

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Auckland Unitary Plan Hearing
Procedures**

Version 1.4
24 November 2015

Auckland Unitary Plan Hearing Procedures

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Document history

Version	Date	Status
1.0	28 May 2014	
1.1	28 October 2014	Updates to sections on mediation, expert conference and evidence. Addition of requests for additional speaking time.
1.2	16 January 2015	Changes to process for circulation of evidence
1.3	7 April 2015	Updates to sections on evidence, mediation, expert conference. Additions for interim guidance, information on expert witnesses and additional speaking time, Auckland Council closing remarks and Panel's general procedural powers.
1.4	24 November 2015	Updated to reflect November 2015 amendment to LGATPA and process for conducting site specific hearings in 2016.

1. Introduction

1. The Auckland Unitary Plan was notified on 30 September 2013. Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) sets out the process for the development of the Auckland Unitary Plan, and includes provisions relating to:
 - a. pre-hearing meetings;
 - b. expert conferencing;
 - c. mediation; and
 - d. hearing sessions.

References within this document are to sections of this legislation unless otherwise specified.

In November 2015 legislation was passed to amend the LGATPA to provide more flexibility for the Auckland Unitary Plan Independent Hearings Panel to help ensure that it can deliver its recommendations on the proposed Auckland Unitary Plan (PAUP) to the Auckland Council by the statutory deadline. The key features are reduction of the quorum to a minimum of two panel members, appointment of up to three additional panel members and the ability to provide recommendations to Auckland Council in stages.

2. In accordance with s.161 of the LGATPA the Minister for the Environment and Minister of Conservation appointed the Hearings Panel, which comprises:
 - Judge David Kirkpatrick (Chairperson);
 - Des Morrison;
 - Greg Hill;
 - Janet Crawford;
 - John Kirikiri;
 - Paula Hunter;
 - Peter Fuller;
 - Stuart Shepherd.Additional members will be appointed in December 2015.
3. The Hearings Panel is required to make recommendations on the Auckland Unitary Plan after it has finished hearing submissions by 22 July 2016. The Auckland Council is then required to decide whether to accept or reject each recommendation of the Independent Hearings Panel, and for each rejected recommendation decide an alternative solution. The Council must then publicly notify its decisions.
4. This Hearing Procedures document may be updated from time to time through the hearings process.

2. Principles of the Hearing

5. As set out in the glossary, 'Hearing' means the overall process undertaken by the Hearings Panel under Part 4 of the LGATPA, and 'hearing session' means a particular session at which submissions are heard by the Hearings Panel as part of the Hearing.
6. The Hearings Panel will establish a hearing procedure that:

- a. is appropriate and fair;
 - b. avoids unnecessary formality; and
 - c. recognises tikanga Māori.
7. In addition, the Hearings Panel will:
- a. be inclusive and acknowledge the broad range of interests, capability and capacity represented in submissions;
 - b. where practicable use collaborative and active participation processes to enhance / complement the formal hearings process;
 - c. act in a fair and transparent manner in proceedings;
 - d. conduct an efficient process which minimises the costs and time to all parties involved in the hearing;
 - e. provide submitters with an adequate opportunity to be heard, while, where necessary, limiting the length of oral presentations, avoiding repetition of information and the presentation of irrelevant material;
 - f. give effect to the Māori Language Act 1987, and receive evidence written or spoken in Māori', and
 - g. recognise New Zealand sign language where appropriate, and receive evidence in sign language if required.
8. Timeframes and deadlines stated in this Hearing Procedures document are intended to balance competing considerations arising from:
- a. ensuring that submitters who wish to be heard have a fair hearing;
 - b. conducting an efficient hearing process; and
 - c. meeting the deadline for recommendations to the Council as set by s146 LGATPA.

Such timeframes may be adjusted (either shortened or lengthened) by the Hearings Panel to meet particular circumstances, either on application by any submitter or by the Panel's own direction.

Failure to meet stated or directed timeframes and deadlines without good reason may result in late material not being considered by the Hearings Panel or exclusion from expert conferencing, mediation or hearing sessions.

3. Conflicts of Interest

9. Subject to the provisions of the LGATPA and Resource Management Act 1991 (**RMA**) the Hearings Panel is responsible for determining its own procedures for the conduct of the Hearings Panel throughout the Hearing process.
10. The Hearings Panel has agreed that where a panel member:
- a. has previously advocated or provided technical advice advocating for a policy or provision to be included in the proposed plan or the draft plan; or
 - b. advocated for a particular outcome in relation to a plan change or resource consent; or
 - c. advocated for or appeared as a witness for a past client; or
 - d. holds a property interest; or
 - e. conducted a mediation or expert conference related to a hearing on the proposed Auckland Unitary Plan;

which may result in a perceived bias, he or she will be required to disclose such positions or perceived conflicts to the Chairperson prior to the hearing session.

11. The Chairperson (or, in the case of issues affecting the Chairperson, the deputy Chairperson) will decide on a course of action, which may include:
 - a. removing the member from that part of the hearing session and from deliberations and decision making on a matter; or
 - b. asking parties whether they are content that the Panel member hear a particular matter in which those submitters are involved; or
 - c. determining that the potential conflict is not material to the matters to be considered.
12. Mediators and facilitators appointed by the Panel are also subject to the same general considerations as the Panel in relation to conflicts of interest. However, as mediators and facilitators are not involved in hearing sessions, deliberations on submissions or the making of recommendations to the Auckland Council, the course of action taken in relation to any apparent conflict of interest may be different.

