrastructure Corridor Zone;
- ii. deletion of indicative roads and open space overlays.

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 9 Reference documents.

## 2. Reasonable use

### 2.1. Statement of issue

The main purpose of the Future Urban Zone is to identify its transitional status. While its existing development and use is rural, it is applied to areas that are expected to become urban sometime in the next 30 years. It is the bulk of the greenfield (as defined in the Unitary Plan) land in the region. This transitional purpose creates a number of issues where the potentially conflicting interests of strategic planning and property rights meet:

- i. pre-emption of structure planning balanced against enabling reasonable use on an interim basis;
- ii. efficient development overall can be hindered by small-scale ad hoc developments;
- iii. end-use development can be disconnected from bulk infrastructure;
- iv. limited heritage/hazard assessment;
- v. urbanisation without full information.

### 2.2. Panel recommendation and reasons

During the period before urbanisation occurs (which may be as long as 30 years) the degree of restriction on the use and development of the land must not render it incapable of reasonable use (see section 85 Resource Management Act 1991). In broad terms, landowners and occupiers must still be able to use the land generally for rural purposes. In that sense, and notwithstanding the firm assertions of Mr Philip Brown, the Council's planning witness, the Future Urban Zone is really a rural zone: the land is not able to be used for urban purposes until an urban zone is applied to it.

The Panel considered a range of options to address the issues relating to the Future Urban Zone, including:

- i. delete the Future Urban Zone entirely and rely on the Rural Urban Boundary and zone changes to manage transition and urbanisation – requires amendment of rural zone activity and subdivision rules to create inside/outside Rural Urban Boundary differences;
- ii. use the Future Urban Zone together with the Rural Urban Boundary and zone changes to add transitional layer based on subdivision; and
- iii. use special housing area-type processes for all Future Urban Zone proposals (including business as well as residential areas).

The Panel's preferred option is the second: to use the Future Urban Zone together with the Rural Urban Boundary and zone changes. This method helps identify areas suitable for urbanisation, providing clear signals to landowners, infrastructure providers and developers. This approach is adaptable to circumstances where there is no Rural Urban Boundary. Clarification of objectives and policies for urban growth, together with structure planning guidelines, provide clear thresholds for rezoning proposals.

### **3. Capacity for urbanisation**

#### **3.1. Statement of issue**

An essential characteristic of land zoned future urban is that it must be capable of being urbanised. This involves both the intrinsic capacity of the land itself to be developed for urban uses and its extrinsic capacity to fit into the existing urban form and to be efficiently provided with infrastructure.

#### **3.2. Panel recommendation and reasons**

The Future Urban Zone should be applied to land which does not have major constraints to urbanisation, although it may include areas with lesser constraints where those can be accommodated by appropriate subdivision and development. Such constraints should be explicit in the Plan: that is, they should be mapped with clear boundaries. For example, an intrinsic constraint may be identified by an existing overlay in the planning maps such as one of those used to show the location of an outstanding natural landscape or an area which is or is likely to be subject to coastal inundation as a result of sea level rise. Constraints at a major level should be avoided by not zoning the area Future Urban and leaving it with a rural or open space zoning.

Such avoidance will not normally extend to local constraints (e.g. significant ecological areas or minor floodplains) which could be addressed through structure planning and incorporated within the urban area albeit potentially with a zoning which reflected its lower capacity for development.

In relation to infrastructure, an extrinsic constraint may be identified in terms of connection or capacity constraints or economic feasibility in the Unitary Plan or in any spatial plan prepared in accordance with Part 6 of the Local Government (Auckland Council) Act 2009. In practical terms, the infrastructure providers themselves can determine areas to be urbanised by identifying areas of service or areas with constrained capacity.

### **4. Avoidance of pre-emptive urbanisation**

#### **4.1. Statement of issue**

Uncoordinated small-scale or ad hoc subdivision and development for urban purposes are likely to create cumulative adverse effects on urban form, compromising its sustainability.

