

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topics 046, 047, 048 and
049**

**Water quality and quantity; lakes, rivers
and streams; aquifers and groundwater;
and discharges of stormwater and
wastewater**

July 2016

Report to Auckland Council - Hearing topics 046, 047, 048 and 049 Water

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1. Hearing topic overview

1.1. Topic description

Topics 046 to 049 address the regional plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
046 Water quality and quantity	C5.15.1 and 6	Chapter D - Overlays Chapter E - Auckland Wide E1 Water quality and integrated management E2 Water quantity, allocation and use
047 Lakes, rivers and streams	C5.14	Chapter D - Overlays Chapter E E3 Lakes, rivers, streams and wetlands
048 Aquifers and groundwater	H4.17, E7.1 and E7.2	Chapter D - Overlays D1 High-use Aquifer Management Areas Overlay D2 Quality-sensitive Aquifer Management Areas Overlay E7 Taking, using, damming and diversion of water and drilling
049 Discharges - stormwater and wastewater	H4.14, 15 and 16	Chapter D - Overlays Chapter E E4 Other discharges of contaminants E5 On-site and small scale wastewater treatment and disposal E6 Wastewater network management E8 Stormwater diversion and discharge E9 Stormwater quality – high contaminant generating carparks and high use roads E10 Stormwater management area - Flow

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

This report covers a wide range of activities (hearing topics 046 to 049) and addresses much of the Council's regional water (including coastal) planning function. Having reviewed all of the submissions and heard extensive legal submissions and evidence the Panel has recommended a number of changes to the suite of provisions. They are all set out in the Panel's recommended Plan.

Many of the changes recommended were those agreed to through the mediation and expert conferencing process, and during the hearing process. Given the number of changes agreed to and the complexity of these topics, only those changes that were contested at the hearing or represent a significant shift in policy approach or rules are addressed in this report.

The Panel notes that Council in its legal submissions and expert evidence acknowledged that some of the provisions, mainly stormwater, were complex and detailed. Submitters also found the provisions, especially those relating to stormwater (and the Stormwater Management Area - Flow (SMAF) provisions in particular), overly complex, unnecessary and in some cases difficult to understand and interpret. The Panel agrees and changes have been made to make these provisions simpler and clearer.

The majority of the Panel's recommended changes to the provisions do not, in the Panel's view, significantly change the outcomes sought by the Plan as notified. The changes seek to clarify, provide functionality, ensure provisions can be more easily interpreted, and provide consistency (for example with the coastal plan discharge provisions). The key changes are summarised below.

1.2.1. Water quality and quantity 046

The water quality objectives are expressed as maintaining water quality where it is excellent or good, and improving it where it is degraded. The Panel has not used the term 'overall'.

The term 'water sensitive design' has been changed to 'integrated stormwater management approach'. This better reflects what it actually is. Notwithstanding the name change, the policy approach is similar to that in the notified Plan.

An additional policy relating to mineral extraction activities and groundwater and de-watering has been included.

The objectives and policies relating to on-site wastewater have been relocated to this section.

1.2.2. Lakes, rivers and streams 047

Clarified the policy on offsetting in relation to mineral extraction.

The management of mangrove removal has been changed to be consistent with the Panel's recommended changes to the coastal plan provisions relating to mangroves.

In relation to the identification of the natural stream management areas, these are still an overlay and shown as a layer in the geospatial viewer, but are now defined in the definitions section, and not defined by the plan policies as in the notified Plan.

1.2.3. Aquifers and groundwater 048

There are no key changes to this topic from the Council closing statement and the provisions.

1.2.4. Discharges - stormwater and wastewater 049

A number of the provisions have been redrafted to make them clearer and simpler with some additional provisions, particularly wastewater provisions, to be consistent with provisions in other chapters (e.g. the coastal plan provisions). In some cases greater flexibility in permitted activities and standards has been provided. This is particularly so regarding the SMAF provisions.

The distinction between public and private networks has been deleted. The same policy approach and activity status is applied to both public and private networks, including the best practicable option.

Amendments to the infiltration requirements in relation to the SMAF areas, as agreed by the Council and submitters, notably the New Zealand Transport Agency and Ports of Auckland Limited.

The impervious area thresholds, as requested by the New Zealand Transport Agency have been increased.

The provisions relating to high contaminant-yielding building materials have been deleted, and changes made to the definition of and provisions relating to high contaminant car parks and roads.

1.3. Overview

The Panel acknowledges the importance of this suite of provisions relating to a large portion of the Council's regional (water) planning function. The Panel also notes that there were wide ranging views of many of the provisions. These views reflect the 'divide' between what is considered to be appropriate use and development, and what is required to maintain and where possible enhance natural values. It is the Panel's position that the suite of provisions recommended by it, better give effect to the Resource Management Act 1991 and the National Policy Statement on Freshwater Management 2014 and the New Zealand Coastal Policy Statement 2010 than those in the notified Plan. In this respect the recommended provisions satisfy section 32 and section 32AA of the Resource Management Act 1991.

Many of the issues raised by submitters were addressed through extensive mediation, and in some cases expert conferencing. A high level of agreement was reached on many of the

issues, and this was reflected in the Council's opening submissions and marked up provisions. However there also remained areas of fundamental disagreement between the Council and some submitters.

Further agreements were reached through the hearings and post hearing discussions. These are reflected in the Council's closing statements and marked up version of the Plan provisions.

The Panel notes that many of the provisions addressed in this report were similar to those in the recently operative Regional: Air, Land and Water Plan. There was little appetite from many submitters and the Council to amend these significantly and the Panel understands this. An exception to this position was the stormwater provisions. This is addressed in more detail below.

1.3.1. Water quality and quantity 046

This section of the report needs to be read in conjunction with the Panel's Report to Auckland Council - Hearing topic 006 Natural resources and 010 Biodiversity July 2016 which also addresses water quality.

The Panel accepts that the Plan will only give interim effect to the National Policy Statement for Freshwater Management 2014 as set out in the Council's evidence. This was generally accepted by submitters. In this respect the Panel accepts and supports the use of the Macroinvertebrate Community Index guideline for Auckland's rivers and streams as part of the 'tool box' for giving effect to the national policy statement until the Council fully implements it. Mr Holland, for the Council, outlined the Council's seven-year programme, including future plan changes, to implement the National Policy Statement for Freshwater Management.

There was considerable debate about how the water quality objectives should be written. The water quality objectives are expressed as maintaining water quality where it is excellent or good, and improving it where it is degraded. The Panel has not used the term 'overall'. While this is addressed in more detail below, the reasons are also addressed in the Panel's report on hearing topics 006 and 010 as referenced above.

A significant policy position of the notified Plan was the concept of 'water sensitive design'. However the Panel having heard all of the evidence did not consider that the term reflected the content of the policy. The term 'water sensitive design' has been changed to 'integrated stormwater management approach'. This, in the Panel's view, better reflects what the policy is. Notwithstanding the name change the policy approach is similar to that in the notified Plan, and is set out in more detail below.