4. Role of Auckland Council

13. The Auckland Council (**Council**) has a number of duties under Part 4 of the LGATPA. A detailed description of the roles and responsibilities of the Auckland Council are included in **Appendix 1**.
14. The LGATPA requires the Council to attend all hearing sessions unless excused by the Hearings Panel. The Hearings Panel will also require the Council to participate in pre-hearing meetings, expert conferencing, and mediation. The Council as the proponent of the proposed Auckland Unitary Plan will be required to provide evidence to support the proposed Auckland Unitary Plan or any proposed amendments to the proposed Auckland Unitary Plan.
15. The Auckland Council is also encouraged (as are all submitters) to meet outside of the formal hearing processes with other submitters to the proposed Auckland Unitary Plan and report on any agreements reached on points of relief sought at pre-hearing meetings and/or hearing sessions. The Hearings Panel recognises that the ability for this to occur may be influenced by time and resource constraints.
16. For the avoidance of doubt the Auckland Council is not responsible for the management of the Hearings Panel's inquiries into the proposed Auckland Unitary Plan.

5. Role of Independent Support Staff

17. The Hearings Panel has an office of support staff. The role of the support staff will include:
 - a. hearing notifications;
 - b. schedules;
 - c. meeting arrangements;
 - d. appointing and managing facilitators and mediators;
 - e. commissioning of independent experts or research on behalf of the Hearings Panel;
 - f. making available hearing directions/advisory notices or decisions;

- g. making available evidence and reports received by the Hearings Panel; and
 - h. handling public and media enquiries to the Hearings Panel.
18. The support staff will manage the www.aupihp.govt.nz website (**website**) to ensure relevant information relating to the above is correctly displayed and updated.
19. The website will contain information that is specific to the Hearing, which may include information provision requirements that apply to the Council under the LGATPA as listed above under the Role of Auckland Council.

6. Communications from the Hearings Panel

20. A communication from the Hearings Panel may include:
- a **Procedural Minute**;
 - a **Direction** – including, but not limited to, a general directive of the Hearings Panel requiring a response from one or more parties, or a direction striking out a submission s.140(2);
 - an **Advisory notice** – information applying to one or more of the parties;
 - a **Notice of pre-hearing meeting**;
 - a **Notice of expert conferencing**;
 - a **Notice of Mediation** (or other alternative dispute resolution process);
 - a **Notice of Hearing** – as required by s.130, which sets out the dates, times and places (venue) of the hearing sessions; or
 - **Interim Guidance** – as set out in the Conference Minute dated 27 January 2015.
21. Communications from the Hearings Panel relating to procedural matters generally will be issued by the Hearings Panel support staff (on the Hearings Panel's behalf) on the www.aupihp.govt.nz website or, in some circumstances where the matters affect only a limited number of parties, by way of email or post.

7. Communications to the Hearings Panel

22. No person should attempt to communicate directly with the Hearings Panel or any member of the Panel except during a pre-hearing meeting or a hearing session.
23. All communications (including all general enquiries, procedural requests and documents to be provided) to the Hearings Panel are to be sent to:
- a. Email: info@aupihp.govt.nz (**Note:** emails need to be smaller than 10 MB)
 - b. Mail: Auckland Unitary Plan Independent Hearings Panel, Private Bag 92300, Victoria Street West, Auckland 1142
 - c. Delivery: Level 15 Tower One 205 Queen St, Auckland Central.
24. Every communication to the Hearings Panel must clearly state in its heading or opening paragraph:
- a. the name of the submitter who or on whose behalf the communication is from;
 - b. the submission number; and
 - c. the relevant Hearing Topic name and number.
25. Any communication or request made to the Hearings Panel or any document provided to it will, unless good reason for withholding it exists, be treated as official

information which is publicly available. Where appropriate in the opinion of the Hearings Panel, such communications, requests or documents may be posted on the Hearing Panel's website.

26. Any communication that directly affects other parties (including a communication in relation to an issue, plan provision or site in which other submitters are interested) must be provided by the sender of that communication to those other affected parties.
27. Where more than 30 parties are directly affected by a communication required by the Hearings Panel, then service of documents is likely to be by posting the communication on the www.aupihp.govt.nz website.

8. Service and provision of documents

28. Formal service of documents for the hearing process will be by way of the www.aupihp.govt.nz website unless submitters have been advised directly by the Hearings Panel that another form of service is required.
29. The Hearings Panel support staff will not directly notify submitters of documents being posted on the www.aupihp.govt.nz website unless there is a legal requirement to do so or otherwise directed to do so by the Hearings Panel.
30. All documentation referred to in **Appendix 1** under 'Documentation that the Council will make available for inspection' will be available on the www.aupihp.govt.nz website.
31. If parties wish to receive documentation through the post, arrangements can be made through the IHP Support Staff phone (09) 979 5566.

