IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Auckland Unitary Plan

JOINT PLANNING STATEMENT OF EVIDENCE FOR MULTIPLE PARTIES IN RELATION TO 004 - CHAPTER G

14 NOVEMBER 2014

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1. INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

Introduction

1.1 This is a joint statement prepared by the following qualified planners on behalf of our clients (in alphabetical order):

(a) Mark Arbuthnot:

(i) Ports of Auckland Limited ("**POAL**")[1];

(b) Stuart Bracey:

(i) Auckland Utility Operators Group ("**AUOG**")[2] and its members[3];

(c) Kellie Roland:

(i) Auckland International Airport Limited ("**AIAL**")[4];

(d) John Duthie:

(i) Unitec Institute of Technology ("**Unitec**")[5];

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1 The scope of POAL's submissions and further submissions on Chapter G broadly cover: Activities not provided for, Assessment Criteria, General information requirements, Making a resource consent application, Notification, Provisions for resource consent applications, Rule infringements for permitted, controlled and restricted discretionary activities and Determining activity status. Outstanding issues for POAL, arising from these topics, regard Bundling, Default activity status and Consultation.

2 The scope of AUOG's submissions and further submissions broadly cover all aspects of Chapter G. Outstanding issues for AUOG, arising from these topics, regard Bundling, Default activity status, Blanket consents, Consultation, Consideration of positive effects with rule infringements and Certificates of Compliance.

3 Chorus New Zealand Limited, Vector Limited and Vector Gas Limited, Counties Power Limited, Spark New Zealand, Vodafone New Zealand Limited

4 The scope of AIAL's submissions and further submissions broadly cover Framework plans, Determining activity status, Making a resource consent application, Activities not provided for, General information requirements, Rule infringements for permitted, controlled and restricted discretionary activities, Assessment criteria and Fees and charges. Outstanding issues for AIAL , arising from these topics, regard Bundling, Default activity status and Consideration of positive effects with rule infringements.

5 The scope of Unitec's submissions and further submissions covers all aspects of Chapter G. Outstanding issues for Unitec, arising from these topics, regard Bundling, Default activity status, Consultation and Consideration of positive effects with rule infringements.

(e) Michael Foster:

(i) Board of Airline Representatives of New Zealand Incorporated ("**BARNZ**")[6]

(ii) Progressive Enterprises Limited ("**Progressive**")[7];

(iii) Tram Lease Limited and Viaduct Harbour Holdings Limited and Viaduct harbour Management Limited ("**VHHL**");

(f) Vijay Lala[8]:

(i) Auckland Racing Club ("**ARC**")[9];

(ii) Crown Group of Companies ("**Crown**");[10]

(g) Craig McGarr:

(i) Scentre (New Zealand) Limited ("**Scentre**")[11];

(h) Iain McManus:

(i) St Cuthbert's College Educational Trust Board

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6 The scope of BARNZ's submissions and further submissions cover Making a resource consent application, Determining activity status and activities not provided for. Outstanding issues for BARNZ, arising from these topics regard bundling and default activity status.

7 The scope of Progressive's submissions and further submissions cover Framework plans, Notification, Determining activity status, making a resource consent application, Activities not provided for, General information requirements, rule infringements for permitted, controlled and restricted discretionary activities, Provisions for resource consent applications, consultation and Assessment criteria. Outstanding issues for Progressive, arising from these topics, regard bundling, consultation and default activity status,

8 I also act for the Property Council New Zealand and the Britomart Group Company. This statement does not cover the Property Council New Zealand's nor the Britomart Group Company's position.

9 The scope of ARC's submissions and further submissions cover Notification, Determining activity status, Making a resource consent application, Activities not provided for, Rule infringements for permitted, controlled and restricted discretionary activities and Assessment criteria. Outstanding issues for ARC, arising from these topics, regard Bundling and Default activity status.

10 The scope of Crown's submissions and further submissions broadly cover Notification, Determining activity status, Making a resource consent application, Activities not provided for, General information requirements and Assessment criteria.

11 The scope of Scentre's submissions and further submissions cover all aspects of Chapter G. Outstanding issues for Scentre, arising from these topics, regard Bundling, Default activity status, Consultation and Consideration of positive effects with rule infringements.

(ii) New Zealand Seventh-day Adventist Schools Association

(iii) Roman Catholic Bishop of the Diocese of Auckland

(iv) New Zealand Marist Brothers Trust Board

(v) King's College

(vi) Diocesan School for Girls

(vii) St Kentigern Trust Board ("**St Cuthbert's et al**")[12];

(i) Matthew Norwell:

(i) Bunnings Limited ("**Bunnings**")[13];

(j) Greg Osborne:

(i) Stevenson Group Limited ("**Stevenson**")[14].

(k) Dave Serjeant:

(i) PACT Group ("**PACT**")[15]; and

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12 The scope of St Cuthbert's et al's submissions and further submissions on Chapter G broadly cover: Assessment criteria, Rule infringements for permitted, controlled and restricted discretionary activities, General information requirements, Notification, Determining activity status and Activities not provided for. Outstanding issues for St Cuthbert's et al, arising from these topics, are in regard to consideration of positive effects with rule infringements.

13 The scope of Bunnings' submissions and further submissions on Chapter G broadly cover: Making a resource consent application, Fees and charges, Assessment criteria and Activities not provided for. Outstanding issues for Bunnings, arising from these topics, regard Consultation and Default activity status.

14 The scope of Stevenson's submissions and further submissions cover Determining activity status, Making a resource consent application, Activities not provided for, General information requirements, Rule infringements for permitted, controlled and restricted discretionary activities and Assessment criteria. Outstanding issues for Stevenson, arising from these topics, regard bundling, default activity status and Consideration of positive effects with rule infringements,

15 The scope of PACT's submissions and further submissions covers Notification, Determining activity status, Making a resource consent application, activities not provided for, General information requirements, Rule infringements for permitted, controlled and restricted discretionary activities, Provisions for resource consent applications and Assessment Criteria. Outstanding issues for PACT arising, arising from these topics, regard bundling, default activity status and consideration of positive effects with rule infringements.

(l) Berin Smith:

(i) Man O War Farm Limited and Clime Asset Management Limited ("**MOW**")[16]

1.2 Our individual involvement in preparing this statement is confined to the scope of the submitters we represent.

1.3 Our respective qualifications and experience have been outlined in our previous statements of evidence presented to the Hearings Panel, or are attached to this statement in **Annexure 1**.

Code of conduct

1.4 We confirm that we have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2011. We have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving oral evidence before the Hearings Panel. Except where we state that we are relying on the evidence of another person, this written evidence is within our area of expertise. We have not omitted to consider material facts known to us that might alter or detract from the opinions expressed in this evidence.

Scope of Evidence

1.5 This statement addresses Chapter G.

16 The scope of MOW's submission covers General information requirements, Activities not provided for, Rule infringements for permitted, controlled and restricted discretionary activities. Outstanding issues for MOW, arising from these topics, regard default activity status and consideration of positive effects with rule infringements.

