

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Auckland Unitary Plan

**LEGAL SUBMISSIONS FOR
MULTIPLE PARTIES IN RELATION TO
004 - CHAPTER G**

24 NOVEMBER 2014

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1. INTRODUCTION

1.1 These legal submissions are given on behalf of:

- (a) Auckland International Airport Limited;
- (b) Auckland Racing Club;
- (c) Auckland Utility Operators Group and its members¹;
- (d) Board of Airline Representatives of New Zealand Incorporated);
- (e) Bunnings Limited;
- (f) Crown Group of Companies;
- (g) Diocesan School for Girls;
- (h) King's College;
- (i) New Zealand Marist Brothers Trust Board;
- (j) New Zealand Seventh-day Adventist Schools Association;
- (k) PACT Group;
- (l) Ports of Auckland Limited;
- (m) Progressive Enterprises Limited;
- (n) Roman Catholic Bishop of the Diocese of Auckland;
- (o) Scentre (New Zealand) Limited;
- (p) St Cuthbert's College Educational Trust Board;
- (q) St Kentigern Trust Board;
- (r) Stevenson Group Limited; and
- (s) Unitec Institute of Technology.

¹ Chorus New Zealand Limited, Vector Limited and Vector Gas Limited, Counties Power Limited, Spark New Zealand, Vodafone New Zealand Limited

- 1.2 The Joint Planning Statement of Evidence ("**JPS**") on behalf of these clients endorsed in large part the version of Chapter G attached to the evidence of Ms Perwick. This demonstrates the effectiveness of the mediation process in relation to this chapter.
- 1.3 A small number of amendments were sought in the JPS relating to:
- (a) Consultation
 - (b) Bundling
 - (c) Blanket or global consents
 - (d) Minor edits discussed at mediation and not carried over
 - (e) Default activity status
 - (f) Consideration of positive effects
- 1.4 It is disappointing that very few amendments have been made in the version of Chapter G attached to the rebuttal evidence of Ms Perwick, and these all therefore remain live issues before the Panel.
- 1.5 Of the amendments proposed by Ms Perwick in her rebuttal evidence:
- (a) Page 4: The revised version of the new "National Environmental Standard" paragraph is acceptable:

National Environmental Standards

~~National Environmental Standards may specify the need for, and status of, resource consents. These obligations apply in addition to the Unitary Plan rules and may restrict the ability of the Unitary Plan to classify certain activities as requiring a particular type of resource consent. These obligations may also limit the extent to which the Unitary Plan may depart from the status or standard specified in a National Environmental Standard.~~

National Environmental Standards (RMA Regulations) may specify the need for and status of resource consents for specified activities. National Environmental Standards apply in addition to the Unitary Plan rules. A provision in the Unitary Plan cannot be less stringent than a National Environmental Standard and can only be more stringent if the National Environmental Standard expressly allows.

- (b) Pages 6 - 7: The reinstatement of the sentence addressing section 91 under the heading "Making a resource consent application" is acceptable, as is its removal from both above and under the heading "Bundling":

Making a resource consent application

...

If the applicant does not apply for all resource consents the council may defer the application under s. 91 of the RMA.

...

~~The council will require all resource consents required for the proposal to be applied for together, including all of those listed in the table above. If the applicant does not apply for all resource consent the council may defer the application under s. 91 of the RMA.~~

Bundling of resource consents

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. If the applicant does not apply for all resource consents in respect of a proposal the council may defer the application under s. 91 of the RMA.

- (c) Page 8: The deletion of "development" is acceptable.

Applications across sites with multiple zones, overlays or precincts

...

Where a development control refers to an area or percentage of the site, the control will be limited to that part of the site to which the zone, overlay or precinct applies.

- (d) Page 9: The amendments sought in the JPS have been made.

Matters for control or discretion and aAssessment criteria

...

~~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.~~

- (e) Page 12: The amendments to the information requirements for scheduled sites, places of significance or value to Mana Whenua, scheduled historic heritage places and archaeological sites recorded on Archsite are acceptable.

...