9. Pre-hearing meetings

32. The Hearings Panel considers the pre-hearing meetings will be important in seeking to identify and resolve procedural issues, and determining whether substantive issues raised in submissions can be addressed through mediation, other alternative dispute resolution process, expert conferencing or by way of a hearing session.
33. The Hearings Panel may invite, or require, submitters, the Council, and anyone else it considers appropriate to attend a pre-hearing meeting. The purpose of the pre-hearing meetings will be to:
 - a. confirm the content of the Parties and Issues report including any request to reallocate submission points as determined in accordance with clauses 40 - 44 below;
 - b. clarify any matter or issue relating to a submission on the proposed Auckland Unitary Plan;
 - c. determine whether submitters consent to participating in mediation or any other alternative dispute resolution process;
 - d. confirm the matters at issue and/or report any agreement reached between the parties by way of informal meetings or off-line mediation;
 - e. confirm the names and contact details of any expert witnesses to be called by each party;
 - f. confirm whether expert conferencing will occur;
 - g. confirm the non-expert witnesses to be called by each party;
 - h. advise of any application(s) for a witness summons;

- i. advise the likely hearing time required at a hearing session and confirm the deadline for making any applications for additional speaking time at the hearing session (which may be determined after the submitter has lodged their statements of evidence for that hearing session).
34. The Hearings Panel acknowledges that at the pre-hearing stage submitters may not know the full details of their expert witnesses or their exact requirements for additional speaking time. However for the purposes of scheduling the hearings, the Panel needs to have an early indication of how many expert witnesses may be called, which topics they will address and their relevant expertise (e.g. planner, traffic engineer, economist), as well as an estimate of the speaking time required by the submitter. This information will be treated as indicative and can be confirmed at a later date. The Panel prefers that this early indication overstates the requirements, as it is easier to accommodate fewer expert witnesses and reduced speaking time rather than the reverse.
35. Submitters do not have to attend the pre-hearing meeting where they:
 - a. include in their response to the invitation to attend the pre-hearing meeting all relevant information for their submission required in terms of paragraph 33 above; and
 - b. send their response to the Hearings Panel by 5pm on the previous working day to the pre-hearing meeting.
36. Following a pre-hearing meeting the Hearings Panel may require all or any parties (or their representatives) to meet to clarify or narrow the matters / issues.
37. A report will be prepared (under s.131(4)) by the chairperson of the pre-hearing meeting after the meeting that:
 - a. sets out any clarification or resolution of a matter or an issue agreed between the persons who attended the meeting;
 - b. sets out any understanding of a matter or issue between the persons who attended the meeting; and
 - c. addresses any matter or issue identified to the chairperson by the Hearings Panel; and
 - d. lists the parties who attended.
38. Any change to the report by the chairperson of the pre-hearing meeting must be made by application to the Chairperson of the Hearings Panel and may require a further pre-hearing meeting to be held for that purpose.
39. Pre-hearing meetings will be open to members of the public to attend as observers.

10. Reallocation of submission points

40. The hearing process is organised by issues on a topic basis using the coding framework for submissions in the Summary of Decisions Requested (**SDR**) and the Further Submissions Report (**FSR**) as prepared by the Auckland Council. The individual submission points identified in that SDR have been allocated by the Council into themes, topics and sub-topics. In some cases the allocations of submission points to themes, topics and sub-topics are incorrect. This creates potential problems both for submitters and for the Hearings Panel because all related submission points might not be heard in the same hearing session.
41. The Hearings Panel will consider the reallocation of a submission point to a different topic where there is a clear error in its coding in the SDR. All requests for reallocations must be made using the reallocation request form on the

www.aupihp.govt.nz website. Requests may be made at any time prior to the pre-hearing meeting for that submission point.

42. Individual submission points are not to be split into two or more topics.
43. Where submission points have been allocated to different topics, a submitter may present evidence in relation to those points in a single statement of evidence and be heard during the hearing session on a single topic where the Panel considers that better accords with the specific PAUP provisions to which that submission relates: see the process provided for clauses 89-91 below.
44. The relevant considerations for the Hearings Panel in determining whether to allow the reallocation of a submission point are:
 - whether the submission point has been incorrectly allocated to a hearing topic in terms of the issue raised in the submission point, the specific provision in the PAUP to which the submission point relates and the coding framework;
 - whether the submitter already has standing (based on another of their submission points) within the hearing topic that they seek a submission point to be reallocated to, so that they may make their presentation on all related points at one time (see the process provided for in clauses 89-91 below);
 - whether the reallocation request is from a primary submitter seeking that their own submission point be reallocated. The Panel is unlikely to agree to a reallocation request from a further submitter seeking that a primary submission point be reallocated and the affected primary submitter has not also sought the same reallocation.

11. Consequences of not attending a pre-hearing meeting if required to do so

45. Notices of pre-hearing meetings will state whether submitters are invited or required to attend. If a notice states that a submitter is invited to attend, clause 46 does not apply.
46. If a submitter who is required to attend a pre-hearing meeting and fails to attend without reasonable excuse, the Hearings Panel may decline to consider the person's submission. If this occurs, the person will have no rights of appeal and may not become a party under s.274 of the Resource Management Act 1991 to any other person's appeal. A right of objection to the Hearings Panel is however available to the person if the Hearings Panel makes a decision declining to hear a person's submission.

12. Expert Conferencing

47. The Hearings Panel may, at any time prior to or during the Hearing, direct that a conference of experts be held. Expert conferencing will normally only be directed where one or more specific issues which are the subject of expert evidence require separate conferencing.
48. The Hearings Panel or a member of the Hearings Panel will decide whether a person has appropriate qualifications, expertise and experience to be qualified to attend as an expert at an expert conference.
49. Participation in expert conferencing (including communication related to any conference) is limited to the experts: submitters and lawyers are not entitled to participate in this process. The Hearings Panel requires that the contact details of experts be provided (see clause 33(e) above) so that its facilitators can make direct

contact with experts to organise expert conferencing. Failure by a submitter or their lawyer to supply contact details for experts is likely to result in those experts not receiving communication about expert conferencing.