2. EXECUTIVE SUMMARY

2.1 In our opinion, and for the reasons set out in this statement, the Panel should:

(a) Endorse the version of Chapter G attached to the evidence of Ms Perwick amended in the manner set out below.

(b) In relation to the guidance on consultation on page 6 of Ms Perwick's Attachment B, either:

(i) Delete the following:

~~Applicants are encouraged where relevant to consult with the following parties prior to lodging a resource consent application... [to be determined]~~

(ii) Or replace "[to be determined] with the following:

1. Mana Whenua where the proposal involves an activity that is on land identified as Sites and Places of Significance to Mana Whenua, ~~adjacent to or likely to impact on Mana Whenua values~~.

2. Auckland Transport where the proposal involves an activity that affects or is likely to affect the use and operation of the transport network for which Auckland Transport is a road controlling authority.

3. Watercare Services Ltd where the proposal involves an activity that relies on the provision of public water and wastewater infrastructure.

4. New Zealand Transport Agency where the proposal involves an activity that affects or is likely to affect the use and operation of the transport network for which the Agency is the road controlling authority.

5. Transpower where the proposal involves an activity that affects or is likely to affect the operation, maintenance and development of the National Grid.

6. Any network utility operator or requiring authority where the proposal involves an activity that affects or is likely to affect the operation, maintenance and development of their assets.

(c) In relation to the issue of bundling and applying the most restrictive activity status, we consider this should be retained under the heading "Making a resource consent application" on page 6. Our suggestion is to:

(i) Reinstate the third paragraph under this heading as notified (shown as deleted in Ms Perwick's Attachment B);

(ii) Add the following below it:

> Where the proposal involves discretionary or non-complying activity consent(s), the council will assess the actual or potential effects of the resource consents that are being applied for, and make a determination as to whether or not it is appropriate in the circumstances to "bundle" the consent requirements, and assess the proposal as a single application with the most restrictive activity status.
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> In considering whether or not it is appropriate to "bundle" the resource consents together, the council shall consider whether the consents relate to activities that are inextricably linked and whether they would generate environmental effects that overlap, impact or have cumulative effects on each other.
>
> Where a proposed linear network utility triggers a requirement for resource consent only in certain locations along the proposed route, or triggers resource consent with a more restrictive activity status in certain locations along the proposed route, the application should be assessed in terms of the activity status applying to that location or locations and should not result in the more restrictive activity status applying in respect of the entire route.
>
> Where appropriate, Certificates of Compliance can also be obtained concurrently with resource consents to document that consents are not required under other parts of the Unitary Plan.
>
> In accordance with s.91 of the RMA, Council may determine not to proceed with the processing of the application if it considers on reasonable grounds that other resource consents are required in respect of the proposal, and that it is appropriate, for the purposes of better understanding the nature of the proposal, that applications for any one or more of those resource consents be made before proceeding further.

(iii) Delete the new heading "Bundling of resource consents" and the three new paragraphs from page 8 of Attachment B to Ms Perwick's evidence.

(d) In relation to AUOG's request for specific acknowledgement of the ability to seek and obtain a global or blanket consent, insert a new heading and paragraph above the heading "Rules" on page 8 of Ms Perwick's Attachment B:

> **Global or blanket resource consents**
>
> Where similar activities can be shown to be undertaken over multiple sites throughout the region (such as the minor maintenance of networks including roading, electricity, telecommunication, water/wastewater and stormwater networks) a global or blanket resource consent application can be sought.

(e) Amend the red text on page 9 of Attachment B to Ms Perwick's evidence to reflect the discussion at mediation:

> Every development proposal is a response to a unique mix of requirements and circumstances. Sometimes, they are in competition. While each development ~~should satisfy~~ will be assessed against all applicable criteria, the unique conditions of each location may mean some criteria are more important than others.

(f) Reinstate two sentences agreed at mediation into the first two paragraphs of the new section G1.4A Information requirements for resource consent applications:

> Applications for resource consents need to be accompanied by information in such detail as corresponds with the nature, scale, context and significance of the proposed activity or development and its environmental effects, the consent status of the activities and the matters to which Council has restricted its discretion.
>
> This section is a guide for applicants as to the type of information that they may need to provide with their application for resource consents. It is not a check list of information that will necessarily be required. Council staff can assist applicants in identifying what aspects of a proposal will require an assessment of effects and the type of information and level of detail expected.

(g) Make minor typographical corrections to 2.1 Determining status of an activity or use to reflect text discussed at mediation:

> To determine the activity status for an activity or use where the same activity or use is controlled by more than one rule, the user should consider the activity status of the activity or use set by any zones, and/or any relevant precincts, Auckland-wide provisions, and overlays. The activity status is determined as follows:

a. The activity status in an overlay takes precedence over the activity status for the same activity ~~status~~ or use in a precinct, Auckland-wide provisions or zone unless the precinct explicitly states otherwise. If more than one overlay applies to the same activity or use then the most restrictive activity status applies.

(h) Amend the default activity status for activities not provided for, from non-complying to discretionary:

Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, ~~discretionary~~ non-complying or prohibited activity is a ~~non-complying~~ discretionary activity, unless otherwise stated in the Unitary Plan

(i) In relation to the issue of 2.3 Control infringements for permitted, controlled and restricted discretionary activities:

(i) Amend 1 to reflect the agreement reached at mediation:

All permitted, controlled and restricted discretionary activities must comply with the land use and development controls applying to the activity.

(ii) Insert a new (c) in 3:

(c) Positive effects

(iii) Restructure 4 to make it clear and obvious that positive effects can be taken into account, so that it reads:

4. When assessing a restricted discretionary control infringement, the council's discretion shall be restricted to the following assessment criteria that apply the matters of discretion above, in addition to the relevant assessment criteria listed in the rules:

   a. Whether the site, location or type of the activity has any unusual features or particular characteristics that make compliance with the control unnecessary, such as:

      i. unusual size, shape, topography, substratum, soil type, vegetation or natural hazard susceptibility.

      ii. adverse topography or the unusual use or particular location of buildings on neighbouring sites.

b. Whether:

i. the outcome of the control infringement is consistent with the purpose of the control.

ii. granting consent to the control infringement will result in a similar or better outcome compared with a complying proposal; or

iii. the proposal will make a positive contribution to the site and/or neighbourhood, locality or environment or have positive effects for the same.

3. OUR POSITION ON THE MEDIATION VERSION OF CHAPTER G

3.1 Prior to and during the mediation sessions on Chapter G of the Plan, a number of changes to the wording of the provisions were proposed either by Auckland Council or others. A number of these changes have addressed our concerns.

3.2 Except as noted below, we support the Chapter G provisions proposed by the Council as contained in the Mediation Record.

3.3 We outline below the proposed amendments in either the Mediation Record or the Council's evidence that we do not agree with, the reasons why we do not agree, and the amendments proposed to address our remaining concerns.

