

**BEFORE THE AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL AT AUCKLAND**

**IN THE MATTER of the Resource Management
Act 1991 ("the Act")**

A N D

**IN THE MATTER of a submission lodged on the
Proposed Auckland Unitary Plan**

**MEMORANDUM OF COUNSEL ON BEHALF OF
HOUSING NEW ZEALAND CORPORATION IN RESPONSE TO MEMORANDUM
OF AUCKLAND 2040
Hearing 081 – Rezoning and Precincts (Geographical Areas)**

**ELLIS GOULD
SOLICITORS
AUCKLAND**

REF: Dr C E Kirman / A K Devine

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: (09) 307 2172 Fax: (09) 358 5215
PO Box 1509
DX: CP22003
AUCKLAND**

May it please the Panel:

1. This memorandum responds to the memorandum of Richard Burton on behalf of Auckland 2040, dated 22 December 2015, which seeks interim advice on the powers conveyed to the Independent Hearing Panel to consider out of scope zone changes. Auckland 2040, in that memorandum, asserts that the majority of changes to zoning proposed by Auckland Council (**"the Council"**) are "out of scope", and seeks to illustrate that using examples of the new "Preliminary Position" zoning maps proposed by the Council (**"the Council Maps"**) for Orakei, Westmere and Blockhouse Bay.
2. Housing New Zealand Corporation (**"the Corporation"**) has read the memorandum issued and the three examples given of "out of scope" changes and makes the following observation:
 - (a) First, the Council Maps contain errors, in that properties identified as "out of scope" by virtue of a blue line are in some cases subject to a submission by the Corporation which either seeks that zoning or a more intensive zoning.
 - (b) Secondly, in some cases the Corporation owns multiple properties on a street which it has sought to rezone – acknowledging that in some instances this rezoning request is for a more intensive zone than that which has been put forward by Council in its "Preliminary Position". In that regard, whilst the Corporation's submission included tables (as 'Attachments' to the formal submission) with specific sites that are owned or managed by the Corporation, for which it seeks rezoning, its submission also sought consequential amendments which would allow for the rezoning of neighbouring properties, so as to avoid spot zoning of properties in an area. The Corporation's formal submission in relation to zone change requests had identified and anticipated the need for consequential amendments to the spatial application of zones across Auckland, in order to ensure as consistent and integrated a process as possible in relation to the spatial planning of Auckland. This was addressed in the 'header' text to Table 3c, Attachment 3, of the Corporation's formal submission (as discussed in more detail below).
 - (c) Thirdly, the Corporation also submitted (and has subsequently presented evidence to the Panel in relation to various hearing topics) on the issue of the appropriateness of the management of 'Overlay values' being addressed both by the Overlay provisions themselves, as well as the application of an underlying zone (often the Single House zone) which also seeks to manage the values of the Overlay (the Special Character overlay being the primary example of this). Where such an approach was taken by Council, the Corporation sought in its submission that the zoning for the area (not just

properties owned or managed by the Corporation) be amended to reflect either the proximity criteria set out in its submissions or the pattern of surrounding development (as appropriate).

- (d) Fourthly, at a macro level the Corporation, along with the Ministry of Business, Innovation and Employment (“MBIE”) and the Minister for the Environment (“the Minister”), made extensive submissions, strongly supporting the strategic direction of the Auckland Plan, but noting that the Unitary Plan (as notified) fell well short of implementing this strategic direction of providing greater urban intensification within the Region. As stated in the Corporation’s submission:

“Overall, Housing New Zealand considers that the provisions of the Proposed AUP as notified (30 September 2013) do not sufficiently provide for the long term residential development capacity needed to meet the population growth expected in Auckland, as set out in the Auckland Plan. While the objectives and policies of the Regional Policy Statement are, in the main, supported by Housing New Zealand, it is concerned that they are not adequately reflected in the District Plan provisions. In particular, the additional consenting requirements and the complexity of the District and Regional Plan provisions, particularly the rules, are not the most appropriate policies and methods to achieve the urban and economic growth goals of the Regional Policy Statement. This is particularly the case in respect of provisions relating to use, development and subdivision within the existing 2010 metropolitan area.” (Refer: page 4, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

The Corporation’s submission then continued to state:

In addition to the comments made in respect of the extent of the residential zones for urban intensification (see items 11 and 12 below), the provisions of the residential zones are not sufficiently enabling to encourage urban intensification (particularly urban regeneration) at a scale that is necessary to provide for 70% of the City’s residential demand as the population grows. Failing to enable or provide for appropriately located and designed residential growth within the urban area will mean the Unitary Plan will not be consistent with, nor aid the implementation of, the strategic directions identified in the Auckland Plan. This issue is compounded by the imposition of Overlays which further restrict the zoning. (Refer: page 4, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Again, the Corporation’s submission clearly articulates its concern regarding the need for reconsideration of the “*extent of the residential zones and urban intensification*” so that there is congruence with the strategic directions identified in the Auckland Plan. In that regard, the Corporation’s submission aligns closely with the relief sought by other Central Government submitters, more specifically the Minister for the Environment’s submission (made by the Hon. Amy Adams as a “whole-of-Government” submission endorsed by Cabinet). In support of its submissions on rezoning, the Corporation, in Table 3c (Attachment 3) of its submission, set out the principles that have informed the Corporation’s vision for the application of zoning within the Region.