#### **4.2. Panel recommendation and reasons**

The objectives and policies for the Future Urban Zone are designed to make the transitional nature of the zone clear, enabling on-going rural use while preventing subdivision, use and development which might prevent or hinder sustainable urbanisation at an appropriate time in the future. The rules for the Future Urban Zone are based closely on the corresponding rules for the Rural - Rural Production Zone, with some restrictions on activities and subdivision to give effect to the policies as discussed above.

As a rural zone, the Future Urban Zone provides for rural uses on an interim basis. There is a limited range and extent of subdivision. While the range and extent of subdivision outside

the Rural Urban Boundary is limited, there are further restrictions proposed for the rural land inside the Rural Urban Boundary. The focus of these additional subdivision controls is on the avoidance of pre-emptive urbanisation: ad hoc creation of relatively small-scale urban development which would hinder larger-scale urban zoning.

The primary method for managing the transition from rural to urban land use is to require careful planning of any substantial change, with full assessment of both the most appropriate methods and the effects (both positive and adverse) of urbanisation in advance of urban zoning. The format of structure planning, as set out in Appendix 1 of the Panel's recommendation version of the Plan (Appendix 1 - Structure plan guidelines), is the recommended guideline for such a planning exercise.

In very broad terms the key control required is to avoid the pre-emption of sustainable urban form resulting from irreversible changes to the current rural environment before there has been a process of planning for urbanisation. In differentiating uses according to the degree of reversibility, it is also important to pay close attention to potential subdivision which may hinder future urbanisation by fragmenting parcels of land and creating roads (whether formed or not) in ways that can result in urban form with poor amenity values and low levels of efficiency. This method must be considered in terms of its relationship with other methods in the Plan, including the Rural Urban Boundary and zoning. It is also relevant to consider the Council's proposal to create a Future Urban Land Supply Strategy as a non-statutory planning document.

## **5. Contestable methods of managing growth**

### **5.1. Statement of issue**

Options for providing land for urban development should be generally contestable so as to enable choices and reassure people and communities that restrictions on urbanisation will not result in the undersupply of land for urban purposes.

### **5.2. Panel recommendation and reasons**

The methods to manage transition from rural to urban discussed in section 4 above are closely related to the issue of managing Auckland's growth. On the evidence before it, the Panel is convinced it is essential that these methods be fully responsive to the effects they seek to address as well as to the effects which the methods themselves have on growth and on the environment overall. In that context a key issue for these related methods is whether they are generally contestable, that is, whether they are able to be initiated or challenged by any person with an interest in the management of urban growth, including not only the Council but also landowners, developers, infrastructure providers and people or groups with particular interests in the protection of matters of national importance and the maintenance and enhancement of the quality of the environment.

In considering the range of methods, one may question why more than one layer of regulation is required to achieve the objectives of the Plan? If the Rural Urban Boundary is an appropriate method for managing growth (and the Panel thinks it is for the reasons set out in relation to Topic 013) and is located appropriately in a manner that provides a

defensible boundary for urban growth and for protection of the rural environment, then why not simply manage the transition from rural to urban based on that boundary?

There appear to be two main reasons why the Rural Urban Boundary is insufficient by itself:

- i. because the rural environment must be managed differently depending on which side of the Rural Urban Boundary it is on – rural land outside Rural Urban Boundary is to remain rural in the longer term, but inside the Rural Urban Boundary is to change in the short to medium term;
- ii. because while the transition is identified now, the medium timeframe of up to 30 years is sufficiently long that an intermediate regime is appropriate to control decision-making pending a change of zoning.

It is therefore important to consider the Future Urban Zone and the Rural Urban Boundary as complementary methods of managing urban growth and the process of urbanisation. In other recommendations (see the Panel's Report to Auckland Council – Overview of recommendations July 2016 and Report to Auckland Council – Hearing topic 013 Urban growth July 2016), the Panel recommends making the Rural Urban Boundary a method in the district plan rather than keeping it as a policy in the regional policy statement. The Panel thinks this is the most appropriate place for it, to enable changes to the Rural Urban Boundary by changes to the district plan and therefore potentially by private plan change.

