

BEFORE THE AUCKLAND UNITARY PLAN

INDEPENDENT HEARINGS PANEL

IN THE MATTER

of the Local Government (Auckland
Transitional Provisions) Amendment Act 2013

AND

IN THE MATTER

of the provisions of S144 (3), (a) and (b)

**MEMORANDUM OF AUCKLAND 2040 SEEKING INTERIM ADVICE ON THE POWERS
CONVEYED TO THE INDEPENDENT HEARING PANEL PURSUANT TO SECTION 144, TO
CONSIDER OUT OF SCOPE ZONE CHANGES**

MAY IT PLEASE THE PANEL:

On the 17th December 2015 Council released its preliminary position on zoning and included a series of maps showing the zoning changes proposed by Council. The maps Legend differentiates the suggested zoning changes into two types:

- Areas of change Outlined with a black border
- Areas of Change - Out of Scope Outlined with a blue border

In terms of the Council explanation in its "Auckland Council's preliminary position on zoning" document, "out of Scope" amendments"

"... are proposed zoning changes to a site or area where no submission has been received."

No supporting information or S32 analysis was lodged with the zoning maps.

Council in its explanation states

"The Independent Hearings Panel has the statutory power to include, or not, any out of scope changes in its recommendations to the council on the PAUP in July 2016"

This reference appears to refer to Section 144 (3), (a) and (b) of the Local Government (Auckland Transitional Provisions) Amendment Act 2013.

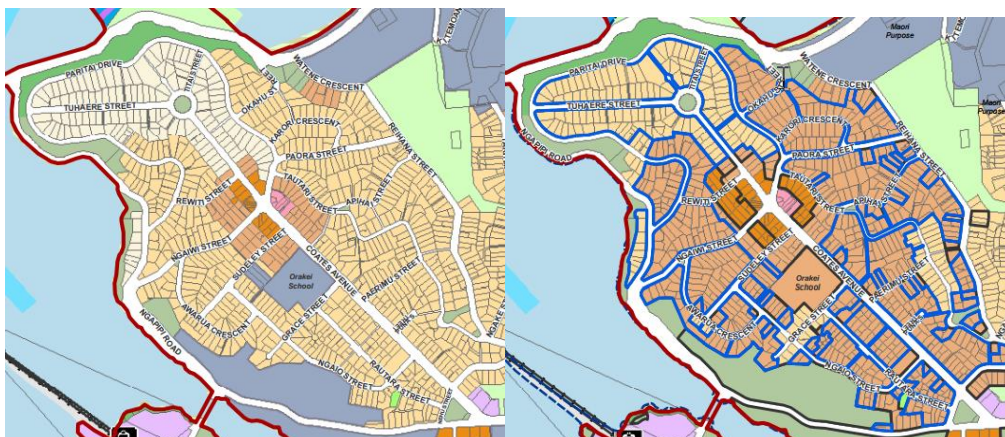
Auckland 2040 seeks the following interim guidance from the Panel:

1. Whether the “Out of Scope” zoning amendments proposed by Council in its Preliminary Position on Zoning fall outside the powers conveyed by Section 144 (3), (a) and (b)
2. The extent to which matters of natural justice and due process and the rights of public participation in the Unitary Plan process fetter the powers conveyed by S144
3. Who has the right to participate in the hearings on Topic 081 in respect to the “Out of Scope” zoning changes
4. Whether the extent of “Out of Scope” zoning changes proposed by Council are such that they should be brought forward by means of variation(s) rather than as “Out of Scope” changes
5. Require the Auckland Council to identify the submissions they are relying on for each of the “in Scope” zoning changes proposed

OUT OF SCOPE ZONING CHANGES

An examination of the maps released by Council reveal very extensive “Out of Scope” zoning changes across Auckland. For example:

- Orakei
Large areas previously zoned MHS up zoned to MHU, areas zoned SH up zoned to MHS



