

# AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

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

## **Further Interim Guidance Text for Regional and District Rules –Chapter G**

### **PAUP Chapter G – General Provisions**

**9 October 2015**

This further interim guidance for topic 004 – Chapter G is provided in addition to the interim guidance “Regional and District Rules – PAUP Chapter G – General Provisions” released by the Panel on 9 March 2015. This further interim guidance addresses the following matters the Panel indicated in its guidance of 9 March 2015 that it was still considering:

- G2.1 – Determining activity status
- G2.3 – Rule infringements for permitted, controlled and restricted discretionary activities
- G2.4 – Notification

The Interim Guidance issued on 9 March 2015 which covered the matters below remains unchanged:

- G1.2 – Activities – Bundling of resource consents;
- G2.2 – Activities not provided for; and
- G2.7 – Information requirements for resource consent applications.

The Panel is issuing this further interim guidance having read the submissions and having heard evidence and legal submissions from submitters (including the Auckland Council) on a number of the regional and district plan sections of the Proposed Auckland Unitary Plan.

The Panel issues this further interim guidance to assist submitters and the Council in preparing for pre-hearing processes and subsequent hearings on the Rural Urban Boundary (RUB) and rezoning and precincts. Also, submitters might address rule G2.1 - Determining Activity Status in relation to precinct rules that are less restrictive than rules for the underlying zone, Auckland-wide rules or overlay rules that would otherwise apply to the site.

This further interim guidance is not a recommendation within the meaning of section 144 of the Local Government (Auckland Transitional Provisions) Act 2010. It is not binding on submitters (including the Council) or on the Panel.

The Panel may revise its interim guidance after considering evidence presented on the remaining provisions and mapping.

The Panel does not invite any further evidence in relation to this topic and will not enter into correspondence on this interim guidance.

#### **G2.1 – Determining activity status**

1. As stated in the interim guidance dated 9 March 2015, this rule attempts to set out how a user of the PAUP can determine which rules apply to activities where more than one rule might be applicable. It is a complex rule; the product of multiple layers of rules that can apply to a particular site or activity.

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2. At this stage, the Panel considers that the overall activity status of a proposal should be determined based on all rules which apply to that proposal, including any rule which creates an exception to other rules.
3. The Panel is also of the view that the most restrictive rule which applies to a proposal should take precedence.
4. The Panel is of the view that the Plan sets up a hierarchy of layers.
5. The Panel considers that overlays have an important role in identifying and preserving, protecting or maintaining and managing various matters of national importance and other matters under s6 and s7 of the Resource Management Act. In this regard, as overlays sit at the top of the hierarchy they should only relate to these matters. Overlays which do not manage these matters should not be overlays. Consideration should be given to a GIS layer which controls Auckland-wide or zone development matters spatially and this should not be referred to as an overlay.
6. For the above reasons the Panel is of the view that an overlay rule should take precedence over all levels of rules that sit below it.
7. The Auckland-wide provisions primarily relate to natural and physical resources (or regional plan type matters) or those district plan matters which affect the entire region (e.g. subdivision, car parking, noise, lighting, earthworks). The zone provisions generally relate to areas with similar characteristics or uses that are repeated in different areas across the region.
8. The Auckland-wide provisions and the zone provisions appear to the Panel to generally stand separately from one another, but sit in the same middle level of the Plan hierarchy.
9. The Panel is of the view that if there are rules in the Auckland-wide rules and a zone rule, then the more restrictive of the rules would take precedence over the other in determining an overall activity status. Based on the Panel's view above, both would be subordinate to a rule in an overlay.
10. However, the relationship between Auckland-wide, zones and precincts rules remains inconsistent and at issue for the Panel.
11. The Panel understands that precincts are supposed to be more detailed place-based provisions. The Panel also understands that in the notified Plan, in some instances rules in a precinct are generally subject to the Auckland-wide or zone rules, but in some instances precinct rules take precedence over the Auckland-wide or zone rules.
12. A problem arises with those precinct rules which are intended to take precedence over the Auckland-wide or zone rules. Given the Panel's proposition set out above, a rule

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at precinct level which is intended to take precedence over an Auckland-wide or zone rule would be inconsistent with that approach.

