

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

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

---

**Procedural Minute No. 6 by Chairperson of  
Independent Hearings Panel**

**Directions in relation to submissions that seek  
specific changes to modify, add or delete site specific provisions  
in the Plan**

**5 August 2014**

---

**AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL**

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

**Proposed Auckland Unitary Plan**

**Directions in relation to submissions that seek  
specific changes to modify, add or delete site specific provisions in the  
Plan**

**Procedural Minute No. 6 by Chairperson of Independent Hearings Panel**

**Introduction**

1. A significant number of the submissions on the Proposed Auckland Unitary Plan (PAUP) include site-specific requests to modify or add items to or delete items from the schedules of the PAUP. This includes:
  - Heritage items
  - Significant ecological areas
  - Outstanding natural landscapes and features
  - Trees
  - Volcanic cone /viewshafts
2. There are also a large number of submissions seeking re-zoning or modification to the zones of specific sites. Many of these also relate to the precinct applicable to the site and to the overlays that may apply. There are also a large number of submissions seeking changes to the Rural-Urban Boundary (RUB) in the proposed Regional Policy Statement.
3. To hear all of these, especially if they are contested by other parties (the Council and/or further submitters), would require a very large number of hearing days. In light of the statutory deadline for reporting our recommendations on submissions to the Auckland Council, we must consider an effective and efficient method for considering such submissions, bearing in mind the rights of the submitters and ensuring that there is procedural fairness throughout the process.

**Purpose of this Minute**

4. The purpose of this minute is to identify the issues that arise in dealing with these submissions and to give directions to the Auckland Council about further information we seek to assist us in addressing them ahead of any pre-hearing meetings we may convene with submitters.

**Relevant considerations**

5. A central question is whether the relief sought in a submission on a proposed plan is within the jurisdiction of the person who has the authority to make decisions on that submission. In the present process for the PAUP under the Resource Management Act 1991 (RMA) as amended by the Local Government (Auckland Transitional Provisions) Amendment Act 2010 (LGATPA), the Panel's

# AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

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

role as the body making recommendations to the Auckland Council is subject to essentially the same jurisdictional constraints.

6. The jurisdictional issue is a fundamental one in the process for preparing or changing a Plan. Submissions must be on the proposed plan and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought and the basis on which they ought to be included in the Plan.
7. A review of the relevant case law shows that the circumstances of particular cases have led to the identification of two fundamental principles:
  - i. the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected;<sup>1</sup> and
  - ii. care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach.<sup>2</sup>
8. A key issue is whether someone might be taken by surprise by changes sought through the submission process, especially by submitters who are not the owner of the affected property.
9. At this stage and subject to fuller consideration in any particular case, it appears to us that where a submission relates directly to a matter which is included in the PAUP as notified and seeks to amend or delete that item, then there may not be any basis on which that submission could be considered to be outside jurisdiction. The matter having been raised in the PAUP as notified, then any submission directly on that matter will likely have to be addressed on its merits.
10. Again subject to fuller consideration in any particular case, where the submission seeks to add an item not identified in the proposed Plan as notified or to modify an item in a substantial way, then a fundamental issue of procedural fairness is the extent to which the submission may directly affect a third party. Where a submission seeks to schedule land or buildings which are privately owned by someone other than the submitter, then the effects on that owner are likely to be such that we will need to be sure that the affected owner has an effective opportunity to participate before proceeding to a merits assessment. The submission and further submission process in Schedule 1 is not likely to be sufficient on its own to ensure adequate notice.
11. It is also important to bear in mind that there are other methods by which new items can be added to the schedules in the PAUP, including by way of a variation

---

<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council* (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66].

<sup>2</sup> *Power v Whakatane District Council & Ors* (unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J) at para [30].

# AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

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

to the PAUP (if that can be done within the statutory deadline) or by way of a subsequent plan change after the Unitary Plan is made operative. The most important aspect of such other methods is that they afford the opportunity for directly affected persons such as the owners to be directly involved in the process from the outset, rather than having the chance of participation only through further submissions.