“Housing New Zealand has made submissions on the REGIONAL POLICY STATEMENT, in support of the objectives and policy intent to achieve a compact quality urban form. In particular, Housing New Zealand supports (with amendment) Objective 3 (part B.2.1) and Policy 2 (Part 2.1), which provide for higher residential densities in areas that are proximate to services and facilities

that enable quality living (e.g. in or near centres, frequent public transport routes and facilities, open spaces, community facilities, education and other social infrastructure and employment).

For the reasons that these objectives and policies are supported, Housing New Zealand has undertaken a review of their sites and considers that a number are suitable for rezoning. Housing New Zealand has undertaken an assessment that has been based on an iterative assessment which has initially undertaken a theoretical 'suitability' test assessment (based on proximity criteria) and where relevant has sought to supplement this with qualitative assessment (based on a review of surrounding development and urban form).

These sites have assessed against the following criteria:

- a. For sites where Housing New Zealand seeks that they be rezoned to Terrace Housing and Apartment Building Zone;
 - i. They are within 400m of the Metropolitan Centre or Town Centre (a proximate walking distance of 5min, which is considered a reasonable distance for people walking to daily facilities and amenities and an appropriate distance to complement the higher density urban form of the Centres themselves);
- b. For sites where Housing New Zealand seeks that they be rezoned to Mixed Housing Urban:
 - i. They are within 800m of the Metropolitan Centre or Town Centre (as a 10min walk time proximate, which is considered a reasonable walking distance for larger shopping amenities provided by such centres);
 - ii. They are within 400m of a Local Centre or Mixed Use Zone (a proximate walking distance of 5min, which is considered a reasonable distance for people walking to daily facilities and amenities);
 - iii. They are within 250m of either a Frequent Transport Network (providing for walkable access to public transport services); or
 - iv. They are within 250m of other social infrastructure sites mapped in the PAUP (e.g. schools and tertiary education facilities).
- c. For sites where Housing New Zealand seeks that they be rezoned to Mixed Housing Suburban:
 - i. They are within 800m of a Local Centre or Mixed Use Zone (a proximate walking distance of 10min, which is considered a reasonable distance for residents in development of this scale to be walking to such amenities; or
 - ii. They are within 400m of Neighborhood Centres as this zone provides for the daily access to amenities appropriate to support urban development.

In addition to assessing the proximity to facilities, amenities and services (set out above), Housing New Zealand has also reviewed the 'constraints' that appear to have informed the proposed zoning pattern of the PAUP. For the reasons set out in Housing New Zealand's submission in support of the objectives and policies for urban development (Part 2.3 Objectives 1-4), and in seeking amendment to other policies of the REGIONAL POLICY STATEMENT (including but not limited to Policy 5 in Part B.6.7; Policy 3 in Part B.2.3; Policies 1 and 9 in Part B.4.1), Housing New Zealand does not support the effective 'down-zoning' of land on the basis of other resource values.

The approach of the PAUP has been to recognise and provide for resource values and constraints through application of Overlays. The principle of this approach is supported by Housing New Zealand as it clearly identifies the values that are being protected / provided for and the

management mechanisms that are being used to achieve that protection / provision. However, it appears that in addition to the application of Overlays, these values have been used to inform the underlying zoning. Housing New Zealand considers that this approach results in confusion in the intent of the zoning and the overlays. For example, it appears that some areas of the City have been effectively "down-zoned" due to the sensitivity of development of these areas for heritage (potential heritage). However, in addition to this, the areas also have character or heritage overlays applied. Similarly, areas appear to have been down-zoned in areas of potential flood hazards. Notwithstanding other concerns from Housing New Zealand (regarding the accuracy and legality of this non-statutory information being used for zoning and rules), the outcome is that these areas are effectively being managed by two processes (Rules for the flood hazard and zoning pattern).

Housing New Zealand seeks that the management of values and resources that are identified in Overlays be managed through the application of Overlay rules, to specifically address the resource values / issues that are relevant to that Overlay and not the zoning pattern. In instances where this approach from Council has been applied, Housing New Zealand has sought to amend the zoning to reflect either the proximity criteria above or (as appropriate) the pattern of surrounding development that is not affected by the Overlay. It is noted that while Housing New Zealand has only submitted seeking this relief to their sites, consequential amendments may be appropriate for wider areas of areas that have effectively been down-zoned.