4. SECTIONS 1.1 TO 1.3

1.1 General Duty to Comply

4.1 There are no outstanding issues with section 1.1.

1.2 Activities

4.2 We agree with and support all of the changes made to section 1.2 during the mediation process.

4.3 One further change that was requested by AUOG but not agreed to by the Council was the addition of the following to the section on Certificates of Compliance:

> Where appropriate, Certificates of Compliance can also be obtained concurrently with resource consents to document that certain parts of the proposal complies with parts of the Unitary Plan**.**

4.4 This request is discussed in paragraphs 12.20 - 12.23 of Ms Perwick's evidence on behalf of the Council.

4.5 This is an outstanding issue for AUOG (4185-349, 2191-418, 2473-350, 2745-366, 4500-499, 8628-452).

4.6 This matter is addressed in paragraphs 5.35 and 5.36 below.

1.3A National environmental standards

4.7 We agree with and support the wording put forward during the mediation process, and the further minor amendments requested by Council following the mediation.

1.3 Designations

4.8 This part of Chapter 4 does not form part of this topic, and is not addressed by this evidence.

5. SECTION 1.4: APPLYING FOR RESOURCE CONSENT

5.1 This is a very lengthy section in Chapter G. Except for the five points raised below, we agree with and support all of the changes made to section 1.4 during the mediation process.

5.2 Our remaining concerns relate to:

(a) Consultation

(b) Bundling

(c) Assessment criteria

(d) Global / blanket resource consents

(e) The information requirements relocated from 2.7.1

5.3 Detail on each is set out below.

Consultation

5.4 A number of clients submitted or further submitted on these provisions:

(a) POAL (5137-514);

(b) Scentre (2968-328);

(c) Unitec (2742–64);

(d) Progressive (5723-189, 190)

(e) Bunnings (6096-3)

(f) AUOG (FS 2127 in support of NZ Archaeological Association 3370-242)

5.5 The primary submissions seek amendments to the guidance provided for consultation under section 1.4 (Applying for resource consents) when preparing to lodge an application for resource consent.

5.6 Submissions sought to narrow any consultation with Mana Whenua, either add other parties to the list or delete it, and clarify that consultation should only be undertaken where appropriate.

5.7 Discussions at mediation on the subject revolved around matters including how useful providing a list was at all if it was only guidance and adding other parties where consultation can be essential such as with Auckland International Airport, NZTA and network utility operators.

5.8 The following outcomes from the mediation are supported:

(a) Retaining the consultation section as guidance to applicants;

(b) Transferring the location of the consultation section to before 'making a resource consent application';

(c) Correcting the RMA reference to Section 36A;

(d) Adding the qualifier to the section that there is no obligation to consult; and

(e) The note added to the end of the section that Auckland Council can assist to identify parties where consultation may be useful.

5.9 In the primary evidence of Ms Perwick (paragraph 8.16) she states that there was no agreement reached between the parties on amending the list provided in the Plan, or deleting it. Her statement of evidence leaves this up to the IHP to determine.

5.10 We are of the opinion that if any list is to be included in the Plan it needs to be comprehensive and not just focus an applicant's attention on Mana Whenua and various parts of Auckland Council operations. But where would this list end? Further it is unhelpful to encourage applicants to consult with one part of the Auckland transport network, Auckland Transport, and not encourage them to consult with NZTA who manages the other part of the same system.

5.11 Overall we are of the opinion that there should be no list of consultation parties in this section. A reference could be made to non-statutory public advisory documents Council could and does produce for applicants when they are looking to lodge a resource consent application. (Information material available at Council front counters). A wider general list of possible parties to consult with when preparing resource consent application can be outlined in an information pamphlet available over the counter.

5.12 However, if there is to be a list, we remain of the view that it should be a complete list as recorded in the Mediation Record. Our suggested list, if there was to be one, is:

1. Mana Whenua where the proposal involves an activity that is on land identified as Sites and Places of Significance to Mana Whenua, ~~adjacent to or likely to impact on Mana Whenua values~~.

2. Auckland Transport where the proposal involves an activity that affects or is likely to affect the use and operation of the transport network for which Auckland Transport is a road controlling authority.

3. Watercare Services Ltd where the proposal involves an activity that relies on the provision of public water and wastewater infrastructure.

4. New Zealand Transport Agency where the proposal involves an activity that affects or is likely to affect the use and operation of the transport network for which the Agency is the road controlling authority.

5. Transpower where the proposal involves an activity that affects or is likely to affect the operation, maintenance and development of the National Grid.

6. Any network utility operator or requiring authority where the proposal involves an activity that affects or is likely to affect the operation, maintenance and development of their assets.

Bundling

5.13 A number of clients submitted and further submitted on these provisions:

(a) AIAL (5294-192),

(b) POAL (5137-513),

(c) Scentre (2968-327),

(d) Unitec (2742-61)

(e) AUOG (4185-353)

(f) Progressive (5723-188)

(g) Stevenson (3682-137)

(h) BARNZ (5128-68, 69)

(i) ARC (FS 978 in support of POAL 5137-513)

(j) PACT (FS 2806 in support of POAL 5137-513)

(k) Bishop, Marist, Diocesan, St Kentigern and King's (respectively, FS 2898, FS 2962, FS 2938, FS 3019 and FS 2952 in support of Telecom 2191-430 and 2191-431)

5.14 Following the mediation process, the provisions in G.1.4 regarding bundling[17] were revised to clarify the test the Council will employ to determine whether to bundle or unbundle consent matters in an application. We agree that these amendments have improved the provisions, but have two outstanding concerns:

(a) The presumption that the most restrictive activity status will apply to the entire application;

(b) As a subset, the presumption that this will also occur across the regional and district plans.

5.15 These two issues are addressed below.

Presumption

5.16 We accept that it is generally appropriate to bundle "*different activities with different types of consents, that are inextricably linked"* (emphasis added). In this respect, we agree with and support the revised "test" for bundling/unbundling as worded in the Mediation Record.

5.17 Where we remain concerned is with respect to the Council's presumption in favour of bundling – i.e. the wording "*Council will generally bundle all resource consents together*" - regardless of activity status.

5.18 What needs to be clear in this provision is that the starting point is neutral in terms of determining whether it is appropriate to consider together one or more elements of an application with different activities and different types of consents. If it is concluded at the outset that the consent matters are inextricably linked, then bundling is appropriate when one or more elements are discretionary or non-complying.

[17] The term "bundling/unbundling" is used in the Plan to refer to how the Council will consider proposals that involve several activities with different types of consent classifications.

5.19 The evidence of Ms Perwick confirms (paragraph 12.14) that in her opinion, the appropriate starting point or presumption is that consents are bundled. By doing so, Ms Perwick considers that the benefits of bundling will enable:

(a) a consent to be considered "in the round";

(b) for the interdependencies between different components of a proposal to be considered;

(c) a more simplified consent process with greater certainty for applicants, including cost and time savings; and

(d) will assist with the integrated management of effects.

5.20 While we accept that it is open to Auckland Council to "bundle" resource consents, the RMA does not provide for the "default" position that is proposed by Auckland Council; which is to "bundle" the consent requirements of an application unless there are reasons that make it appropriate to "unbundle".