The Panel makes this recommendation notwithstanding the urgings of counsel for the Auckland Council and several witnesses called by her, most notably Dr Fairgray who argued strenuously against what he described as a 'soft' Rural Urban Boundary, that is, one that could be changed by private plan change. With great respect, the Panel does not accept that there is anything 'soft' about the requirements of demonstrating that the Rural Urban Boundary should be moved, no matter who proposes it, the need for a full evaluation of a proposed change in terms of section 32 of the Resource Management Act 1991 in a way that gives effect to the regional policy statement will ensure that any change is properly considered.

If the Council is concerned about poor proposals wasting its resources in processing private plan changes, the Panel thinks it has broad powers under clause 25 of Schedule 1 to the Resource Management Act 1991 to reject such applications. The Panel thinks it is far more important that the location of the Rural Urban Boundary be properly contestable so that one of the principal options for enabling greenfield land to be identified is available to anyone who can make a case for it, and not limited to the Council.

These considerations are also relevant in considering the Future Urban Land Supply Strategy. As it exists presently, this is a policy document created by the Council under the Local Government Act 2002. While adopted following a special consultative procedure, its creation was not contestable in the same way as a statutory planning document created under the Resource Management Act 1991. The Future Urban Land Supply Strategy has no regulatory effect, but does appear to describe, in very general terms, where and when greenfield areas will be urbanised.

The Panel thinks there is a danger that the description of the process of urbanisation in the Future Urban Land Supply Strategy will, over time, be treated as a method of controlling the process, effectively by directing when and how essential infrastructure will be provided. This



could inhibit or even prevent meritorious proposals for greenfield development without a full assessment of those merits. While the Future Urban Land Supply Strategy may be a relevant policy document for consideration in a structure planning process, the Panel does not think it should formally be treated at the same level as the Rural Urban Boundary and the Future Urban Zone because of its lack of contestability.

## **6. Green Infrastructure Corridor Zone**

### **6.1. Statement of issue**

The extent to which the Green Infrastructure Corridor Zone is an appropriate policy response and whether the outcome sought by this zone can best be achieved by other resource management means.

### **6.2. Panel recommendation and reasons**

The Panel recommends the deletion of this zone. The purpose of this zone as notified applies to land that needs to be set aside from development and used primarily for stormwater and flood hazard mitigation purposes. The Panel recommends these matters should be addressed in the structure plan and a live zoning with less capacity could be applied to these areas. Hence, a Green Infrastructure Corridor Zone is not required.

While there are no submissions seeking to delete this zone, the Panel considers its deletion is a consequential change arising from the application of the Future Urban Zone and the Panel's growth management method.

## **7. Indicative roads and open space overlays**

### **7.1. Statement of issue**

Some submitters sought the deletion from the Future Urban Zone of indicative roads and open space overlays

### **7.2. Panel recommendation and reasons**

The Panel supports the relief sought by these submitters and recommends the deletion of indicative roads and open space overlays from the Future Urban Zone on the grounds that these are not section 6 and 7 Resource Management Act 1991 matters.

The Panel finds that the inclusion of indicative roads and open space overlays is unhelpful and does not assist land owners to plan for future development of their land. Both indicative roads and open space overlays are unnecessary because during a structure plan process the location of indicative roads and open space will be identified and the appropriate open space zoning can be applied. The location and alignment of roads are usually further refined at time of subdivision.

## 8. Consequential changes

### 8.1. Changes to other parts of the plan

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

- i. deletion of the Green Infrastructure Corridor Zone as a result of application of the Future Urban Zone and the Panel's growth management method, see section 6 above.

### 8.2. 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.

## 9. 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](http://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.)

### 9.1. General topic documents

#### **Panel documents**

028 Submission Point Pathway Report (8 December 2014) (8 December 2014)

028 Parties and Issues Report (17 February 2015) (5 March 2015)

028 Joint Mediation Statement (9 February 2015) (2 March 2015)

#### **Auckland Council marked up version**

Markup Version of Green Infrastructure Zone (4 February 2015)

Markup Version of Objectives and Policies (4 February 2015)

Markup Version of Rules (4 February 2015)

Markup Version of Indicative Roads and Open Space Overlay - Objectives and Policies (5 February 2015)

Markup Version of Indicative Roads and Open Space Overlay - Rules (5 February 2015)

#### **Auckland Council closing statement**

Closing statement (20 March 2015)

