

IN THE MATTER OF: The Resource Management Act 1991

AND

**IN THE MATTER OF: The Local Government (Auckland
Transitional Provisions) Act 2013**

AND

**IN THE MATTER OF: The Auckland Unitary Plan matters
pertaining to time allocation for hearings
and hearing procedures**

To: The Auckland Unitary Plan Independent Hearings Panel (The Panel)

AND

To: The Auckland Council

At the Judicial Conference on Procedural Minute 10 I was asked by the Chairperson to convey in writing to the Panel my oral submissions to the panel. I set these out below.

May it please the Panel,

1. Time Allocation and the significance of the RPS

- a. The RPS is the foundation document in the Unitary Plan. Decisions made on the RPS will significantly influence decisions to be made on the other documents comprising the Unitary Plan. As such it is imperative that adequate time be allocated to ensuring that the output from the process is a robust RPS that meets the aspirations and needs of Aucklanders.
- b. To achieve this there needs to be sufficient time devoted to each stage of the process, in particular:
 - i. Mediation and expert conferencing should be used for all matters relating to the RPS
 - ii. Sufficient time needs to be provided between each stage of expert conferencing, mediation, release of Council evidence and hearing so as to allow for proper consideration and response by submitters.

- iii. It is respectfully submitted that the time allocation and processes for RPS issues, in particular Topics 005 and 013 is insufficient and will seriously compromise the ability of submitters to make reasoned and well researched contributions to the process. A poor decision making process now on the RPS will inevitably compromise the ability of the Panel to make sound decisions on later documents.

2. Importance of knowing Council's position on submissions

- a. When the Draft UP was published it received over 20,000 submissions. The expectation was that Council would take considerable time considering those submissions, determining what changes were desirable and refining the DUP so that it could be released as a reasonably polished document. Unfortunately this did not occur and the PUP was rushed through and notified prior to Council elections. The result was an incomplete document which concerned many people and resulted in nearly 10,000 submissions and many further submissions. Council's own submission amounts to some 5000 pages (or so I am told).
- b. It is reasonable for submitters to expect that since notification Council will have been reflecting on the submissions and determining its position on the changes sought to the PUP. It is important that Council's current position is known before submitters embark on evidence preparation. Otherwise evidence could be prepared based on the PUP as notified only to find that Council's position has changed materially.
- c. Having Council's position known prior to expert conferencing and mediation would refine the process enabling parties to focus their efforts on remaining areas of disagreement. This would provide focus to the expert conferencing and mediation, likely leading to more settlements and reducing the matters requiring a full hearing before the panel. (See comments below on mediation)
- d. An essential component to this is providing sufficient time between receiving Council's position report and the mediation and expert conferencing stages (we suggest a minimum of 15 working days). This is necessary for the parties to make a considered response to Council's position. Such a time lag need not slow down the process. Multiple Topic issues can run concurrently.

3. Processes of the IHP

- a. The IHP hearing process for lay submitters is not only extremely confusing, it is extremely intimidating. To a lay person navigating the pre hearing meeting, expert conferencing and then the formality of a hearing with potential cross examination is a daunting prospect. Auckland 2040 represents approximately 100 community groups across Auckland, we are being inundated with requests for assistance on the process as well as the substance of their submissions. Many groups and individuals are finding the process just too much and are just giving up,

notwithstanding that their submissions might have real substance and should result in changes to the PUP.

- b. To assist our groups we have prepared a guideline to the process entitled *“How To Determine Which Hearings You Need To Attend”*

A copy of this document was requested by the Chairperson and is attached. The IHP are welcome to utilise this document in whole or part as they see fit.

- c. In addition, we are hosting a workshop on the IHP process on the 8th Oct; this has been oversubscribed.
- d. The efforts of Auckland 2040 can only assist at best a small number of the nearly 10,000 submitters, nearly half of whom we understand wish to be heard. We are greatly concerned that the process is excessively complex and will effectively deter a great many submitters from participating. Furthermore, most groups are unlikely to be able to afford expert witnesses if they are able, in fact, to find experts of good standing to represent them. Effectively, this will exclude all these submitters from an important stage of the process, expert conferencing, and will further limit their ability to have their concerns considered. This then brings into question whether the process is “Fair”. I would note that the MFE has determined that the “Environmental Legal Assistance Fund” is not available to submitters on the PUP.

4. The Role of Mediation

- a. The “one stage” IHP process can be contrasted with the “two stage” hearing process previously used in District Plan proceedings. Formerly a submitter had the opportunity to appear before a Council hearing panel principally comprising elected Councillors with perhaps some appointed hearing commissioners. This process had two advantages:

- i. It was an informal setting before a lay panel without the formality of a Court and without strict procedures and timelines. Lay submitters felt more comfortable at this level.
- ii. It provided a sorting mechanism whereby the great majority of submissions could be determined at this level leaving only the more contentious issues to proceed through to the Environment Court. Even contentious issues had the benefit of a thorough hearing at the Council level which benefited the subsequent hearing at the Environment Court.

- b. The one IHP stage process has neither of the above elements. If there is not a sorting mechanism by which some filtering of submissions can be undertaken, there are likely to be serious consequences to the hearing process:

- i. The sheer volume of submissions requesting a hearing may swamp the panel
- ii. Many submitters (particularly lay submitters) will attend hearings not fully understanding the process and poorly prepared and thus unable to adequately present their case.
- iii. Time frames set by the Panel may be unattainable and result in submitters being prevented from adequately presenting their case

- iv. Many submissions which would have been resolved at the previous Council level will still end up at hearing making the process inefficient.

- c. It is respectfully suggested that mediation may be one answer to these issues. If all topics are set down for mediation well before evidence exchange and hearings, then mediation could effectively be the process by which submissions can be debated in a more relaxed informal manner. This could have some significant advantages:
 - i. Lay persons will feel more comfortable in this type of forum
 - ii. Topics could be further refined into “Mediation Issues” whereby the core issues within each topic could be identified and mediation held specifically for those submissions covered by each Mediation Issue.
 - iii. Council will be able to circulate a Mediation Issue Report setting out its position on the issue prior to the mediation to focus the debate
 - iv. Many submissions may be able to be resolved through mediation
 - v. Those issues not resolved by mediation may be referred to expert conferencing to refine the issues prior to hearing
 - vi. Issues going to hearing will have been refined making for a more reasoned and efficient process at the hearing
 - vii. The hearing time before the Panel may be significantly reduced enabling the Panel to devote more time to the important issues.

It is therefore respectfully requested that all Topics be broken down into Mediation Issues and each issue be the subject of mediation. Further that Council be requested to provide Mediation Issues reports to all relevant submitters prior to each mediation.

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4th October 2014