In addition to the site context issues above, there are a few Housing New Zealand properties and sites where the zoning proposed in the Proposed AUP is inconsistent with the current development pattern on or surrounding the site (including some inaccurate zones). Following our site assessments, Housing New Zealand seeks that these sites are re-zoned to provide a zoning more consistent with these development patterns.

Finally, following detailed review of Housing New Zealand sites, there are also a few Housing New Zealand sites where it is considered that an alternative enabling zoning would facilitate Housing New Zealand to deliver positive social and community change. Such outcomes would assist in Housing New Zealand contributing to the social and economic wellbeing of the community. For example, in cases where the age and condition of existing stock is having potential adverse effects on communities (e.g. amenity values), it is considered that an opportunity for redevelopment of these areas would positively contribute to quality urban form (Issue B.1.1 of the REGIONAL POLICY STATEMENT).

Housing New Zealand seeks a number of amendments of the provisions of the Unitary Plan relating to the use and development of its sites in the Region. The amendments sought can be met by amendments to the zoning provisions and/or by removal of the sites from various overlay provisions, but as an alternative can also be dealt with by way of introduction of another planning mechanism (for example, a Precinct (recognising Housing New Zealand's submission on the weighting given to Precincts relative to Overlays))." (Refer: Table 3: Housing New Zealand Site Specific Zoning Submissions 3c. Submissions in Opposition (Amendment Sought), Housing New Zealand Submission)

(Emphasis added)

3. A more detailed explication of the scope of the Corporation's submission, along with other Central Government submitters, was provided by the Corporation as part of the Topic 059/060/061/063 - Residential objectives and policies, activities, development controls and controls and assessment hearing, and for convenience are attached as **Annexure 1** to this Memorandum.

DATED this 13th day of January 2016



Dr Claire Kirman / Alex Devine
Counsel for Housing New Zealand Corporation

Annexure 1 - Scope of Corporation's submissions

11. The Corporation considers that its submissions on the Unitary Plan, along with those made by the Ministry of Business, Innovation and Employment ("MBIE") and the Minister for the Environment ("the Minister")¹ are sufficiently broad to support the amendments to the residential provisions now proposed by the Council, including those proposed in respect of the Single House Zone ("SHZ"). As noted in the Corporation's January and February submissions², the Corporation strongly supported the strategic direction of the Auckland Plan, but considered that the Unitary Plan (as notified) fell well short of implementing this strategic direction of providing greater residential intensification. As stated in the Corporation's submission:

"Overall, Housing New Zealand considers that the provisions of the Proposed AUP as notified (30 September 2013) do not sufficiently provide for the long term residential development capacity needed to meet the population growth expected in Auckland, as set out in the Auckland Plan. While the objectives and policies of the Regional Policy Statement are, in the main, supported by Housing New Zealand, it is concerned that they are not adequately reflected in the District Plan provisions. In particular, the additional consenting requirements and the complexity of the District and Regional Plan provisions, particularly the rules, are not the most appropriate policies and methods to achieve the urban and economic growth goals of the Regional Policy Statement. This is particularly the case in respect of provisions relating to use, development and subdivision within the existing 2010 metropolitan area." (Refer: page 4, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Comment: The Corporation's submission clearly states its concern that the notified Unitary Plan did not sufficiently provide for the long-term residential growth and the urban growth goals of the Auckland Plan. These concerns mirror those of MBIE in its submission which states:

"MBIE's concern with the Unitary Plan as proposed is that it does not follow through on its strategic objectives (which are generally supported) with the appropriately-aligned policies and rules:

- *By not providing sufficient capacity through appropriate zonings and density provisions to meet Auckland's forecast growth*
- *By failing to free development from complicated policies and rules that will create high transaction costs, thereby limiting innovation and responsiveness of supply to demand.*

In doing so, the proposed Unitary Plan does not provide for the growth that Auckland needs over the next thirty years, and to the extent that it does not, Auckland's housing market will not perform efficiently and house prices will become even more unaffordable." (Refer: paras 8 and 9, MBIE submission)

(Emphasis added)

¹ The Minister for the Environment's submission clearly states that: *"the nature of this submission is high-level: it does not specify amendments to individual provisions in the Proposed AUP, though such amendments will be required in order to give effect to the relief sought in the submission."* (Refer: para 4, submission of the Minister for the Environment)