With respect to priority allocation of geothermal water, the Panel accepts the Council's position and not that of Waiwera Properties Limited which sought to prioritise allocation to existing lawfully-established water uses.

1.3.2. Lakes, rivers and streams 047

The Panel accepts the Council's position regarding the definition of rivers and streams and that intermittent rivers and streams are part of the definition. This reflects the definition of rivers in the Resource Management Act 1991 and the provisions of the National Policy Statement for Fresh Water Management 2014. More details are provided later in this report.

With respect to offsetting, the Panel has retained the provisions in this chapter. The Panel supports the concept of and policy approach (as modified by the Panel) to offsetting significant residual adverse effects as set out in the Plan. Offsetting and the Panel's recommendations in relation to this are addressed in the Panel's report on hearing topics 006 and 010 as referenced above. The report addresses:

- i. the extent to which biodiversity offsetting should be provided for;
- ii. whether it can be required;
- iii. whether it is 'more than minor' residual adverse effects or 'significant' residual effects that should be offset; and
- iv. whether the offset requirement should be 'not net loss' and 'like-for-like', or 'like-for-better'.

Given the above, offsetting is not addressed further in this report.

The provisions for the removal of mangroves has been changed in this section in the Plan in response to a significant amount of evidence in hearing topics 033/034 relating to the coastal plan. The changes have been made to be consistent with the Panel's recommended changes to the coastal plan provisions relating to mangroves. The reasons for this are set out in the Panel's report to Auckland Council - Hearing topic 033 and 034 General Coastal Marine Zone and other coastal zones July 2016.

Given the above, mangrove management is not addressed further in this report.

The identification of the natural stream management areas was an issue raised by the New Zealand Transport Agency. This is addressed in more detail later, but the natural stream management areas remain as an overlay shown as a layer in the geospatial viewer, and are defined in the definitions section rather than by policy as they were in the notified Plan.

The Council sought a more enabling activity status for a range of activities in the beds of lakes and rivers when those activities were to be undertaken by network utility operators. The Panel has not accepted this on the basis that the plan addresses the effects of the activity and not the needs of a particular operator. The Panel also questioned whether there was scope to make this change.

1.3.3. Aquifers and groundwater 048

This section of the report needs to be read in conjunction with the Panel's report on hearing topics 006 and 010 as referenced above.

Other than those changes agreed by the parties, either at mediation or during the course of the hearings, no further substantive changes have been made.

Horticulture New Zealand and the Pukekohe Vegetable Growers Association raised a number of significant issues at the hearing, as they had done throughout all of the hearings they attended. They sought a suite of interconnected provisions but due to the structure of the hearing topics presented their evidence in a more 'piecemeal' way but sought to 'pull it all together' in this topic. To reflect this they presented a document with extensive tracked changes.

One of the more significant changes sought was the introduction of a High Productive Potential Overlay. This set out a range of activities with assigned activity statuses. This has been addressed in the Panel's Report to Auckland Council - Hearing topic 011 Rural environment July 2016. The Panel notes that it has not recommended its inclusion in the Plan and has also not recommended issues relating to managed aquifer re-charge. Extensive evidence was presented by Horticulture New Zealand and the Pukekohe Vegetable Growers Association and the Council. The Panel notes here it agrees with the evidence of the Council.

Federated Farmers sought to allow 15m³ per day of water take as a permitted activity. The Panel agrees with the Council and has not increased the permitted limit of 5m³ per day.

1.3.4. Discharges - stormwater and wastewater 049

The Panel acknowledges the importance of these provisions, and while changes have been recommended, the Panel does not consider that they significantly change the management approach or the outcomes sought by the Council.

The Panel did note the extensive stormwater provisions and relative lack of wastewater provisions in this part of the Plan, as well as the lack of integration with the water quality and discharge provisions of the coastal plan (objectives and policies and differing activity statuses). The Panel has addressed this in its recommendations.

The Panel has found that many of the stormwater provisions were complex, prescriptive and difficult to interpret. They also provided a different policy and rule framework for public and private networks, with the public network provisions being considerably more enabled. The same was not the case for wastewater discharges. The Panel does not support the distinction made and has recommended that public and private networks are treated the same way in the Plan, in fact the distinction, and definition, has been deleted. The activity statuses have also been changed to provide consistency with the wastewater activities and those in the coastal plan.

The Panel also notes that in relation to stormwater, the Council appeared to propose a set of provisions to enable it to manage its stormwater network (its infrastructure asset). The Panel sought to clarify this with the Council, particularly with reference to the Council's Stormwater Bylaw (addressed in more detail below). While the Panel has reservations about the Council's response, the Panel has accepted this is needed to enable a range of stormwater discharges, and that the bylaw was only adopted in late 2015.

The Panel considers there is significant scope in the bylaw to manage the Council's stormwater assets. This is a matter for the Council to consider in the future, potentially when it promotes a plan change to give full effect to the National Policy Statement for Freshwater Management 2014 (also discussed below).

With respect to the SMAF provisions, the Panel supports them being relocated into one place for clarity and ease of use. The Panel also largely supports the objectives and policies agreed between the parties and set out in the Council's closing remarks for topic 049. The Panel has also recommended changes to address submitter concerns that the rules were overly complex, very prescriptive and difficult to interpret. The Panel has recommended amending the infiltration requirements in relation to the SMAF areas. Agreement was largely reached between Council and submitters on these. Also the increase in the impervious

areas threshold requested by the New Zealand Transport Agency has been recommended by the Panel. The Panel has recommended changes to the 'high contaminant generating activity'. The changes are to delete provisions relating to high contaminant building materials and, as agreed, amend the definitions of the remaining activities under the high contaminant generating activity.

1.4. Scope

The Panel considers that the recommendations summarised in 1.2 above and the changes made to the provisions relating to this topic 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 19 Reference documents.

2. Water quality objective (046)

2.1. Statement of issue

The main issue that arose was whether the water quality objective (1A) should include the word 'overall', given that the inclusion of these words would result in an objective that sought to maintain overall water quality in the region.

2.2. Panel recommendation and reasons

The Panel notes this is a similar issue to that raised in the regional policy statement hearing topic 006. This section of the report on water quality needs to be read in conjunction with the Panel's report on hearing topics 006 and 010 as referenced above.

The Council's marked up provisions proposed a new Objective 1A to read:

The overall quality of fresh water and associated ecosystems within Auckland is progressively improved.

This was in addition to the following objectives:

- i. Areas of excellent or good freshwater quality, ecosystem health, and areas of significant Mana Whenua values are protected from degradation, and;
- ii. Areas of degraded water quality and ecosystem health are protected from further degradation and they are progressively enhanced.

Some submitters sought to amend this proposed new objective to insert the words 'maintained or' before the words 'progressively improved', so that it would read:

The overall quality of freshwater and associated ecosystems within Auckland is maintained or progressively improved.

