

IN THE MATTER

of the Resource Management Act 1991 and the
Local Government (Auckland Transitional
Provisions) Act 2010

AND

IN THE MATTER

of the Proposed Auckland Unitary Plan

**JOINT MEMORANDUM REGARDING THE PROVISIONAL SCHEDULE TO
NOVEMBER 2015 (AS AT 13 FEBRUARY 2015) AS IT RELATES TO TOPIC
031 - HISTORIC HERITAGE**

19 FEBRUARY 2015

1. INTRODUCTION

- 1.1 This memorandum is jointly filed on behalf of Auckland District Health Board, McDonalds Restaurants (NZ) Limited, Unitec Institute of Technology, Museum of Transport and Technology, St Kentigern Trust Board, University of Auckland, Britomart Group Company, Property Council, Ports of Auckland Limited, General Trust Board of the Diocese of Auckland, Bledisloe Estate Trust, Smith and Caughey, 273 Neilson Street Limited, Jarrod Blundell, Department of Corrections, The Urban Design Forum New Zealand and New Zealand Institute of Architects.
- 1.2 These parties have lodged primary and further submissions on Topic 031 - Historic Heritage of the Proposed Auckland Unitary Plan ("**PAUP**") and have attended the mediation on this topic that was held from 11 - 13 February 2015. The submitters listed above have formed the "**Heritage Working Group**" for the purposes of adopting a joint approach to certain matters addressed in Topic 031.
- 1.3 This memorandum relates to the provisional hearing schedule dated 13 February 2015 ("**Schedule**") and requests an extension to the dates for Topic 031 currently set down in that schedule.
- 1.4 The parties consider the current timeframes are too restrictive in light of the progress made at mediation, and believe that allowing a longer period of time for informal negotiations will result in the parties listed above being able to establish a consolidated set of provisions with the aim of narrowing the issues to be brought before the Hearings Panel. This extension will also allow time for Council to establish its position on the provisions prior to witnesses commencing evidence preparation.
- 1.5 The current Schedule evidence exchange and hearing dates are:
- (a) Council evidence in chief - **27 February 2015**;
 - (b) Submitter evidence in chief - **9 March 2015**;
 - (c) Rebuttal evidence - **16 March 2015**; and

- (d) Hearing - **23 and 24 March 2015**.
- 1.6 The Group seeks changes to the Schedule to extend the evidence exchange and hearing dates as follows:
- (a) Further Mediation - **23 March 2015**
 - (b) Council evidence in chief - **13 April 2015**;
 - (c) Submitter evidence in chief - **28 April 2015**;
 - (d) Rebuttal evidence - **5 May 2015**; and
 - (e) Hearing - **14 and 15 May 2015**.
- 1.7 The Council has also indicated that it supports this request.
- 1.8 The Group's reasons for the extension are discussed in detail below.

2. REASONS FOR EXTENSION

Collective approach

- 2.1 Members of the Group attended the 031 - Historic Heritage mediation on 11 - 13 February 2015. The mediation sessions addressed sections C3 (unscheduled heritage) and E3 and J2 (scheduled historic heritage) of the plan. Although the Council reserved its opinion on many aspects, it became apparent that many of the parties in attendance had similar views as to how the proposed provisions might be amended to address their relief.
- 2.2 In particular, there was general agreement that the provisions of section C3 ought to be reconsidered in light of the Council's intended purpose for that part of the plan, and the Council team agreed that a revised version of section C3 would be circulated to the parties following mediation. The Council also proposed a number of substantive changes to parts E2 and J2 of the Plan for the purpose of mediation, in particular with respect to concepts of adaptation and partial and substantial demolition. Following a useful discussion in respect of those proposed changes at mediation, it was evident that a

revised version of section E2 and J2 could address a number of the remaining concerns held by the parties to this memorandum.