² The Corporation's submission included the following statement under the Relief sought section: *"such further, other or consequential orders, relief or amendments as are considered appropriate and necessary to address the matters raised in this submission so as to adequately recognise and respond to the development and operational requirements of Housing New Zealand as the key social housing provider in New Zealand."* (Refer: page 10, 28 February 2014, Housing New Zealand Corporation submission)

A similar submission regarding the need for greater residential development capacity was made by the Minister in her submission:

"The proposed development controls and zoning (including future and urban land) do not provide the needed long-term residential development capacity to meet the projected population growth." (Refer: para 17, submission of the Minister for the Environment)

12. The Corporation's submission then continued to state:

In addition to the comments made in respect of the extent of the residential zones for urban intensification (see items 11 and 12 below), the provisions of the residential zones are not sufficiently enabling to encourage urban intensification (particularly urban regeneration) at a scale that is necessary to provide for 70% of the City's residential demand as the population grows. Failing to enable or provide for appropriately located and designed residential growth within the urban area will mean the Unitary Plan will not be consistent with, nor aid the implementation of, the strategic directions identified in the Auckland Plan. This issue is compounded by the imposition of Overlays which further restrict the zoning. (Refer: page 4, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Comment: Again, the Corporation's submission clearly puts at issue the need for reconsideration of the "extent of the residential zones and urban intensification" so that there is congruence with the strategic directions identified in the Auckland Plan. In that regard, the Corporation's submission aligns closely with the relief sought by other Central Government submitters, more specifically the MBIE submission which sought that: *"where necessary to achieve alignment with the objectives of the Auckland Plan and the Regional Policy statement sections of the proposed Unitary Plan, the zoning, overlays and development controls and other rules in the proposed Unitary Plan are adjusted and amended such that they do not constrain provision of sufficient residential development to meet Auckland's long term (30 year) growth projections, and proactively enable efficient growth in areas of high market demand."* (Refer: para 78, MBIE submission) (Emphasis added)

13. The Corporation's submission further stated:

That the provisions of the residential zones do not sufficiently encourage housing choices that are both necessary to support the social and economic demands of Auckland's community and are identified as appropriate in the Regional Policy Statement sections of Proposed AUP; (Refer: page 4, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Comment: The Corporation's concern that the current residential zone provisions did not sufficiently encourage housing choice within the Region is clearly stated. Again, this is line with the Minister for the Environment's submission (made by the Hon. Amy Adams as a "whole-of-Government" submission endorsed by Cabinet) which recorded the following concern with the Unitary Plan residential provisions:

"Based on Auckland Council and independent market-based modelling, there appears to be a large gap between the likely development capacity provided by the proposed AUP and that required to meet the objectives and projected population growth over the next 30 years. Some estimates have the gap at about half of that required. This is concerning irrespective of what growth and household formation projections are used.

In some market-attractive areas, where the development sector would be expected to respond to rising land values with more intensive (i.e. efficient) development, rules are especially constraining, and in some cases represent a down-zoning from existing plans. Conversely, the areas where zoning intensity has increased tend to be the areas where the economics of medium-and high-density development is more questionable due to the relatively lower levels of consumer demand for those typologies. This constrains choices for households, creates additional uncertainty for developers who will still likely risk 'out-of-zone' development, and by extension creates greater uncertainty for infrastructure providers about where growth is actually likely to occur.

There will always be uncertainty about how the market will respond to development opportunities. In addition, areas that are not market-attractive now may be more attractive in 15-30 years as development economics evolve, and as public and private investment generates amenity and connectivity. Nevertheless, it is vital that a market perspective informs the policies and rules in the AUP. I consider it is not enough for the AUP just to provide the needed capacity at a theoretical level. In order to meet the Plan's own objectives, and the wellbeing and resource-efficiency provisions of the RMA (urban land, dwellings, and infrastructure are all 'natural and physical resources' for the purposes of the RMA), the AUP needs to provide residential capacity in areas where it is demanded, and likely to be taken up." (Refer: paras 27-29, submission of the Minister for the Environment)

(Emphasis added)

With the following relief being specifically sought:

"that zoning, overlays, development controls and other rules be adjusted to provide sufficient residential development capacity and land supply – particularly in areas of high market demand – to meet Auckland's long-term (30 year) growth projections, as well as the development objectives of the AUP itself (as specified in the Auckland Plan and the Regional Policy Statement (RPS) component of the AUP)." (Refer: para 31, submission of the Minister for the Environment)

(Emphasis added)

