

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

IN THE MATTER of the Resource Management Act 1991 as amended
by the Local Government (Auckland Transitional
Provisions) Amendment Act 2010

AND

IN THE MATTER of submissions lodged on the Proposed Auckland
Unitary Plan

**MEMORANDUM FOR PANEL CONFERENCE ON PROCESS
2.00 PM FRIDAY, 3 OCTOBER 2014**

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MAY IT PLEASE THE PANEL:

1. This memorandum is lodged in response to the Panel's invitation to legal and planning practitioners to attend a conference on 3 October 2014 to discuss various matters relating to process. The Panel's willingness to discuss these matters with the professions is appreciated.
2. This memorandum is in addition to the memorandum lodged by Ellis Gould on Topic 004 on behalf of Kiwi Income Property Trust and Kiwi Property Holdings Limited, The National Trading Company of New Zealand Limited and The Waitakere Ranges Protection Society Incorporated which is listed as one of the topics for discussion ("**the EG Memorandum**"). This note endeavours to identify procedural matters that might usefully be canvassed at the conference.

Overall Concerns

3. The combination of the compressed timetables for each hearing topic and the sheer number of topics that are being progressed contemporaneously (and therefore have overlapping timetables) is placing significant procedural demands on practitioners and parties and is likely to adversely affect the quality of evidence before the Panel (see EG Memorandum paras 29 to 31). Anecdotally, many lay submitters are finding the process daunting and are effectively withdrawing from it or reconsidering their involvement.
4. The problems are, in practice, the consequence of the statutory timeframe which is incompatible with:
 - (a) The implementation, given the large number of submissions which have been received and the absence of merits appeals to the Environment Court, of a process which provides submitters with fairness and natural justice; and
 - (b) The development of a high quality Unitary Plan, particularly given that the PAUP involves changes to the operative planning regime in the region that are of unique significance and scale historically and therefore warrant particularly careful consideration.
5. Ideally the statute will be amended, either by reinstating merits appeals or by extending or removing the time constraint. It is accepted that in the absence of any amendment the Panel is constrained by the statute and the balance of this

memorandum identifies areas in which the process might be altered to ease pressure on parties.

6. The RPS provisions are particularly important in setting the framework for the balance of the PAUP and are also an area in which many parties have interests. Those interests will tend to disaggregate once the process moves into more confined areas of the PAUP. Thus the overlapping and speedy processing of RPS topics is particularly problematic from a practical perspective. Those factors suggest that a slow start at the RPS stage might help parties, practitioners and the Panel to ease into the hearings (see EG Memorandum paras 32 and 33).

Suggested Changes to Process

7. It is suggested with regard to timetabling matters that the Panel:
 - (a) Extend the time limits within each topic. The compressed timetables for each topic compromise settlement discussions and quality of thought on matters. Stretching the timetable for each individual matter will not necessarily extend the duration of the overall PAUP process but will enable settlements to occur and hence reduce hearing time.
 - (b) Factor in an opportunity for mediation (at least) on all topics. Parties want to avoid the cost and risk of hearings if possible. Mediation enables that to occur and will enable the Panel to concentrate on the more intractable differences of opinion.
 - (c) Require Council to exchange updated redlined provisions before mediation and again before evidence exchange. This facilitates settlements and enables evidence to be focused on remaining differences.
 - (d) Provide greater time between steps in timetables. This will enable a considered response by parties and witnesses and will give some recognition to the work pressures generated by the overlapping timetable requirements on multiple matters.
 - (e) Provide for sequential exchange on all matters. This enables evidence to be concise and focussed. In practice the Council evidence will set the agenda for hearings, particularly given the lack of a section 42A RMA report which would typically serve that function. This may prove particularly important for lay submitters (see EG Memorandum para 21).

8. The following is suggested with regard to the applications for leave to extend the 10 minute presentation time:
- (a) That the formality of the leave applications and the level of information required be clarified and minimised. Some applications are being made orally: Others are complying with the level of formality required.
 - (b) That the Panel requires such applications to be made only once all evidence is exchanged. By then parties will know what Council is proposing and the scope of issues in dispute. The number of applications needed is likely to reduce.
9. The following is suggested with regard to technical matters:
- (a) That the procedural requirements generally be simplified as much as possible. Process is currently dominating diaries and activities. Is it necessary, for example, for:
 - (i) Parties to specify witnesses before exchanging evidence?
 - (ii) Parties to attend prehearing meetings simply because they will be calling expert witnesses or have coding issues to resolve?

It is possible, if a simpler standard process with extended timeframes and provision for mediation is implemented, that the prehearing meetings will become less important for parties and can be reserved for significant procedural issues (eg: whether the topic or parts of it might best be heard at a later stage).
 - (b) That all relevant dates for each topic be placed in one easily located place (eg: on the relevant topic page in the hearings section of the Panel website). Currently, parties need to refer to multiple documents to identify dates.
 - (c) That a method be developed for further submitters to identify more easily the primary submissions with which they are concerned on a topic. Locating further submissions is currently very challenging in the absence of any cross referencing in the topic spreadsheets. There is also a suggestion that parties are receiving prehearing meeting notices where they lodged further submissions against a party who is being heard, even if they did not submit

on the part of the primary submission subject to the topic. Ideally all information will be easily and clearly accessible at the Panel's website.

- (d) That the timetables specify a day for evidence exchange and not a midday cut-off. The midday cut-off is practically challenging for professionals and presumably unfeasible for lay submitters (see EG Memorandum para 22 to 24).

DATED 3 October 2014

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a long, sweeping tail that ends in a small hook.

DA Allan

