

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

MEMORANDUM OF GUY BEATSON ON BEHALF OF THE MINISTRY FOR THE ENVIRONMENT

Judicial Conference - Tuesday 27 January 2015

MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of the Ministry for the Environment (“MfE”).
2. This memorandum responds to an invitation from the Independent Hearings Panel (“IHP”) for an MfE representative to attend the Judicial Conference to discuss issues raised by Russell McVeagh (dated 16 December 2014) and Richard Brabant (dated 19 December 2014) in relation to:
 - A *substantive issue* affecting the ability of submitters to address regional and district plan matters without knowing with certainty what the provisions of the RPS may be; and
 - A *legal issue* affecting the status of the operative RPS and the jurisdiction of the IHP to be able to take into account any aspect of the proposed RPS in making its recommendations on the proposed Regional and District Plans.
3. This memorandum provides an explanation of the policy intent for the relevant provisions of the Local Government (Auckland Transitional Provisions) Act 2010 (“LGATPA”) and the Resource Management Act 1991 (“RMA”). It does not provide a legal position to the IHP on the matters raised in the memoranda.
4. In accepting the invitation to attend the Judicial Conference, it is appropriate to acknowledge that MfE assisted the Minister for the Environment in the development of the whole of Government submission on the Proposed Auckland Unitary Plan (“PAUP”), and that the Minister chose not to be heard on that submission.
5. MfE’s attendance at the Judicial Conference is to assist the IHP in accordance with the Ministry’s role as the department responsible for Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (“LGATPA”) and the Resource Management Act 1991 (“RMA”).

Substantive Issue

6. The overarching policy intent of the provisions contained in Part 4 of the LGATPA, are to enable the IHP to deliver the highest quality recommendations to the Auckland Council within a three-year statutory timeframe, whilst recognising:
 - i. the scale of the Auckland Unitary Plan and its significance to the well-being of Auckland’s communities and the environment.
 - ii. the need for a single integrated resource management plan for Auckland that replaces the multitude of planning documents that existed prior to the Council’s amalgamation.
7. In order to achieve the intent of the policy, the legislation amended the RMA schedule 1 and Environmental Court appeals processes in order to:
 - reduce timeframes

- provide greater opportunities for public engagement throughout the plan deliberation process, and
 - enable integrated decision-making across the Regional Policy Statement (“RPS”), Regional Plan and District Plan components of the Unitary Plan.
8. The Auckland Unitary Plan is unique in the context of the New Zealand planning system. Significantly larger in scale, and arguably more complex (particularly in terms of plan integration and alignment) than the plans previously developed under the RMA. The policy intent is that the bespoke special hearings process will recognise the IHP faces challenges that have not previously been encountered.
 9. Recognising these likely challenges, it is the policy intent that IHP have flexible and broad powers to regulate their own proceedings beyond the matters expressly provided for by the LGATPA.
 10. Matters such as the issuance of provisional or interim guidance to submitters on the IHP’s views on the RPS are not prescribed in the LGATPA, as these are considered to be matters more appropriately left to the discretion of the IHP. Equally the scope and detail provided in any guidance is also at the IHP’s discretion.
 11. It is worth noting that the issue of providing guidance to submitters on the content of the RPS has been encountered previously with the development of the Horizons One Plan, itself is a combined plan that incorporates an RPS, albeit on a much smaller scale.
 12. The One Plan Hearing Panel's approach is documented in their decision report. In that case, the Panel recognised the need for internal consistency and chose not to make final decisions on the RPS matters until they had heard all the evidence relating to the lower order Regional Plan provisions.
 13. Acknowledging the need to develop a coherent and integrated plan, the Panel for the Horizon’s One Plan provided submitters and council staff with provisional determinations which detailed their preliminary thinking. However, the Panel also reserved the right to make changes to their position as a result of evidence being delivered during hearings on the lower-order provisions.
 14. Acknowledging the complexity of the Auckland Unitary Plan and the need to deliver an integrated resource management plan for Auckland within the statutory timeframe, it is MfE’s view that similar guidance to submitters in relation to the IHP’s position on the RPS is consistent with the policy intent of the LGATPA.

Legal Issue

15. It is worth reiterating that a key driver in developing the special hearings process for Auckland was that the Unitary Plan would replace the multitude of planning documents that existed prior to the Councils’ amalgamation with a single integrated resource management plan.

16. In this context, it is not the policy intent of the LGATPA for the IHP to be required to give effect to the existing RPS made operative by the Auckland Regional Council in 1999, but rather that the RPS, regional and district components of the PAUP should be developed together to form an integrated product.
17. With regard to the provisions relating to the development of combined plans in the RMA, it is noted that section 80 (*Combined regional and district documents*) was amended through the Resource Management (Simplifying and Streamlining) Amendment Act 2009. The purpose of that amendment was to clarify that local authorities could prepare a single combined plan that fulfilled the requirements of a regional policy statement, a regional plan and a district plan.
18. The policy intent of section 80 of the RMA is to enable and encourage local authorities to produce a single resource management document for their region *'that fully integrates regional and district council functions, obligations and powers'*¹. That is, develop a single combined plan that is internally consistent, with the regional and district level provisions giving effect to the RPS component within that combined plan.

Conclusion

19. The policy intent of the LGATPA is that the IHP has broad powers to regulate their own proceedings beyond the matters expressly provided for by the LGATPA. Matters such as the issuance of provisional or interim guidance to submitters on what the IHP's recommendations on RPS, were not prescribed in the LGATPA as these were considered to be more appropriately left to the discretion of the IHP.
20. MfE considers that the provision of guidance to submitters in relation to the IHP's position on the RPS is consistent with the policy intent of the LGATPA.
21. It is not the policy intent of the LGATPA for the IHP to be required to give effect to the existing RPS made operative by the Auckland Regional Council in 1999, but rather to give effect to proposed RPS which forms part of the Auckland Unitary Plan.


Guy Beatson - Deputy Secretary, Ministry for the Environment

Dated: 26 January 2015

¹ Cabinet Paper - Reform of the Resource Management Act 1991: Phase One Proposals
Link: <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/cabinet-papers/rma/reform-resource-management-act>