- k. location and extent of any known scheduled sites or areas places of significant or value to Mana Whenua on the site or adjoining sites that are on council records, in the Unitary Plan or on the NZHPT records, or that are made known to the applicant during any consultation process which may have been undertaken
- l. location and extent of any known scheduled archaeological sites or historic heritage places and on any archaeological sites that are recorded on the New Zealand Archaeological Association Database (Archsite) on the site or adjoining sites.

(f) Page 19: The amendments to Rule 2.1 sought in the JPS have been made and the further amendments are also acceptable.

2.1 Determining activity status of an activity or use

...

- 1. To determine the activity status for an activity or use where the same activity or use is controlled by more than one rule. The plan 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 same activity or use in a precinct, Auckland-wide provisions or zone, unless the precinct or overlay expressly states otherwise...
 - ...
 - c. The activity status within a precinct takes precedence over the same activity within a zone or an Auckland-wide provisions, whether more restrictive or enabling.

(g) Page 20:

(i) The amendment to clause 3 of Rule 2.3 is an improvement on the earlier version:

- 3. For ~~rule control~~ infringements that are a restricted discretionary activity, the council will restrict its to the following matters, in addition to any specific matters listed in the rules:
 - a. Site ~~and/or~~ development and/or proposal characteristics

but the preference is still for the wording in the JPS.

- (ii) The amendment to clause 4 reflects what was sought in the JPS and is acceptable:

- 4. The council will consider the relevant assessment criteria below. When when assessing a restricted discretionary land use or development control infringement, for the matters of discretion listed above the council may consider the following criteria as they relate to the matters of discretion above, in addition to the relevant assessment criteria listed in the rules.

1.6 These submissions focus on the remaining issues in Chapter G:

- (a) Consultation:
 - (i) Should there be a list, and if so its extent?
- (b) Bundling
 - (i) What guidance should be provided in the Plan?
- (c) Blanket or global consents
 - (i) Should this acknowledged tool be acknowledged in the Plan?
- (d) The preamble to G1.4A
 - (i) Is the list of information requirements intended to be a checklist?
 - (ii) If the information corresponds with the activity status, should it not also correspond to the matters for discretion?
- (e) Default activity status
 - (i) Should this be discretionary (to reflect the Act) or non-complying (to reflect the legacy plans)
- (f) Consideration of positive effects

- (i) How best to capture the parties mutual intention that positive effects should be considered when controls are infringed?

1.7 I address each of these below. The amendments sought by our clients are shown in **Attachment 1**.

2. CONSULTATION

2.1 Ms Perwick's primary evidence (paragraph 8.16) states that there was no agreement reached between the parties on amending the list provided in the Plan, or deleting it. The version attached to her evidence simply noted "[to be determined]".

2.2 The position taken in the JPS was:

- (a) A preference was expressed for no list of consultation parties in this section.
- (b) If a list is to be included, it must be comprehensive and not simply limited to Mana Whenua and various parts of Auckland Council operations. A "complete" list was proposed at paragraphs 2.1(b)(ii) and 5.12 of the JPS in the event the Panel adopted this approach:

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.

2.3 That remains the position of our clients. If there is to be a list, it must be a complete list. There is no lawful or principled basis to limit the parties in the manner suggested by Council, either in the notified version or the mediation version.

3. BUNDLING

3.1 Following the mediation process, the provisions in G.1.4 regarding bundling² were revised to clarify the test the Council will employ to determine whether to bundle or unbundle consent matters in an application. These amendments have improved the provisions. The wording now proposed by Council reads:

Where the proposal involves several activities with different types of consent that are inextricably linked, the council will generally bundle all activities and apply the most restrictive activity status.

In considering whether it is appropriate to unbundle in response to a request from an applicant, the Council shall consider whether the consents relate to activities that are independent of each other and whether they would generate environmental effects that do not 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.

3.2 While this is an improvement, the provisions still suggest:

- (a) The starting presumption is that activities will be bundled and the most restrictive status applied.

² The term "bundling/unbundling" is used in the Plan to refer to how the Council will consider proposals that involve several activities with different status.

- (b) This is regardless of:
 - (i) Activity status
 - (ii) Effects

3.3 I submit such an approach is incorrect.

3.4 The approach to bundling is found in case law, not the Act. It is often misunderstood or misapplied by Councils, including Auckland Council. Providing "guidance" in the Plan is useful, provided the guidance is correct. At present, I submit it is not.