5.21 We are of the opinion that it is only necessary to consider whether or not to "bundle" the consent requirements of an application where there is a discretionary or non-complying activity status element to that proposal. Without a discretionary or non-complying activity status element, Auckland Council is required under s 104C of the RMA (for a restricted discretionary activity) to consider only those matters which it has restricted its discretion in its plan, thereby effectively "unbundling" the decision-making process.

5.22 In our opinion, the "default" position should be that a decision on "bundling" is required to be made during the processing of the application, based on the particular consents required and the actual or potential effects of the activity on the environment.

5.23 In our opinion, the pre-mediation wording that gave examples of when it might be appropriate to unbundle provided some useful guidance – including district and regional consent matters, and controlled and restricted discretionary activities. In our view there are additional

examples that could be included, such as where one component of an activity is non-complying but the rest are restricted or controlled.

5.24 The Mediation Record shows that, with the exception of the linear network utility scenario of consents along a route, no examples have been included in the agreed text.

5.25 Provided:

(a) the presumption in favour of bundling all consent applications is removed and more "neutral" wording is inserted; and

(b) it is clear that the most restrictive activity status only applies when one or more components are discretionary or non-complying;

then we agree that the provisions do not need to include the above examples. In the absence of those changes, we remain of the view that the examples must be provided.

5.26 Turning to Council's evidence on this matter,[18] we have additional concerns with respect to Ms Perwick's arguments, as follows.

5.27 Firstly, we believe Ms Perwick is conflating the practice of bundling as defined in section 12.3 of her evidence with the application of section 91, where Council can require that all consent applications are heard together. These are two separate processes. Section 91 of the RMA provides clear guidance as to whether or not there are reasonable grounds to defer the notification or hearing of an application for resource consent.

5.28 Ms Perwick notes at section 12.5 of her evidence that bundling consents *"is administratively efficient and can be more cost effective for certain applications. It allows applicants to pay one set of application fees and receive one consent".* This is not a relevant consideration with respect to bundling or unbundling consent matters within an application.

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18 Statement of Primary Evidence of Michele Ann Perwick, dated 10 November, paragraphs 12.1-12.23.

5.29 Further, the process of bundling (as a general presumption favoured by Council) can lead to inefficiency, uncertainty and increased cost whereby those elements of a proposal that are uncontentious and warrant a lesser activity status can be “caught up” in the more onerous consent status required for one discrete, potentially non-complying, element of a proposal.

5.30 Considering the matters raised in Ms Perwick’s evidence and those we have already discussed previously, we are of the opinion that changes are necessary to the text of G.1.4 in respect of bundling. We consider that the changes proposed within Annexure A of our evidence result in a clear explanation of how Council will consider whether or not to bundle, such that applicants can have a degree of certainty around the process and the way in which their applications will be assessed.

Bundling of regional and district consents

5.31 The same clients as listed in paragraph 5.13 above sought to amend G.1.4 "Applying for resource consent" to confirm that there will be no "bundling" between "district" consents and any necessary "regional" consents.

5.32 At paragraph 12.16 of her evidence, Ms Perwick raises uncertainty over whether the Council considers that unbundling of regional and district consent matters will usually be acceptable. This is concerning as we consider regional and district consent matters to be a good example of when bundling should not occur for the fact that the effects arising from such consent matters are typically discrete and independent of each other. Ms Perwick does go on to state, at paragraph 12.17 of her evidence, that consideration of unbundling regional and district consent matters should *“ultimately be subject to the same test”.* We agree with this proposition, but consider that instead of being neutral the presumption should be towards unbundling these matters.

5.33 Where an application for resource consent contains a discretionary or non-complying activity element, applicants and the Council should examine the actual and potential effects of the various activities that are being applied for (including the distinction between any "district" and "regional" consents), and establish whether or not they are inextricably linked in respect of the nature of the consents and the relationship of the effects of the respective activities for which consent is sought for, such that they should be "bundled" together for consideration.

5.34 In undertaking such an analysis, should there be no overlap or consequential flow-on effects between the various "district" and "regional" consents that are being applied for; and should the need to obtain one consent be unrelated to the need to obtain another, then it is unnecessary to require the consents to be "bundled" together. For example, the siting and design of a building (s.9 RMA) is unlikely to change in any appreciable way as a consequence of requiring a stormwater discharge permit (s.15 RMA), as matters pertaining to stormwater effects are typically dealt with by way of engineering solutions that do not implicate building design.

Certificates of Compliance

5.35 A related issue is the Council's suggestion, as discussed in paragraphs 12.20 - 12.23 of Ms Perwick's evidence, that all permitted components of an activity also default to the most restrictive activity status with no ability to obtain a certificate of compliance for the permitted components.

5.36 For the same reasons discussed above, we disagree with this approach. It should be open to an applicant to obtain a certificate of compliance under the district land use rules, for example, when only regional land use or discharge consents are required. It defeats the purpose of, and approach in, many of the zones if consent is required for an entire development as a discretionary activity due to one regional discharge rule.

Proposed amendments

5.37 Having regard to all of the above matters, we propose the following amendments to the notified version of G.1.4 to address the relief:

> Where the proposal involves several activities with different types of consent classification that are inextricably linked, the council will generally bundle all activities and apply the most restrictive activity status.
>
> Where the proposal involves discretionary or non-complying activity consent(s), the council will assess the actual or potential effects of the resource consents that are being applied for, and make a determination as to whether or not it is appropriate in the circumstances to "bundle" the consent requirements, and assess the proposal as a single application with the most restrictive activity status.
>
> In considering whether or not it is appropriate to "bundle" the resource consents together, the council shall consider whether the consents relate to activities that are inextricably linked and whether they would generate environmental effects that overlap, impact or have cumulative effects on each other.
>
> Where a proposed linear network utility triggers a requirement for resource consent only in certain locations along the proposed route, or triggers resource consent with a more restrictive activity status in certain locations along the proposed route, the application should be assessed in terms of the activity status applying to that location or locations and should not result in the more restrictive activity status applying in respect of the entire route.
>
> Where appropriate, Certificates of Compliance can also be obtained concurrently with resource consents to document that consents are not required under other parts of the Unitary Plan.
>
> In accordance with s.91 of the RMA, Council may determine not to proceed with the processing of the application if it considers on reasonable grounds that other resource consents are required in respect of the proposal, and that it is appropriate, for the purposes of better understanding the nature of the proposal, that applications for any one or more of those resource consents be made before proceeding further.

Assessment criteria

5.38 At mediation the parties all agreed to amend a paragraph under the heading "Matters for control or discretion and assessment criteria" as follows:

> Every development proposal is a response to a unique mix of requirements and circumstances. Sometimes, they are in competition. While each development ~~should demonstrably satisfy~~ will be assessed against all applicable criteria, the unique conditions of each location may mean some criteria are more important than others. ~~Priority should be given to~~

~~satisfying those criteria that are most critical to the overall intentions of the listed criteria in an optimal way in each unique location.~~

5.39 These amendments have not been correctly reflected in the version recorded in paragraph 8.25 of Ms Perwick's evidence. The phrase "should satisfy" in her version needs to be replaced with "will be assessed against".