## **Scope of submissions concerning scheduled items**

12. From our preliminary review of a number of submissions which address the schedules to the PAUP, we are concerned that a number of them may not include certain information that we would regard as essential to any assessment of the scheduling of such items in terms of the relevant objectives and policies and the requirements of section 32 of the RMA.
13. On a preliminary basis, we would group these submissions into four categories, noting that in many cases a submission may fit into the first category as well as one of the other three:
  - i. those that do not have approval or support from the owner(s) of the item;
  - ii. those where the submission contains adequate information which shows that the item meets the relevant plan criteria as proposed in the PAUP;
  - iii. those where the item nearly meets the relevant criteria as proposed in the PAUP, such that it may be appropriate to seek more information in respect of specific aspects of the submission to see if the item does indeed meet the criteria; and
  - iv. those which are unsupported by detailed information in relation to the relevant criteria as proposed in the PAUP.
14. We are concerned at the amount of time that may be needed to traverse all of these considerations in respect of every item that is proposed to be added to the schedules of the PAUP.
15. Where the addition of items is approved or supported by its owner (point i) and the submission contains adequate or nearly enough information to demonstrate that the item meets the relevant criteria for scheduling (point ii or iii), then it appears to us that consideration of that submission should proceed on its merits.
16. Where the addition of the item is opposed by the owner (point i) and/or the submission lacks any sufficient information to demonstrate that it meets or is likely to meet the relevant criteria (point iv), then we do not consider that the submission should proceed to be considered on its merits as it does not meet the second *Clearwater* test. In these cases a better approach may be for the Council to consider these subsequent to our processes.

## **Re-zonings, precinct changes and changes to the RUB**

# AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

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

17. The single largest group of submissions identified through the Summary of Decisions Requested is that containing all those submitters who seek a change to the zoning or precinct applicable to their property or seek to bring their property inside the RUB. We see these matters as a significant issue (both in terms of the time required to address them and in terms of their significance to submitters). We need to get a better idea of how many issues are raised to help determine the scale of this hearing topic, what issues may be able to be mediated and how many hearing days are likely to be required.
18. We understand that the Council is developing a spatial mapping tool to identify those properties where site specific changes are requested to the zoning or precinct which is proposed to be applied under the PAUP. We further understand that the Council is uncertain how complete this mapping tool may be for detailed analytical use in the near future and therefore has concerns about publicly releasing it. We have not had any access to the tool ourselves.
19. If such a mapping tool is sufficient for the Council at least to be able to do the work we envisage, then we think the following information is needed:
- i. a summary of all re-zoning requests and their identification spatially, whether by list, table or map;
  - ii. a scheme for potential grouping of issues (whether spatially or by PAUP provision);
  - iii. a preliminary assessment of the significance of the issue according to nominated criteria, which we envisage would include: areas of widespread concern; site-specific v street, neighbourhood or community changes; and addition of new zones or new zoning provisions;
  - iv. the extent to which mediation is likely to be useful to progress the submission;
  - v. an estimate of the total likely mediation and hearing time required; and
  - vi. indicative responses by the Council as to its view of the merits of the requests.

## **Our present directions**

20. We will hear all of the PAUP policy matters first before dealing with the 'site-specific' or 'schedule-specific' submissions. This will enable the Panel to work from the general to the specific, which we consider the best way to develop and apply policy.
21. We intend to dis-aggregate the RPS policy matters from the RPS schedules so as to allow more time to address the schedule issues.
22. We propose to develop a work programme now to enable the work on these schedule and re-zoning issues to be undertaken in parallel to other Panel work,

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

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

accepting that the hearings on these matters will be late in the overall programme and that time is needed to do this work.

23. We will address any 'out of scope' submissions early in the process, so we and submitters are clear on the number of submissions and range of issues we are to deal with.
24. We direct the Council to report to us by **1st September 2014** on its approach and assessment of the categorisation of the submissions on scheduled items as set out above.
25. We direct the Council to report to us by **10th September 2014** on changes to the RUB and by **1st October 2014** on its approach to and assessment of the categorisation of the submissions on rezoning and changes to precincts as set out above.
26. Any information provided to the panel by the council will be made publicly available.



5/8/14