

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

IN THE MATTER

of the Local Government (Auckland Transitional Provisions) Act 2010 ("**the Act**")

AND

IN THE MATTER

of Hearings pursuant to section 128 of the Act

**MEMORANDUM ON BEHALF OF MAN O'WAR FARM LIMITED
AND CLIME ASSET MANAGEMENT LIMITED
REGARDING ISSUE OF INTERIM (STAGED) RECOMMENDATIONS ON
RPS SECTIONS OF UNITARY PLAN
DATED 26 JANUARY 2015**

MAY IT PLEASE THE COURT

1. Man O' War Farm Limited ("**Man O' War**") does not wish to burden the Hearings Panel with unnecessary further written material regarding the issues being addressed at the conference on 27 January, and as are thoroughly canvassed in the memoranda filed by counsel for other parties in any event.
2. However, in order to potentially assist the Panel, some observations of a general nature are made having regard to that body of material, along with a statement of Man O War's preferred option.
3. It is respectfully submitted that:
 - (a) The issue being confronted (lack of a firm direction on the RPS level provisions being available to submitters before lower order provisions are heard)¹ must have been contemplated by Parliament in providing for a single plan process within fixed timeframes. To that extent, it is simply 'part and parcel' of an intended process and outcome.
 - (b) There is considerable scope within the existing legislative framework to arrive at a solution that is appropriate and fair to address the issues raised,² likely without recourse to regulation and/ or disrupting/derailing the process.
4. Man O'War Farm submits that in deciding what (if any) interim approach to adopt (whether some form of high level indications/conclusions and/ or a "red line" version), the following criteria might be applied, and bearing in mind the apparent consensus of legal opinion that recourse to the various options is legally open to the Panel (one way or another³):
 - (a) Would the option enable submitters to focus evidence in a manner that would be most helpful to the Panel when evaluating lower order provisions *that are likely to align (and so ultimately give effect to) the RPS level provisions in their final form?*

¹ Reference paragraph 4(c) of memoranda of counsel for Forest and Bird Protection Society and others, which with is opposed in suggesting formal decisions and any appeals on the RPS should be determined now (paragraph 6).

² Refer paragraphs 5.16 to 5.18 of Counsel for the Councils memorandum.

³ Refer paragraphs 2.2 and 2.3 of Counsel for the Councils memorandum for example, as to 'staged final' recommendations or high level 'indications'

- (b) Would the option enable the Hearings Panel to consider the Unitary Plan in its totality (from top to bottom)⁴ before making any formal recommendations that may be difficult to reverse without raising natural justice issues, exciting legal (e.g. judicial review) challenge, or the need for decisions and appeals at this stage.⁵
- (c) Would the option enable the Hearings Panel to complete its statutory tasks of making recommendations under s144 within the statutory deadline, and in a manner that enables the overall process to be concluded as soon as possible and as envisaged by Parliament.
5. Having regard to these factors, Man O'War Farm essentially adopts the approach recommended in the memorandum filed by counsel for Ports of Auckland, with a preference for "high level indications" or conclusions on the RPS provisions, and whereby flexibility is preserved as much as possible (consistent with the wish to enable submitters and the Panel to produce and have regard to the most relevant and helpful evidence downstream).
6. Less preferred, but provisionally supported, is the Russell McVeagh 'redline' option, but in the manner advanced by Ellis Gould.⁶
7. That said, Man O' War agrees that the notified version of the RPS would not be an appropriate or helpful "platform" for evidence regarding the lower order provisions, given the substantial changes in wording (and indeed policy approach) that are reflected in mediation outcomes and tracked change versions subject of the RPS level hearings to date.⁷
8. If a regulation is considered necessary to give any 'redline' statutory effect (and displace the notified version) it is supported to that extent.
9. Two other factors that Man O' War wishes to highlight, favouring an option preserving flexibility over the RPS level provisions at this stage, are that:

⁴ Memorandum of counsel for Ports of Auckland, paragraph 7(a), and with Man O' War very much supporting the point made at paragraph 7 (b) in this respect.

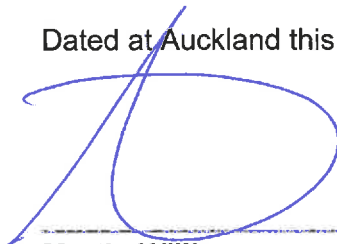
⁵ Auckland Council's memorandum, paragraph 5.19. That said Man O'War Farm would not submit that the Council must necessarily issue decisions on the back of any staged (final) recommendation.

⁶ Not necessitating regulations, paragraph 11 of its memorandum for various submitters dated 23 January.

⁷ Supporting paragraph 11(b) and 14 of the Russell McVeagh 23 January memorandum in that respect, in response to the Council's apparent position that the relevant RPS version would be that as notified.

- (a) The Minister for the Environment has confirmed an intention to proceed with substantial RMA reform, including amending s6 and s7, in a manner that may have a direct statutory bearing on the Unitary Plan RPS (depending on any transitional provisions); and
 - (b) Man O' War has an appeal to the High Court regarding questions of outstanding natural landscape identification and management that it respectfully considers may assist the Panel in reaching any final conclusions regarding those interrelated issues,⁸ but the High Court decision would not be available before the timing of any interim recommendations, as proposed by other parties.
10. To the extent the appeal is founded on Change 8 to the ARPS, Man O' War submits that complete disregard to the operative ARPS may not be appropriate,⁹ but the general point that for reasons of common sense the operative ARPS would not inform the lower order provisions of the Unitary Plan is unassailable.
11. Finally, Man O' War notes that the issue upon which it would (for its own purposes) most benefit from at least a high level indication of the Panel's conclusions, would be in relation to the extent to which it accepts that landscape identification (mapping) and management are interconnected,¹⁰ as would assist parties producing evidence in the context of Topic 019 (landscape and natural character).¹¹

Dated at Auckland this 26th day of January 2015



Martin Williams
Counsel for Man O' War Farm Limited

⁸ As put to the Panel in legal submissions on Topic 010.

⁹ Paragraph 8.10 of the Council's memorandum.

¹⁰ Contrary to the Council's position as put in evidence through Mr Brown in Topic 010.

¹¹ Refer paragraphs 30 to 55 of Counsel's submissions for Man O' War on Topic 010.