5.40 We consider the amendment as agreed at the mediation more appropriately recognises the role of assessment criteria.

Global / blanket resource consents

5.41 This is an issue raised by the primary submission of AUOG (4185 – 358).

5.42 AUOG members operate throughout the region and many of their activities, including those for maintenance, are the same, irrespective of the zone or location of the work. In the past, AUOG members have sought global consents to allow them to undertake particular activities throughout a district (for example in relation to works on or around trees and when dealing with contaminated soil).

5.43 Similar global consent applications are with Auckland Council currently for processing or about to be lodged with Auckland Council to address infrastructure network activities triggering requirements under the Plan and undertaken throughout the region.

5.44 Individually the activities being triggered for resource consent under the Plan are quite minor in nature (e.g. minor earthworks when repairing and maintaining line networks). If required, individual resource consent applications sought across the region would amount to significant time, cost and duplication for little environment gain. A global or blanket resource consent application can address this in a timely and efficient manner

5.45 Ms Perwick discusses this resource consenting approach in section 13 of her primary evidence. Ms Perwick states that to date global consents have been processed and granted by Auckland Council and

are used in very few circumstances. As such, in her opinion that including a specific reference to this form of resource consent application would not add anything to Chapter G.

5.46 We are of the opinion that describing what a global consent is and when it might be used in Chapter G would add to the clarity and understanding of the resource consent process for network operators and the wider community. We consider it would be helpful to openly acknowledge the ability for applications to be structured across the region in this manner

5.47 One option could be to simply add a note under Table 1 of G1.4 to the effect that:

> Note. Where similar activities can be shown to be undertaken over multiple sites throughout the region (such as the minor maintenance of networks including roading, electricity, telecommunication, water/wastewater and stormwater networks) a global or blanket resource consent application can be sought.

5.48 Our preference, however, would be to give the note more obvious treatment by adding it under a new heading after the section "Application across sites with multiple zones, overlays or precincts":

> **Global or blanket resource consents**
>
> Where similar activities can be shown to be undertaken over multiple sites throughout the region (such as the minor maintenance of networks including roading, electricity, telecommunication, water/wastewater and stormwater networks) a global or blanket resource consent application can be sought.

5.49 In our view this specific reference would add both clarity and certainty for those operating under the Plan and a necessary level of information for the wider community.

The information requirements relocated from 2.7.1

5.50 We agree with and support:

(a) the relocation of the former 2.7.1 to immediately following section 1.4; and

(b) all of the changes to the text of the former section 2.7.1 during mediation.

5.51 In particular, we strongly support the wording of the new clause 2 agreed at mediation, which reads:

> This section is a guide for applicants as to the type of information that they may need to provide with their application for resource consent. **It is not a checklist of information that will necessarily be required**…

5.52 From a practical perspective, and drawing on our experience in preparing and lodging resource consents, we are of the opinion that these introductory statements are crucial to the implementation of this list. In short, clause 2 will ensure that G.2.7.1/G.1.4A is not used as a checklist of information to be required. Without it, we are of the opinion that Council planning officers could interpret the provision in the most prescriptive way. This approach would result in onerous and unnecessary information requirements, and subsequently increased costs and inefficiencies in processing.

5.53 To this end, we disagree with and do not support the changes sought by the Council in evidence, which seeks to remove the sentence *"it is not a checklist of information that will necessarily be required".*

5.54 Further, we disagree with and do not support the changes sought by the Council in evidence which delete the phrase *"and the matters to which Council has restricted its discretion"* from newly inserted clause 1. Where Council has restricted its discretion, it should be clearly stated that, as with assessment criteria, the information requirements must relate to and cannot exceed that discretion. In those circumstances where Council has not restricted its discretion, for example when considering discretionary or non-complying activities,

then this sentence will not apply. Again this relates to managing costs and ensuring efficiencies in the consenting process.

5.55 Ms Perwick's evidence on this matter (section 18.1-18.5) does not alter our position above. In fact, we disagree with Ms Perwick as regards the assertion that the two sentences Council proposes to delete (referenced above) result in repetition and confusion. Rather, we consider that these sentences are required to ensure that G.1.4A is clearly and commonly interpreted by Council and applicants.

6. SECTIONS 1.5 - 1.10

6.1 We agree with and support all of the changes made to sections 1.5 - 1.10 during the mediation process, and have no outstanding issues.

7. SECTION 2

7.1 There are a number of outstanding issues in section 2, as discussed below.

Section 2.1 - Determining status of an activity

7.2 We agree with and support the wording of Rule 2.1 as amended during the mediation process, which in our opinion now clarifies the way in which activity status is determined.

7.3 The proposed changes better explain the way in which the layers of the planning framework apply to a site, in terms of zone, precinct, Auckland-wide rules and overlays, where applicable.

7.4 We have no objection to the minor points of clarification made to rule G.2.1 by Council in its tracked changes version appended to Ms Perwick's evidence. We have raised with Council a few minor corrections that need to be made to the final text, which are set out in paragraph 2.1(g) above, and we understand are agreed.

Section 2.2 - Activities not provided for

7.5 The following clients sought to amend the default activity status from non-complying, as proposed by Council, to discretionary:

(a) AIAL (5294-196),

(b) MOW (882-160)

(c) POAL (5137-516),

(d) Scentre (2968-335),

(e) Unitec (2742-70);

(f) ARC (3026-69)

(g) Stevenson (3682-141)

(h) Progressive (5723-192)

(i) Bunnings (6096-5)

(j) AUOG (4185-365, 2191-434, 2473-366, 2745-382, 4500-515, 8628-468)

(k) BARNZ (5128-71)

(l) St Cuthbert's et al (FS 2898, FS 2962, FS 2938, FS 3019 and FS 2952 in support of Telecom 2191-434)

7.6 They all seek the following amendment to G.2.2 “Activities not provided for”:

> Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, ~~discretionary~~ non-complying or prohibited activity is a ~~non-complying~~ discretionary activity.

7.7 Section 87B of the RMA provides for a “default” discretionary activity status for activities that are not otherwise specifically provided for in the Plan with an alternate activity status, unless the Plan states otherwise.

7.8 We do not consider it appropriate to assume that every activity not otherwise listed in the respective activity tables contained throughout the Plan is discouraged and needs to be assessed more rigorously.

7.9 Such an approach is unnecessarily onerous, and does not readily enable the Plan to respond to the prospect of activities/developments not currently listed or identified, or which do not fit a particular activity classification (or definition), without progressing through the high threshold test of a non complying activity.

7.10 In her evidence on this topic (paragraph 15.2), Ms Perwick acknowledges that there is a divergence on how Plans nationwide either utilise the default position of the Act, or impose a non complying status, for activities not otherwise listed, and notes that all of the operative (legacy) Plans (except for Papakura and the Regional Plans) for the Auckland Council jurisdiction contain provisions which require non complying activity status.

7.11 With the exception of Rodney and the Hauraki Gulf Islands section of the Auckland Council Plan, these legacy Plans were all made operative or were well advanced through the decision making process prior to 2003 when section 77C (now section 87B) was introduced. It is not appropriate to continue the approach taken in most of the legacy plans, merely because that is the approach taken in the legacy plans, when the legislation has changed in the interim. On the contrary, the Proposed Plan heralds the era of a new approach, and it is appropriate to consider this matter more thoroughly.