Consistent with its recommendation in topic 006, the Panel has not included the objective at all. The reasons are set out in the Panel's report on hearing topics 006 and 010 as referenced above. However the Panel notes that if those words were to be added, then the objective would permit an approach to water quality of maintaining existing levels of water quality.

The Council sought to keep the objective worded to require progressive improvement in the overall water quality because of the expert evidence of some of its witnesses (Drs Buckthought and Neale and Mr Cameron) who stated that the overall quality of water within the region is presently unacceptable, and fails to meet national objectives and minimum standards.

As set out in the Panel's report on hearing topics 006 and 010 as referenced above, and here, the Panel recommends that objective 1A is not adopted, as objectives 1 and 2 effectively incorporate objective 1A. This also avoids the potential issues of the word 'overall' as the other objectives are clear that where water quality is excellent or good it needs to be maintained, and where it has been degraded it can be improved over time.

Reflecting on all of the evidence relating to water quality in terms of the regional policy statement and the regional plan the Panel has recommended a consistent approach. That

approach is one which is not taking an 'overall' approach but one that requires coastal and fresh water quality to be maintained where it is excellent or good and progressively improved over time.

3. Water sensitive design (046)

3.1. Statement of issue

Water sensitive design was a significant policy position of the Council. The Council presented extensive evidence of this, including from Ms Fenelon and Mr Mayhew. A number of submitters (including Ports of Auckland and Z Energy and BP Oil Company Limited and Mobil Oil NZ Limited and Wiri Oil Services Limited) had opposed its use, or sought that the policy position be 'softened' so it was a matter to be considered when proposing a development, and that it was an approach as opposed to an outcome in its own right.

3.2. Panel recommendation and reasons

During the course of the hearing, it was clear that there were only minor differences in wording between Council's revised definition and that sought by the various parties who wanted to see changes to the definition. Those parties and the Council met and agreed the following, and this was set out at paragraph 4.3 of the Council's closing statement:

Water Sensitive Design (WSD) approach means an interdisciplinary approach to land use and development planning, design and implementation which integrates land use and water management, to minimise adverse effects on freshwater systems and coastal environments, particularly from stormwater runoff.

Some of the tools and techniques that can be used for stormwater management under a WSD approach (noting that there are other tools and techniques and that not all tools and techniques will be appropriate for any particular site) include:

- a. Keeping and enhancing freshwater systems, including intermittent and permanent streams
- b. Keeping or otherwise providing overland flow paths
- c. Minimising changes to predevelopment hydrology in stream catchments, including maintaining soil infiltration, base flow, groundwater recharge, and reducing runoff volumes and the duration and intensity of flows which cause erosion and habitat degradation
- d. Minimising impervious area on individual sites including through site design, clustering of houses, use of pervious paving and provision of open or vegetated spaces
- e. Minimising the generation of contaminants, including minimising the use of high contaminant yielding building materials.
- f. Mitigating stormwater contaminants and runoff at or close to source.

g. using green infrastructure which also provides other benefits and values and can be integrated into the urban landscape.

It was the Panel's view when considering the elements that made up the policy, that in fact most of the items were not about water sensitive design but about how stormwater should be managed in an integrated way. That is managing land use and development planning, design and implementation integrates land use and water management to minimise adverse effects on freshwater systems and coastal environments, particularly from stormwater runoff.

The policy requires that in taking an integrated stormwater management approach a wider range of matters must be taken into account. These include those set out in the notified water sensitive design policy, as well as:

- i. the nature and scale of the development and practical and cost considerations; and
- ii. the location, design, capacity, intensity and integration of sites/development and infrastructure to protect significant site features and hydrology and minimise adverse effects on receiving environments.

Accordingly the Panel has re-cast water sensitive design to 'an integrated stormwater management approach'. The policy and structure (order of policies) has been amended to better and more appropriately, in section 32 and 32AA terms, provide for the integrated management of land use and water and land quality.

3.3. Scope

The Panel considers that this matter is in scope as some submitters sought the deletion of, or the substantial modification of, the approach taken to water sensitive design. The Panel's position is that it has essentially accepted the agreed outcome, but renamed the approach to one that more accurately reflects its purpose; that of taking an integrated stormwater management approach, as opposed to one which suggests water sensitivity.

The Panel notes Mr Mayhew's view that, while there were no submissions to the definition, he considered that submissions which challenged how water sensitive design is used in the Plan provided sufficient scope to encompass amendments to the definition. The Panel agrees.

4. Mineral extraction and groundwater and de-watering (046)

4.1. Statement of issue

The mineral extraction industry sought an additional policy to better provide for mineral extraction activities in relation to groundwater and de-watering.

4.2. Panel recommendation and reasons

The Panel agrees with the mineral extraction industry. The notified Plan, including the regional policy statement, places considerable importance on mineral extraction as necessary to enable economic development within the region.

Mr Tollemache, expert planner for the mineral extraction industry, set out that for other topics affecting quarrying, the Council had supported specific tailored approaches to provide certainty about quarrying being enabled, and to avoid quarrying being subject to general plan protections. He particularly mentioned outstanding natural landscapes, significant ecological areas, earthworks and transport as examples where a tailored enabling approach to quarrying had been agreed.

It was the Council's position that the additional policy was not necessary, but if the Panel decided it was, it should be in the minerals chapter of the regional policy statement. The Panel does not agree, particularly as the regional policy statement is now recommended to be a standalone document.

The Panel has included a policy similar to that sought by Mr Tollemache, consistent with the Plan's approach to appropriately enabling mineral extraction while avoiding, remedying or mitigating the adverse effects.

5. Priority allocation of water (046)

5.1. Statement of issue

Waiwera Properties Limited and UP Management Limited sought to introduce a change to the order of priorities for existing uses (paragraph 39 of the legal submissions and in the evidence of Mr Neeve - expert planning witness). Waiwera Properties Limited sought that the policy read:

1A Manage the allocation of geothermal water, heat or energy by giving priority to existing lawfully established water uses and manage new allocations of geothermal water, heat or energy within the guidelines provided by Appendix 5.5, except where provided for by Policy 9, and give priority to making water, heat or energy available for the following uses (in descending order of priority):

- (a) In accordance with Tikanga Maori for the communal benefit of Mana Whenua;
- (b) ~~existing lawfully established water uses;~~
- (c) heating public pools;
- (d) all other uses.

The consequence of this change would be to elevate lawfully established water uses above other allocations, including the provision of water for use in accordance with tikanga Māori, and for heating public pools. The Council's position was that this was not appropriate, and this was set out in Council's legal submissions and in its closing statement for topic 046 (section 8 - Priorities of existing uses in the closing statement).

5.2. Panel recommendation and reasons

The Panel notes that this issue was raised by the submitters in relation to the regional policy statement. A similar reordering of priorities had been sought (paragraph 11 of the legal submissions for Waiwera Properties Limited). In this respect this report needs to be read in

conjunction with the Panel's report on hearing topics 006 and 010 as referenced above. Paragraphs 8.5 and 8.6 of the Council's closing statement state:

To some extent, the submissions [for Waiwera Properties Limited] which follow confuse "existing lawfully established water uses" with those for which a resource consent has been granted. They also confuse the protective provisions of s 14(3) of the Resource Management Act 1991 (RMA), by suggesting that s 14(3) is a list, but not a priority list.

