

In the Matter of the Resource Management Act 1991 as amended by the
Local Government (Auckland Transition Provisions) Act 2010

And

In the Matter of submissions lodged on the Proposed Auckland Unitary Plan

FIRST MEMORANDUM OF COUNSEL ON BEHALF OF DNZ PROPERTY FUND
LIMITED, AMP CAPITAL PROPERTY PORTFOLIO LIMITED, DB BREWERIES
LIMITED AND 273 NEILSON STREET LIMITED

Dated 1 October 2014

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To: Auckland Unitary Plan Independent Hearings Panel

Name of submitter: DNZ Property Fund Limited (S 3863 FS 868)
AMP Capital Property Portfolio Limited (S 4376 FS 831)
DB Breweries Limited (S 4868 FS 884)
273 Neilson Street Limited (S 4378 FS 888)

Introduction

1. We refer to the notice of conference to be held on Friday, 3 October 2014 to address the matters raised in the memorandum from Ellis Gould dated 19 September 2014.
2. This memorandum is tabled on behalf of the submitters listed above. The submitters endorse the comments made in paragraphs 12-33 of the Ellis Gould memorandum. This memorandum does not repeat the concerns raised, but provides additional comment to support amendments to the timetables proposed to date to ensure that adequate time is provided for and between witness caucusing, mediation, evidence exchange and hearing dates.
3. Counsel appreciates the complexity of the issues, number of parties involved, and tight statutory timeframe that the Panel is required to work within. We also appreciate our duty to the Panel, including assisting the Panel by providing succinct evidence and legal submissions. It is with some irony that it often takes more time and preparation to provide succinct evidence and submissions that will be of the greatest benefit to the Panel and to the overall outcome of the Unitary Plan.
4. We wish to make some observations about the bigger picture need or otherwise to adhere to the very demanding timeframes that have been proposed for the topics to date.

One Step Unitary Plan Process

5. At the time that the 'one step' process was proposed a number of concerns were raised by the resource management profession including the lack of appeal rights and therefore the need to address all matters fully and comprehensively in the single hearing opportunity. At that time the response by Auckland Council to these concerns were that a draft Unitary Plan would be notified for feedback so that the Unitary Plan as notified could respond to and address issues raised where appropriate. The objective being the Unitary Plan as notified should be 'almost' there. It is clear from the number of submissions on the Unitary Plan, including the Council's own submission, that this is not the case.
6. It is also clear that the Auckland Council Unitary Plan team has worked tirelessly to prepare the Unitary Plan. However their work load has not enabled discussion to occur with submitters following feedback on the Draft Unitary Plan or since notification of the Unitary Plan. The only periods when the Unitary Plan Team may have been less busy over the past year is when the resource management profession have been equally busy preparing submissions and further submissions.
7. It is important to note that the process so far has not enabled Auckland Council and submitters to engage in discussion on the Unitary Plan and matters raised in either feedback or submissions.
8. It is also helpful to reflect on why the 'one step' process was sought by Auckland Council and passed into law by the Government. In the second reading of the Resource Management Reform Bill, the Hon. Amy Adams gave the following speech in respect of the Unitary Plan process¹:

"As I have mentioned, the other area of reform in the bill is a proposal to develop a one-off hearings process for Auckland's first unitary plan. The streamlined process for developing and making operational the first plan is essential for developing a set of consistent planning policies and rules within a workable time frame. Long-term costs and uncertainty around the delivery of

the plan will be lowered, while ensuring the delivery of a high-quality document that has comprehensive input from the public and key stakeholders.... Delivery of the plan within 3 years, as opposed to the 10 years it might have taken under the current processes, will have real benefits for Aucklanders and the country as a whole. Getting the plan right for the future of Auckland matters, but there is no benefit to having an overly drawn out process that will cause significant cost and delay.”

9. The Unitary Plan ‘one step’ process will ensure the delivery of the Unitary Plan in a timely manner. However, the imperatives of delivery of a high quality document with comprehensive input from the public and key stakeholders will be compromised if the process is too rushed. Applying the extension to deliver the plan within 4 years (from notification) as provided for in s147 of the Local Government (Auckland Transitional Provisions) Amendment Act 2013 is still fast-tracked having regard to the number and complexity of the issues.
10. It is also understood that a key driver to the ‘one-step’ process was the concern over residential land supply and housing affordability.² However, this driver for the fast track process has since been addressed by the Housing Accords and Special Housing Areas Act 2013. The other noted drivers of macro-economic impact and business competitiveness support the importance of getting the plan ‘right’ for the future of Auckland.

Amendments Sought to the Hearing Process

11. As the Auckland Unitary Plan process is a ‘one step’ process it is even more important that submitters have the opportunity to engage with Auckland Council and other submitters prior to the hearings, through mediation and witness caucusing, and that they have adequate time to both prepare and present their case.

¹ Hansard, sitting date; 25 June 2013. Volume: 691; Page 11227.

² The Ministry for the Environment, Auckland Unitary Plan, Resource Management Amendments 2013, Fact Sheet 4 (August 2013) states that the ‘one step’ Unitary Plan process was needed: “Given the scale and significance of the Plan it will have macro-economic impact, including effects on development capacity, housing affordability, and business competitiveness across Auckland and New Zealand.”

12. It is appreciated that a balance needs to be struck between the most efficient use of time, including how long parties should be given to mediate prior to hearing if positions are entrenched. However, it should be borne in mind that mediation is often very effective in appeals on plan provisions, and that any 'agreement' between the parties will limit the number of contentious issues presented to the Panel. Allowing sufficient time for mediation, particularly as there has not been time to engage with Auckland Council to date to any degree, is an important part of the public engagement process.
13. It is also important that there be sufficient time to prepare evidence after mediation has concluded. As the topics progress and hearings overlap, it will be even more important to ensure that there is some leeway for the demands that will be placed on expert witnesses and counsel.
14. Providing sufficient time at the front end of the process should reduce the amount of evidence that will need to be produced, and hearing time before the Panel.
15. The changes sought to the hearing timetables are even more pertinent for the Regional Policy Statement provisions which will inform the direction of the Unitary Plan.
16. We wish to thank the Panel for calling this conference and considering the matters raised in this memorandum.



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Dated 1 October 2014

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