7.12 The Plan is touted as an outcome led plan, intended to be a more strategic and outcomes focussed document that identifies areas and resources for use, development and protection. Against that, the Plan contains a sufficient and detailed policy framework to enable a robust analysis to be undertaken for an application for an activity not specifically provided for.

7.13 A non complying activity status signals an intention to discourage, as opposed to encourage, enable or innovate, and a blanket non complying activity status for activities not listed in an activity table will not in our opinion align with the statement that Ms Perwick makes with regards to the activity status for rule infringements (para 16.3) . That is, a non-complying activity status does not 'align with the Plan principle of ensuring planning burden is relative to planning gain'.

7.14 Rather the planning burden of a non complying activity status, compared with a discretionary activity status (for an activity not otherwise listed) will act as a bar to flexibility, innovation, opportunity and development, and which in turn may prevent positive effects from occurring that would otherwise flow from a more enabling and flexible regime. This is reinforced by Ms Perwick's comments (15.3) that 'a non-complying activity status signals an intention to discourage activities that are unlikely, in the most but not all circumstances, to meet the relevant objectives and policies of the Plan'.

7.15 While that may be correct for those activities which are specifically classified, the concern is that such a position will similarly be taken for those that are not listed, ie that a negative approach will be the fall back position, assuming that such activities are inappropriate or possibility inconsistent with the Plan's objectives and policies. Yet there cannot (of necessity) have been any evaluation (under section 32 or otherwise) as to whether it is actually necessary or appropriate to regulate against the unlisted activity at all, let alone apply the most restrictive status under RMA on an assumption any such is likely to be at odds with the plan objectives and policies.

7.16 We do not agree that a "default" non-complying activity status is the most appropriate way to promote the sustainable management of natural and physical resources.

7.17 A “default” discretionary activity status will be more enabling and encouraging of innovation to achieve the outcomes promoted by the Plan. The Plan can still provide for non-complying activities as a default in specific contexts (Plan chapters) where evaluation under section 32 suggests this is appropriate in light of the likely effects of the type of activities at stake in that more specific context. This more tailored approach would better reflect also the need to evaluate relevant benefits and costs of the default applied, than is achievable on a blanket Plan wide basis for what are (by definition), unknown activities and effects .

7.18 In her evidence, Ms Perwick acknowledges that there is merit to including appropriate, but as yet undefined, default statuses on a ‘more individualised approach in the zones and Auckland wide rules’, rather than a blanket approach across the Plan. In the absence of any thorough assessment of how that approach might be reflected in each activity table, in our opinion the Plan should favour the discretionary status (reflecting section 87B), unless there are specific circumstances which determine a contrary approach, rather than the contrary approach being assumed as the default on such a generic bass across the entire Plan. It is considered that this can be achieved by amending G.2.2 as follows:

> Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, ~~discretionary~~ non-complying or prohibited activity is a ~~non-complying~~ discretionary activity, unless otherwise stated in the Unitary Plan

7.19 In this regard, it is acknowledged that there may be some circumstances within the Plan where it is appropriate for the default status to not apply, and for activities not listed in a particular situation to be classified as non complying, and this is a matter that can (and should) be addressed on a section by section basis.

Section 2.3 - Rule infringements

7.20 This matter relates to Rule G2.3 which is a general, Auckland-wide rule that, under Clause 3 specifies the limits of discretion and, under

Clause 4, lists assessment criteria in relation to applications for land use and development control infringements.

7.21 The following clients lodged submissions on these provisions:

(a) POAL (5137-517)

(b) Scentre (2968-337)

(c) Stevenson (3682-238)

(d) Progressive (5723-193)

(e) MOW (882-161)

(f) St Cuthbert's et al (5256-2, 5235-2, 5250-2, 5228-2, 5224-2, 5249-2, FS 2950 in support of 882-161 and 879-93)

(g) ARC (FS 978 in support of Fletcher Residential Limited 1731-74)

(h) PACT (FS 978 in support of Fletcher Residential Limited 1731-74)

7.22 We agree with most of the changes to Rule G2.3 set out in Paragraph 16.20 of Ms Perwick's statement of evidence but seek express reference to positive effects in the matters for discretion under clause 3, a return to some of the wording agreed in mediation for clause 4, and some minor wording changes to provide more certainty and clarity.

7.23 The full version of Rule G2.3 sought by submitters is as follows:

> 2.3 Control infringements for permitted, controlled and restricted discretionary activities
>
> 1. All permitted, controlled and restricted discretionary activities must comply with the land use and development controls applying to the activity.
>
> 2. A permitted, controlled or restricted discretionary activity that does not comply with one or more controls is a restricted discretionary activity unless otherwise stated in the Unitary Plan.
>
> 3. For control infringements that are a restricted discretionary activity, the council will restrict its discretion to the following matters, in addition to any specific matters listed in the rules:
>
> a. Site and/or development characteristics

b. The purpose of the control

c. Positive effects.

4. When assessing a restricted discretionary control infringement, the council's discretion shall be restricted to the following assessment criteria that apply the matters of discretion above, in addition to the relevant assessment criteria listed in the rules:

a. Whether the site, location or type of the activity has any unusual features or particular characteristics that make compliance with the control unnecessary, such as:

i. unusual size, shape, topography, substratum, soil type, vegetation or natural hazard susceptibility.

ii. adverse topography or the unusual use or particular location of buildings on neighbouring sites.

b. Whether

i. the outcome of the control infringement is consistent with the purpose of the control.

ii. granting consent to the control infringement will result in a similar or better outcome compared with a complying proposal; or

iii. the proposal will make a positive contribution to the site and/or neighbourhood, locality or environment or have positive effects for the same.

7.24 We note that the High Court has previously determined that it is appropriate to consider positive effects under Part 2 of the RMA when assessing and in particular approving, applications for restricted discretionary activities[19].

7.25 The High Court also observed in that case that "generally, the use of restricted discretionary activities has been confined to relatively minor matters incidental to some principal activity (such as control of earthworks), relatively minor stand-alone activities, or the modification of standards". Rule G2.3 of the Plan addresses the latter situation. The Court went on to note that "the vast majority of these activities are likely to arise in the urban environment where Part 2 matters are less frequently engaged".

19 *Auckland City Council v John Woolley Trust* [2008] NZRMA 260.

7.26 The Court also observed that the "present case would have been unlikely to have caused difficulties if the council had specified the broader range of considerations" in its District Plan.

7.27 It is our understanding that the 2009 amendments to the Act have since clarified the relationship between Part 2 and consideration of applications where Council's discretion is restricted. In particular, Part 2 now cannot be employed to expand the range of relevant matters listed in the plan. This highlights the desirability of ensuring that plans provide in a clear and unambiguous way for an appropriate range of matters to be considered when assessing restricted discretionary activities and, importantly, for the consideration of desirable positive effects to be enabled at this District Plan level.