This latter statement is correct, as far as it goes, but it misses the more fundamental point that the provisions of s 14(3) do not require any allocation priority to be established by a plan. They are exceptions from the requirements of the RMA that set out which activities require consent of some sort before they can be established. In the case of the taking of geothermal water for use in accordance with Tikanga Maori for the communal benefit of Mana Whenua, such activity does not require a consent at all.

The Panel agrees with the Council's position that the allocative priorities established in the Plan need to recognise that geothermal water may be taken as of right, and that all other activities, including those authorised by a resource consent, take the geothermal water subject to that existing statutory right. The Panel also agrees that in the case of resource consents, the allocative regime should reflect the prospect that existing consents may not be renewed, or may be reviewed under section 128(1)(b) and potentially reducing the allocation), once limits are set in the Plan establishing maximum or minimum temperatures or pressures of geothermal water, or limits of flows by the setting of limits pursuant to the National Policy Statement for Freshwater Management 2014.

The Panel supports the provisions that were proposed in the evidence of Mr Bayliss, planner for the Council.

6. Location of on-site wastewater objectives and policies (046)

6.1. Statement of issue

The location of on-site wastewater objectives and policies.

6.2. Panel recommendation and reasons

The objectives and policies relating to water quality and quantity are all located in this chapter of the Plan. However those relating to on-site water were contained in their own chapter. For integration and consistency reasons the objectives and policies relating to on-site wastewater have been relocated to this section.

6.3. Scope

There are no scope issues as this change is for integration and consistency purposes and is a consequential change due to reformatting of the Plan.

7. Permanent and intermittent streams (047)

7.1. Statement of issue

The issue is whether the provisions relating to rivers and streams should apply to both permanent and intermittently flowing streams. The Plan as notified treated them the same.

7.2. Panel recommendation and reasons

The Council's position was that since 2001 when the now operative Regional Plan: Air Land and Water was notified, landowners have been on notice that Auckland was about to manage intermittent rivers and streams. This followed from the Resource Management Act 1991 which includes intermittent rivers in the definition of rivers, and which applies the controls of Part 2 of the act to them.

The National Policy Statement for Freshwater Management 2014 does not separately address permanent and intermittently flowing rivers and streams. The Panel notes that it must meet the purpose of the Resource Management Act 1991 and give effect to national policy statements.

The Council's evidence in this and the coastal topic (033 and 034) identified the poor state of the region's waterways, and the contribution that management of intermittent rivers and streams can make to improving water quality. This was addressed in Dr Neale's evidence in chief (Council's expert water quality scientist) at paragraphs 5.50 to 5.52. Of particular significance is the observation of Dr Neale that:

the management approach specified within the NPSFM, and the consequential obligations placed on Auckland Council, applies to intermittent and permanent rivers. Hence the shift to managing intermittent rivers in a similar way to permanent rivers is consistent with the current statutory context within which Auckland Council must operate. The objective and limit setting processes required by the NPSFM apply equally to permanent and intermittent rivers, as do the compulsory national bottom lines described in the National Objectives Framework. (Paragraph 5.44.)

While a number of submitters raised this issue, the Southern Gateway Consortium argued that the addition of intermittent streams would cause land worth millions of dollars to become undevelopable. The Panel understands the concern of the submitters, and notes that land, and in this case land for employment, is a scarce resource and needs to be sustainably managed. Submitters are directed to the Plan provisions and the setbacks and yards provisions.

The Panel also notes that new reclaiming (piping) of intermittent streams is not prohibited. It is classified as non-complying. In response to the evidence from submitters, Mr van Voorthuysen, the Council's expert planner, recommended an amendment to the relevant policies (C5.14 Policy 10(2)), so that provided there are no reasonably practicable alternatives outside the intermittent stream, such activities would be able to pass through the section 104D(1)(b) gateway test and be assessed on their merits.

The Council stated in its closing statement that it was not persuaded to resile from the position it advanced for intermittent streams. The Panel agrees. It is the Panel's position that in section 32 and 32AA terms the further loss or degradation of intermittent streams should

be protected and further loss avoided where this is practicable. The continued loss of intermittent rivers and streams would not give effect to either the National Policy Statement for Freshwater Management (objectives A1 and A2 and objective B1) or the regional policy statement.

8. The identification of natural stream management areas (047)

8.1. Statement of issue

The identification of the natural stream management areas was an issue raised by Ms Heppelthwaite, expert planner, for the New Zealand Transport Agency. She sought that the natural stream management areas remain an overlay and shown as a layer in the geospatial viewer and be defined in the definitions section.

The Plan as notified mapped the natural stream management areas, but set out in the policies how they were to be identified. Ms Yan, Council's expert planner, was concerned that the mapping of the natural stream management areas, due to the scale of the maps, was not particularly accurate, and that the plan policies set out the characteristics and dimensions of when an area was a natural stream management area. Ms Yan had recommended the maps be deleted.

8.2. Panel recommendation and reasons

The Panel agrees with Ms Heppelthwaite. It is not appropriate to identify areas through policy. Unless areas are mapped, property owners and plan users will not know of the existence of a natural stream management area. The Panel notes that Ms Yan, when questioned, accepted Ms Heppelthwaite's suggestion as appropriate. The Panel has recommended accordingly.

9. Different activity status for network utility operators (047)

9.1. Statement of issue

Whether or a more enabling regime should be introduced for network utility operators, when they wish to undertake a range of activities in a significant ecological area.

9.2. Panel recommendation and reasons

The Council sought to introduce amendments to the plan provisions, in particular the rules, to provide a more enabling regime for a range of activities if undertaken by network utility operators, as opposed to other people within the significant ecological areas. Those activities were:

- i. channel clearance;
- ii. mangrove removal;

- iii. disturbance that does not meet the permitted activity controls or is not covered by another rule;
- iv. minor infrastructure upgrading;
- v. temporary structures;
- vi. erosion control structures;
- vii. stormwater or wastewater outfalls; and
- viii. new structures that do not meet the permitted activity controls or are not addressed by another rule in the Plan.

Ms Coombes, expert planner for the Council, supported this position. She stated that for all other activities (than those listed above) undertaken in the Significant Ecological Areas, the more restrictive regime in the Plan would be retained. She noted that these amendments were discussed at the mediation for Topic 023 Significant ecological areas, and were supported by the Auckland Utility Operators Group and the New Zealand Transport Agency. Other parties, including the Environmental Defence Society, Royal Forest and Bird Protection Society, the Gibbs Foundation and the Minister of Conservation, reserved their position.