14. The Corporation's submission also clearly noted concern that:

"With respect to residential zoning, that there has been inconsistent application of the Regional Policy Statement direction for urban intensification opportunities around Centres, Frequent Transport networks and facilities and other community infrastructure (e.g. education facilities). In particular, Housing NZ is concerned that the extent of areas zoned for greater residential intensification is not sufficient to achieve the desired urban uplift, nor to support other significant resources (e.g. the public transport network). For example, Housing NZ has undertaken an assessment of the extent of Terrance Housing and Apartment Buildings Zone (THAB zone) and concludes that it only represents 3.5% of land in the Metropolitan Urban Area. Similarly, the Mixed Housing Urban zone only representing some 6.5%." (Refer: page 6, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Comment: It follows that in seeking that there be a greater extent of land zoned for residential intensification, low intensity zones such as SHZ would decrease in size. Again this is in line with the relief sought in the Minister's submission that:

"the Proposed AUP's policies and methods be reconciled with its RPS-level objectives, improving the AUP's integrity, and that the approach for doing this focuses on increasing development capacity to provide housing supply and choice across a wide range of new and existing locations." (Refer: para 49, submission of the Minister for the Environment)

(Emphasis added)

15. The Corporation's submission also sought significant amendments to many of the proposed overlays notified in the Unitary Plan, with the stated aim of increasing the ability for residential growth to occur within residential zones within the Region (including the SHZ), noting:

"To this end, Housing NZ is concerned that substantial rezoning is required to achieve the outcomes of the Auckland Plan and the Regional Policy Statement. In response, Housing New Zealand seeks the rezoning of a notable proportion of its land. Table 3 provides a summary of property specific rezoning submissions.

These specific property submission points are made in addition to the submission matters that Housing NZ has made with zone, overlay and precinct provisions (Table 1). In this regard, it is important to note that the specific relief identified in terms of zoning requests is contingent on the provisions of the District Plan zones, overlays and precincts (to achieve the outcomes that Housing NZ is seeking). In summary, rezoning requests are made for the following broad reasons:

- a. *There are a number of Housing NZ properties and sites that are within walking access of Frequent Transport networks and facilities, education and other social facilities and/or centres such that they warrant a zoning that would enable further urban intensification from that currently proposed (e.g. a shift from proposed zonings of Single House and Mixed Housing Suburban to Mixed Housing Urban, Terrace Housing and Apartments or in a few cases to Mixed Use);*
- b. *There are a few Housing NZ properties and sites where the zoning proposed in the Proposed AUP is inconsistent with the current development pattern on or surrounding the site and it is considered an alternate zone is more appropriate to the sites' existing or proposed zoning;*
- c. *There are a number of Housing NZ properties that appear to have been 'down-zoned' (compared with either existing zoning or surrounding zoning) on the basis of infrastructure constraints (primarily flood hazard notations). It is submitted that these areas are better managed through the application of Overlays to address resource values / issues (such that if these issues can be addressed, the wider zoning pattern appears appropriate for the site);*

...

That there are instances where the precautionary approach has resulted in significant areas of the City being encompassed within Overlays. Housing NZ considers that the broad spread of Overlays and the constraints that are imposed by them are not, on balance, appropriately reflective of the resource management issues in the Regional Policy Statement. Housing NZ submits in opposition to the extent and degree of regulation of these Overlays. In particular, Housing NZ considers that these Overlays will unreasonably restrict development such that there is a risk that providing sufficient capacity to deliver a quality compact city with some 70% of growth directed to the existing metropolitan areas of the City will not be achieved. As illustrations (with Tables 1 and 4 providing further detail):

- a. *Approximately 80% of the areas of the City zoned for Terrace Housing and Apartments are have some form of Overlay (including designation) over it, leaving on 362ha without some form of further development control.*
- b. *For Housing New Zealand's stock, these figures are even higher, with 85% affected by overlay and only 21ha unaffected;*
- c. *Approximately 65% and 75% respectively of the Mixed Housing Urban and Mixed Housing Suburban zones have some form of Overlay (including designation) over it.*
- d. *Again, for Housing New Zealand's stock these respective percentages are 83% and 91%.*

Therefore, Housing NZ is concerned that even those limited land areas that have been identified within the existing Metropolitan Urban Area for residential growth are in reality even smaller than the zoning provisions would indicate. Table 4 highlights specific properties for where Housing NZ is seeking amendments to Overlay extents." (Refer: pages 6-7, 28 February 2014, Housing New Zealand Corporation submission)

(Emphasis added)

Comment: The Corporation's support for the new SHZ provisions stems (in part) from the need for a clear explication of the relationship between the SHZ and the constraints imposed by various overlays.

