

**AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL**

TO:

FROM: PAUL CAVANAGH, Q.C.

DATE: 31.7.14

RE: Pre Hearing Meeting Friday 1 August 2014

MAY IT PLEASE THE PANEL:

1. Counsel apologises for inadvertently failing to formally notify Auckland Council with a copy of the memorandum that is the subject of this inquiry.

**PROCEDURAL MINUTE NUMBER FIVE: By Chairperson of Independent Hearings Panel
Procedure In Relation To Further Submissions**

2. The Chairman has acknowledged that the large numbers of submissions, involving a larger number of points of submission, entails a high level of complexity in dealing with the process for hearings submissions on the proposed plan.

It is conceded that the first direction given in the Chairman's minute provides that a primary submitter is entitled to be heard on any submission that challenges the relief sought in the primary submission, whether that primary submitter has lodged a further submission on that other submission or not. This direction addresses most of the concerns in relation to the jurisdictional issue that has been raised.

THE COUNCIL'S SUBMISSION

3. It is conceded by the Chairman that the Council's submission raises a number of questions. Counsel is aware of at least one instance which reveals a significant problem with the procedure utilised by the Council in proceeding with this plan change.

4. The example I wish to refer to is the Birkenhead Transport Bus Depot building at 2 – 22 Verran Road, Birkdale.

I am indebted to Mr Putt for this information. He came upon this example inadvertently when looking for something else.

We have both secured a hard copy of the Council's submission. It is contained in 8 and half East Light folders of material.

In volume 1, page 30 of 47 under tab 3, reference is made to submission 394. Attachment 394 refers to appendix 9.1 PDF schedule:

New items to be included in the schedule of significant historic heritage places to reflect plan change 38

Relief sought - Amend as shown in attachment 394

The pages are not numbered and following a series of aerial photographs reflecting the proposed map changes is attachment 394, which is a schedule of significant historic heritage places

Part 1

Historic heritage places

On the first page, third from the bottom of the schedule is the reference to the bus depot building.

There are 5 pages referring to buildings that are to be scheduled now under the provisions of this attachment 394.

The question arises, how are the owners of these affected buildings supposed to become aware that the Council has scheduled these properties. Mr Putt has ascertained that the Birkenhead Bus company has not been notified of this change.

UNITARY PLAN: Cultural Impact Assessment Rule 2.7.4

5. The provision of cultural impact assessment authorised by Iwi as part of the resource management process relating to a large number of alleged Maori sites (noting that the legitimacy of many of them are challenged by NZ Archaeological Association, NZAA and over extensive ecological areas involving procedures not contemplated by the RMA and unique in relation to statutory planning elsewhere in New Zealand.

6. These provisions are extremely controversial because of the manner in which they were incorporated into the PAUP at the eleventh hour and the fact that as “heritage” items they took immediate effect upon notification of the PAUP.
7. It is the practice of Council planners to require CIAs as a general rule even where there is little likelihood that Maori interests are imperilled by, for example, straight forward proposals for a minor residential development. It is significant that up to 16 Iwi can be involved in the CIA process.

For example, I am aware of a situation where an Auckland Council planner has invoked Rule 2.7.4.4 (d):

“Diversion, taking or using of surface water, ground water or geothermal resources” –

to require CIA’s because the proposal involved a *“diversion and discharge of stormwater”*, There was no attempt to justify the assertion that the consent sought may have adverse effects on Manu Whenua values. Furthermore, there is no notification in the rules of any site of significance to Maori in the vicinity.

8. The panel is not asked to adjudicate on this issue today other than to understand that as the impact on property owners which will end if CIAs are required from 16 or more Iwi or hapu, can be substantial. This can involve significant cost in obtaining such reports through the relevance and appropriateness of this requirement should be addressed early in the hearing process if necessary by a test case to set the scene.
9. The identification of issues for mediation, it is submitted that participants in the mediation process should be permitted to have a say in determining how such matters should be scheduled. It should not be left to Auckland Council alone to assume that role. Counsel is confident that the experienced mediators who will be assisting the panel in this process could and should control the whole process from its inception.