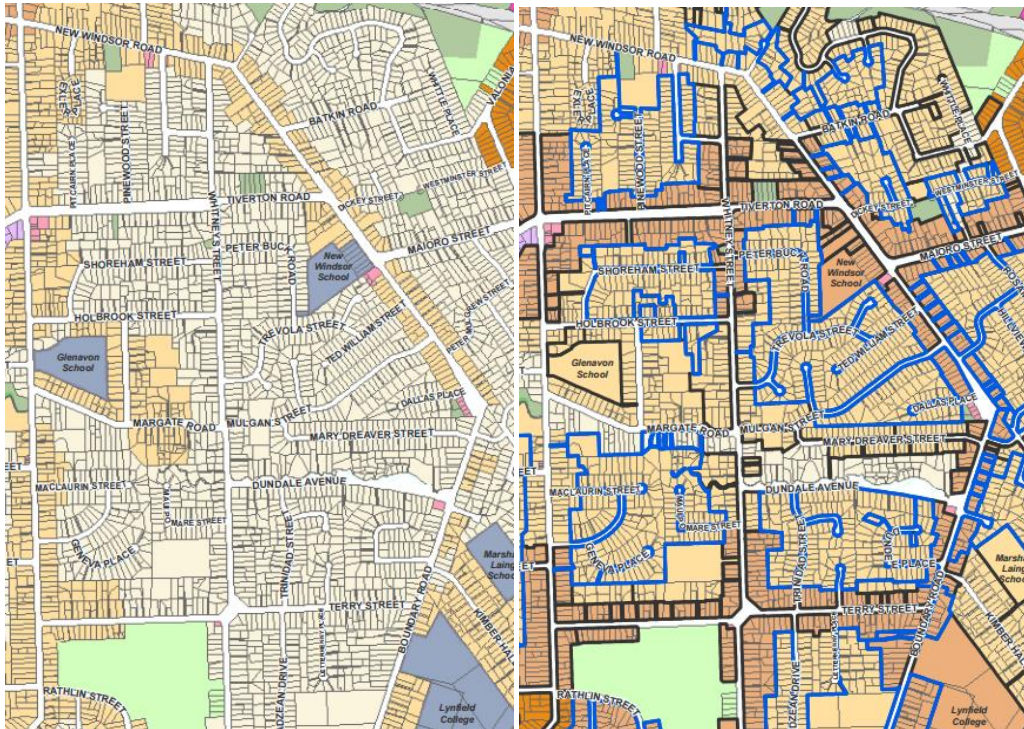
- **Westmere**

Large areas of SH up-zoned to MHS and MHU



- **Blockhouse Bay**

Large areas of SH up-zoned to MHS and MHU



There are many hundreds of zoning changes across Auckland affecting many thousands of households. The extent of the proposed zoning changes both “In Scope” and “Out of Scope” have the effect of substantially changing the zoning pattern of Auckland.

The issue is the extent of zoning change which can be an “Out of Scope” recommendation in terms of S144. We submit that this power should be restricted to matters which are limited in scope, have a high degree of public knowledge and can be seen as consequential or in the nature of tidying up an inconsistency. As an example an area previously identified as subject to flooding and zoned Single House where subsequent investigations revealed this was no

longer an issue and this was well known in the area. In this case the up zoning to the adjoining MHS rezoning would be appropriate, the public knew the storm water issue was resolved and the zoning change could be regarded as consequential. This can be contrasted with the proposed wholesale rezoning of areas without any community involvement or neighbourhood planning as above.

Council has proposed the “out of Scope” zoning changes with no public participation or input and without seemingly undertaking the necessary research to underpin such major zoning changes.

Had it not been for the premature release of a segment of the planning maps the public would have been ignorant of what Council was proposing. In a reply to a request from Auckland 2040 for Council to release its preliminary position on spatial zoning changes, Mr Dugoid on the 29th October 2015 stated:

“A recommended approach will be presented to the council from mid to late November. The council’s actual evidence on zoning is not due until 26 January next year. The evidence will include a set of zoning maps showing the council’s proposed amendments. Given the complexity involved in addressing the submissions and the time required to complete the council’s evidence, the council does not intend to release the maps prior to the date currently set by the IHP.”

Given that distribution of evidence on Topic 081 is the 10th February 2016 release of the Councils position would have given only 2 weeks for response.

The Resource Management Act and the amendments to the Local Government Act set down the basis for how the PAUP is to be considered. This process involves public consultation and submissions, further submissions and hearings in front of an Independent Hearing Panel. This process provides specifically for extensive public input to the Unitary Plan process.

Given this process it is submitted that it’s is unconscionable that Auckland Council can, at the last stage in the hearing process recommend such sweeping changes under the guise of evidence and then suggest that the IHP use its powers under S144 to legitimise Councils ‘Out of Scope’ zoning changes. It is submitted that this would amount to an abuse of process, be contrary to the public participation tenor of the Unitary Plan process and be entirely contrary to the principals of natural justice.

It is submitted that the powers in section 144 relate more to “tidy up provisions” rather than envisage the type of broad sweeping changes proposed by Council.

