

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 by the University of Auckland (5662) and Karaka North Village Limited (5925) on the Proposed Auckland Unitary Plan

Memorandum on behalf of the University of Auckland and Karaka North Village Limited in relation to Procedural Minute No 14 and in response to memoranda of the Auckland Council dated 21 & 27 April 2016

4 May 2016

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Barristers

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1. I have read the 2 decisions of the Environment Court¹ in relation to the declaration proceedings instigated by the Auckland Council in respect of proposed “Framework Plan” provisions intended to be included in the PAUP.
2. I have read the 2 memoranda on behalf of the Auckland Council dated 21 April and 27 April 2 016, and Procedural Minute No 14 by the Chairperson of the IHP.
3. I refer first¹ to the Memorandum on behalf of the Auckland Council dated 21 April 2016. Paragraph 10 of that memorandum sets out declaratory order AA as found in the Final Decision. In paragraph 11 it goes on to say that the Final Decision “*approved* slightly amended versions of the Chapter G and Chapter K provisions filed by the Council, and it is those which will now be adopted by the Council for the purposes of Topics 080 and 081 and the certain precincts which provide for “Framework Consents”.”
4. With respect to counsel for the Auckland Council, the Environment Court did not approve these provisions as the memorandum suggests; rather the declaration is that the Unitary Plan may lawfully include a provision enabling an application for a bundle of land-use consents for defined purposes and as set out in the attachments to the decision marked “Chapter G” and Chapter “K”.
5. From my reading of the Interim Decision it is plain that the Environment Court was at pains to point out both during the course of the hearing of submissions and in its Interim Decision that its role was not to enter into a consideration of the merits of particular Unitary Plan provisions, but only consider what provisions might be lawfully included in the Unitary Plan. Its orders are framed in those terms and in my submission the wording set out in the attachments in respect of those two chapters is properly regarded as

¹ Interim decision Dated 24/03/16; Final decision dated 15/04/16

examples of what could be lawfully included rather than carrying some sort of endorsement, still less approval.

6. As it is the role of the IHP to consider the merits of any particular PAUP plan proposals, the first consideration is whether it is now appropriate to embark on a merits consideration of proposed amended provisions. The Council's memorandum simply announces that the provisions it provided to the Court for consideration "*will now be adopted by the Council for the purposes of Topics 080 and 081*". At this stage of the Unitary Plan review the Council's role is as a party to proceedings before the IHP – its role as a decision-maker commences after the IHP has delivered its recommendation report on 22 July 2016.
7. Council's memorandum went on to seek guidance, suggesting 2 options were available for the IHP to consider, both of which contemplated the Council supplying the revisions to Chapters G & K. Almost as an afterthought the memorandum acknowledged that submitters may wish to respond to the revisions prepared by the Council.
8. I refer to the Procedural Minute in response dated 22 April 2016. With respect, that very properly raises the question of whether there is an opportunity for the Panel to schedule further hearings in order that submitters can participate in the process. While the Council's first Memorandum did acknowledge that the hearings of Topics 080 and 081 were or were about to be completed, the approach taken by the Council in my submission rather assumes that the orders issued by the Environment Court referencing certain proposed provisions that could be included in Chapters G & K amounts to some sort of endorsement of those provisions which require only IHP ratification. Further, the first memorandum refers to a list of precincts – paragraph 16 states there are 24 precincts that currently include framework consent provisions. The Auckland Council is referring there to its own proposed wording in respect of precincts where it considered provision should be made for "Framework Plans".
9. On the 24th of February 2016 I presented submissions on behalf of the University of Auckland in respect of 5 campuses, including the East Tamaki Campus. I refer to those legal submissions of the same date at paragraphs 57 – 71, and note that footnote 30 referred to the Auckland Council's

declaratory application. Consistent with proposed concept plan provisions put forward at the hearing of Plan Change 375 to the Operative District Plan, approved by decision of the Auckland Council dated 23 December 2015, the legal submissions and the evidence of the University's planning consultant Karl Cook proposed the inclusion of a provision which would achieve the equivalent outcome to the "Framework Plan" wording found in the notified Unitary Plan, and which I had advised the University was unlawful by reference to the "*Queenstown*" decisions of the Environment Court.