50. In order to enable all experts to know in advance the opinions and reasons for opinions of other experts, a member of the Hearings Panel or a person appointed by the Panel may direct the experts to prepare a summary of expert opinion in advance of the expert conferencing. All summaries of expert opinion are to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in Clause 5.7.1 of the Environment Court's Practice Note 2011 or (after 1 December 2014) Clause 1(g) of Appendix 3 to the Environment Court's Practice Note 2014. All summaries of expert opinion are to be served on the expert conference facilitator and participating experts no later than 3 working days prior to the expert conference.
51. The Hearings Panel will have the same expectations of expert witnesses as set out in the Environment Court's Practice Note, including in particular:
 - a. an expert witness has an overriding duty to assist the Hearings Panel impartially on matters within the expert's area of expertise;
 - b. an expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
52. In addition, every person at an expert conference who is participating in his or her role as an expert witness must agree to comply with the Code of Conduct for such witnesses and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.
53. An expert conference will be facilitated by a person appointed by the Panel. The facilitator of a conference must, no more than five working days after the conference, prepare a report on the conference and provide it in writing or electronically to the Hearings Panel and the persons who attended the conference, with the report to omit any material as required by s133(5) LGATPA.
54. The report on the expert conference will take the form of a joint statement signed by the experts and will include the following matters:
 - a. the matters and issues that are agreed between the experts (including key facts and assumptions and identification of any methodology or standards used by the experts in arriving at their opinions and reasons for differences in methodology and standards (if any));
 - b. the issues upon which the experts cannot agree and the reasons for their disagreement;
 - c. identification of published standards or papers relied upon in coming to their opinions, including identification of all material regarded by the experts as primary data;
 - d. confirmation that in producing the statement the experts have complied with the Code of Conduct for Expert Witnesses.
55. Expert conferencing will **not** be open to members of the public or to submitters who are not experts.

13. Mediation

56. At pre-hearing meetings, the Hearings Panel will be asking submitters to confirm whether they consent to participating in mediation or any other alternative dispute

resolution process. Mediation will normally be encouraged by the Hearings Panel in any case where it appears that the issues are suitable for being mediated.

57. If parties consent (other than the Council, which is required to attend), the Hearings Panel may refer a matter to mediation or to another alternative dispute resolution process. The parties will be advised of the scope of a mediation session and of the time, date and venue of the mediation by way of email, or by telephone.
58. The Hearings Panel will appoint a mediator or a person to facilitate the mediation or other process, and the person who conducts the mediation must report the outcome to the Hearings Panel. However, material will not be included in the report without a person's consent if the material was communicated or made available by the person on a without-prejudice basis.
59. This report will take the form of a joint statement signed by the parties in attendance that will include the following matters:
 - a. The names and contact details of the people who attended;
 - b. the matters and issues that were agreed among submitters and the resource management reasons supporting that agreement;
 - c. any matters or issues that were not agreed and a concise summary of the outstanding issues between the submitters.

A template for this purpose will be provided.

60. Parties attending a mediation must be authorised to be able to agree or otherwise settle the matters and issues that are the subject of the mediation.
61. Mediation will be undertaken in a pro-active way by the appointed mediators. This may involve parties being contacted by mediators prior to scheduled mediation. Mediators may also present questions to participants and/or request that certain matters be addressed prior to mediation.
62. With the agreement of parties, mediation will focus on a marked up version of the relevant provisions of the PAUP. This will in most cases be provided in advance by Auckland Council but any other party may bring a marked up version to the mediation.
63. Mediation is undertaken to arrive at joint statements of changes to the proposed plan that address the relevant matters within s32AA RMA. Mediation towards joint statements may not involve all parties (identified within the Parties and Issues report as being assigned to the mediation pathway) being called upon to contribute to mediation.
64. Mediation can include the use of expert conferences to determine matters of fact or expert opinion. This can occur as a sub-set to the mediation with agreed positions on facts (between expert witnesses) contributing back into ongoing mediation.
65. Mediation will **not** be open to members of the public or to submitters who are not directly involved in that mediation.

14. Hearing sessions

66. All submitters who indicated on their submissions that they wish to be heard (and every requiring authority that has a designation or heritage protection order included in the proposed plan) will be advised of the date, time and venue of hearing sessions at least 10 working days in advance.
67. Submitters will arrange a time to attend the hearing by contacting the hearing administrator for the hearing topic. However the Hearings Panel may make changes to the hearing schedule and to the order of speakers and may request submitters to

come at a specific time. In addition, all notices of hearing sessions for each topic, and any updates, will be available on the www.aupihp.govt.nz website.

68. Hearing sessions will be open to members of the public to attend as observers unless there are reasons in terms of s141 LGATPA for protecting sensitive information by requiring that the whole or part of a hearing session be held with the public excluded or by prohibiting or restricting the publication or communication of any information supplied to or obtained by the Hearings Panel.
69. At each hearing session no fewer than 2 members of the Hearings Panel must be present. The Hearings Panel will determine how many members will attend each hearing session and will advise that in the notices of hearing sessions.
70. In the event that a submitter has failed to pre-circulate evidence as required by the Panel's directions, then hard copies of any evidence to be presented at a hearing session must be provided on the day. These shall be given to the hearing administrator on arrival, and an electronic copy shall be provided to info@aupihp.govt.nz within 24 hours of the submitter's appearance.

15. Format of Evidence

71. It is important for submitters to ensure that evidence is succinct and clearly sets out the issues and the changes being sought. Submitters are requested to:
 - a. Provide an effective summary statement;
 - b. Focus the evidence on matters not agreed;
 - c. Clearly separate the matters agreed from the matters not agreed;
 - d. Set out the relief sought in an appendix.

