

IN THE MATTER

of the Local Government (Auckland Transitional Provisions) Act 2010, and the Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Auckland Unitary Plan

MEMORANDUM OF COUNSEL IN RELATION TO MEDIATION AND HEARING DIRECTIONS FOR NETWORK UTILITIES

24 FEBRUARY 2015

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MAY IT PLEASE THE HEARING PANEL:

1. Thank you for your direction as to Unitary Plan Hearing Topic 042 Infrastructure on 13 February 2015. This memorandum of counsel responds to that notice.

2. In its original submission on the Proposed Auckland Unitary Plan ("**Unitary Plan**"), the Auckland Utility Operators Group Incorporated ("**AUOG**") sought a dedicated Auckland-wide chapter for network utilities, which would contain all rules and development standards directly affecting network utilities.¹ Assuming that the Unitary Plan adopts the definition of network utilities in the Resource Management Act 1991, the following entities' operations would be caught within that definition:
 - (a) New Zealand Refining Company Ltd, the operator of the 170km Marsden Point to Wiri oil pipeline, and Vector Gas Limited (sub-para (a) of the definition of network utility operator);
 - (b) Spark Trading New Zealand Limited, Chorus New Zealand Limited, and Vodafone New Zealand Limited (sub-para (b) of the definition of network utility operator);
 - (c) Vector Limited, Counties Power Limited and Transpower Limited (sub-para (c) of the definition of network utility operator);
 - (d) Watercare Services Limited (sub-paras (d)(water), and (e) (sewerage), of the definition of network utility operator);
 - (e) Auckland Stormwater (sub-para (e)(drainage) of the definition of network utility operator);
 - (f) KiwiRail, Auckland Transport, and the New Zealand Transport Agency (sub-para (f) of the definition of network utility operator);
 - (g) Auckland Airport (sub-para (g) of the definition of network utility operator); and
 - (h) Airways Corporation (sub-para (h) of the definition of network utility operator).

¹ Annexure D of the original submission of the Auckland Utility Operators Group Inc, dated 25 February 2014 (submission number 4185).

3. As the Hearings Panel will have appreciated through the Regional Policy Statement ("**RPS**") level hearings, AUOG also sought a separate new issue addressing significant infrastructure at the RPS-level.² It was not practicable to pursue this separate issue because of the time constraints all parties were under, and consequently AUOG stepped away from this relief. This resulted in AUOG having to be involved in each separate RPS Hearing Topic, including preparing evidence, attending mediations and attending each hearing. In most cases, AUOG, and many other providers of significant infrastructure, were seeking equivalent relief in each of the various topic mediations and hearings. Council is currently working with the AUOG outside of the formal mediation and hearing process on a comprehensive Network Utility Chapter H1.1 the structure and form is yet to be confirmed. There is acceptance that the overlay provisions related to network utilities would be included within Chapter H1.1.

4. Looking towards the District and Regional Plan level mediations and hearings, some of which have already started, AUOG maintains its position that the Unitary Plan should contain a dedicated chapter for network utility rules, assessment criteria etc. The reason for this is two-fold:
 - (a) In a substantive/operational sense, a dedicated chapter for network utilities would be more user-friendly and efficient through the life of the Unitary Plan. It would enable those applying, and relying on, the network utility rules to find those provisions in one location. It would also avoid duplication through multiple chapters, eg providing for network utilities expressly within each of the multiple activity tables within each of the overlays.

 - (b) At a procedural/process level, AUOG could present its case in relation to the Unitary Plan at a single hearing, rather than needing to attend almost every hearing for the Unitary Plan still to come in order to seek a minor change to one or two provisions in each zone, precinct and overlay (as was needed to occur in respect of the RPS hearings).

² Annexure A of the original submission of the Auckland Utility Operators Group Inc, dated 25 February 2014 (submission number 4185).