Closing statement - Attachment A (20 March 2015)

LATE Closing statement - Indicative Roads (23 April 2015)

## **9.2. Specific evidence**

### **Auckland Council**

Hearing evidence (Douglas Fairgray) - Economic (20 February 2015)

Hearing evidence (Philip Brown) - Planning (20 February 2015)



**Decisions of the Auckland Council on  
recommendations by the Auckland Unitary  
Plan Independent Hearings Panel on  
submissions and further submissions to the  
Proposed Auckland Unitary Plan**

---

**Decisions Report**

---

**19 August 2016**

## **Contents**

1. Introduction.....	2
2. Statutory Context.....	2
3. The Panel’s Recommendations.....	4
4. ‘Out of scope’ recommendations / decisions .....	5
5. Designations.....	6
6. Attachments to Decisions Report.....	8
7. Decisions of Auckland Council .....	9

## 1. Introduction

- 1.1 This "**Decisions Report**" sets out the decisions made by the Auckland Council (**Council**) on the recommendations for the Proposed Auckland Unitary Plan (**PAUP**) that were provided to the Council on 18 May 2016<sup>1</sup> and 22 July 2016<sup>2</sup> by the Auckland Unitary Plan Independent Hearings Panel (**Panel**).
- 1.2 This Decisions Report has been prepared in accordance with section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**). Section 148 sets out how the Council is to consider the "**Panel's Recommendations**" and make and notify its decisions on them. In summary, the Council must decide whether to accept or reject each of the Panel's Recommendations, and must publicly notify those decisions no later than 20 working days after it is provided with the reports containing the Panel's Recommendations (or, if there is more than one report, the last of the reports). Where any of the Panel's Recommendations are proposed for rejection, the Council must provide reasons supporting the rejection and an alternative solution to the Panel's Recommendation that has been rejected.
- 1.3 The Council made its decisions on the Panel's Recommendations during a series of Governing Body (**GB**) meetings held between 10 and 15 August 2016, at which the Panel's Recommendations were considered alongside several reports which set out the proposed staff response to the Panel's recommendations.
- 1.4 In accordance with section 148(4) of the LGATPA, the Council is required to:
- a) publicly notify its decisions no later than 20 working days after it is provided with the reports containing the Panel's Recommendations (or, if there is more than one report, the last of the reports).
  - b) electronically notify its decisions on designations to requiring authorities.

## 2. Statutory Context

- 2.1 The statutory context within which the Panel was required to provide recommendations on the PAUP to the Council, and which then requires the Council to make its decisions on the Panel's Recommendations, is found in Part 4 of the LGATPA.
- 2.2 As outlined in earlier reports to the Council<sup>3</sup>, Part 4 of the LGATPA was enacted by the Government to provide a streamlined, unique process for the preparation of the PAUP. It is the Part 4 process which requires the Council to make and publicly notify its decisions on the Panel's Recommendations, and notify requiring authorities of decisions on their designations, by way of this Decisions Report.

---

<sup>1</sup> In relation to a majority of designations, except for Auckland International Airport, Kiwirail designations heard on 2 May 2016, and NZ Transport Agency designation 6727 (Newmarket Viaduct) heard on 2 May 2016.

<sup>2</sup> In relation to the remaining designations and the balance of the PAUP.

<sup>3</sup> Reports 1, 2 and 3 dated 10 August 2016. Report 1 provided information about the process used to develop the PAUP and the statutory framework around the PAUP process and the decision-making requirements placed on the Council by the LGATPA.

- 2.3 The Panel was required to provide its recommendation report(s) to the Council by no later than 22 July 2016.
- 2.4 After receiving the Panel's Recommendations the LGATPA requires the Council to make decisions, specifically deciding whether to accept or reject each recommendation made by the Panel<sup>4</sup>. Where the Council decides to reject any recommendation, there are additional requirements for the Council, including preparing an "alternative solution" which, in accordance with section 148(1)(b):
- a) may or may not include elements of both the PAUP as notified and the Panel's Recommendation in respect of that part of the PAUP; but
  - b) must be within the scope of the submissions.
- 2.5 After making its decisions, the Council must, by no later than 19 August 2016, publicly notify its decisions in a way that sets out the following information<sup>5</sup>:
- a) each Panel recommendation that it accepts; and
  - b) each Panel recommendation that it rejects and the reasons for doing so; and
  - c) the alternative solution for each rejected recommendation.
- 2.6 In relation to designations (discussed further below), the Council must, again by no later than 19 August 2016, electronically notify each requiring authority affected by the decisions of the Council of the information referred to in paragraph (2.5) above that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation concerned<sup>6</sup>.

