Interim Guidance Text for Regional and District Rules – Chapter G

PAUP Chapter G – General Provisions

9 March 2015

Having read the submissions relating to this topic and having heard evidence and legal submissions from submitters (including the Auckland Council), the Panel issues this guidance in relation to RPS level provisions to assist submitters and the Council in preparing for mediation and subsequent hearings on regional and district plan provisions.

This 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 regional and district plan provisions.

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

Interim Guidance – PAUP Chapter G: General provisions –

G1.2 Activities - Bundling of resource consents

1. "Bundling" is a term applied to the assessment of applications for resource consent, where different classes of activity in terms of s87A RMA apply to different aspects of the proposal. The effect of bundling is that the most stringent provisions for the assessment and grant or refusal of consent in terms of ss104 – 104D RMA are applied to the whole proposal.

2. The usual test for considering if bundling is appropriate is whether the effects of the different activities overlap. The PAUP as notified would use a test of whether the activities are inextricably linked. The Panel thinks that the usual test of overlapping effects is more appropriate. It is supported by relevant case law. While it does require some consideration of the nature and extent of the different effects that are likely to be generated by the different activities, that should be provided by an applicant in the assessment of environmental effects (AEE) accompanying the application.

3. In contrast, assessing whether the activities are inextricably linked may depend on operational matters which are not apparent in the AEE and may not even have an RMA basis. A notional ability to extricate one element of a development from the rest does not appear to us to be a sound basis for the integrated management of effects of the whole development.

4. The PAUP as notified also provided that bundling would be the default basis on which the Council would assess applications, and that an applicant who considered that disparate elements of an application ought not to be bundled would need to apply for a

determination of that by the Council. We do not think that is the right way around: it is for the Council as consent authority to determine, in each case, how an application ought to be assessed.

G2.1 – Determining activity status

5. This rule attempts to set out the way in which 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, whether in its notified form or in the form which emerged from mediation. The Panel is not yet satisfied that it is the most appropriate rule for this purpose. The Panel is concerned that the relationships between precincts and overlays as proposed within the PAUP are not always consistent. It is important to understand the roles and limitations of zones, Auckland-wide provisions, overlays and precincts before arriving at interim guidance on G2.1. For those reasons we do not think we can advance its drafting before we have had the opportunity to consider how it might work in light of the rules to which it is intended to apply.

6. We bring this to the attention of submitters at this stage so that they may consider the issue of how to determine the class or status of an activity when making submissions on rules which purport to do that. This is likely also to require explanation within the text of the Plan to assist lay users.

G2.2 – Activities not provided for

7. The PAUP as notified includes a rule which states that any activity not specifically listed as being of any class or status is a non-complying activity. Many submitters seek that this be amended to make such activities discretionary.

8. Section 87B(1)(b) RMA provides that where a plan requires a resource consent to be obtained for an activity but does not classify that activity, then it is to be treated as discretionary. Some submitters argued that this statutory provision determines the issue; the Council and some other submitters argued that it leaves open the option of a rule in a plan which does otherwise.

9. Assuming cautiously that the latter view is correct, we consider that it would be more appropriate for such activities to be treated as discretionary. A key difference between a discretionary activity and a non-complying activity really turns on the restriction in s104D(1)(b) RMA of whether the application is for an activity that will not be contrary to the objectives and policies of the relevant plan. If a proposed activity is not listed in any way in the PAUP, then there may have been no consideration of it when the objectives or policies were drafted and, depending on the words of those objectives and policies, it could be said to be contrary to them.

10. If it is an activity which would be of some significant benefit to people or communities, or to the environment generally, but was considered to have more than minor adverse effects (which is the alternative restriction for a non-complying activity in s104D(1)(a) RMA), then this proposed rule would effectively prevent it from being assessed on its

merits. It would be much better to enable it to be assessed as a discretionary activity in light of all the relevant matters listed in s104 RMA, including its effects on the environment and relevant plan provisions. If, after such assessment, the consent authority considered that consent should not be granted, then that would be open to it in the exercise of the discretion conferred by s104B RMA.

11. If in considering certain overlays, zones or precincts it appears that it would be desirable for any unspecified activity to be treated as non-complying, then that can be addressed at that stage by a specific rule for that overlay, zone or precinct.

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

12. Proposed rule G2.3 sets out the default way in which 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.

13. The rule as drafted is of very broad application and its implications are potentially much more extensive than its text might indicate. The use of restricted assessment criteria appears unlikely to be able to address all possible infringements of permitted activity performance standards. If more criteria were added (whether in this rule or throughout the plan), that would raise doubts as to the appropriateness of restricted activity status for such infringements. If the activity status were changed to discretionary, that would result in making such applications notifiable (which is an issue raised by numerous submitters in any event). For these reasons the Panel is not yet satisfied that the proposed rule is the most appropriate rule for this purpose. We do not think we can advance its drafting before we have had the opportunity to consider how it might work in light of the rules to which it is intended to apply.

14. We bring this to the attention of submitters at this stage so that they may consider the issue of how to deal with infringements of rules when making submissions on the rules.

G2.4 – Notification

15. Proposed rule G2.4 provides, in terms of s95A(2)(c) and (3)(a) 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 special circumstances exist.

16. As with rules G2.1 and G2.3, the Panel is not yet satisfied that it is the most appropriate rule for this purpose. We do not think we can advance its drafting before we have had the opportunity to consider how it might work in light of the rules to which it is intended to apply.

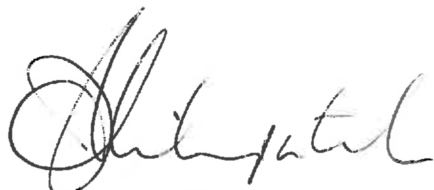
17. We bring this to the attention of submitters at this stage so that they may consider the issue of how to determine whether to notify an application for resource consent for an activity when making submissions on rules relating to activities.

G2.7 – Information requirements for resource consent applications

18. In the PAUP as notified, a section was included setting out over several pages detailed requirements for information to accompany applications. Almost all of the requirements related to land use consent applications: in relation to regional resource consents the text simply noted that the Council's application forms and guidance notes which set out the information required. In the version of the PAUP Chapter G that emerged after mediation, this section was shifted to the first part of Chapter G as Section 1.4A.

19. The Panel does not consider that this list (as either District or Regional guidance) should be in the PAUP at all. It is too detailed to be applicable to all applications for land use consent. On the other hand, it may not be comprehensive enough to cover all of the information that is relevant to specific types of consents and, if contained in the PAUP, is harder for the Council to modify and update.

20. It is doubtful whether the proposed list can properly be called a list of requirements, given the terms of s88 and Schedule 4 RMA. It appears to be inconsistent with the purpose of the 2009 amendments to the RMA which were intended to simplify and streamline the consenting process.



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proposed Auckland Unitary Plan