5. While AUOG understands that there are other submitters with interests in more than one zone, precinct or overlay, AUOG respectfully submits that network utilities in particular are ubiquitous, are within virtually every zone and exist beneath almost every overlay in the Unitary Plan. Accordingly, there are both operational benefits (ie how the plan is applied), and procedural benefits (ie in how the Unitary Plan is developed through these mediation and hearing processes, as well as future plan changes that might just affect network utilities) that result from mediating and hearing all network utility-specific rules and all specific network utility objectives and policies together, and ultimately a separate network utilities chapter.
6. Furthermore, while a range of activities may need to occur within overlays, network utilities will almost always have a functional or operational need to be within or traverse those overlays (eg in order to service existing communities within or adjacent to those areas). These reasons, combined with network utility operators being very experienced at constructing and maintaining their assets (including at managing earthworks, vegetation management and tree works), means that a more favourable activity status would be desirable, as compared to, for example, commercial or residential development.
7. Ultimately, the AUOG proposes a Chapter H.1.1 which contains activities, rules and assessment criteria relating to network utilities, and which is structured to include the follows:
 - (a) Activity table 1, being all network utility works in all zones and precincts;
 - (b) Activity table 2, being all network utility works within the overlays; and
 - (c) a series of specific rules, within the Activity tables or separate, addressing the following activities associated with network utilities:
 - (i) works on trees (trimming, alteration, removal etc):
 - (aa) notable trees;
 - (bb) street trees;

- (cc) other protected trees;
 - (ii) works on vegetation (alteration, removal, etc);
 - (iii) earthworks.
8. AUOG acknowledges that the earthworks mediations have commenced, however the mediation has not yet reached the network utility provisions of the earthworks chapter. As occurred (informally) in respect of the historic heritage mediation, AUOG will be requesting that the network utility earthworks rules be heard at the same time as the mediation on network utilities (chapter H1.1). AUOG also sought a similar outcome in respect of Topics 29/30, Special Character and Pre-1944 which commenced on 23 February 2015.
9. AUOG is still considering how best to incorporate the objectives and policies relating to significant infrastructure into chapter C, or whether it is best to leave the chapter E Overlay objectives and policies in chapter E. It may be that specific network utility objectives and policies from chapter E get brought through into chapter C, but that, where only exemptions are sought within broader policies within chapter E, those objectives and policies remain within chapter E. As requested below, irrespective of their final location, AUOG seeks that these provisions be mediated as part of Topic 042.
10. The AUOG has been in preliminary discussions with Auckland Council and some other network utility operators. While we understand they generally support this proposal in principle, they will file separate memoranda addressing any matters they wish to raise.

Current directions - topics and timeframe

11. Currently, the directions for Topic 042 Infrastructure include the following provisions:
- (a) C.1.1 Infrastructure;
 - (b) C.1.3 Use of designations with the road corridor;
 - (c) E.1.3 City Centre Port Noise;
 - (d) J.1.3 City Centre Port Noise; and

- (e) E1.4 Electricity Transmission Corridor;
 - (f) J.1.4 Electricity Transmission Corridor;
 - (g) H.1.1 Network Utilities and Energy;
12. The timeframe for Topic 042 Infrastructure is:
- (a) pre-hearing meeting: 13 March 2015;
 - (b) mediation sessions: 16-17 and 21 April 2015;
 - (c) evidence due: 29 April 2015 for Auckland Council and 14 May 2015 for all other submitters; and
 - (d) hearing: 5 June 2015.

Amended directions sought

13. We respectfully request that there be a minor change to the mediation schedule, with the days of 16 and 17 April being moved to 22 and 23 April. The reason for this request is that the NZPI conference is taking place on 16 and 17 April, and many planners (from all parties) would like to attend that conference.
14. For the reasons outlined above, in particular in paragraph 4, the AUOG request that the Hearings Panel consider including additional provisions into Topic 042.
15. For the most part these additional provisions comprise those parts of the overlay chapters relating to network utilities, which AUOG is proposing to include within a separate table within H.1.1 that reflects the activities appropriate to network utilities.
16. We should record AUOG's acceptance that the rules relating to the CMA (ie the coastal plan section of the Unitary Plan) should remain within the coastal section. While ideally they would be located within chapter H.1.1, the extent and number of works within the CMA is very minor, compared to the extent and number of day to day works outside of the CMA. Accordingly, AUOG accepts that for works within the CMA, specific consents will be needed and the coastal chapters will need to be applied.