Detailed instructions are provided in paragraphs 72- 83 below.

Submitters on topics 016/017 Rural Urban Boundary and 080/081 rezoning and precincts are encouraged to read the Panel's **interim guidance** on best practice approaches to rezoning, precincts and changes to the Rural Urban Boundary ([best practice](#)).

72. All statements of evidence and legal submissions shall be:
 - a. headed clearly with:
 - i. the name of the submitter who or on whose behalf the document is being lodged;
 - ii. the submission number;
 - iii. the Hearing Topic name and number;
 - iv. whether they contain primary or rebuttal evidence;
 - v. if containing the evidence or submissions of someone other than the submitter, the name of that witness or counsel; and
 - vi. the date; and
 - b. on white A4 paper in Arial 11 point font with sufficient margins and line-spacing that the content is readily legible;
 - c. in sequentially numbered paragraphs with coherently numbered or lettered sub-paragraphs; and
 - d. lodged electronically in either unsecured and searchable .pdf or unsecured .doc format.
73. The content of all statements of evidence or legal submissions must commence with a summary statement of the content of the document which is no more than 3 pages long. Parties are strongly encouraged to be succinct, to focus on matters that are in issue, to state clearly the reasons for their support of or opposition to the provisions of the Proposed Auckland Unitary Plan and to state clearly the outcome they seek.

74. The content of evidence and legal submissions should include, in appropriate places, cross-references to the submission point numbering as set out in the Council's Summary of Decisions Requested.
75. Any tables, figures or diagrams in any statement of evidence shall be numbered, titled and cross-referenced to the relevant text of the evidence.
76. Submitters are requested to list matters of agreement in an appendix so that the body of their evidence is focused on matters which are not agreed.
77. Each submitter must present as part of their evidence an appendix which lists the changes they seek to the provisions of the Proposed Auckland Unitary Plan, supported by amended text and drawings.
78. Changes to text should be shown in marked-up format as underlined additions and struck-through deletions. Changes to text should **not** be presented using a tracked-change word-processing tool because of the problems created by such tools for numbering and formatting. Wherever possible, such marked-up versions should be based on the latest version provided by the Auckland Council.
79. Changes to drawings (including maps) should include that relevant Plan drawing (as notified) and the version that the submitter seeks to substitute.
80. Statements of evidence shall be focussed on the particular provisions of the Proposed Auckland Unitary Plan which are of concern to the submitter and which the submission seeks to change. Incidental or background material or references should be placed in appendices.
81. All **expert** evidence is to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in Clause 5 of the Environment Court's Practice Note 2011 or (after 1 December 2014) Clause 7 of the Environment Court's Practice Note 2014.
82. All **expert** evidence is to address the same matters as a will say statement (see clause 46 above) and must set out the key facts and assumptions relied upon, identify the methodology and standards used in arriving at any opinion and clearly explain the opinion arrived at.
83. Where a witness is giving the same or similar evidence for more than one submitter on the same topic, all such statements of evidence should identify all submitters for whom the evidence is being given and whether there are any material differences between the statements.

16. Pre-circulation of evidence and legal submissions

84. The purpose of pre-circulation of evidence is to ensure all parties, and the Hearings Panel, understand the issues that are to be presented prior to the hearing session commencing. It will also enable a much more efficient hearings process.
85. The Hearings Panel will direct the pre-circulation of all submitter evidence, expert evidence, and Council evidence for any particular hearing session. Where no other specific directions are made, the pre-circulation of evidence shall be in accordance with paragraphs 86, 87 and 88 below.
86. A sequential evidence exchange programme shall be undertaken as follows;
 - a. the Auckland Council shall provide its primary statements of evidence to the Hearings Panel for uploading to the Panel's website at least 25 clear working days prior to the hearing to which such evidence relates;
 - b. all other submitters shall provide their primary statements of evidence (both expert and non-expert) to the Hearings Panel for uploading to the Panel's

website at least 15 clear working days prior to the hearing to which such evidence relates; and

- c. the evidence of other submitters shall address the Council's evidence, including any rebuttal of it, in their primary statements of evidence.
87. Any rebuttal evidence shall be provided to the Hearings Panel for uploading to the Panel's website no later than 5 clear working days prior to the hearing to which such evidence relates.
88. The Hearings Panel encourages all parties to pre-circulate their opening legal submissions in advance of the hearing session. Any legal submissions by the Auckland Council shall identify the relevant proposed plan provisions and shall state clearly the Council's position in relation to those provisions and the reasons for that position.

17. Presentation of evidence for other hearing topics

89. At a hearing session on a topic, the Hearings Panel will generally allow the presentation of evidence relating to other hearing topics subject to the following requirements and limitations:
 - a. the evidence must be on submission points at the same PAUP level (i.e. the Regional Policy Statement, the Regional Coastal Plan, the Regional Plan, the District Plan within the PAUP);
 - b. the evidence must be presented at the earliest session in the order of hearings on the same PAUP level;
 - c. the evidence exchange dates must be met in relation to the earliest affected topic so that other primary submitters on that topic have notice of it;
 - d. submitters who choose to present evidence on this basis are responsible for attending or not attending the other hearings to which their evidence relates and any consequences for the submitter's case that flow from this choice.
90. Notwithstanding any presentation of evidence on the basis provided for in clause 89, submission points will remain allocated as set out in the SDR and the FSR.
91. The Chairperson directs all parties to address in their primary evidence any relevant evidence of other parties presented at any earlier hearing. Rebuttal evidence for a hearing topic should be confined to addressing material raised for the first time in the primary evidence for that topic. The reason for this is to assist the Panel in dealing with large volumes of evidence by ensuring that relevant material is put before the Panel at the earliest opportunity and not left until a few days before the hearing. Parties who do not do this and who delay presenting their response to material presented earlier run the risk that the late material will not be considered by the Panel.