7.28 The Council position set out in Ms Perwick's evidence is that it is unnecessary to include "positive effects" in the matters for discretion applying to restricted discretionary control infringements under Clause 3 because "positive effects" falls within the scope of "site and development characteristics"[20]. Nevertheless Ms Perwick recommends inclusion of an advice note to "emphasise the need to consider both positive and adverse effects when considering control infringements"[21]. Helpfully, therefore, we and Ms Perwick are in agreement that it is important to be clear that positive effects must be considered in the assessment of control infringements. The issue in contention is how we do that.

7.29 In terms of the structure of Rule G2.3, it is our understanding that clause 3 sets out the broad matters for discretion, essentially in the form of headings, and that clause 4 provides the detail for those matters (i.e. the guidance to applicants and council officers as to how to apply those broad matters in practice). Given this structure, it is our opinion that all of the assessment criteria in clause 4 should clearly and unambiguously come under the "umbrella" of at least one of the matters identified in clause 3. They would otherwise potentially be

20 Paragraph 16.12 of Ms Perwick's statement of evidence.
21 Paragraph 16.12 of Ms Perwick's statement of evidence.

seen to fall outside the "matters over which discretion is restricted" in terms of Section 87A of RMA, having regard to clause 3.

7.30 It is our opinion that the necessary degree of certainty is not currently achieved with clause 3 as proposed by Council. In particular, it is our assessment that the better outcomes / positive contributions / positive effects referred in clause 4 (whether one refers to the version proposed by Council or by us) do not clearly and unambiguously come within the ambit of the two matters for discretion proposed by Council for clause 3, and that a third matter for discretion needs to be added in order for that to occur.

7.31 As noted above, Ms Perwick has argued that "positive effects" fall within the ambit of "site and development characteristics" and therefore no change to clause 3 is required[22]. We agree that the reference to site and development characteristics in clause 3 might provide an opening for the consideration of positive effects insofar as a control infringement might have positive effects in terms of the site and development characteristics or insofar as the combination of the control infringement and the site and development characteristics might give rise to some positive effects. However, it would be much clearer just to refer to positive effects. In addition, it is our opinion that the positive effects of some proposals may arise from the nature of the activity rather than the characteristics of the site within which the activity is proposed to be located or the characteristics of any "development" intended to house or facilitate the activity (indeed, some proposals requiring assessment under Rule G2.3 might not include any "development" at all). For example:

Example 1

(a) A retailer might propose to locate within an existing commercial building within the Central Area zone, outside of the core retail area identified on map 2 of the Plan. If the floor area of the activity is between 1,000m^2 and 5,000m^2, this would require a restricted discretionary activity resource

22 Paragraph 16.12 of Ms Perwick's statement of evidence.

consent under Rule I.4.3.1 of the Plan. Because this requires the modification of a Central Area zone land use control, the application would need to be assessed against the matters and criteria in Rule G2.3.

(b) The establishment of the retailer within this existing commercial building might be likely to have a number of positive effects in terms of revitalising the surrounding area, and it is our opinion that the retailer should be able to point to those positive effects when seeking resource consent to infringe this control, and that the Council should consider and, where appropriate rely on those positive effects when deciding whether to approve the application.

Example 2

(c) A childcare centre might propose to locate within an existing building in a business zone, within 30m of a residential zone. This would require a restricted discretionary activity resource consent under Rule I.3.3.1. Because this requires the modification of a Business zone land use control, the application would need to be assessed against the matters and criteria in Rule G2.3.

(d) It is our opinion that the childcare centre provider should be able to point to the positive effects likely to arise from the establishment of the proposed activity, when seeking consent for the activity, and that the Council should consider those positive effects when deciding whether or not to grant consent.

Example 3

(e) An emergency housing provider might need resource consent for an infringement of one of the development controls for the zone in which the emergency housing is (or is proposed to be) located, created by the need to modify an existing building or its surrounds (e.g. the fencing or impervious area

controls). This infringement would need to be assessed under Rule G2.3.

(f) It is our opinion that the emergency housing provider should be able to point to the positive effects of the emergency housing for the existing or intended residents and/or wider community when seeking consent for the development control infringement, given that the infringement is necessitated by the activity.

7.32 However, it is our opinion that the positive effects of the proposal in each of these examples arises from the nature of the activity rather than the characteristics of the site within which the activity is (or is proposed to be) located or any development (e.g. modification to the site surrounds) that might be required to facilitate the activity.

7.33 It is therefore our opinion that Ms Perwick's suggestion that positive effects fit within the ambit of "site and development characteristics" does not hold true with reference to these examples.

7.34 As a consequence of the above, and in light of the agreement amongst all of the parties who attended the mediation of Rule G2.3 that, in assessing applications under Rule G2.3, the Council should consider whether a better outcome will be achieved and whether the proposal will make a positive contribution to the site, neighbourhood, locality or environment, it is our opinion that reference to positive effects should be included in the matters for discretion in clause 3.

7.35 In summary, it is our opinion that:

(a) The matters for discretion for restricted discretionary activities, and the assessment criteria flowing from those matters, should provide for an appropriate range of matters to be considered when applications are assessed, including positive effects.

(b) The ability to consider positive effects should be clear and unambiguous (and not inferred from some other expression) so that there is no uncertainty for applicants or Council at the resource consent stage.

(c) The most appropriate place to provide that clarity is within the rule itself, rather than within an advice note following the rule.

7.36 We also seek a number of minor amendments to clause 4 which we think will assist applicants and the Council at the resource consent stage. In particular, we think it would assist applicants and the Council to make it clear that:

(a) The Council will (not "may") assess control infringements against the specified assessment criteria;

(b) The Council's discretion is restricted to the assessment criteria identified in clause 4; and

(c) The criteria in clause 4 apply (rather than just relate to) the matters in clause 3.

7.37 These suggestions are captured in the following changes, which are shown via <u>additions</u> and ~~deletions~~ relative to clause 4 as recommended by Ms Perwick:

> When assessing a restricted discretionary control infringement, the ~~council may consider~~ <u>council's discretion shall be restricted to</u> the following criteria ~~as they relate to~~ <u>that apply</u> the matters of discretion above, in addition to the assessment criteria listed in the relevant rules.

7.38 We seek the reinstatement of clause 4.b.i. as agreed in mediation, and do not support the re-wording of this clause recommended by Ms Perwick following mediation. In addition, we consider it is appropriate to keep clauses 4.b.i and 4.b.ii separate, as per the mediation version of clause 4. We do, however, seek minor amendments to the wording of clauses 4.b.ii and 4.b.iii. Most notably:

(a) We are concerned that some Council officers might interpret clause 4.b.ii as requiring a better outcome in order to be approved. Our clients' submissions noted that:

> "It is helpful (i.e. a bonus) if an applicant can demonstrate that the non-compliant proposal achieves *"a better outcome … than a complying proposal"* but it is not appropriate for this rule to create an expectation that applicants **must** achieve a better outcome than a complying proposal (achieving a similar outcome should be sufficient, as the potentially affected party or resource is not significantly worse off than under a complying proposal)."[23]

Accordingly, we seek the addition of the words "similar or better…" to clause 4.b.ii.

(b) Because the reference to "positive contribution" is a little unconventional for a resource management plan, we consider that it would be beneficial to include a reference to positive effects following that expression.