- 2.3 The parties to this memorandum consider that, if sufficient time were to be given to allow for informal discussions surrounding these provisions, they will be able to narrow any remaining issues significantly, and possibly develop an agreed set of provisions. The parties accept that there may be other submitters who disagree with any resolution between them and that the Panel may choose to reject any package of provisions agreed by them.
- 2.4 Nevertheless, the parties consider that significant advantages will accrue if evidence exchange and the hearing is delayed, including:
- (a) The range of relief before the Panel will be reduced, which should enable the Panel to concentrate on the options and the rationale for each approach.
 - (b) The time and expense involved in preparing and reading evidence will be reduced.
 - (c) The Group consider that informal discussions on this topic will result in improved provisions as well as reduced areas of dispute.

Council position

- 2.5 Although the Council team reserved its position on many matters during mediation, the Council indicated it was willing in principle to consider a number of matters raised throughout the course of discussions.
- 2.6 However, given the limited time available for mediation, the Council team was not in a position to provide feedback throughout the course of mediation, in order to allow any substantive progress to be made.
- 2.7 If the proposed extensions were granted, the Council team will have an opportunity to carefully work through the matters raised at the mediation and, ultimately, to attach an updated version of its proposed provisions to its evidence-in-chief. This will mean that the submitters

have the opportunity of producing joint planning statements that reflect the Council's latest position, rather than producing lengthy and complex evidence on matters which have already been raised with Council.

- 2.8 The parties to this memorandum consider this approach will considerably shorten the hearing time and reduce the amount of material required to be considered by the Panel when making its decisions.
- 2.9 The parties understand that the Council also supports the suggested approach.

Interim Guidance on RPS Provisions

- 2.10 The Group's request for extended time is especially relevant in light of the Hearings Panel's conference minute, released on 9 February 2015. Following the judicial conference held on 27 January, the Panel advised that it will issue interim guidance on the principal issues arising from submissions on the proposed Regional Policy Statement in mid-March.
- 2.11 A number of points raised by submitters in Topic 010 - RPS Historic heritage, special character and natural heritage are directly related to the provisions currently being addressed in Topic 031. To prepare evidence on plan provisions which should be consistent with the RPS provisions that may subsequently be the subject of change, by way of interim guidance, will be an unnecessary use of time and resources.
- 2.12 Additionally, an extension of time will allow for greater consistency in process, as the majority of other topic hearings will take place following the release of the interim guidance.

Accidental Discovery Protocols

- 2.13 On 11 February, the Council issued a Memorandum of Counsel in relation to Accidental Discovery Protocols (Hearing Topics 031 Historic Heritage and 037 Mana Whenua Sites). The Council requested that the Accidental Discovery Protocols for both topics be mediated together and that the provisions under Topics 031 and 037

be consolidated. The Panel agreed to joint mediation for these provisions (as well as for Topic 038 - Contaminated land).

- 2.14 The parties support this initiative, but note the mediation is set for 10 April 2015, which is after the scheduled hearing for Topic 031.
- 2.15 The parties consider that if the hearing for Topic 031 is deferred until after the Accidental Discovery Protocols mediation on 10 April 2015, evidence and hearing times will be reduced. If not, evidence and legal submissions will still need to address specific relief in respect of Historic Heritage accidental discovery protocols with the knowledge that the notified provisions will likely be considerably amended as a result of the upcoming mediation.
- 2.16 This will result in duplication of material and inefficiencies in process. With this in mind, the parties suggest that deferring the hearing for Topic 031 will streamline the overall process, despite the additional time sought.

3. RELIEF SOUGHT

- 3.1 In the circumstances, the parties to this memorandum respectfully request that the Panel adopt the following timetable:
- (a) Further mediation - **23 March 2015**;
 - (b) Council evidence in chief - **13 April 2015**;
 - (c) Submitter evidence in chief - **28 April 2015**;
 - (d) Rebuttal evidence - **5 May 2015**;
 - (e) Hearing - **14 and 15 May 2015**.
- 3.2 The parties propose that the existing hearing date of 23 March 2015 be used for a further mediation focussed on an updated version of provisions.
- 3.3 The proposed dates will ensure sufficient time for informal discussions to occur and for Council to establish its position on the provisions prior to witnesses commencing evidence preparation. In turn the amount of

material required to be considered by the Panel in making its decisions will be reduced leading to a more efficient hearing and decision-making process.

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