The provisions for activities in lakes, rivers and streams have a distinction in the activity table based on whether the activity is undertaken inside or outside of the listed management areas. In considering whether activities in significant ecological areas should be grouped with the management areas, or with waterways outside those areas, the Council identified a need to provide for some works by network utility operators while otherwise treating significant ecological areas consistently with the management areas. Ms Coombes considered it was appropriate to enable infrastructure works "with public benefits, and limited environmental effects, while recognising the values of waterways in Significant Ecological Areas" (paragraphs 1.2 and 9.1 of her evidence in chief).

The Panel notes that this matter was heard in hearing topic 023 rather than topic 047. The Panel was alerted at the hearing on topic 047 hearing that this matter would be raised at the hearing on topic 023. The Panel questioned Mr van Voorthuysen, Council's expert planner for topic 047 as to whether he supported a different activity status for network utility operators. He did not. He considered that activity status should not be determined by who was undertaking the activity, but by the effects of that activity.

The Panel also questioned Ms Coombes whether there was scope to make the changes she supported. Ms Coombes acknowledged that she was relying on submissions made by the Auckland Utility Operators Group and a number of the network utility operators individually, in which they generally supported the existing provisions with some amendments. In reviewing those submissions, the Panel is not convinced there is scope to make the changes requested. Watercare Limited and Auckland Transport, to whom Ms Coombes referred in her evidence, had not made submissions (i.e. no Council submission) on this.

The Panel was not persuaded by the Council's position and has not accepted the evidence. It is the Panel's view that the provisions should not be changed as sought by the Council and in particular that activity status should not be determined on the basis of who undertakes the activity but the effects of the activity. In this respect the Panel agrees with Mr van

Voorthuysen. Furthermore the Panel does not consider there is scope to make the changes sought.

10. Permitted take for farming activities (048)

10.1. Statement of issue

Federated Farmers sought to allow 15m³ per day of water take as a permitted activity. The Council did not agree with this and sought that the permitted quantity not be increased from the permitted limit of 5m³ per day.

10.2. Panel recommendation and reasons

Mr Gardner for the Federated Farmers sought the increase from 5m³ per day to 15m³ per day on the basis that he considered this quantity was required, and because farmers had always understood that the permitted take allowed by section 14 of the Resource Management Act 1991 allowed for drinking water and dairy shed wash down water as well. The farmers considered that the new construction of the provisions of the statute now operated unfairly.

The Council does not agree that there has been any change in the interpretation of section 14 of the Act, nor any change in how that section is applied. The Council also did not agree that 15m³ per day should be a permitted activity as it was in some other regions. In this regard the Council set out that the circumstances in the Auckland region differ from those in other regions. The Auckland region lacks big rivers like the Waikato River, and the land is more closely developed, with life-stylers and others spaced more closely through the rural areas.

Moreover the Council considered that to allow 15m³ per day as a permitted activity, would establish a permitted baseline which could well be significant over the more densely developed land within the Auckland region.

The Panel agrees with the Council for the reasons set out in its legal submissions and expert evidence.

11. Overall approach to stormwater management (049)

11.1. Statement of issue

The Council's overall approach to stormwater management

11.2. Panel recommendation and reasons

The Panel notes that there was extensive evidence presented to it on these matters from both the Council and submitters. As already addressed the stormwater provisions in particular were complex, prescriptive and in some cases difficult to understand and interpret.

The rationale for the Council's detailed and prescriptive approach was set out by Mr Mayhew, Council's expert planning witness. This included:

- i. Auckland's freshwater and coastal environments are demonstrably degraded by existing urban development;
- ii. management of hydrological change (including stormwater runoff volume, peak and infiltration) caused by urbanisation is essential to maintain freshwater ecosystem health, protect the remaining natural character of urban streams,
- iii. the national policy direction, (National Policy Statement for Fresh Water Management and the New Zealand Coastal Policy Statement) provide a strong driver to improve the management of fresh and coastal water quality and to maintain or improve water quality and ecosystem health and enhance it where it has been degraded. (See paragraph 3.4, evidence in chief.)

The Council's concern, supported by Mr Mayhew, is that a more comprehensive and integrated approach is required if improved outcomes are to be achieved. Moreover he accepted that the rules were complex, primarily because they are not a 'one size fits all' approach but instead a combination of:

- i. discharge and land use rules (both regional and district);
- ii. rules that apply at a site scale through to rules for large stormwater networks;
- iii. spatial rules based on receiving environment sensitivity to stormwater runoff from development (i.e. SMAF);
- iv. rules that target specific activities, primarily for contaminant management; and
- v. rules that apply to both development and redevelopment, with the aim of the latter being to reduce existing adverse effects.

The Panel understands and accepts that stormwater management is a significant issue and that a comprehensive and integrated approach is required if improved outcomes are to be achieved. While the Panel generally supports the approach taken by the Council seeking to improve water quality outcomes, the Panel found the provisions overly complex and difficult to understand, particularly those related to the SMAF provisions.

Following initial deliberations on the stormwater provisions (hearing topic 049), the Panel also heard evidence on hazardous substances and Industrial and Trade Activities (hearing topic 039), and evidence relating to the maximum impervious area rules during the hearings on the residential topics (059, 060, 062 and 063). This raised some matters on which the Panel sought clarification in relation to the stormwater controls. See the Panel's memorandum to the Council dated 4 November 2015 - titled 049 Discharges, stormwater and wastewater in the proposed Auckland Unitary Plan (PAUP).

These matters raised were jurisdictional regarding sections 9(2) and (3), 14, 15, 30 and 31 of the Resource Management Act 1991 and the exclusion of water in any form while in any pipe, tank, or cistern from the definition of water in section 2 of the Resource Management Act 1991. The Panel also sought clarification of the role and function of the Auckland Council Stormwater Bylaw.

In brief, the issues raised were:

- i. whether there is jurisdiction under the Resource Management Act 1991 to control or manage stormwater entering the stormwater network and/or the

combined sewer-stormwater network (i.e. a piped network) through a combination of regional and district land use controls; and

- ii. what the relationship is between the proposed Auckland Unitary Plan and the Auckland Council Stormwater Bylaw, which appears to control and manage stormwater entering the Council's stormwater network.

No additional evidence was sought and this memorandum made it clear the Panel was not going to re-open the 049 hearing.

The Council replied on 20 November 2015 in its document titled Topic 049 Stormwater: response of the Auckland Council to the Panel's memorandum of 4 November 2015 concerning jurisdiction and relevance of the bylaw. In summary the Council's position, set out at 1.3 of the memorandum was:

- (a) to the extent that the relevant PAUP provisions manage water or effects on water, it is not water "while" in a pipe and can, therefore, be controlled under the PAUP;
- (b) there is jurisdiction to control the diversion of surface water under sections 14 and 30(1)(1)(e) of the Resource Management Act 1991 (RMA) – whether or not the water is directed to the public stormwater network;
- (c) there is jurisdiction to control the use of land under sections 30 and 31 of the RMA to address the effects of stormwater flows exceeding the stormwater network capacity, in terms of:
 - (i) the control of any actual or potential effects of the use or development of land; and
 - (ii) the avoidance or mitigation of natural hazards;
- (d) there is jurisdiction to control the use of land for the purpose of managing the effect of stormwater that is directed to the combined sewer network under section 30(1)(c)(ii) and (iiia) of the RMA because the additional stormwater can result in wastewater overflows;
- (e) there is jurisdiction to control the use of land for activities that generate high levels of contaminants under section 30(1)(c)(ii) and (iiia) of the RMA, even where the stormwater from these activities may be conveyed through pipes before entering the eventual receiving environment;
- (f) the Bylaw is of limited relevance to the assessment of the PAUP provisions as it is focussed on direct impacts on the networks and, to the extent it potentially overlaps with the PAUP controls, the Bylaw is subject to the PAUP.