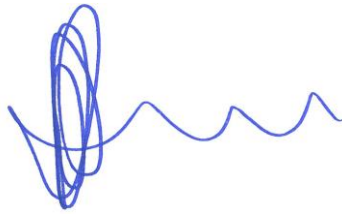
10. The same approach was adopted for the hearing under Topic 081 of the zoning and precinct proposals for the Karaka North Village zone included in the notified Unitary Plan. The submission by the landowner (Karaka North Village Limited, (5925)) had requested an expanded zoning, and the application of precinct provisions including a Framework Plan. Subsequent to the *Queenstown* decisions my legal advice was that an alternative approach was required to including in the proposed precinct a requirement for a Framework Plan, and the wording that had been utilised for the East Tamaki Campus was adopted. This was included in the proposed precinct provisions presented through the evidence of the company's planning consultant Nick Grala, and referred to in paragraphs 57 – 59 of my legal submissions dated 12 April 2016.
11. Neither of the memoranda that have been lodged by the Auckland Council refer to these precinct provisions, although the hearing procedures adopted by the IHP for both topics enabled the Auckland Council lawyer and planning witnesses to respond during the course of the hearing to the submitters presentation on all issues. And of course, the evidence of the planning witnesses and their proposed precinct provisions had been pre-circulated.
12. The second memorandum of the Auckland Council dated 27 April 2016 acknowledges that the hearing of submissions on re-zoning and precincts were scheduled to conclude the week the memorandum is filed and that "*some precinct submitters may want to participate in the consideration of any revised "Framework Consent" provisions by way of reconvened hearings on certain precincts.*" However the memorandum goes on to maintain the position that the Council intends that it's revised provisions

(still referred to as “recently *approved* by the Environment Court”) should be included and states its intention to complete the required revisions and file them by 13 May 2016.

13. I oppose this process, and submit that it is now necessary for the IHP to rule on whether or not it will deal with this matter further. The timing of the declaration proceedings and the speed with which they were dealt with was a matter in the hands of the Auckland Council. Regrettably (on the basis that the Auckland Council needed a declaration of the Environment Court to appreciate that its notified provisions were unlawful) the orders received in the Final Decision of the Environment Court have come too late. The hearings on all topics have been completed and in my submission it is now out of the question for the Council to produce 11th-hour changes to plan provisions in respect of Chapters where the hearing procedures are complete, and where the effect of that revised wording on specific precincts cannot be considered as the hearings on Topics 080 & 081 are also complete.
14. The latest Auckland Council memorandum describes the changes as “mostly technical”; however that is pre-judging the issue, the issue being whether the IHP would recommend the proposed provisions the Council now proposes to offer up, after a merits consideration. Apart from other legal considerations natural justice requires that all submitters that have an interest in these provisions have an opportunity to engage in the process of determining whether the provisions are appropriate or should be amended. There is also the additional consideration in respect of the two situations referred to above where on behalf of submitters legal submissions and expert evidence has been produced during the hearing of topics 080 and 081 to support an alternative to provision for a Framework Plan- or as now titled in the Council’s latest version “Framework consents”. Neither precinct is on the list in paragraph 16 of the first memorandum since provision for them arises in response to a landowner submission.
15. There is another option for the Auckland Council. That option is to advise the IHP that the proposed “framework plan” provisions found currently in the notified version of Chapters G & K are withdrawn since the declarations made by the Environment Court have not ruled in their favour. The matter of alternative provisions can be the subject of a future plan change.

16. In my submission the alternative must be a proper opportunity for debate as to the merits of the alternative provisions that the Council asks that it now be able to produce for consideration by the IHP. In my submission if that process is to proceed it must enable fair and proper engagement by submitters.

Dated this 4th day of May 2016

A handwritten signature in blue ink, consisting of a series of loops and a wavy line extending to the right.

Richard Brabant

Counsel for the University of Auckland and Karaka North Village Limited