17. Accordingly, it is in our respectful submission, appropriate to include these parts of those topics within Topic 042:

Overlay rules

- (a) J6.1.1 (ONF) - Activity table, last line (network utilities);
- (b) J6.2.1 (ONFs, ONCs, HNCs) - Activity table, lines 6-11 (Network utilities and road networks);
- (c) J6.3 (Volcanic viewshafts & height sensitive areas) - Activity table, lines 6-10 (Network utilities and road networks);
- (d) J2.1 (Historic heritage) - Activity table 1, lines 15-17 (Development and maintenance - Infrastructure); noting that the AUOG has requested a more extensive list of activities that reflect the works that network utilities undertake;
- (e) J2.1 (Additional management controls for archaeological sites or features) - Activity table 2; Noting that the AUOG has requested a more extensive list of activities that reflect the works that network utilities undertake and for earthworks within these sites or features;
- (f) J2.1 (Historic heritage areas) - Activity table 3, line 3; noting that the AUOG has requested a more extensive list of activities that reflect the works that network utilities undertake and for earthworks within these areas;
- (g) J5.1 (Sites and Places of Significance to Mana Whenua) - Activity table 1, lines 5, 9, 10 and 12;
- (h) J5.2 (Sites and Places of Value to Mana Whenua) - Activity table 1, lines 4 and 8;
- (i) Overlay J4.1 (Auckland War Memorial Museum Viewshaft) - Activity table 1, lines 1 - 2 (network utilities);
- (j) J4.3 (Ridgeline Protection), Development controls 4.3.1.1, 1-3 (an exemption is sought for network utilities);

Objectives and policies

- (k) In respect of the following three sections, an exemption is sought for network utilities (this exemption could be discussed within the network utility mediation, with other submissions being heard in a separate chapter E mediation if necessary):
- (i) Overlay E4.1 (Auckland War Memorial Museum Viewshaft);
 - (ii) Overlay E4.3 (Ridgeline Protection);
 - (iii) Overlay E4.6 (Local public views);

Additional Chapter H rules

- (l) The following parts of chapter H insofar as they relate to network utilities, including Activity tables, development controls, and assessment criteria:
- (i) H4.2 (Earthworks);
 - (ii) H4.3 (Vegetation management);
 - (iii) H4.11 (natural hazards) and H4.12 (flooding) mediation for this topics has commenced with the mediation on the rules and assessment criteria due to start on 24 February. AUOG will be requesting at the mediation, as with Historic Heritage and as is proposed for earthworks, that the rules discussion related infrastructure be put on-hold and transferred to the Topic 042 infrastructure. AUOG would greatly appreciate the Panel's direction on this request.

18. AUOG and many other network utilities have a considerable interest in the provisions relating to trees, particularly street trees. While ultimately AUOG would seek to include provisions within H.1.1 which control tree works required by network utilities, AUOG accepts that this may need to be a separate mediation process.

Designations

19. AUOG members together have some 235 designations within the Unitary Plan. Together with the rules, the designations provide the other major

consenting framework for network utilities and other infrastructure within the Unitary Plan.

20. The vast majority of those designations have very few submissions lodged on them, other than the Council. (From an initial review, the total number of submitters on the AUOG's designations is only 6.) While conscious of all parties' workload, AUOG believes that there would be considerable benefit if the various requiring authorities commenced the process of informal discussions and if need be mediations with the Council and various submitters on these designations.
21. While not seeking specific directions at this stage, AUOG would welcome the Panel's guidance as to whether there would be any impediment (from the Panel's perspective) of commencing those discussions, or even bringing forward mediations and hearings of submissions on those designations.

Specific request

22. As noted above, mediations have commenced for many of the topics for which we are seeking directions. Accordingly, we respectfully request the Panel give this request whatever urgency it can. That will allow the mediations that have been set down to proceed most effectively.
23. If it would assist the Hearing Panel, counsel would welcome the opportunity to be heard on this application.

DATED: 24 February 2015



Bal Matheson

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