

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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**Procedural Minute No.10 by Chairperson of  
Independent Hearings Panel**

**Minute in relation to leave to apply for  
additional presentation time at hearing sessions**

Revised 19 January 2015

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*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

**Proposed Auckland Unitary Plan**

**Minute in relation to leave to apply for  
additional presentation time at hearing sessions**

**Procedural Minute No.10 by Chairperson of Independent Hearings Panel**

**Directions**

**Submitters or groups of submitters who consider that they will require more than 10 minutes to present an oral case in support of their submissions (including any legal submissions) may apply to the Hearings Panel for additional time.**

**Any such application for additional time must be made in response to a notice of, and at least 5 clear working days prior to, a pre-hearing meeting and must include:**

- (a) the total amount of time sought;**
- (b) a breakdown of the amount of time sought by reference to the person or persons who will be presenting submissions or evidence;**
- (c) a schedule setting out the extent of evidential material relevant to the submission, including the submission itself and the evidence intended to be lodged (note the evidence itself is not required at the pre-hearing meeting);**
- (d) (if not already contained in the submission) a succinct statement of:
  - i. clear references to the specific provisions of the PAUP to which the submission relates;**
  - ii. the specific amendments sought by the submitter to the text or maps of the PAUP; and**
  - iii. the reasons why such amendments are appropriate; and****
- (e) reasons why the amount of additional time sought is necessary in light of the evidential material listed in (c) and the statement in (d);**
- (f) whether or not the submitter is joining with other submitters to present a co-ordinated case.**

**Decisions on applications will be made at the pre-hearing meeting after considering the application and taking into account the number of submitters who wish to be heard, any other applications for additional time and the overall amount of hearing time available for that topic.**

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**The decision will be documented in the Pre-hearing Meeting Record which will be available at <http://www.aupihp.govt.nz/hearings/> three working days after the pre-hearing meeting.**

**Any submitter who has been allocated additional hearing time is required to advise the panel office promptly if the additional time is no longer necessary as a result of an expert conference, mediation or any other reason.**

**Background**

1. The several submitters listed below have communicated with the Hearings Panel to express concern about notices of hearing issued by the Panel which advise that the time available to each submitter to present their case at hearing sessions will be 10 minutes:
  - (a) #5137 Ports of Auckland Ltd
  - (b) #2968 Scentre (NZ) Ltd (previously, Westfield (NZ) Ltd)
  - (c) #5253 Kiwi Income Property Trust
  - (d) #6558 Mediaworks Holdings Ltd
  - (e) #2632 National Trading Company of NZ Ltd
  - (f) #3416 Sanford Ltd
  - (g) #839 Housing New Zealand Corp.
  - (h) #868 New Zealand Steel Ltd
  - (i) #877 Waste Management (properly, Transpacific Industries Group (NZ) Ltd)
  - (j) #2748 The Warehouse Ltd
  - (k) #6106 Ryman Healthcare Ltd
2. The submitters say that such a limit would deprive them of a fair hearing. They seek:
  - (a) 10 minutes per witness;
  - (b) sufficient time for opening legal submissions; and
  - (c) with the leave of the Hearings Panel, the opportunity to have a longer period to present their case to enable submitters with complex cases to present a comprehensive case.
3. As to what is appropriate and fair in the circumstances, the submitters make the following points:
  - (a) their submissions raise broad or complex ranges of concerns;
  - (b) they have significant assets;

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- (c) the limited time slot for each presentation is a disincentive to groups of submitters to present a co-ordinated case in a single presentation;
- (d) there is a need for input to the most significant recasting of the statutory planning provisions for the Auckland region since the enactment of the RMA;
- (e) the removal of a two-stage submission and appeal process and the loss of an unlimited appeal right to the Environment Court was to be balanced by a fair hearing with elevated protections such as the opportunity to cross-examine witnesses;
- (f) a ration of 10 minutes to present a submission will be more constrained than any previous process with a severely reduced right of appearance to express the submitter's position;
- (g) these submitters are significant contributors to the region's economy;
- (h) the limit is not in accordance with natural justice and was not expected as part of the "high quality streamlined process" which, they submit, was the purpose of the amended procedure;
- (i) the Panel needs to receive legal submissions and submitter or expert evidence that will not fit in a 10 minute slot.

## **Discussion**

4. The relevant provisions of the Local Government (Auckland Transitional Provisions) Act 2010 ("LGATPA") govern the proceedings of the Hearings Panel. Particularly relevant to this issue are the following:
- (a) the Panel must hold a hearing into submissions (s128(1));
  - (b) for that purpose the Panel must establish a procedure for hearing sessions that is appropriate and fair in the circumstances (s136(4)).
  - (c) the Panel may direct:
    - i. the provision of briefs of evidence in writing before a hearing session (s139);
    - ii. that submissions and evidence be taken as read or limited to matters in dispute (s140(1));
    - iii. a submitter not to present any part of a submission that is irrelevant or not in dispute or does not relate to that part of the proposed plan being addressed at the hearing session (s140 (3)).
  - (d) the Panel must provide its recommendations on the proposed plan by 22 July 2016 (s146).