The full memorandum and the Council's response are referenced in section 19 below.

The Panel, while having some reservations about the Council's response, largely accepts it due to the requirement to enable a range of stormwater discharges, and that the bylaw was only adopted in late 2015. The Panel considers there is significant scope in the bylaw to better manage the Council's stormwater network asset, and to further simplify the Plan provisions.

The Panel notes that this is a matter for the Council to consider in the future, potentially when it promotes a plan change to give full effect to the National Policy Statement on Freshwater Management 2014 as has already been set out in sections 2-6 above dealing with water quality and quantity (hearing topic 046). In that section the Panel accepted that the Plan will only give interim effect to the national policy statement for freshwater management until the Council fully implements it.

12. Public and private networks

12.1. Statement of issue

The distinction between public and private networks.

12.2. Panel recommendation and reasons

The Panel does not support the distinction made in the notified Plan between public and private networks. This has been deleted and the same policy approach and activity status applied to both public and private networks, including the best practicable option. In doing so the activity status for the discharge of stormwater not otherwise specifically provided for in the activity table is discretionary.

The Panel has deleted the distinction between public and private networks. It has done this for a number of reasons including the same reasons as set out earlier in this report in reference to more enabling provisions for network utility operators and activities in relation to the beds of rivers, streams and lakes. The Plan is concerned about the effects of the activity and not who undertakes them.

In this respect the Panel does not accept Mr Mayhew's evidence in rebuttal (paragraphs 3.1 to 3.7) where in relation to best practicable option he sets out why it should only apply to public networks. One of the reasons is that the significant majority of the discharges from the public stormwater network are from existing infrastructure and development. Mr Mayhew says this is an important point of difference between the public network and private discharges as a primary rationale for adopting the best practicable option for public networks is to provide an appropriate framework to prioritise and progressively reduce existing adverse effects associated with existing development and associated stormwater discharges.

In contrast Mr Mayhew considered that discharges by private developers were typically focussed on obtaining consent for new impervious areas and constructing the infrastructure at a single point in time, rather than ongoing management and reduction of adverse effects on the environment.

The main argument by a number of submitters for why the best practicable option should be available in applications for private discharges is so that elements of cost and practicality can be considered. The Panel supports this and acknowledges that this may be part of any consent process and whether it is appropriate to grant consent on the basis of the best practicable option as proposed. Moreover, as Mr Mayhew noted, the best practicable option can be considered as part of any assessment criteria in the Plan, without specifically adopting a best practicable option-based approach. Given this it is better to be direct and enable the best practicable option as a policy position.

The Panel also supports no distinction between public and private networks due to the Panel's recommended approach to urban growth set out in the regional policy statement (see the Panel's Report to Auckland Council – Hearing topic 013 Urban growth July 2016). At the regional policy statement hearings there was considerable debate about growth with a significant focus on the ability or, more accurately, the lack of ability to provide infrastructure to be able to urbanise land. It is possible that to enable timely, demand-led growth that infrastructure will increasingly be provided by private networks. These networks may or may not become public assets. It is the Panel's view that public and private networks should be held to the same standards and treated in the same way.

13. Different activity status for public and private networks (049)

13.1. Statement of issue

Different activity status for public and private networks

13.2. Panel recommendation and reasons

In terms of activity status in the notified Plan the following applies:

- i. existing stormwater discharge and diversions not directed to the public stormwater network are a permitted activity subject to conditions;
- ii. discharges from the public stormwater system require resource consent as a controlled activity; and
- iii. new stormwater discharges and diversions (or those not meeting permitted activity conditions) not directed to the public stormwater network require resource consent as a restricted discretionary activity.

In the Council's closing submissions (paragraph 3.3) Council set out why it considered the classification of activity status appropriate:

- i. the diversion of private discharges into the public stormwater network is already provided for as a permitted activity;
- ii. for the public stormwater network, controlled activity status reflects the reality that the majority of the discharges being consented are from the existing network, which is large and well-established. It is unrealistic that these discharges cease. With or without resource consent, these discharges of stormwater will continue to occur. Accordingly, while conditions requiring treatment of stormwater and management of the discharge may be imposed, consent cannot realistically be declined.

Accordingly, in the Council's submission, controlled activity status for the discharges in (ii) above is appropriate as it enables the discharges to take place, subject to appropriate assessment and matters of control.

In terms of new private diversions and discharges, the Council considered restricted discretionary activity status is the most appropriate. The restricted discretionary activity provisions refer to a range of specific technical matters that need to be addressed. The

Council considered that while these matters will usually be capable of being addressed through design (and consent granted) it may still be necessary to decline consent in some cases (where the adverse effects of the diversion and discharge may be such that granting consent is not appropriate).

For the reasons given in response to the public and private networks, the Panel is similarly not supportive of the differing activity status to selectively enable a particular operator (in this case the Council) over other operators. It was the Council's position that if the Panel were to recommend the same activity, the most appropriate approach would be to amend the activity status for discharges from the public stormwater network to restricted discretionary, rather than making private discharges a controlled activity. As stated the Panel agrees the activity statuses should be consistent.

The Panel notes that the discharge of treated or untreated wastewater from treatment plants is a discretionary activity when discharged on to land or water, and into the coastal marine area (coastal plan). The Panel is of the view that the discharge of stormwater can have the same or even greater potential adverse effects than treated or even untreated sewage. The Panel found that the discretionary activity status is appropriate for wastewater given the range of effects that should be considered. It follows in terms of the potential adverse effects and preferring consistent provisions, the discharge of stormwater (not otherwise provided for) should also be discretionary. The revised objectives and policies will provide clear guidance on any application for resource consent.

A number of submitters including the Royal Forest and Bird Protection Society (4848), the Environmental Defence Society (4735) Friends of Oakley Creek (5745) and Mr Moorhead (5363) were all seeking stronger controls over stormwater, stating that the current rules were too permissive and would not achieve the Plan's objective. The Panel agrees and for the reasons set out above, the Panel recommends discretionary activity status.

14. Stormwater management area – flow – general (049)

14.1. Statement of issue

The Stormwater Management Area – Flow 1 and Flow 2 seeks to protect and enhance Auckland's rivers, streams and aquatic biodiversity in urban areas. The Panel supports the intent of these provisions as the creation of impervious surfaces in a catchment undergoing development increases the flow rate and volume of stormwater runoff. This change in hydrology, unless managed, can have a significant adverse effect on streams within the catchment, including accelerating river and stream erosion and bank instability, particularly in steeper upper catchment areas, and creating hydrological conditions that do not support healthy aquatic ecosystems.