7.39 Our preferred text for clause 4.b is set out below. The changes are shown via additions and ~~deletions~~ relative to the text agreed in mediation:

> b. Whether
>
> i. the outcome of the control infringement is consistent with the purpose of the control;
>
> ~~ii. a better outcome is achieved than a complying proposal; or~~
>
> ii granting consent to the control infringement will result in a similar or better outcome compared with a complying proposal; or
>
> iii. the proposal ~~makes~~ will make a positive contribution to the site and/or neighbourhood, locality or environment or have positive effects for the same.

Section 2.4 - Notification

7.40 While not agreed by all at the mediation, we support the version proposed by Council for the reasons set out in Section 17 of the primary evidence of Ms Perwick.

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[23] Bishop 5256-2, Adventist 5235-2, Marist 5250-2, St Kentigern 5228-2, Diocesan 5224-2, King's 5249-2.

Section 2.5 - Accidental Discovery Protocols

7.41 This part of Chapter 4 does not form part of this topic, and is not addressed by this evidence.

Section 2.6 - Framework Plans

7.42 The following clients sought to amend the framework plan provisions:

(a) AUOG (4185-372, 4185-373, 4185-374, 4185-384)

(b) AIAL (5294-192)

(c) Progressive (5723-196, 5723-198, 5723-199, 5723-200, 5723-201)

(d) Unitec (2742-75, 2742-79)

7.43 In summary, the parties which submitted on this matter agree with and support all of the changes made to section 2.6 during the mediation process and in discussions with the Council since, and have no outstanding issues.

7.44 The submissions filed:

(a) supported the framework plan approach in certain identified precincts as an important mechanism in the Unitary Plan to promote comprehensive integrated development of large blocks of greenfields and brownfields land;

(b) sought changes to the mechanisms of the framework plan provisions to bring a greater legal robustness to the provisions;

(c) supported framework plans being a voluntary mechanism;

(d) sought amendments to ensure the workability of framework plans in identified precincts for both greenfields development and brownfields development;

(e) sought a clear policy position that framework plans provide incentives for adopting a comprehensive planning approach.

7.45 Framework plans seek to encourage comprehensive integrated planning of large scale greenfields and brownfields developments in identified precincts. It provides the up-front technique to resolve key issues, particularly relating to core planning elements, roading and transport, public open space, and infrastructure. It enables key investment decisions to be made with some certainty.

7.46 Framework plans are integrally related to the individual precincts to which they apply. In the final analysis the success of the framework plan approach will depend on the precinct provisions. However these 'general provisions' as proposed to be modified as the result of the mediation process, will set the basis from which successful framework plans for individual precincts can be developed.

7.47 The framework provisions as initially drafted within the Proposed Auckland Unitary Plan were recognised as being problematic in terms of the Environment Court decision Queenstown Airport Corp & Others vs Queenstown Lakes District Council.

7.48 Consequently key changes to the Plan are proposed through the mediation process. These include:

(a) The provisions which implied a resource consent for a framework plan could amend the plan provisions have been deleted.

(b) Development / subdivision applications which occur after a framework plan has been issued are now assessed with reference to the most recently approved resource consent for a framework plan. Alternatively an applicant can choose to concurrently lodge a new framework plan or variation to a framework plan.

(c) The framework plan enables detailed infrastructure and subdivision approvals, and therefore embodies a direct land use component.

7.49 It is critical that the Unitary Plan provide realistic incentives for the use of framework plans. These are the mechanisms which will encourage development to utilise the framework plan technique, and achieve the comprehensive planning approach that is desirable to help achieve quality planning outcomes.

7.50 The particular incentives that apply will be specific to the individual precinct. The general provisions are now proposed to acknowledge that incentives may apply on a precinct by precinct basis. Examples of these incentives would be additional height coverage or intensity in particular precincts following comprehensive planning under the framework plan process.

7.51 At mediation the Council reserved its position in relation to the activity status of a framework plan when accompanied by a development control modification. The rule which stipulates that "any concurrent application for a development control infringement will not alter the restricted activity status" is an important provision. Otherwise a higher level of assessment could be triggered which would be disincentive to using the framework plan process. Attachment B to the evidence of Ms Dimery includes, as paragraph 13, the wording we support.

7.52 The notified version of the Unitary Plan states framework plans do not supersede the need for structure plans. While this might be a logical approach in greenfields situations, it does not take account of brownfields where structure plans are not needed or appropriate. The new proposed provisions from the mediation resolve this matter.

7.53 Other amendments have been made to ensure the framework plan provisions work equally well for brownfields as greenfields development.

7.54 The notified Unitary Plan contains a prerequisite that sites subject to a framework plan must be contiguous. This was deleted as part of the mediation process. This change is critical in brownfields situation where comprehensive planning is highly desirable, but the sites that can successfully contribute to the framework plan are often not contiguous. If the originally notified control remains, then the framework plan method will not be available in significant parts of Auckland where urban renewal and / or regeneration is targeted. This will have the unintended consequence of frustrating quality planning outcomes. The change agreed though the mediation process is essential.

7.55 The mediation identified a range of other "workability" elements which were unanimously agreed. These have been incorporated within the document attached to the evidence of Ms Dimery. As a result, there are no outstanding issues with the framework plan provisions.

Section 2.7.1 - General Information Requirements

7.56 Our comments on this section are addressed above.

Section 2.7.2 - Design Statements

7.57 This part of Chapter 4 does not form part of this topic, and is not addressed by this evidence.

Section 2.7.3 - Framework Plans

7.58 The parties involved in this topic are listed in paragraph 7.42. We agree with and support all of the changes made to section 2.7.3 during the mediation process, and have no outstanding issues.

Sections 2.7.4 - 2.7.9

7.59 These parts of Chapter 4 do not form part of this topic, and are not addressed by this evidence.

14 November 2014

Mark Arbuthnot
Stuart Bracey
Kellie Roland
John Duthie
Michael Foster
Vijay Lala
Craig McGarr
Iain McManus
Matthew Norwell
Greg Osborne
Dave Serjeant
Berin Smith

ANNEXURE 1:

BERIN JOHN SMITH

My full name is Berin John Smith. I hold a Bachelor of Science in Resources and Environmental Planning from the University of Waikato, and a Masters degree in Resource and Environmental Planning from Massey University. I also hold papers in Survey Law and Survey Practice from UNITEC Institute of Technology.

I am a full member of the New Zealand Planning Institute and a director of the Waiheke Island-based resource management planning firm Isle Land Limited which primarily provides town planning services in relation to activities in the Hauraki Gulf Islands. I have worked as a resource management planner for 19 years both in the private and public sectors. My employment history is as follows –

- Cato Bolam Consultants Surveyors (1995-1999)
- Waitakere City Council (1999-2000)
- URS New Zealand Limited (2001-2002)
- Duffill Watts Limited (2002-2003)
- Todd Property Group Limited (formally Landco Limited) (2006 – 2008)
- Isle Land Limited (formally Urbisphere Limited), Planning Consultant (2004-2006 / 2008– present).