#### ***Decision-making by the Council***

- 2.7 In making its decisions the Council must either accept or reject the Panel's Recommendations.
- 2.8 For the Panel's Recommendations that it decides to **accept**, the Council will be able to fulfil its decision-making obligations by considering the Panel's Recommendations and reasons only. This is because the Panel, in making its recommendations, was required to comply with all the requirements of section 145 of the LGATPA, including obligations on the Panel to:
- a) ensure that if the Council accepts each/any/all of the Panel's Recommendations, all relevant requirements (and legal tests) of the RMA,

---

<sup>4</sup> See section 148, LGATPA.

<sup>5</sup> See section 148(4), LGATPA.

<sup>6</sup> See section 148(4)(b), LGATPA. While this requirement also applies to heritage orders, all heritage orders in the PAUP 'rolled over' without modification or submissions, meaning that section 144(6) of the LGATPA applies (pursuant to that provision, the Panel must not make a recommendation on any existing designation or heritage order that is included in the PAUP without modification and on which no submissions were received).

and other enactments which apply to the Council's preparation of the PAUP, are complied with<sup>7</sup>; and

- b) prepare, and include with its recommendations, a further evaluation in accordance with section 32AA of the RMA<sup>8</sup>.
- 2.9 Where however, the Council decides to **reject** any of the Panel's Recommendations, there are additional requirements that must be satisfied before that decision can be publicly notified. If the Council decides to **reject** a recommendation, it must provide reasons supporting that rejection and also prepare an **alternative solution** for that rejected Panel recommendation<sup>9</sup> (which, given the way in which the Panel's Recommendations have been formulated, could be any matter or provision recommended by the Panel), together with a **section 32AA assessment** supporting the rejection, where necessary. No new section 32 / 32AA assessment has been undertaken by the Council, where section 32 / 32AA assessment relating to all alternative solution has already been prepared as part of development of the PAUP<sup>10</sup> and / or the Council's case team evidence for the hearings before the Panel.
- 2.10 There are specific requirements relating to the preparation of alternative solutions, which are set out in subsections (1) and (2) of section 148 of the LGATPA. In short, the Council must decide an alternative solution which:
- a) **May or may not** include elements of both the PAUP as notified and the Panel's Recommendations in respect of that part of the PAUP (and which therefore may be a combination of the two); **but**
  - b) **Must** be within the scope of the submissions.

### 3. The Panel's Recommendations

- 3.1 As outlined in the background information report prepared by staff for the GB decision-making meetings<sup>11</sup>, the Panel's Recommendations were provided to the Council in three parts:
- a) **Part 1** - The Panel's Recommendation Reports: these comprise an overview report dated July 2016, which generally addresses all of the Panel's Recommendations, and 58 separate recommendation reports, relevant to the topics that were heard before the Panel (albeit with some of those hearing topics being combined together in one Panel recommendation report). In addition, the Panel provided a series of designation reports, including a similar introductory / overview report on designations;
  - b) **Part 2** - The Recommended Plan: which comprises a "clean" version of the Panel's recommended text for the PAUP; and

---

<sup>7</sup> See section 145(1)(f), LGATPA.

<sup>8</sup> See section 145(1)(d) and (f)(i) and (ii), LGATPA.

<sup>9</sup> See section 148(1)(b), LGATPA.

<sup>10</sup> E.g. in the Auckland Unitary Plan Evaluation Report prepared by the Council under section 32.

<sup>11</sup> Report 1.



- c) **Part 3** - The Recommended Maps / GIS Viewer: which comprises the Panel's recommended version of the PAUP planning maps, created in the Panel's GIS viewer.