3.5 As the approach has developed in the case law, it is important to review the case law to properly understand the approach.

3.6 Starting in 1973, Cooke J considered a six storey 60 bedroom addition to an existing "licensed tourist house".³ This required a conditional use consent and a specified departure. In response to the question of the implications of a breach of the side yard requirement, Cooke J held:

I think it clear that in consequence the whole proposal became a conditional use and accordingly fell to be dealt with in terms of s28C of the statute.⁴

...

I agree with counsel for the City that a use is either wholly predominant or wholly conditional. The hybrid concept would add an unnecessary complication to legislation already sufficiently complicated and it would tend to limit rights of objection. In a case of ambiguity the legislation should not be so construed. On a conditional use application the fact that there is only minor non compliance with predominant use requirements is a relevant consideration, but it is neither exclusive nor necessarily decisive.⁵

... the non-compliance with the side yard provisions rendered the whole proposal one requiring conditional use consent.⁶

3.7 In 1997 Judge Sheppard had the first opportunity to consider whether that approach continued to apply under the Resource Management Act 1991, when he considered a challenge to the conditions imposed on a consent

³ *Locke v Avon Motor Lodge* (1973) NZTPA 17.
⁴ Page 21.
⁵ Page 22.
⁶ Page 22.

for a new hall and gymnasium at a school.⁷ Resource consent was not needed for the use of the site for those purposes, but a discretionary activity consent was required to exceed the maximum height. Conditions were imposed limiting the hours of use, and requiring it only be used for core school activities. The question on appeal was whether conditions could be imposed on the use of the hall, when consent was not required for its use. Judge Sheppard referred to *Locke*.⁸

That judgment was given in respect of the Town and Country Planning Act 1953. The present proceedings are to be decided according to the Resource Management Act 1991. **However the relevant differences between the two enactments do not deprive the reasoning in *Locke's case of applicability to the present Act.*** To the contrary, section 76(3b) (inserted by section 40 of the Resource Management Amendment Act 1993) provides for a territorial authority to state in a rule a restriction on the exercise of its discretion on a discretionary activity. That introduced a hybrid concept of the kind referred to in *Locke's case* as not then existing.

...

Meaning has to be given to the distinction which the amended Act now contemplates between restricted discretionary activities and discretionary activities for which the scope of the consent authority's discretion is not restricted. In respect of a discretionary activity which is not a restricted discretionary activity, the discretions to grant or refuse consent, and to impose conditions on consent, have to be regarded as not confined beyond the limits implied by law and stated in the *Newbury* case. Applying the reasoning in *Locke's case*, a non-restricted discretionary activity is wholly discretionary, and in exercising the discretions to grant or refuse consent and to impose conditions a consent authority is to have regard to all the matters listed in section 104(1) that are relevant in the circumstances. A consent authority is not entitled to exclude considerations about use of a building on the basis that consent is required because the building would be overheight. If it were to do that, it would be treating the application in the same way as if the territorial authority had exercised the power conferred on it to restrict the scope of its discretion. But that power can only be exercised by express provision to that effect in the district rules.

3.8 It is clear from this that:

- (a) Locke continues to apply where there is a fully discretionary or non-complying consent requirement;
- (b) But not where the consent is a restricted discretionary activity, otherwise no meaning would be given to the distinction between restricted and fully discretionary activities.

⁷

⁸ *Rudolph Steiner School v Auckland City Council* (1997) 3 ELRNZ 85.
Page 87.

- 3.9 The issue went to the High Court in 1998, when Salmon J considered a five storey mixed-use development in a low rise commercial area.⁹ A number of consents were required and it was agreed that certain elements were discretionary activities.¹⁰ Salmon J noted:¹¹

What is important is that all parties agree that discretionary consents are required.

There was a difference between counsel as to the extent of Council's discretion in relation to the discretionary activity consents required. The resolution of this difference is essential to a determination of these proceedings.

- 3.10 After reviewing the two decisions cited above, Salmon J held:¹²

At issue is whether the Resource Management Act should permit what Cooke J described, as a "hybrid activity" or whether, as Judge Shepherd has held in *Rudolph Steiner* a non-restricted discretionary activity must be wholly discretionary.