16. With specific reference to the District Plan mapping, the Corporation's submission states:

"In respect of the District Plan mapping, there has been an inconsistent approach between the mapping and imposition of controls associated with specific resources/resource values particularly between 'Overlays' and zoning. As an illustration, the Plan has both mapped heritage and special character as an Overlay, with specific development controls to manage activities in these areas and has used such information to change the underlying zoning (land use classifications) for these areas. Similar examples are evidence for natural hazards and infrastructure (e.g. floodplain areas)." (Refer: page 4, 14 January 2014, Housing New Zealand Corporation submission)

(Emphasis added)

In support of its rezoning the Corporation also noted in Table 3c of its submission:

"Housing New Zealand has made submissions on the REGIONAL POLICY STATEMENT, in support of the objectives and policy intent to achieve a compact quality urban form. In particular, Housing New Zealand supports (with amendment) Objective 3 (part B.2.1) and Policy 2 (Part 2.1), which provide for higher residential densities in areas that are proximate to services and facilities that enable quality living (e.g. in or near centres, frequent public transport routes and facilities, open spaces, community facilities, education and other social infrastructure and employment).

For the reasons that these objectives and policies are supported, Housing New Zealand has undertaken a review of their sites and considers that a number are suitable for rezoning. Housing New Zealand has undertaken an assessment that has been based on an iterative assessment which has initially undertaken a theoretical 'suitability' test assessment (based on proximity criteria) and where relevant has sought to supplement this with qualitative assessment (based on a review of surrounding development and urban form).

These sites have assessed against the following criteria:

- d. *For sites where Housing New Zealand seeks that they be rezoned to Terrace Housing and Apartment Building Zone;*
 - i. *They are within 400m of the Metropolitan Centre of Town Centre (a proximate walking distance of 5min, which is considered a reasonable distance for people walking to daily facilities and amenities and an appropriate distance to complement the higher density urban form of the Centres themselves);*
- e. *For sites where Housing New Zealand seeks that they be rezoned to Mixed Housing Urban:*
 - i. *They are within 800m of the Metropolitan Centre or Town Centre (as a 10min walk time proximate, which is considered a reasonable walking distance for larger shopping amenities provided by such centres);*
 - ii. *They are within 400m of a Local Centre or Mixed Use Zone (a proximate walking distance of 5min, which is considered a reasonable distance for people walking to daily facilities and amenities);*
 - iii. *They are within 250m of either a Frequent Transport Network (providing for walkable access to public transport services); or*
 - iv. *They are within 250m of other social infrastructure sites mapped in the PAUP (e.g. schools and tertiary education facilities).*
- f. *For sites where Housing New Zealand seeks that they be rezoned to Mixed Housing Suburban:*
 - i. *They are within 800m of a Local Centre or Mixed Use Zone (a proximate walking distance of 10min, which is considered a reasonable distance for residents in development of this scale to be walking to such amenities; or*

- ii. They are within 400m of Neighborhood Centres as this zone provides for the daily access to amenities appropriate to support urban development.

In addition to assessing the proximity to facilities, amenities and services (set out above), Housing New Zealand has also reviewed the 'constraints' that appear to have informed the proposed zoning pattern of the PAUP. For the reasons set out in Housing New Zealand's submission in support of the objectives and policies for urban development (Part 2.3 Objectives 1-4), and in seeking amendment to other policies of the REGIONAL POLICY STATEMENT (including but not limited to Policy 5 in Part B.6.7; Policy 3 in Part B.2.3; Policies 1 and 9 in Part B.4.1), Housing New Zealand does not support the effective 'down-zoning' of land on the basis of other resource values.

The approach of the PAUP has been to recognise and provide for resource values and constraints through application of Overlays. The principle of this approach is supported by Housing New Zealand as it clearly identifies the values that are being protected / provided for and the management mechanisms that are being used to achieve that protection / provision. However, it appears that in addition to the application of Overlays, these values have been used to inform the underlying zoning. Housing New Zealand considers that this approach results in confusion in the intent of the zoning and the overlays. For example, it appears that some areas of the City have been effectively "down-zoned" due to the sensitivity of development of these areas for heritage (potential heritage). However, in addition to this, the areas also have character or heritage overlays applied. Similarly, areas appear to have been down-zoned in areas of potential flood hazards. Notwithstanding other concerns from Housing New Zealand (regarding the accuracy and legality of this non-statutory information being used for zoning and rules), the outcome is that these areas are effectively being managed by two processes (Rules for the flood hazard and zoning pattern).

Housing New Zealand seeks that the management of values and resources that are identified in Overlays be managed through the application of Overlay rules, to specifically address the resource values / issues that are relevant to that Overlay and not the zoning pattern. In instances where this approach from Council has been applied, Housing New Zealand has sought to amend the zoning to reflect either the proximity criteria above or (as appropriate) the pattern of surrounding development that is not affected by the Overlay. It is noted that while Housing New Zealand has only submitted seeking this relief to their sites, consequential amendments may be appropriate for wider areas of areas that have effectively been down-zoned.