13. Therefore, at the upcoming hearings on Rezoning and Precincts the Panel will be assessing precinct rules against the following:
  - why a precinct rule that is more enabling than an Auckland-wide or zone rule is necessary; and
  - whether or not such a precinct rule is the most appropriate way of addressing the matter; and
  - how such a precinct rule could fit into the Panel's preferred proposition of the most restrictive rule taking precedence.
14. The Panel is unable to resolve the most appropriate form of rule G2.1 - Determining Activity Status before hearing and considering submitters' evidence on precincts in Topic 081. The Panel may revise its interim position after considering the evidence.

## **G2.3 – Rule infringements for permitted, controlled and restricted discretionary activities**

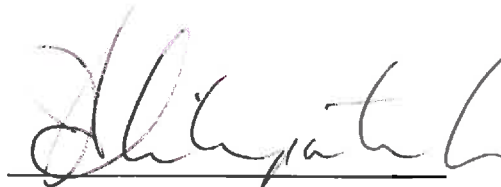
15. The Interim Guidance dated 9 March 2015 outlined that proposed rule G2.3 (Rule infringement for permitted, controlled and restricted discretionary activities) sets out how an activity will be assessed when it does not comply with one or more of the controls in the Plan but, if it did, would be classed as a permitted, controlled or restricted discretionary activity.
16. As the Panel noted previously, the rule as drafted is too broad in its application and has implications that go beyond what is suggested by the text. The Panel has now considered this matter further in light of evidence on regional and district plan matters.
17. The Panel is of the view that restricted discretionary activity status is appropriate; but the associated matters of discretion should be worded to ensure they are applicable to both regional and district level rules; and only matters of relevance to the standard or standards being infringed should be considered.
18. Furthermore, in relation to this rule the Panel is concerned about the number of times the PAUP uses the terms “control” or “controls” outside of a controlled activity (e.g. for permitted activity controls, controlled activity controls, restricted discretionary activity controls, land use controls, development controls etc).
19. To avoid confusion, and to better distinguish the components of an activity that are required to be met to ensure a particular activity status, the Panel prefers the term “standard” (e.g. permitted activity standard, controlled activity standard, restricted discretionary activity standard, land use standard or development standard. This confines the word “control” to a controlled activity and its associated matters of control only.

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## **G2.4 – Notification**

20. Proposed rule G2.4 provides, in terms of s95A(2)(c) and (3)(a) of the Resource Management Act (RMA), that applications for consent for controlled and restricted discretionary activities will be considered without public or limited notification, or the need to obtain written approval from affected parties, unless otherwise specified in the plan or where special circumstances exist.
21. As outlined in the Interim Guidance dated 9 March 2015 the Panel was not satisfied that rule is the most appropriate for this purpose.
22. Having heard evidence on various regional and district plan matters the Panel is of the view that:
  - all controlled activities should be considered without public or limited notification, or the need to obtain written approval from affected parties, unless special circumstances exist under s95A(4) RMA; and
  - all restricted discretionary, discretionary or non-complying activities should be subject to the normal tests for notification under the relevant section of the RMA, unless otherwise specified by a specific rule in the Plan.
23. The Panel notes that the principal reason for this is that the Plan has a significant number of activities specified as restricted discretionary and, due to their nature, many of them may have more than minor adverse effects on the environment. To have a blanket rule that these will all be dealt with on a non-notified basis would not, in the Panel's view, give effect to the Resource Management Act's purpose and principles.
24. The Panel considers that for clarity and consistency a separate notification section should be contained in each chapter of the Plan. This would enable full consideration of the matters within that chapter which may require activity, rule or standard specific notification or non-notification.



David Kirkpatrick

Chairperson, Hearings Panel for the  
proposed Auckland Unitary Plan