18. Late, supplementary or rebuttal evidence

92. Late or supplementary evidence will only be accepted at a hearing session:
 - a. where circumstances make it necessary for such evidence to be provided; and
 - b. with the leave of the Hearings Panel.
93. Rebuttal evidence will only be accepted as evidence before the Hearings Panel if it is strictly in rebuttal to matters already raised in evidence and contains no material relating to new issues not previously raised in evidence. Rebuttal that simply restates primary evidence will not be accepted.

19. Pre-reading of the submissions and the evidence

94. The Hearings Panel will in most cases pre-read submissions and evidence in advance.
95. Before or at a hearing session, the Hearings Panel may:
 - a. direct the order that submissions and evidence are to be presented;
 - b. direct that submissions and evidence be recorded, taken as read, or limited to matters in dispute;
 - c. direct a submitter, when presenting a submission or evidence, to present it within a time limit;
 - d. request a submitter to provide further information.
96. When appearing at a hearing session, a submitter can highlight the main points of their submission.

20. Hearing session presentation

97. All expert and non-expert witnesses must attend hearing sessions in person and confirm that the statement of the evidence they have produced is true and correct, unless otherwise directed by the Hearings Panel in any particular case.
98. Affidavit evidence will be required of any expert and non-expert witness who is not able to attend a hearing session, if the Hearings Panel is to give that evidence any weight when making its recommendations.
99. All submitters or their representatives will need to be prepared to:
 - a. present a 10 minute concise summary of the case in support of their submission; and
 - b. explain relevant figures, plans and tables in their evidence; and
 - c. summarise any changes to their evidence for any reasons including as a result of facilitation or conferencing.
100. Where a submitter seeks more than the 10 minute time allocation for presentation of their case, they need to apply to the Panel for approval at least 5 working days prior to the pre-hearing meeting where the topic is proceeding direct to a hearing or by such other deadline as may be specified by the Panel after expert conferencing and mediation has occurred. There is a form to do this on the www.aupihp.govt.nz website.
101. Submitters should not assume that presentation time will be extended automatically on the basis of calling expert witnesses or presenting a joint case with other submitters. The Panel expects every submitter to organise their case to be succinct and focussed on the key issues and the specific changes that are sought to the Plan. Where demand for hearing time exceeds supply, the Panel will limit presentations in order to ensure that all submitters who wish to be heard get a reasonable opportunity for that to happen.

21. Cross-examination and questioning

102. The Hearings Panel may permit cross-examination or questioning of a witness at a hearing (s.136(3)(b)). Cross-examination or questioning of a witness will normally only be permitted where:
 - a. it assists the Hearings Panel to better understand an issue that is relevant to the preparation of its recommendations;

- b. it is consistent with the principles set out in clauses 6, 7 and 8;
 - c. the witness is an expert witness;
 - d. conflicting evidence is being put to a witness to confirm their view; or
 - e. “disputed issues of fact.
103. There is no obligation on counsel to put their case to opposing witnesses through cross-examination. That requirement of Section 92 Evidence Act 2006 (also known as the rule in *Browne v Dunn* (1893) 6 R 67) does not apply to the evidential process before the Hearings Panel.
104. The Notice of Hearing for a hearing session will request that parties give notice to the Hearings Panel no later than 3 working days prior to the hearing session of any requests to cross-examine the witness(es) of any other party in advance of the relevant hearing session. The notice is to include the witness to be questioned, the topics to be covered in cross-examination and an estimate of the time likely to be required to cross-examine each witness. The Hearings Panel will then determine whether to allow such cross-examination and, if cross-examination is allowed, which witnesses may be questioned, which topics may be covered and how long such cross-examination may take.
105. The party that wishes to cross-examine must also send the notice to the party calling the particular witness/witnesses.
106. The Hearings Panel will make all notices of cross-examination and its determination in respect of such notices available on the www.aupihp.govt.nz website.
107. Following cross-examination the Hearings Panel will allow re-examination of witnesses by the party that called them.

22. Auckland Council closing remarks

108. After all submitters have presented their cases at a hearing of a topic, the Panel may call upon Auckland Council to provide closing remarks. Closing remarks can be presented either orally at the end of the hearing or in writing within 5 working days after the hearing or both. They are limited to a summary of Auckland Council’s case having heard all of the evidence. Closing remarks can include an updated marked-up version of the relevant PAUP provisions for that topic. No additional evidence or new information can be introduced at this time without the leave of the Panel.
109. Written closing remarks are to be provided no later than 5 working days after the hearing or by such deadline as may be specified by the Panel.
110. Where such written remarks are provided, they will be made available on the [hearings](#) page of the website under the relevant hearing topic.

23. General procedural power

111. The Panel may reconvene any hearing or call for any expert conferencing or mediation to be undertaken on any hearing topic at any point up until 22 July 2016.

24. Power to summon witnesses

112. Section 138(1)(c) of the LGATPA provides that section 4D of the Commissions of Inquiry Act 1908 applies to each hearing session as if the Hearings Panel were a Commission, and the Hearing were an inquiry. Section 4D(1) of the Commissions of Inquiry Act 1908 provides that:

For the purposes of the inquiry the Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the inquiry.

