

**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

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**MEMORANDUM OF COUNSEL ON BEHALF OF PORTS OF AUCKLAND  
LIMITED ON THE ISSUE OF A RECOMMENDATION ON THE RPS  
SECTION OF THE PROPOSED UNITARY PLAN**

23 January 2015

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**MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of Ports of Auckland Limited (submitter 5137).
2. It is in response to the letter or memoranda lodged by Russell McVeagh (16 December 2014), Richard Brabant (19 December 2014), Auckland Council (22 January 2015) and Ellis Gould (22 January 2015).
3. As the matters or legal issues are canvassed at significant length in that earlier material, this memorandum can be brief.

**Need for Regional and District Plan Provisions of the PAUP to give effect to the Operative ACRPS**

4. I do not consider that, absent some amendment by Act of Parliament or Regulation, the Regional and District Plan provisions of the PAUP are required to give effect to the currently operative Auckland Council Regional Policy Statement ("**ACRPS**"). The Council's memorandum addresses this at paragraphs 8.1 – 8.10 and the Ellis Gould memorandum addresses this at paragraph 5(b) and paragraphs 7 – 9. While there are some differences in their approach, the same outcome is arrived at and I agree with that.

**Interim Indications or Conclusions on the RPS**

5. I agree that it would be desirable for the Panel to provide some level of indications or conclusions on the RPS provisions, for the reasons and benefits set out in paragraph 5(a) of the Ellis Gould memorandum, paragraph 7.3 of the Auckland Council memorandum and paragraphs 9 – 10 of the Russell McVeagh letter.
6. I support those interim indications or conclusions being informal, however, as sought by the Ellis Gould memorandum. There seems full agreement that this is within the powers of the Panel as set out in the other memoranda.

7. While both Russell McVeagh and Mr Brabant are clearly correct that some type of formal release of interim conclusions would be of more utility in terms of having greater certainty and legal weight when presenting cases on the regional district plan provisions, overall, I do not consider it is necessarily wise that such interim indications or conclusions be anything other than informal, for the following reasons:
- (a) The new Unitary Plan is one that has been written and is intended to function as one holistic document. The Council has had the advantage, in the preparation of the plan, of considering it in its totality, from top to bottom. The Panel needs to have that same opportunity to approach the Unitary Plan holistically and be satisfied on all its parts. Keeping initial indications and conclusions informal may be more likely to give the Panel that opportunity, than if any initial conclusions were formalised in some manner.
  - (b) On many occasions during the hearings on the RPS, legal submissions and evidence from participants have alerted the Panel to problems or difficulties with proposed RPS provisions (or suggested amendments) in terms of the rules that follow in the regional and district plan parts of the Plan. The Panel has not yet had any real opportunity to consider those lower order rules and seen the full implications of the RPS provisions. As Ellis Gould allude to, the Panel's consideration of the PAUP needs to be an iterative process as the Panel will learn more as it goes down into the lower order provisions. Being able to revisit the RPS in the light of that experience will be important. The Council and Russell McVeagh also point that out. Release of informal conclusions or indications may be a preferable course of action to facilitate that iterative process.
  - (c) In terms of how the Panel might release informal conclusions or indications, that is obviously something for the Panel to determine. It may not necessarily be appropriate at this stage to issue a track change or redlined version, as some parties have suggested. Rather, a more flexible approach may need

to be taken as outlined in the Ellis Gould memorandum in paragraphs 11 and 12. For example, as referred to above, where the Panel is not entirely certain of the full implications of some of the provisions in the RPS that have been disputed, because of their flow on effect by way of rules in the regional and district plans, the Panel might prefer to be more general in its indications of what it is thinking, than in other parts of the RPS where it is satisfied that it is in a position to provide a redline version.

8. I therefore support in principle the request by Russell McVeagh and Ellis Gould, and inherently Richard Brabant, for some initial indications or conclusions on the RPS, as opposed to the position of the Auckland Council which does not propose that. As to when, later in the process, the Panel might actually release its formal recommendations, which is something discussed at length in the Council memorandum, I suggest that is a decision does not need to be made right now.

Dated at Auckland this 23<sup>rd</sup> day of January 2015

Derek Nolan

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**D A Nolan**  
**Counsel for Ports of Auckland Limited**