Collectively, the above reports have been referred to by the Council as the "**Panel's Recommendations**".

- 3.2 The Panel's Recommendations (including on designations), Recommended Plan, and Recommended Maps / GIS Viewer can all be viewed on the Council's website: [www.aucklandcouncil.govt.nz/unitaryplan](http://www.aucklandcouncil.govt.nz/unitaryplan).
- 3.3 It is noted that the Panel's Recommendations contain a number of separate hearing topic reports, and that recommendations are often provided throughout the body of each report (including the overview reports referred to at paragraph 3.1(a) above). As a result, where the Council has made a decision which accepts all of the Panel's Recommendations in relation to a specific hearing topic / designation, this Decisions Report will need to be read in conjunction with the related hearing topic report provided to the Council as part of the Panel's Recommendations as well as the decisions (and recommended) version of the PAUP text and maps.

#### 4. 'Out of scope' recommendations / decisions

- 4.1 The Part 4 process for the preparation of the PAUP allowed the Panel to make recommendations that are beyond the scope of submissions made on the PAUP<sup>12</sup> ("out of scope recommendations"). Where the Council accepts any out of scope recommendations made by the Panel in relation to provisions / matters in the PAUP, there is a specific right of appeal to the Environment Court for any person that "is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter"<sup>13</sup>.
- 4.2 The overview report dated July 2016 included with the Panel's Recommendations contained a detailed section that addressed "scope" and, as required by section 144(8) of the LGATPA, the Panel identified recommendations that the Panel considered to be beyond the scope of submissions on the PAUP.
- 4.3 The identification of the Panel's out of scope recommendations was set out in Appendix 3 to the overview report dated July 2016 – "*Summary of recommendations out of scope*" – which listed the hearing topics where the Panel had provided out of scope recommendations to the Council, and identified the out of scope recommendations in question. The Panel's Appendix 3 is reproduced as **Attachment C** to this Decisions Report.
- 4.4 While the Panel's Appendix 3, as reproduced at Attachment C, should be referred to, in summary, the Panel has identified out of scope recommendations in relation to the following topics: 006 – *Natural Resources*, 027 – *Artworks, signs and temporary activities*, 028 – *Future Urban*, 032 – *Historic heritage schedules*, 080 – *Rezoning and precincts (general)* and 081 – *Rezoning and precincts (geographical areas)*, with numerous individual precincts containing out of scope recommendations.

---

<sup>12</sup> Section 144(5), LGATPA.

<sup>13</sup> Section 156(3), LGATPA.

- 4.5 In order to identify out of scope recommendations as they relate to the GIS Viewer (the PAUP spatial component, e.g. zoning) the Panel outlined the properties associated with out of scope recommendations with a bold black line on the GIS Viewer. This outline can be seen on the Panel's recommended version of the GIS Viewer.
- 4.6 In order to identify the Panel's out of scope spatial (zoning) recommendations that have been accepted, the Council has retained the same bold black line on its decisions version of the GIS Viewer.
- 4.7 For ease of reference for users of this Decisions Report the Council has also printed and **attached** ten separate maps showing the accepted Panel out of scope recommendations as they relate to the GIS Viewer. These maps, which are included as **Attachment C**, show out of scope decisions made in the following areas: Albany; Glen Eden, Greenlane, Mangere Bridge, Milford, Newmarket, Otahuhu, Te Atatu South, Warkworth and Whangaparoa. The address details of the properties associated with those decisions have not been provided by the Council.

## 5. Designations

- 5.1 Under the RMA (and the special legislation applying to the PAUP), while designations included as part of a plan review are subject to submissions and a hearing, there is a different process for who makes the decisions on the recommendations from the Panel.
- 5.2 For the Council's own designations, the Council must make a decision on the recommendations provided by the Panel. For designations owned by other requiring authorities however, the Council's decisions are treated as recommendations to those requiring authorities on their designations<sup>14</sup>. The requiring authorities themselves will make the final decisions (subject to appeal) on whether they will accept or reject the Council's recommendations.
- 5.3 In relation to designations included in the PAUP, the Council's GB made decisions on the following aspects:
- a) decisions relating to Chapter G1.3 and Part 7 Designations of the PAUP;
  - b) decisions relating to the Council's own designations included in the PAUP; and
  - c) decisions relating to the recommendations it will make to other requiring authorities in respect of their designations included in the PAUP.
- 5.4 The Council did not oppose any designations included in the PAUP, and did not have an active role in the assessment of third party submissions on designations; other