113. Reasons must be provided in support of any application to summon a witness to attend a hearing.
114. A summons to a witness to appear at a hearing session must be in the prescribed form and signed by the chairperson.
115. Clause 9 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 provides that the prescribed form is Form 4 in the Schedule to the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013.
116. Form 4 provides that the party on whose behalf the summons is issued is required to pay the witness the witness fees, allowances, and travelling expenses according to the scales prescribed by regulations made under the Summary Proceedings Act 1957.
117. On receipt of an application in accordance with clauses 112-116, the Hearings Panel will then determine whether to grant such application and, if granted, what terms or conditions may attach to any summons that is issued.

25. Legal counsel to assist the Hearings Panel

118. The Hearings Panel may appoint a legal advisor to assist the Hearings Panel. The Hearings Panel may request the legal advisor to provide advice or assist on specific issues before, during, or after the hearing, by way of producing memoranda, cross-examining of witnesses, attending the hearing, making representations, or such other functions as the Hearings Panel considers appropriate.
119. The Hearings Panel has a discretion over disclosure of or waiver of legal privilege in any legal advice it receives. The Hearings Panel will normally make available to submitters its legal advice where such advice relates to a matter arising from the content of a submission or the substantive consideration of a submission relating to an issue, plan provision or site.

26. Hearing administration

Venue

120. The Hearings Panel has two hearing rooms available at its premises at Level 16, Tower 1, 205 Queen Street, Auckland. Hearing sessions will take place in one of these hearings rooms, or at an alternative venue, as identified in a notice of hearing.
121. Alternative hearing rooms may be utilised to cater for larger groups of submitters for the purposes of pre-hearing meetings or for pre-hearing and hearing processes relating to particular geographic areas.

Presenting in Te Reo

122. Any party, representative or witness may speak in te reo Māori at a hearing session. The Hearings Panel support staff must be informed of the intention to use te reo Māori at least 5 working days prior to the hearing session so that an interpreter can be arranged. Any karakia, powhiri, or mihi will not be translated into

English unless requested before the hearing. (Note: The Māori Language Act 1987 states that no person may insist on being addressed or answered in te reo Māori.)

123. If evidence is to be given in te reo Māori, that evidence is to be pre-circulated with an English translation.

Presenting in New Zealand Sign Language

124. Any party, representative or witness may present in New Zealand Sign Language. The Hearings Panel support staff must be informed of the intention to use New Zealand Sign Language at least 5 working days prior to the hearing session so that an interpreter can be arranged. (Note: The New Zealand Sign Language Act 2006 states that no person is entitled to insist on being addressed or answered (by persons other than the interpreter for the purpose of the proceedings) in New Zealand Sign Language.)

27. Assistance

125. Any person seeking assistance in relation to the Hearing Panel's procedures may contact the support staff of the Hearings Panel: see clauses 22 - 27.

28. Glossary

126. When used in this Hearing Procedures document, these words are intended to have the following meanings:
- a. **Auckland Unitary Plan** means the proposed Auckland combined plan prepared by the Auckland Council in accordance with sections 121 to 126 of the LGATPA;
 - b. **chairperson** means the chairperson of the Hearings Panel;
 - c. **expert conferencing** means a process by which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Such a conference is a structured discussion between peers within a field of expertise which can narrow points of difference and save hearing time (and costs). All experts have a duty to ensure that any conference is a genuine dialogue between them in a common effort to reach agreement about the relevant facts and issues;
 - d. **expert witness** means a person who would be recognised by the Hearings Panel as an expert in his or her field by reason of relevant qualifications and/or experience;
 - e. **FSR** means the Further Submissions Report, as notified by the Auckland Council;
 - f. **Hearing** means the overall process undertaken by the Hearings Panel under Part 4 of the LGATPA;
 - g. **hearing session** means a particular session at which submissions are heard by the Hearings Panel as part of the Hearing;
 - h. **Hearings Panel or Panel** means the Hearings Panel established by section 161 of the LGATPA;
 - i. **Independent Māori Statutory Board** means the board established by Part 7 of the Local Government (Auckland Council) Act 2009;
 - j. **LGATPA** means the Local Government (Auckland Transitional Provisions) Act 2010;

- k. **mediation** is a process of assisted negotiations to discuss a dispute and work toward a solution that is acceptable to all parties rather than have the Panel impose an outcome on the parties;
- l. **member of the public** means any person who is not a submitter, a witness, a representative of the Auckland Council, a member of the Hearings Panel or one of the support staff assisting the Hearings Panel;
- m. **member**, in relation to the Hearings Panel, includes the chairperson;
- n. **Ministry** means the Ministry for the Environment;
- o. **non-expert witness** means a witness who is not an expert witness and includes a submitter giving evidence;
- p. **off-line mediation** means mediation or direct discussions between parties that occurs outside the schedule for mediation set by the Hearings Panel;
- q. **Practice Note** means:
 1. until 1 December 2014, the Environment Court of New Zealand Practice Note 2011; and
 2. after 1 December 2014, the Environment Court of New Zealand Practice Note 2014;

which are available on the following website:
<http://www.justice.govt.nz/courts/environment-court/legislation-and-resources/practice-notes/practice-notes>