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- (e) the Panel may request an extension of the deadline that is no later than 1 year after the original deadline and the Minister for the Environment has an unspecified discretion whether to grant such a request (s147).
5. The Panel accepts without hesitation that very many of the issues that arise in relation to the Proposed Auckland Unitary Plan (“PAUP”) are complex and require careful consideration which could be enhanced by cogent oral presentations. In relation to its procedures generally, the Panel wishes to make it clear that any submitter may apply for leave to deal with any particular matter that deserves some special consideration while recognising that such an application will be considered in the context of the whole process for preparing the PAUP.
6. Certain other circumstances not mentioned by these submitters also appear to the Panel to be relevant and important to that context. Obvious matters are listed below.
- (a) The PAUP is required to comprise the Regional Policy Statement, Regional Plan, Regional Coastal Plan and District Plan (other than in relation to the Hauraki Gulf Islands): this is the first occasion where such a comprehensive review of the statutory planning documents for a unitary authority has been undertaken.
  - (b) A Draft PAUP was released for review and comment between March and June 2013.
  - (c) The PAUP as notified on 30 September 2013 consists of 10 lever-arch volumes of text on A4 pages and 3 volumes of maps on B2 pages.
  - (d) The period for lodging submissions was extended to 28 February 2014.
  - (e) More than 9,400 primary submissions and 3,800 further submissions have been made.
  - (f) The scope of submissions ranges between essentially pro forma submissions making a single point to submissions of hundreds of pages making hundreds of submission points.
  - (g) In many cases the submissions are detailed and helpfully set out in relatively succinct terms:
    - i. clear reference to the specific provisions of the PAUP to which their submission relates;
    - ii. the specific amendments sought by the submitter to the text or maps of the PAUP; and
    - iii. the reasons why such amendments are appropriate.
  - (h) Approximately half of all submitters have indicated they wish to be heard.

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- (i) The LGATPA provides a substantially amended process to that in Schedule 1 to the RMA, incorporating a range of pre-hearing processes such as expert conferencing and mediation, which may be used to reduce or even eliminate the need for oral hearings of submissions.
  - (j) The Panel has directed that evidence is to be lodged in advance to enable it to be read prior to the relevant hearing. The Panel has not made any such direction in relation to legal submissions (recognising that counsel may need to address late-breaking events) but counsel will discern that their clients may benefit from written legal submissions being lodged in advance on the same basis.
  - (k) As well as scheduling time for pre-hearing meetings and hearings, the Panel will require time to consider submissions and deliberate on its recommendations to the Auckland Council.
  - (l) The Panel is subject to s32AA of the RMA.
7. In response to some of the matters put forward by the submitters as to appropriateness:
- (a) the Panel does not distinguish among or prefer persons by reference to such matters as the value of their assets. It may be appropriate in the course of hearing submissions to examine the extent to which any particular provisions of the PAUP may disproportionately affect the wellbeing of particular persons or groups of persons, but that does not appear to be a determinative consideration in relation to these procedural issues;
  - (b) at this stage the Panel considers that it has a duty to all submitters to afford each of them a fair and appropriate opportunity to be heard, while noting that such an opportunity includes the opportunity to lodge written material with the Panel for its consideration;
  - (c) the Panel does not consider that the differences between the hearing process under the LGATPA (including the limited appeal rights) and that under Schedule 1 to the RMA necessarily constrain the Panel's powers or discretions under the LGATPA.
8. The Panel is endeavouring to strike a balance between the concerns of submitters that their submissions are able to be presented on some reasonable basis (including through expert conferences and mediation) and its own needs to address all those matters and complete its statutory obligations within the time set in the LGATPA. The statutory deadline is a significant constraint on the whole process. While an extension of time for the Panel to present recommendations to the Auckland Council is possible, there is no certainty of

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obtaining it. At this stage the Panel considers it must budget the time presently available to it in the best way it can to deal with all submissions.

**Directions**

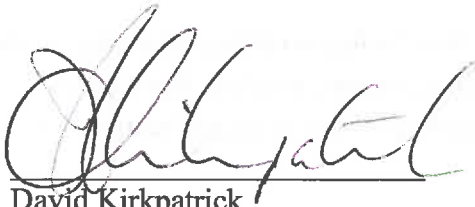
9. For those reasons, the Panel considers it appropriate to continue to restrict the standard presentation time for submitters at hearing sessions.
10. However, the Panel will consider applications for extra time where those are supported by appropriate reasons why the standard for all submitters ought to be enlarged in the interests of fairness and an appropriate hearing process while keeping in mind the deadline to which the Panel must budget its time resources and the reasonable expectations of other submitters.
11. Such an application must be made no later than 5 clear working days prior to the pre-hearing meeting, as part of the pre-hearing process, to allow the Panel to make arrangements for the scheduling of hearings. Any such application for additional time must state:
  - (a) the total amount of time sought;
  - (b) a breakdown of the amount of time sought by reference to the person or persons who will be presenting submissions or evidence;
  - (c) a schedule setting out the extent of evidential material relevant to the submission, including the submission itself, any joint statement of expert witnesses, any mediated agreement and the pre-circulated evidence to be lodged (note the evidence itself is not required at the pre-hearing meeting);
  - (d) (if not already contained in the submission) a succinct statement of:
    - i. clear references to the specific provisions of the PAUP to which the submission relates;
    - ii. the specific amendments sought by the submitter to the text or maps of the PAUP; and
    - iii. the reasons why such amendments are appropriate; and
  - (e) reasons why the amount of additional time sought is necessary in light of the evidential material listed in (c) and the statement in (d);
  - (f) whether or not the submitter is joining with other submitters to present a co-ordinated case.
12. Decisions on applications will be made at the pre-hearing meeting after considering the application and taking into account the number of submitters who wish to be heard, any other applications for additional time and the overall amount of hearing time available for that topic.

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13. The decision will be documented in the Pre-hearing Meeting Record which will be available at <http://www.aupihp.govt.nz/hearings/> three working days after the pre-hearing meeting.
14. Any submitter who has been allocated additional hearing time is required to advise the panel office promptly if the additional time is no longer necessary as a result of an expert conference, mediation or any other reason.

Dated at Auckland this *19th* day of January 2015



David Kirkpatrick  
Chairperson, Hearings Panel for  
proposed Auckland Unitary Plan