I have concluded that Judge Shepherd is right and that the position under the Resource Management Act is the same as it was under the Town and Country Planning Act. Indeed, the arguments in favour of that approach are stronger under the present legislation. This is because specific provision is made for a restricted discretionary activity. In respect of such an activity the Council's discretion may be restricted to matters specified in the plan or proposed plan for that activity. In the case of a non-restricted discretionary activity Council's discretion is not so limited.

Mr Cavanagh's argument¹³ is correct in relation to a restricted discretionary activity but obviously the legislation treats non-restricted discretionary activities differently.

- 3.11 Again, this emphasises the position set out in paragraph 3.8 above.

- 3.12 Soon after, the Court of Appeal considered a 57 unit terraced house complex on the site of a former supermarket.¹⁴ Three consents were required, one as a controlled activity and two as restricted discretionary activities.¹⁵ Salmon J had heard the matter and issued his decision the day after his decision in *Aley*.¹⁶ On appeal, the Court of Appeal held:¹⁷

⁹ *Aley v North Shore City Council* [1998] NZRMA 361.

¹⁰ Page 367.

¹¹ Page 367.

¹² Pages 374 - 375.

¹³ Which was that the Council should concern itself only with those matters in respect of which the consent was required (see page 372).

¹⁴ *Bayley & Ors v Manukau City Council* 4 ELRNZ 461

¹⁵ Page 465, at lines 20-30.

¹⁶ Page 472, line 16.

¹⁷ Page 473, lines 22 - 33.

Salmon J's observations were made concerning a discretionary activity consent application in respect of which the Council had not restricted its discretion. Mr Gault appeared to accept the force of them, but he argued that where the Council has restricted its discretion, then the activity which it is considering...does not consist of the whole of the proposed development, but only those aspects of it which the Council has specified as remaining for its consideration. Counsel drew attention to the fact that Salmon J had qualified his endorsement of the Environment Court's approach by distinguishing restricted discretionary activities.

Mr Gault's argument is in our view correct as a matter of construction.

- 3.13 The Court found that the decision not to notify the restricted discretionary activity application in relation to the yard space was invalid¹⁸ and "that being the case, the Council should not have permitted the controlled activity consent application to proceed on a non-notified basis."¹⁹ Its reasoning was:²⁰

Technically, it was a separate application, although for convenience contained in the same application document seeking the three consents. Section 94(1)(b) and the provisions of the Council's proposed plan **permit non-notification of such an application without written approval of affected persons but do not require the Council to dispense with notification. (It "need not be notified".) Such a course may be inappropriate where another form of consent is also being sought or is necessary.** The effects to be considered in relation to each application may be quite distinct. But more often it is likely that the matters requiring consideration under multiple land use consent applications in respect of the same development will overlap. The consent authority should direct its mind to this question and, where there is an overlap, **should decline to dispense with notification of one application unless it is appropriate to do so with all of them.** To do otherwise would be for the authority to fail to look at a proposal in the round, considering at the one time all the matters which it ought to consider, and instead to split it artificially into pieces.

- 3.14 The result was that all applications should have been notified.²¹ The Court of Appeal did not find that all applications should have been processed as a restricted discretionary activity, just that it was not appropriate to dispense with notification of one consent unless it was appropriate to do it with both consents. This is the genesis of the test of distinct / overlapping effects.

18 Page 476, line 16.
19 Page 476, line 20.
20 Page 476, line 22.
21 Page 477, line 2.

- 3.15 In 2000 Randerson J considered an application for a substantial two storey home with associated excavation and earthworks.²² Various forms of controlled and discretionary consents were required, in some cases in restricted form and in others unrestricted. The Council and the applicant both agreed that overall the application was to be considered as a discretionary activity. The question was whether the dwelling (which required restricted controlled activity consent and was subject to a non-notification rule in the plan) could be dealt with on a non-notified basis with the Council separately considering the consents required for earthworks, excavation and works within the dripline (as a discretionary activity).²³ Randerson J held:²⁴

I have no doubt in the present case that a compartmentalised approach would not have been appropriate. Indeed, both PDL as applicant and the Council's planning officer accepted that the applications were to be dealt with as a whole and should be treated overall as an application for consent to a discretionary activity.

