

**Before the Auckland Unitary Plan
Independent Hearings Panel**

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

**Memorandum concerning the issue by the Hearing Panel of its final
recommendation on the RPS**

19 December 2014

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May it please the Hearing Panel:

1. I have read the memorandum of counsel on behalf of the Auckland Council dated 16 December 2014, and the letter dated 16 December 2014 to the Hearing Panel from Russell McVeagh.
2. I support the request that the Hearing Panel issue a recommendation on the RPS section of the PAUP. I would like to be heard on this matter at a conference or hearing to deal with this matter next year and note the proposal by the Auckland Council that there be a conference on 27 January 2015.
3. To assist, I summarise in this memorandum my submissions on the question of whether a recommendation and decision on the proposed RPS can be left until the Hearing Panel makes its recommendation after hearing all submissions, as contemplated by section 144 of the Local Government (Auckland Transitional Provisions) Act 2010 (ATP Act).
4. Whilst I acknowledge that the proposed approach outlined in the letter from Russell McVeagh is intended to provide a solution to the difficulty of proceeding to hear Regional Plan and District Plan topics without a final operative version of the RPS, in my submission producing what is described in the letter as a "Interim Recommendation" will not meet the requirements of s67(3) and s75(3) RMA.
5. Planning instruments in New Zealand are required under the Resource Management Act 1991 to adhere to a strict hierarchy. It follows that district and regional plans are under a mandatory statutory obligation to give effect to higher-ranking documents- relevantly here the Regional Policy Statement.¹ The hearing process for the Proposed Auckland Unitary Plan currently underway has revealed an issue relating to the proposed regional policy statement or rather the lack of a final version to supercede the existing operative RPS. The absence of this replacement document in final operative form will create severe and significant complications throughout the subsequent hearing process, as referred to in the Russell McVeagh letter.

¹ Sections 67(3)(c), 75(3)(c) Resource Management Act 1991.

6. A regional policy statement occupies a superior position in relation to district and regional plans. Under s 75(3)(c) of the RMA a district plan must *give effect* to any regional policy statement. Under s 67(3)(c) of the RMA a regional plan must *give effect* to any regional policy statement. The importance of maintaining a hierarchical approach to planning instruments has recently been reiterated by the Supreme Court.²
7. A RPS is defined under s 43AA of the RMA as meaning an operative regional policy statement approved by a Regional Council under Schedule 1. The current operative RPS for Auckland became operative on 31 August 1999 and because regional and district plans are required to *give effect* to the operative RPS, the sections of the PAUP containing the proposed new regional and district plans must give effect to the current operative RPS unless it is replaced by a new operative document. An “interim” version won’t do. Otherwise as I see it, all evidence for the hearings into those plans would need to reference the current operative RPS provisions.
8. The Local Government (Auckland Transitional Provisions) Act 2010 (ATP Act) was enacted with the purpose of providing a process for the development of the first combined planning document for the Auckland Council under the RMA.³ This Act provides that regulations may be made under s 360(1) of the RMA for the purposes of the preparation of the plan.⁴ It follows that the Governor-General may from time, by Order in Council, make regulations for providing for any other such matters as are contemplated by, or necessary for giving full effect to, the RMA and for its due administration.⁵
9. In my submission it is necessary to use s5 or s119 of the ATP to amend s143 and s148 so that a recommendation can be made in respect of the RPS provisions, and the Auckland Council can issue a decision on that recommendation.
10. I acknowledge there is potential for delay in proceeding further with the

² *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] NZRMA 195 at [10]-[11].

³ Section 3(2)(d).

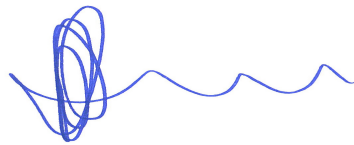
⁴ Section 119(2) and also transitional regulations under s5.

⁵ Section 360(1)(i).

hearings before the Hearing Panel, depending on whether the recommendations are accepted in full or some are not, giving rise to potential appeal. However, in my submission that circumstance must be recognised and accepted as potentially meaning an extension of time to complete the process of establishing a new Unitary Plan for Auckland will be needed. Even if there were a statutory exemption from the clear provisions in the RMA requiring Operative and District plans (including new proposed plans) to give effect to the operative RPS (which there is not), using some form of interim RPS when hearing submissions on and determining the wording of the District and Regional sections of the PAUP cannot be an appropriate way forward.

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Dated at Auckland this 19th day of December 2014

A handwritten signature in blue ink, consisting of a series of loops and wavy lines.

Richard Brabant