Should Council wish to bring forward significant changes to the spatial zoning then it is submitted that the appropriate process is to introduce either one or a series of variations under S’s 124 and 125. This process provides for public submission and hearing. The provisions of S124 and 125 further reinforce Auckland 2040’s submission that S144 cannot be used to allow “Out of Zone” changes as requested by Council.

PROPOSED AMENDMENTS TO SINGLE HOUSE ZONE DESCRIPTION AND OBJECTIVES AND POLICIES

The proposed spatial zoning changes reflect Council's proposed amendments to the zone description and objectives and policies of the Single House Zone. Whether or not these amendments are in turn "Out of Scope", is subject to evidence and submissions as well as a request for interim guidance from Auckland 2040 to the IHP. A decision on that issue materially affects Council's proposed spatial zoning changes as Council seems to be relying on the amendments to the Single House zone to support its rezoning.

The true implication of the proposed changes to the zone description and objectives and policies of the Single House Zone will only become apparent when the IHP is asked to consider submissions from other submitters requesting changes to the spatial zone boundaries.

IMPLICATIONS OF PROPOSED CHANGES

Taken together, the changes to the zone description and objectives and policies of the Single House Zone coupled with the "Out of Scope" spatial zoning changes represent a fundamental change to the PAUP and a fundamental change undertaken without any public participation, right of submission or right of hearing before the IHP.

A person who had carefully checked the PAUP as notified, then checked the submissions lodged and concluded they were comfortable with their zoning would consider that they had done all that was necessary to protect their interests. Such a person would then have had no idea that Council proposed "Out of Scope" spatial changes affecting their property and neighbourhood. Even had they become aware of the changes they would have no right to participate and no right to a hearing before the IHP.

In Auckland 2040's submission this represents a fundamental abuse of process and a flagrant breach of natural justice. Had parliament intended that the IHP be able to undertake, in terms of S144 very significant changes to the spatial zoning pattern in the absence of any submission requesting such change then why is there a carefully constructed right of public participation in the process.

In Auckland 2040's submission Council's request calls into question the very integrity of the IHP and the process by which the PAUP is assessed.

The limited right of appeal to the Environment Court under Section 156 is outside the IHP process and beyond the resources of most persons.

The scope of the proposed "Out of Scope" spatial zone changes are such that in Auckland 2040's submission they are beyond the powers of S144; such the proposed changes should be processed as variations or alternatively be deferred until the Plan is operative and then advanced as scheme plan changes.

Interim guidance on the status of “Out of Zone” spatial changes is necessary. Individuals and community groups who have only now become aware of the fundamental changes to the spatial zoning proposed in their area are requesting the right to be notified and the right to lodge submissions and present their point of view to the IHP. In terms of S144 there is no such right of participation. In the interests of natural justice it is submitted that the IHP should rule that Council’s changes are inadmissible and should be withdrawn.

IN SCOPE ZONING CHANGES

Council has not been specific in identifying which submission(s) it is relying on for each of the “in Zone” changes. Auckland 2040 requests that this work is undertaken and Council be directed to demonstrate that the in scope changes are based on submissions that requests the proposed change. In particular that the council demonstrate with sufficient particularity to enable any person wishing to challenge such submission to be able to do so.

SUMMARY

Auckland 2040’s submission is that interim guidance is necessary on the questions raised so that the basis for the forthcoming hearings on Topics 080 and 081 can be understood. Prior to Council’s release of the proposed zoning changes, submitters and further submitters were preparing their cases on zoning based on the PAUP as notified. With the release of the Councils proposed zoning changes the question becomes who has the right to produce evidence on the “Out of Zone” zoning changes? Auckland 2040 has further submissions on most major submissions seeking rezoning but as “Out of Zone” changes by definition are a Council initiative without supporting submissions. Auckland 2040 is concerned it has no jurisdiction to produce evidence on the “Out of Zone” changes. In addition persons who are effected to a significant degree by the proposed changes have no right to hearing. It is thus entirely plausible that if Council’s proposals are allowed to proceed there effectively becomes two parallel processes; the first the hearing of zoning changes with rights of hearing in front of the IHP, the second a process under S144 with no rights of public participation and no right of hearing before the IHP. It is submitted that this cannot be the intention of the enabling statute and that clear directions from the IHP are required.

With submitter evidence due on Topic 081 by the 10th February clear direction is requested from the IHP as soon as possible.

Richard J Burton
Chairperson
Auckland 2040
22 December 2015

