

BEFORE THE INDEPENDENT HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991 (**RMA**) and the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**)

AND

IN THE MATTER of the Proposed Auckland Unitary Plan (**PAUP**) and procedures established under the relevant legislation to address the submissions and further submissions processes in relation to the PAUP following notification of it by the Auckland Council

LEGAL SUBMISSIONS ON BEHALF OF AUCKLAND COUNCIL: TOPIC 006 RPS NATURAL RESOURCES (B 6.5 LAND - CONTAMINATED)

- 1 Section B6.5 of the Regional Policy Statement is relatively brief, attracted submissions from only 15 submitters, and has only two outstanding issues as discussed in paragraphs 4 and 7 below.
- 2 The relevant statutory framework relating to the preparation and contents of a RPS have been well canvassed in the legal submissions for Topic 005 – Issues and other chapters of the RPS.¹ Accordingly, we do not address sections 59 to 62 of the Resource Management Act 1991 (**RMA**), other than as necessary for the following discussion.
- 3 Mediation took place on 23 October 2014, at which the Council and seven parties were represented or present. It resulted in changes being made to a number of the provisions, largely of a drafting nature to maintain consistency of terminology.

¹ For example, legal submissions of John Burns and Mathew Gribben on Chapter B7 (Topic 008 – RSP Coastal).

4 The first difference arises in relation to Policy 1(c). That policy presently reads:

"1. Identify potential and confirmed land that is contaminated based on the following three priorities:

- a) sites known to have supported contaminating land use activities in the past;
- b) sites with a significant potential risk to human health;
- c) sites having significant adverse effects on the environment."

5 This wording was agreed by the parties at mediation. However Transpower, who did not attend, sent an email to the parties seeking the addition of the words "due to contaminants" at the end of 1(c).

6 Given the wording of the introductory words, the Council and the other parties at the mediation considered this addition unnecessary and repetitive.

7 The other point of disagreement arises in relation to Policy 3(d). This policy presently reads:

"3. Manage or remediate land that is contaminated where:

- a) the level of contamination renders the site unsuitable for the existing or proposed use; or
- b) the discharge of contaminants from such land is generating or is likely to generate significant adverse effects on the environment; or
- c) (deleted)
- d) development or subdivision of land is proposed."

8 The concern expressed by New Zealand Transport Agency (**NZTA**) is that the policy is too broad. Its suggested remedy is to reword subclause (d) to read:

"d) development or subdivision of land is proposed and the level of contamination renders the site (land) unsuitable for its proposed use."

9 The Council does not accept the extra wording as being helpful or necessary. It is in fact the wording already used in the policy for subclause (a) and adds nothing to limit the scope of subclause (d).

- 10 The evidence for NZTA by Lesley Hopkins discusses the issue at paragraph 116, but does not explain why the submitter has a concern, nor why its proposed wording resolves its concern.
- 11 Council respectfully submits that the existing wording functions adequately at a regional policy statement level to set out the policy approach of Council. Limitations on the scope of the controls can be worked out adequately at the following levels of the planning documents.

I Cowper

Counsel for Auckland Council

25 November 2014

J Hassall

Auckland Council