In developed urban catchments with large areas of impervious surface, increased runoff is one of the primary causes of degraded river and stream health, and also causes loss of land (including undermining buildings) and amenity values.

14.2. Panel recommendation and reasons

The Panel supports the SMAF provisions being relocated into one place for clarity and ease of use. The Panel also largely supports the objectives and policies as generally agreed

between the parties and set out in the Council's closing statement. However a number of submitters expressed concerns that the rules were overly complex, very prescriptive and difficult to interpret. The Panel has similar concerns and expressed these during the hearing process.

During deliberations, the Panel attempted to better understand the rules, but despite Council's closing version, still found them complex, prescriptive and difficult to interpret. This is, in part, what prompted the Panel's November 2015 memorandum to the Council (referred to earlier in this report). Two examples of rules for permitted activities are provided on the following pages.

Example 1

1. Development of additional and redevelopment of, impervious areas within a SMAF 1 or 2 (other than for a road, motorway, state highway, or rail corridor)
 - a. stormwater from the additional and redeveloped impervious area is not directed to a stream receiving environment (via a network or direct discharge); or
 - b. stormwater from the additional and redeveloped impervious area is directed to a stream receiving environment (via a network or direct discharge) downstream of RL 2m; or
 - c. the additional and redeveloped impervious area is no more than 50m²; or
 - d. the additional and redeveloped impervious area is more than 50m² and no more than 1000m²; and stormwater from the new and redeveloped impervious area is directed to a stream receiving environment (via a network or direct discharge) upstream of RL 2m and either
 - i. the additional and redeveloped impervious area comprises no more than 50 per cent of the total site area; and
 - ii. stormwater from the additional and redeveloped impervious area is managed to achieve the hydrology mitigation requirements specified in Table 1 for a SMAF1 and SMAF 2;
or
 - iii. the additional and redeveloped impervious area comprises more than 50 per cent of the total site area; and
 - iv. stormwater from the total site impervious area is managed to achieve the hydrology mitigation requirements specified in Table 1 for a SMAF1 and SMAF 2; and
 - e. the hydrology mitigation requirements in d above are either met:
 - i. on-site; or
 - ii. by an authorised off-site device or system designed, constructed and operated to receive and manage stormwater from the site impervious area, and a copy of authorisation (such as a discharge consent or subdivision consent notice on title) is provided to council, along with confirmation from the operator of the device or system that hydrology mitigation requirements will be achieved for stormwater from the site.
 - f. any stormwater management device or system is built generally in accordance with design specifications by a suitably qualified service provider and is fully operational prior to use of the impervious area.
 - g. 'as built' plans for any stormwater management device or system are provided to council within three months of practical completion of the works.
 - h. any stormwater management device or system is operated and maintained in accordance with best practice for the device or system.

Example 2

2. Development of new impervious area for a road, motorway or state highway (operated by a road controlling authority), or a rail corridor within a SMAF-1 or 2
 - aa. stormwater from the new impervious area is not directed to a stream receiving environment (via a network or direct discharge); or
 - ab. stormwater from the new impervious area is directed to a stream receiving environment (via a network or direct discharge) downstream of RL 2m; or
 - ac. the new impervious area, excluding footpaths, cycleways and ancillary areas where stormwater runoff is to vegetated or grassed areas, is no more than 500m²; or
 - a. the new impervious area, excluding footpaths, cycleways and ancillary areas where stormwater runoff is to vegetated or grassed areas, is more than 500m²; and
 - i. stormwater runoff from the new impervious area and any existing road discharging to the same drainage network point is managed to achieve the hydrology mitigation requirements specified in Table 1 for SMAF 1 and SMAF 2;
 - ii, the stormwater management device or system is certified by a council-approved chartered professional engineer as meeting (i) above and is constructed in general accordance with the design;
 - iii. the stormwater management device or system is fully operational prior to public use of the road, motorway or state highway;
 - iv. 'as built' plans and an operations and maintenance plan are provided to council within three months of practical completion of the works; and-
 - v. any stormwater management device or system is maintained in accordance with the operations and maintenance plan.

In light of submitters' and the Panel's concern, some of the rules have been redrafted to be less complex and easier to interpret. It is the Panel's view that, notwithstanding the specific changes addressed in the next two sections of this report, the rules still achieve the outcome sought by the Plan. The Panel finds that the changes it recommends in section 32 and section 32AA are more appropriate than those in the notified Plan and those in the Council's closing statement. The reasons for this are those set out in this report.

15. Infiltration requirements in relation to the stormwater management flow areas (049)

15.1. Statement of issue

The New Zealand Transport Agency considered in its evidence that the stormwater retention requirements within SMAF areas were unable to be achieved for roads in most instances. This was because for roads the only retention option is infiltration, and in the Agency's view this may not be achievable in many circumstances due to soil infiltration and geotechnical

limitations. The New Zealand Transport Agency's experts proposed amended plan provisions that provide for these limitations.

15.2. Panel recommendation and reasons

In the hearing the Council stated that it had given careful consideration to the provisions proposed by the New Zealand Transport Agency. The Panel was advised in the Council's closing submissions that representatives of the Council, the New Zealand Transport Agency and other parties (including Ports of Auckland Limited) had met several times to discuss this issue since the conclusion of the hearing. As a result of these discussions, Council has proposed amendments to the SMAF hydrology mitigation requirements

The Panel understands that the parties agree and that the amended SMAF hydrology mitigation requirements should be endorsed by the Panel. The Panel agrees, and notes that other changes have been made to the SMAF provisions.

16. Increase the impervious areas threshold as requested by The New Zealand Transport Agency (049)

16.1. Statement of issue

The New Zealand Transport Agency questioned the justification for a permitted activity threshold of 500m² of additional impervious area, compared to the figure of 1,000m² it proposed. The New Zealand Transport Agency set out in its evidence that while it understood from Mr Nelson's (Auckland Transport) evidence that a threshold of 500m² would allow Auckland Transport to undertake minor upgrades and projects as a permitted activity; the Agency sought 1,000m².

The Council did not consider it appropriate, or justifiable on an effects or consistency basis, to increase the permitted activity standard from 500m² to 1000m². It remained of the view that the effects of more than 500m² of new impervious area should be assessed through a consenting process, and if granted, be subject to any required conditions.

16.2. Panel recommendation and reasons

The Panel was more persuaded by the evidence of the New Zealand Transport Agency (Dr T Fisher, Ms Heppelthwaite and Mr Mitchell).

Dr Fisher, at paragraphs 21 and 22 of his evidence in rebuttal stated:

In my EIC, I supported provision for additional impervious areas up to 1,000m² as a permitted activity without treatment or hydrological mitigation. This was because it is not cost effective to include stormwater treatment for projects of that size, particularly in retrofit situations, and would result in the project(s) becoming significantly more expensive such that they might not precede or be delayed. Mr Mitchell, in his rebuttal evidence, provides more detailed examples of these types of projects in support of allowing 1,000m² of impervious areas without treatment.