or any amended or revised version issued by the Court;
- r. **proposed plan** means the proposed Auckland combined plan prepared by the Auckland Council in accordance with sections 121 to 126 of the LGATPA;
- s. **representation** means the case or arguments advanced in support of a submission and may include legal submissions;
- t. **Requiring Authority** means—
 - (a) a requiring authority within the meaning of section 166 of the RMA; and
 - (b) a heritage protection authority within the meaning of section 187 of the RMA;
- u. **RMA** means the Resource Management Act 1991;
- v. **SDR** means the summary of decisions requested by submissions, as notified by the Auckland Council;
- w. **submission**—
 - (a) means a written or an electronic submission received by the Auckland Council on the proposed plan; and
 - (b) includes a further written or electronic submission on the proposed plan;
- x. **submitter** includes a person representing a submitter or further submitter;
- y. **will say statement** means a statement prepared by an expert witness that will as a minimum:
 - (a) Set out the key facts and assumptions relied upon;
 - (b) Identify the methodology and standards used in arriving at his or her opinion;
 - (c) Clearly explain the opinion arrived at.

Dated at Auckland this day of 2015

Judge David Kirkpatrick
Chairperson
Auckland Unitary Plan Independent Hearings Panel

29. Appendix – Roles and Responsibilities of the Auckland Council

Providing documentation to the Hearings Panel

1. For the Hearing on the Auckland Unitary Plan the role of Auckland Council under the LGATPA includes providing copies of the following to the Hearings Panel under s.127;
 - a. the proposed Auckland combined plan that was publicly notified;
 - b. any notices about designations, or notices of requirements for designations or heritage orders, referred to in clause 4(5) of Schedule 1 of the RMA;
 - c. the information about requirements referred to in clause 4(7) of Schedule 1 of the RMA;
 - d. the Council's evaluation report prepared under section 32 of the RMA, and the report prepared under section 165H(1A) of the RMA, in relation to the proposed plan;
 - e. the audit report provided to the Council under section 126(4);
 - f. the submissions on the proposed plan received by the closing date for submissions;
 - g. the Council's summary of the decisions requested by submitters;
 - h. the further submissions on the proposed plan received by the closing date for further submissions;
 - i. any submissions or further submissions received after the relevant closing date, along with information about when the submissions were received;
 - j. the planning documents that are recognised by an iwi authority and lodged with the Council;
 - k. any amendments the Council makes to the proposed plan under section 124(2)(a);
 - l. any other relevant information held by the Council that is requested by the Hearings Panel.

Council attendance

2. In addition, the role of the Council will include:
 - a. attendance at pre-hearing meetings (s.131(2)(b)) where invited/required by the Hearings Panel;
 - b. attendance of Council expert witnesses at expert conferencing (s.133) where directed by the Hearings Panel;
 - c. attendance at alternative dispute resolution processes (s.134(2)(b)) where referred by the Hearings Panel. It is compulsory for the Council to attend mediation (or any other dispute resolution process) if all other relevant persons have consented (s.134(1)(b));
 - d. provide a marked up version of proposed changes to the plan for consideration at mediation and as part of its evidence for the hearing;
 - e. provide briefs of evidence to the Hearings Panel before a hearing session (s.139);

- f. attendance at hearing sessions (unless excused by the Hearings Panel) to assist the Hearings Panel in one or more of the following ways:
 1. to provide an opening statement/representation on each topic explaining the plan provisions, stating the Council's position and the reasons for that position;
 2. to present evidence in support of its position;
 3. to speak to submissions or address issues raised by them;
 4. to cross-examine or question witnesses;
 5. to provide any other relevant information as requested by the Hearings Panel;
 6. to provide closing remarks;
 7. to provide a final version of marked up changes to plan provisions.
- g. preparation of reports under s.142(1) of the LGATPA as required by the Hearing Panel on:
 1. 1 or more submissions;
 2. any matter arising from a hearing session; or
 3. any other matter that the Hearings Panel considers necessary for the purposes of the Hearings Panel making its recommendations.

Documentation that the Council will make available for inspection

3. The Council will make available for inspection (on its internet site and at its principal office or by copies of specific items on request) the following:
 - a. any orders made by the Hearings Panel under s.141 as required by s.141(3);
 - b. any reports commissioned by the Hearing Panel under s.142 as required by s.142(4)(b);
 - c. any written or electronic evidence, including further information provided under s.140(1)(d), received by the Hearings Panel during the Hearing as required by s.143(1)(a);
 - d. any written or electronic report provided to the Hearings Panel under s.131 (pre-hearing session meetings), 133 (expert conferencing), or 134 (alternative dispute resolution) as required by s.143(1)(b); and
 - e. the report of the Hearings Panel required under section 144(5) at the same time as the Auckland Council publicly notifies its decisions under section 148(4)(a), as required by s.150.

Note. The requirements under s.143 do not apply if the Hearings Panel considers that it is not reasonable to make the material available for inspection.

Making decisions on recommendations, requesting extensions and responsibility for costs of the Hearing Panel

4. In addition, the Council:
 - a. can accept or reject recommendations of the Hearings Panel, and for each rejected recommendation it can decide an alternative solution (s.148(1));
 - b. must publicly notify its decisions on recommendations no later than 20 working days after it receives the Hearings Panel recommendations report (s.148(4));
 - c. has the ability to request an extension of time from the Minister for the Environment for:

1. the deadline in s.146 for the Hearings Panel to make recommendations on submissions (s.147(1));
 2. the deadline in s.148(4) deadline for publicly notifying its decision on the recommendations;
- d. is responsible for all costs incurred by the Hearings Panel, and for the activities related to the performance or exercise of the Panel's functions and powers under Part 4 of the LGATPA (s.168).