...As I later find and, as Mr Gault conceded, the Council reserved for itself power under the district plan to control the bulk and location of the dwelling on the site. It follows that there was a direct connection between the excavation and earthworks required and the bulk and location of the dwellings on the site. Plainly this was a case where the consents overlapped in the sense described in *Bayley* to such an extent that they could not realistically or properly be separated either for the purposes of s94 or for the grant of the consents themselves.

- 3.16 That same year Randerson J presided on *Body Corporate*,²⁵ where the building was a controlled activity under the operative plan and the carparking was discretionary. Randerson J referred to *Bayley* and *King* then summarised the position:²⁶

Where there is an overlap between the two consents such that consideration of one may affect the outcome of the other, it will generally be appropriate to treat the application as a whole requiring the entire proposal to be assessed as a **discretionary** activity.

²² *King v Auckland City Council* [2000] NZRMA 145.

²³ [47].

²⁴ [49] - [50].

²⁵ *Body Corporate 970101 v Auckland City Council* [2000] NZRMA 202.

²⁶ [28].

3.17 On appeal²⁷ Mr Farmer repeated the argument made to Randerson J that, in accordance with *Bayley*, the whole proposal should have been assessed "for notification purposes" as a discretionary activity.²⁸ The Court of Appeal disagreed.²⁹ It held the effects of the carparking were distinct in the sense that there were no consequential or flow-on effects on the matters being considered under the controlled activity application. There was no overlap and no need for a holistic approach.

3.18 In my submission:

- (a) This review clearly shows that it is only where a consent is required for a discretionary or non-complying activity that the more restrictive activity status may apply to the entire proposal.
- (b) There is no case law that supports such an approach for controlled and restricted discretionary consents, as intended by Council. All the law does in this regard is confirm that controlled activities may need to be *notified* when their effects overlap with a restricted discretionary consent that needs to be notified.
- (c) There is not an invariable rule that where an aspect requires consent as a non-complying or discretionary activity that the whole of the proposal is to be treated as such automatically. Where there is an overlap, consequential or flow on effects then the whole of the proposal should be treated as one. But that is not the starting point for all applications regardless of:
 - (i) Activity status; or
 - (ii) Effects

3.19 For the reasons set out above, and in the JPS, I submit that the version of G.1.4 attached to Ms Perwick's rebuttal evidence should be amended as shown:

Where the proposal involves several activities with different types of consent that are inextricably linked, the council will generally bundle all activities and apply the most restrictive activity status.

²⁷ *Body Corporate 970101 v Auckland City Council* [2000] NZRMA 529.
²⁸ [21].
²⁹ [22].

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 ~~unbundle in response to a request from an applicant~~ the resource consents together, the Council shall consider whether the consents relate to activities that are ~~independent of each other~~ inextricably linked and whether they would generate environmental effects that ~~do not~~ 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.

- 3.20 In relation to the final paragraph above, the rationale for this request is discussed in the JPS.³⁰ An applicant seeking consent under the district plan rules should be able to obtain a certificate of compliance confirming their development requires no consents under the regional plan, and vice versa. Council's current approach would have all permitted components falling to the most restrictive activity status, regardless of which plan rules they sit under.

4. GLOBAL / BLANKET RESOURCE CONSENTS

- 4.1 A global or blanket consent allows a consent holder to undertake particular activities throughout a district (for example in relation to works on or around trees and when dealing with contaminated soil). While 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

³⁰ Joint Planning Statement of Evidence for Multiple Parties in Relation to 004 - Chapter G, dated 14 November 2014, at [5.35] - [5.36].

- 4.2 Ms Perwick discusses this resource consenting approach in section 13 of her primary evidence. In her opinion adding a specific reference to this form of resource consent application would not add anything to Chapter G. We disagree.
- 4.3 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. It would be helpful to openly acknowledge the ability for applications to be structured across the region in this manner
- 4.4 As noted in the JPS,³¹ the preference is to add 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.

- 4.5 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.

5. THE INFORMATION REQUIREMENTS RELOCATED FROM 2.7.1

- 5.1 As noted in the JPS, there are two outstanding matters with the information requirements relocated from 2.7.1. The edits sought (as shown against the version of Chapter G attached to Ms Perwick's rebuttal evidence) are:

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, ~~and~~ 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

³¹ Joint Planning Statement of Evidence for Multiple Parties in Relation to 004 - Chapter G, dated 14 November 2014, at [5.48].

in identifying what aspects of a proposal will require an assessment of the effects and the type of information and level of detail expected.