In practical terms, the amount of impervious area potentially affected by this permitted activity within in a catchment would be small. If there were 50 projects of

this size (up to 1,000m²) over the Auckland Isthmus these would equate to 0.3% of the existing road area and 0.03% of the total land area. This demonstrates that the area of road and land potentially affected is very small.

The provisions have been changed to reflect the Panel's recommendations.

17. High contaminating activities (049)

17.1. Statement of issue

The proposed Auckland Unitary Plan contains a definition and provisions relating to high contaminating activities. It includes three components:

- i. high contaminant car park;
- ii. high contaminant-yielding building materials; and
- iii. high use roads

With respect to high contaminant car parks, the main submitter who raised issues was Mr Le Marquand, expert planner for Z Energy Limited, BP Oil Company Limited, Mobil Oil NZ Limited and Wiri Oil Services Limited. While the need for the provision was questioned, Mr Le Marquand and the Council essentially agreed on a revised definition. In Council's closing statement, the Council considered that the changes clarified the definition but did not change the substantive effect of the definition and rule.

17.2. Panel recommendation and reasons

With respect to high contaminant-yielding building materials, the Panel has recommended that this be deleted. The Panel preferred the evidence of New Zealand Steel (Mr Shedden - engineering, Dr Ogilvie - ecology and Ms Rickard - planning) to that of the Council.

In summary the Panel agrees with Ms Rickard's evidence in chief, (summary paragraph C), which states:

My evidence addresses my view that the provisions for stormwater management as they relate to High Contaminant-Yielding Building Materials:

Do not respond to any demonstrated adverse effect experienced within the receiving environment, and are therefore not necessary, reasonable or appropriate in terms of the RMA;

Are unnecessarily complex, hard to understand, and open to variable interpretation;

Do not represent, to my knowledge, an approach that has been used anywhere else in the world;

Seek to effectively apply ANZECC "ambient" water quality guidelines at the "top of pipe", rather than in a receiving environment which is where they are designed to be applied, and after reasonable mixing;

Would require individual site-based approaches to stormwater quality management; C.6 could potentially deter people from using certain building products, including

some of the more cost-effective and efficient products available; and C.7 are unlikely to achieve notable beneficial outcomes from a wider planning and environmental perspective.

and D:

I also consider it to be inequitable for specific building products to be targeted for planning controls when there are many other sources of zinc in the environment. Further to this, it is unclear from the Council evidence and background information as to the overarching environmental effect (or problem) that the rules are seeking to manage. In short, it is not clear why zinc, at the levels being experienced in Auckland, is considered to be a problem that warrants this rule framework.

Ms Rickard also set out her opinion in her summary statement at the hearing, with which the Panel agrees.

From an overarching planning perspective, and taking into account the goals of the Auckland Plan and the PAUP, my view is that there is a reasonable expectation that demand for development, an increasing focus on intensification within the existing urban limits, and the redevelopment of existing urban sites, may also result in a quicker reduction. For example, there are a lot of older industrial fringe areas and older residential areas that may experience pressure from new intensification and development. If demand for housing continues to increase, then the old roofs get replaced with the newer products with lower discharge rates. That happens without PAUP "zinc rules". In short, my view is that you can have all the rules you like, that would not address the presence of older, poorer performing materials (paragraph 6) - emphasis added.

Overall, I am not convinced that there is any demonstrated link between the discharge of zinc from building products, environmental effects, and therefore the PAUP provisions proposed, and that the Council's proposed provisions are overly complex and likely to be difficult to apply. In particular, I consider it is important to recognise that there are positive changes occurring without the need for further regulation such as these provisions (paragraph 14).

The issue of high use roads was raised by the New Zealand Transport Agency. Their concern was the provisions that relate to high use roads. These have been addressed in the sections of this report above.

18. Consequential changes

18.1. Changes to other parts of the plan

There are no consequential changes to other parts of the Plan as a result of the Panel's recommendations on this topic.

18.2. 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.

19. 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.)

19.1. General topic documents

Panel documents

[046 - Submission Points Pathway Report - 14 April 2015](#)

[047 - Submission Points Pathway Report - 24 March 2015](#)

[048 - Submission Points Pathway Report - 13 April 2015](#)

[049-Submission Point Pathway Report \(15 April 2015\)](#)

[046 - Parties and Issues Report - 26 June 2015](#)

[047 - Parties and Issues Report - 17 June 2015](#)

[048 - Parties and Issues Report - 24 July 2015](#)

[049-Parties & Issues Report \(18 June 2015\)](#)

[046 - Mediation Joint Statement - C.5.15.1 Water Quality and Integrated Mgmt Obs and Pols - 18 May 2015 \(20 May 2015\)](#)

[046 - Mediation Joint Statement - C.5.15.2 Water Quantity, Allocation and Use obs and pols & E.7.3 High Use Stream Management obs and pols \(21 May 2015\)](#)

[047 - Mediation Joint Statement - Lakes, Rivers and Streams \(20 May 2015\)](#)

[047 - Mediation Joint Statement - E.7.4 and follow up on Intermittent Streams and Indicative Streams \(26 May 2015\)](#)

[047 - Expert Conference Statement - Freshwater - 10 June 2015 \(23 June 2015\)](#)

[048 - Mediation Joint Statement - 18 and 19 June 2015](#)

[049 - Mediation Joint Statement Wastewater Network Management \(3 June 2015\) \(30 June 2015\)](#)

[049 - Mediation Joint Statement Other contaminants \(4 June 2015\) \(30 June 2015\)](#)

[049 - Mediation Joint Statement Stormwater Management & SMAF \(15 June 2015\)](#) (30 June 2015)

[049 - Mediation Joint Statement On-Site Wastewater \(17 June 2015\)](#) (30 June 2015)

[049 - Expert Conference Joint Statement \(DEQR\) \(10 June 2015\)](#) (30 June 2015)

[049 - Expert Joint Statement \(FMD\) \(24 June 2015\)](#) (30 June 2015)

Auckland Council closing statement

[046 Hrg - Auckland Council - Post Hearing closing submissions](#) (31 July 2015)

[047 Hrg - Auckland Council - Post hearing closing statement](#) (17 July 2015)

[047 Hrg - Auckland Council - Post hearing closing statement - Final marked up version](#) (17 July 2015)

[048 Hrg - Auckland Council - CLOSING REMARKS](#) (25 September 2015)

[Closing remarks](#) (10 September 2015) for Topic 049

Panel Interim Guidance

[049 and 059, 060, 062 and 063 –Post Hearing Memorandum to Auckland Council](#) (4 November 2015)

[049 and 059, 060, 062 and 063 –Post Hearing Memorandum to Auckland Council – Auckland Council response](#) (23 November 2015)

19.2. Specific evidence

Auckland Council

[046 Hrg - Auckland Council - Legal Submissions](#) (22 July 2015)

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