---

<sup>14</sup> See section 151(1), LGATPA. As noted at paragraph 2.3(i) above, the Council is required to electronically notify each requiring authority affected by the decisions of the Council of the information that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation.

than where the Council's own designations were involved, or where the Council was also a submitter. In addition, the LGATPA did not allow the Panel to make recommendations on designations (or heritage orders) that were 'rolled over' without modification that did not attract any submissions and the Council does not have a decision making role in relation to those 'rolled over' designations (and heritage orders<sup>15</sup>). These 'rolled over' designations will be included in the Council's decisions version of the PAUP and are deemed to have been approved by the Council<sup>16</sup>.

- 5.5 Council staff recommended that the GB, in making its decision on the Panel's Recommendations as they relate to designations, accept all the Panel's Recommendations on designations. Those designations were identified in an attachment to a report entitled "Proposed Auckland Unitary Plan Report 3 - Response to Recommendations from the Auckland Unitary Plan Independent Hearings Panel Relating to Designations" which was prepared for committee meetings on 10 August 2016. That same attachment has been included as Attachment E to this Decisions Report as it contains the Council's decisions in relation to designations.

---

<sup>15</sup> As noted earlier, all heritage orders rolled over without modification / submissions.

<sup>16</sup> Under clause 17(1) of Schedule 1 to the RMA. See s152(5) of the LGATPA.

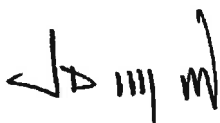
## 6. Attachments to Decisions Report

6.1 A number of attachments have been included as part of this Decisions Report, as follows:

- a) **Attachment A** - The alternative solutions prepared by the Council for any rejected recommendations (which includes: text, diagram and map alternative solutions).
- b) **Attachment B** – The section 32AA assessment reports prepared, where necessary, as part of any rejection.
- c) **Attachment C** – A list of the Panel's out of scope recommendations that have been accepted by the Council, including maps which show the out of scope recommendations within the GIS Viewer.
- d) **Attachment D** – A list of the Panel's Recommendations that have been rejected by the Council.
- e) **Attachment E** – Designations (Parts 1, 2 and 3).

**Approved for release:**

John Duguid - General Manager - Plans and Places



Penny Pirrit - Director Regulatory Services



**24. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 028 (Future urban zone), July 2016”**

**Panel recommendations accepted:**

24.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 028 (Future urban zone), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 24.2.

**Panel recommendations rejected:**

24.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 028 (Future urban zone) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

**(a) Changing the activity status of subdivision in the Future Urban zone from a Prohibited activity to a Discretionary activity.**

<b>Reasons</b>	
(i) It is an important that the PAUP does not facilitate the fragmentation of land within the Future Urban zone, which might prevent or hinder efficient and well planned urbanisation with good urban form and efficient and orderly provision of infrastructure.	
(ii) By allowing discretion, the recommended wording of the subdivision provisions in the Future Urban zone is unclear about the types of subdivision that could be promoted.	
<b>Alternative solution</b>	See Attachment A

- (b) **Changing the activity status of landfills in the Future Urban zone from a Non-complying activity to a Discretionary activity.**

<b>Reasons</b>	
(i) Landfills create significant long term adverse effects over a wide area, potentially irreversible changes and require detailed and careful management and should be assessed as a Non-complying activity.	
(ii) Changing the recommended Discretionary activity status to Non-complying activity status is consistent with the relevant objectives and the consistent management of this activity across the PAUP.	
<b>Alternative solution</b>	See Attachment A

**25. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 031 (Historic heritage), July 2016”**

**Panel recommendations accepted:**

- 25.1 The Council has accepted all the recommendations of the Panel as contained in the Panel report for Hearing Topic 031 (Historic heritage), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

**Panel recommendations rejected: none.**