In addition to the site context issues above, there are a few Housing New Zealand properties and sites where the zoning proposed in the Proposed AUP is inconsistent with the current development pattern on or surrounding the site (including some inaccurate zones). Following our site assessments, Housing New Zealand seeks that these sites are re-zoned to provide a zoning more consistent with these development patterns.

Finally, following detailed review of Housing New Zealand sites, there are also a few Housing New Zealand sites where it is considered that an alternative enabling zoning would facilitate Housing New Zealand to deliver positive social and community change. Such outcomes would assist in Housing New Zealand contributing to the social and economic wellbeing of the community. For example, in cases where the age and condition of existing stock is having potential adverse effects on communities (e.g. amenity values), it is considered that an opportunity for redevelopment of these areas would positively contribute to quality urban form (Issue B.1.1 of the REGIONAL POLICY STATEMENT).

Housing New Zealand seeks a number of amendments of the provisions of the Unitary Plan relating to the use and development of its sites in the Region. The amendments sought can be met by amendments to the zoning provisions and/or by removal of the sites from various overlay provisions, but as an alternative can also be dealt with by way of introduction of another planning mechanism (for example, a Precinct (recognising Housing New Zealand's submission on the weighting given to Precincts relative to Overlays))." (Refer: Table 3: Housing New Zealand Site Specific Zoning Submissions 3c. Submissions in Opposition (Amendment Sought), Housing New Zealand Submission)

(Emphasis added)

Comment: Similar concerns regard the inconsistent zoning of land around centres and transport networks, the down-zoning of areas, and the widespread use of overlays which prevents intensification included in the notified Unitary Plan, was also included in the MBIE submission which noted that:

"The broad brush approach of the 'overlays', the inconsistency in zonings between market interest and density allocations (e.g. down-zoned areas around centres and transport corridors), and the misalignment

between density allowances and specific development controls that then constrain attaining that density.”
(Refer: para 12, MBIE submission)

And later in the MBIE submission similar submission points were made stating:

“As noted in the Government submission, the misalignment between the regional-level objectives and the district-level provisions are expressed through:

- *Proposed development controls and zoning (including future urban land) that do not provide the needed long-term development capacity to meet projected population growth*
- *A deliberate down-zoning apparent between the draft Unitary Plan released in March 2013, and the proposed version, creating a misalignment between areas of high demand and the areas where growth is provided for, which may create additional uncertainty for infrastructure providers, and additional cost to housing provision as developers challenge through out-of-zone consents, the development rules and zonings in order to achieve economically viable development”* (Refer: para 23, MBIE submission)

“There is little justification provided for why many zoning decisions across the city have been made – i.e. why ostensibly market-attractive areas near transport and employment etc. have been zoned at low densities (or lower densities than indicated in the draft Auckland Unitary Plan in March 2013). Inefficient use of market attractive land while protecting the micro-amenity of neighbourhoods in the short-term will seriously compromise the macro-utility of the city as a whole, and detract from the overarching vision of Auckland as the world’s most liveable city – attractive, economically efficient and socially equitable.” (Refer: para 28, MBIE submission)

“MBIE seeks amendment to the zoning and density rules pertaining across the region to re-establish and ensure alignment with the strategic objectives of the Auckland Plan and the Regional Policy Statement sections of the proposed Unitary Plan, with the zoning, overlays and development controls and other rules adjusted to provide sufficient residential development capacity and land-supply – particularly in areas of high market demand – to meet Auckland’s long term (30 year) growth projections.” (Refer: para 30, MBIE submission)

“Where necessary to achieve alignment with the objectives of the Auckland Plan and the Regional Policy Statement sections of the proposed Unitary Plan, the zoning, overlays and development controls and other rules in the proposed Unitary Plan are adjusted and amended such that they do not constrain provision of sufficient residential development to meet Auckland’s long term (30 year) growth projections, and proactively enable efficient growth in areas of high market demand.” (Refer: para 78, MBIE submission)

(Emphasis added)

17. Detailed amendments were also sought by the Corporation to the RPS which sought, that *“opportunities for brownfield urban intensification should be optimised”*. Further, amendments to the RPS were sought to enable higher residential densities and efficient use of land in neighbourhoods located in close proximity to employment opportunities.
18. In relation to the SHZ, specific amendments were sought to the regional and district objectives and policies to allow for greater density within this zone by way of rules permitting the conversion of an existing dwelling into two dwellings, and the establishment of a small detached residential unit in addition to the main dwelling.

