**BEFORE THE AUCKLAND UNITARY PLAN**
**INDEPENDENT HEARINGS PANEL**

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| **IN THE MATTER** | of the Resource Management Act 1991 as amended by the Local Government (Auckland Transitional Provisions) Amendment Act 2010 |
| **AND** | |
| **IN THE MATTER** | of submissions lodged on the Proposed Auckland Unitary Plan |
| **BETWEEN** | **Johns Creek Holdings Limited, Rahopara Farms Limited, Karepiro Investments Limited, Monowai Properties Limited and others**<br><br>**Submitters** |
| **AND** | **Auckland Council**<br><br>**Respondent** |

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# MEMORANDUM OF COUNSEL FOR JOHNS CREEK HOLDINGS LIMITED, RAHOPARA FARMS LIMITED, KAREPIRO INVESTMENTS LIMITED AND OTHERS

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**MAY IT PLEASE THE PANEL:**

1 This Memorandum is lodged on behalf of Johns Creek Holdings Limited, Rahopara Farms Limited, Karepiro Investments Limited, Monowai Properties Limited, Karaka Estates Limited and Kingseat Farms Limited, Bianconi Investments Limited, Byerley Park Limited, Cazadora Holdings Limited, D A Nakhle Investment Trust, Darley Investments Limited, Carhart Investments Limited and Herne Bay Residents Association Incorporated.

2 Counsel has recently received and endorses memoranda firstly dated 12 September 2014, filed on behalf of Ports of Auckland Limited and Scenter (New Zealand) Limited and filed on the 19th September 2014 on behalf of Kiwi Income Property Trust and Kiwi Property Holdings Limited and Others.

3 Section 136(4) Local Government (Auckland Transitional Provisions) Amendment Act 2010 (LGATP) requires the Panel to hold a hearing into the Proposed Auckland Unitary Plan (PAUP) submissions. It is submitted that this obligation requires a hearing process that is appropriate and 'fair' and cannot be circumvented by a process (proposed IHP hearing process) that has the effect of 'disenfranchising' the people of Auckland from 'effectively' participating in the refinement and development of the Plan.

4 It is submitted that the proposed IHP hearings process is deeply flawed and cumbersome and risks failing to produce a quality plan for Aucklanders. Some of the many limitations include for example, a timetable that changes daily requiring submitters to check and double check dates and the inability to easily track hearings subjects, especially if the submitter is a further submitter, a fault arising out of the submission coding system which doesn't neatly follow PAUP sections. There is also the critical issue of the timing of evidence exchange and smooth integration with Pre-Hearing Meeting, Expert Conferencing and Mediation stages, and importantly the timing of the release and sharing of Council's response. These limitations require considerable refinement if the Hearings are to be 'fair'.

5 While these issues are of significant concern as is the 10 minute presentation limitation to all submitters, the task of being heard by residents and special interest groups is especially problematic under the proposed Hearings process. These groups are by far the most disenfranchised because they are less able than business entities to fund critical experts, for example lawyers, planners, engineers to ensure they can participate in Pre-Hearing Meetings and Expert Conferencing. Not to put too finer point on the 'inequity' of the IHP process, these groups – residents and ratepayers, will simply not be able to engage in a way that will ensure their voice is heard. The process, for them is not 'fair'.

6 Counsel acknowledges the sheer size of the task faced by the IHP. The PAUP is the first of its kind in New Zealand and there is no precedent on which to rely. It is submitted that these facts suggest a more cautionary approach would be a wise approach. The Auckland region after all, in essence, is being required to experiment with the country's largest city - the powerhouse of the New Zealand economy.

7 It appears evident that the only reason for the almost indecent haste with which the hearing process is being pursued arises from pressure applied on the IHP by the unrealistic statutory deadline for providing its recommendations on the proposed plan; namely 22 July 2016 (Section 146 LGTPA). Counsel wishes to make it very clear that no criticism of the IHP is intended. This issue only arises because of the statutory imperative imposed upon the Panel by Section 146 LGTPA. The question therefore posed is will this arbitrary date deliver the quality plan promised by Auckland Council and will it result in the thousands of submitters achieve a fair hearing? The answer appears to be sadly no. Aucklanders deserve better treatment. They deserve a plan that they can proudly take ownership of. This must require their active participation in the process leading to its adoption.

8 It is submitted that there is no legitimate justification for central government to apply such pressure on the IHP because any review of the task that it faces makes it clear that this target is simply not achievable unless the rights of submitters are so constrained that there is a real danger that the right to a fair hearing is irretrievably compromised. That this cannot be justified can also be seen when regard is to be had to the legacy plans that the PAUP seeks to replace. All are up-to-date and all therefore provide adequate protection for regional imperatives. So why the haste – where is the fire? The reality is, the Hearings completion date is arbitrary, there is time to fully consider and debate the submissions to the Plan in a 'fair' way that will result in a more 'liveable' city. As senior counsel who has been involved in a number of significant resource consent application hearings, I cannot anticipate any adverse impact of concern arising from any further delay in the consent process attributed solely to a further period required for the implementation of the PAUP. All relevant issues can still be addressed then under the existing planning regime.

9 In closing, Counsel is aware from liaison with community interest groups and clients, of the growing disenchantment and frustration with the impossible task that they are required to face if they wish to attempt to make a meaningful contribution to the PAUP debate. Aucklanders – residents and business people alike are in danger of being disenfranchised and this must be addressed.

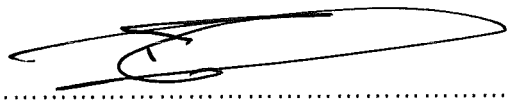
10 It is therefore submitted that it is now the time for the IHP to take the opportunity to seek an extension to the hearing period for a minimum of at least one year. This is envisaged by the legislation and it is apparent that the need for such an extension is now clearly evident.

11 To rush proceedings at this early stage – especially in respect of those strategic matters which underpin the PAUP would be unthinkable. Now is the time to seek an extension and not once these critical issues have been decided and the hearings are dealing with the detail of the Plan.

12 It is also submitted that it is appropriate for the Panel to carefully address as a significant issue the need to achieve an appropriate balance between residents, special interest groups and business entities in the hearing process.

13 This needs to be achieved or residents and ratepayers risk being disenfranchised in the process by the requirement for a range of expert assistance to combat those whose interests often will significantly diverge from those held by existing residents. The Environment Court, in recent cases where it has been sitting as a Board of Inquiry, has taken steps to ensure that the views of such groups are properly taken into account. It is therefore recommended that an inquiry be made to see whether similar assistance could be offered to resident and special interest groups if that can be seen to be imperative.

**Dated** this 30th day of September 2014.



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**PT Cavanagh QC**