5.2 This request is not discussed in the rebuttal evidence.

5.3 I submit that, for the reasons set out in the JPS³² and the legal submissions of Mr Douglas Allen, these amendments should be made.

6. DEFAULT ACTIVITY STATUS

6.1 Our clients sought 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.

6.2 This has not been accepted by the Council.

6.3 I have reviewed the submissions of Mr Martin Williams in relation to this point, and adopt his reasoning.

6.4 I submit, for the reasons set out in the JPS and the legal submissions of Mr Williams, that the default activity status in Chapter G should be discretionary rather than non-complying.

7. RULE INFRINGEMENTS - POSITIVE EFFECTS

7.1 I have reviewed the submissions of Mr Williams in relation to this point, and adopt his reasoning.

7.2 I submit, for the reasons set out in the JPS³³ and the legal submissions of Mr Williams, that Rule 2.3 should be amended as follows:

Control infringements for permitted, controlled and restricted discretionary activities

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

³² Joint Planning Statement of Evidence for Multiple Parties in Relation to 004 - Chapter G, dated 14 November 2014, at [5.52]-[5.55].

³³ Joint Planning Statement of Evidence for Multiple Parties in Relation to 004 - Chapter G, dated 14 November 2014, at [7.24]-[7.34].

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, development and/or proposal characteristics

b. The purpose of the control

c. Positive effects

4. The Council will consider the relevant assessment criteria below when assessing a restricted discretionary control infringement, for the matters of discretion listed 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 effects outcome of the control infringement still achieves is consistent with the purpose of the control;

ii. (or will in the circumstances result granting consent to the control infringement will result in a similar or in a better outcome than a complying proposal); or

e-iii The proposal makes a positive contribution to the site and/or neighbourhood, locality or environment or have positive effects for the same.

Advice note: When considering an application for resource consent, Council will consider both the positive and adverse effects on the environment of allowing the infringement.



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Auckland Utility Operators Group and its members
Board of Airline Representatives of New Zealand Incorporated³⁴
Bunnings Limited
Crown Group of Companies
Diocesan School for Girls
King's College
New Zealand Marist Brothers Trust Board
New Zealand Seventh-day Adventist Schools Association
PACT Group
Ports of Auckland Limited
Progressive Enterprises Limited
Roman Catholic Bishop of the Diocese of Auckland
Scentre (New Zealand) Limited
St Cuthbert's College Educational Trust Board
St Kentigern Trust Board
Stevenson Group Limited.
Unitec Institute of Technology

ATTACHMENT 1 - RELIEF SOUGHT

(a) Guidance on consultation on page 6, 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.~~

(b) Bundling of resource consents on page 7:

Where the proposal involves several activities with different types of consent 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 ~~unbundle in response to a request from an applicant~~ the resource consents together, the Council shall consider whether the consents relate to activities that are ~~independent of each other~~ inextricably linked and whether they would generate environmental effects that ~~do not~~ 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.

- (c) Insert a new heading and paragraph above the heading "Rules" on page 8:

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.

- (d) Reinstate two sentences into section G1.4A on page 10:

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, ~~and~~ 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 the effects and the type of information and level of detail expected.

- (e) Amend 2.2 on page 19-20:

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

(f) Amend 2.3 on page 20:

Control infringements for permitted, controlled and restricted discretionary activities

1. All permitted, controlled and restricted discretionary activities must comply with the 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, development and/or proposal characteristics

b. The purpose of the control

c. Positive effects

4. The Council will consider the relevant assessment criteria below when assessing a restricted discretionary control infringement, for the matters of discretion listed 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 effects outcome of the control infringement still achieves is consistent with the purpose of the control;

ii. (or will in the circumstances result granting consent to the control infringement will result in a similar or in a better outcome than a complying proposal); or

e-iii The proposal makes a positive contribution to the site and/or neighbourhood, locality or

environment or have positive effects for the same.

Advice note: When considering an application for resource consent, Council will consider both the positive and adverse effects on the environment of allowing the infringement.