19. For the Mixed Housing Suburban (“MHS”) and Mixed Housing Urban (“MHU”) zones, amendments were also sought to the regional and district objectives and policies to require the density and scale of development for those zones to achieve an appropriate balance between making the most efficient use of the site, whilst still providing quality amenity for residents and adjoining sites.
20. For the Terrace Housing and Apartment Buildings (“THAB”) zone, amendments were sought by the Corporation to the regional and district objectives and policies to “require” development to make the most efficient use of the site as was practicable, taking into account the ability to provide quality amenity for residents as well as adjoining sites.
21. Reading the Central Government submissions together (i.e. “*the whole relief package detailed in each submission*” to use Chisholm J’s language in the *Shaw* decision), it is submitted that it is quite clear that the objectives, policies, rules and spatial application of the zoning of the Unitary Plan as notified were under challenge due to the Corporation, and other Central Government submitters’ expressed concerns that the notified provisions would not provide for the levels of intensification required to address the Region’s housing shortage and to accommodate future growth. Whilst couched in broad terms, it is submitted that the relief sought was made with the necessary specificity to make clear to those reading the submission that greater intensification within zones and changes in the spatial composition of zones could occur (Refer: *Shaw v Selwyn District Council* [2001] 2 NZLR 277 at paras 29-33).
22. As such, it is submitted, that it would not be justifiable for a person to have assumed that the notified zoning of SHZ necessarily meant that their property was exempt from future intensification because of its current SHZ zoning. In that regard, it is submitted that the Panel should focus on the effects or consequences of the changes being sought in submissions, rather than the particular coding of a submission point. In a resource management context it follows, as a matter of law, that submissions seeking amendments to high level planning instruments, will if accepted, lead to amendments to lower order planning instruments. As noted in *Auckland Regional Council v Arrigato Investments Limited and Others* [2001] NZRMA 158:

“The Act creates a hierarchy of documents, each being required to reflect the objectives and policies of the document higher in the chain. There is a mechanism for resolving conflict: see s 82. Naturally, the most specific document is that at the bottom of the hierarchy – the district plan. But all documents in the chain should be considered when attempting to assess the overall objectives and policies and how in a given situation the sustainable management of natural and physical resources is to be promoted (which is the purpose of the Act: see s 5(1)).

For instance, one cannot sensibly consider whether s 6(a) was misinterpreted without considering the documents reliant on it further down the chain. Even when one gets to the district plan, which has specific objectives, policies, rule, and provisions relating to Pakiri and to subdivisions at Pakiri, one is still assisted in the appropriate understanding of that document by considering the other documents which in part led to it. The statutory documents need to be assessed as a whole.” (Refer: paras 12 and 13)

In effect, this is simply a reversal of the situation faced by the High Court in the *Shaw* decision where Chishom J stated:

"Although it is true that no new objectives and policies were actually formulated in either referrers' submission, there can be little doubt that both submissions signalled that the relief package was intended to include such modification to the objectives and policies as might be necessary to support the proposed rules. In my opinion the "workable" approach discussed by Panckhurst J required the Environment Court to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonable and fairly raised in the submissions. Given the nature of the proposed rules I cannot conceive that anyone could have been under any illusion that the submissions were seeking not only a reduction in lot size (and associated relaxation in relation to dwellings) but also any necessary modification to the objectives and policies. In other words, I do not think that anyone could justifiably complain that they would have lodged a submission if they had been aware that the referrers were seeking amendments to the objectives and policies. They were on notice that such amendments were contemplated." (Refer: para 31).

23. As noted above, the emphasis should therefore be on the relief package sought by the submitter and the consequence of that relief package as understood by "a reasonably informed reader or citizen" (Refer: *Healthlink South Ltd v Christchurch International Airport Ltd* AP14/99 at para 33). That is, a submission seeking an increase in residential intensification within the Region through, for example, an expansion of the THAB and MHU zones, necessarily means that the other zones within the Region will consequentially decrease spatially.
24. Likewise, a submission seeking the removal of overlays, for example the Pre-1944 or the volcanic viewshaft overlays, also would have an effect, indeed in some cases a quite profound effect, on the ability to intensify a zone and hence the continuation of the current "intrinsic values of existing low-density suburban housing, the character and amenity of which is protected by restricting subdivision, multi-unit development and activities" (Refer: para 8, Legal Submissions for Auckland 2040 Incorporated).
25. Submissions seeking the provision of minor dwellings within the SHZ would have the same effect in terms of increasing the intensity of the development envisaged within that zone. In a similar way, the submissions challenging the extent of the application of overlays and the attendant down-zoning of sites which has then followed in the notified version of the Unitary Plan, would (if the SHZ is to remain restricted in its ability to allow for future intensification), lead to changes in the spatial application of that zone.
26. To summarise, in a *Countdown Properties*³ sense it is submitted that the general nature of the changes now proposed by the Council are supported both by the combined written submissions of the Corporation, MBIE and the Minister; correspond to the grounds stated in those written submissions; and have been addressed in the cases presented at the hearing of submissions of those parties.

³ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145

