

**From:** Douglas Allan [mailto:dallan@ellisgould.co.nz]

**Sent:** Friday, 27 March 2015 12:04 p.m.

**To:** Julie McKee

**Cc:** 'jennifer.caldwell@buddlefindlay.com'; Angela Bull (angela.bull@foodstuffs.co.nz); Vaughan Smith (vaughan@vsplanning.co.nz); dickey@brookfields.co.nz

**Subject:** Auckland Unitary Plan Independent Hearing Panel - Independent legal advice sought on Framework Plans

Dear Julie,

Thank you for your email of 13 March 2015. We write on behalf of The National Trading company of New Zealand Limited.

Our client has not challenged the vires of the Council's framework plan mechanism and does not make any substantive submissions on the content of the opinion obtained by the Panel from Royden Somerville QC. NTC remains concerned, however, by the practical implications of the ongoing uncertainty regarding the lawfulness of the framework plan mechanism. It was for that reason that NTC suggested in its PAUP submissions that the Council seek a declaration as to the legality of its proposed mechanism. Council elected not to do so but the ongoing uncertainty is reflected both in the Panel's commissioning of Mr Somerville's opinion and in the nature of his conclusions. By way of example, Mr Somerville's findings in paragraphs 86, 88 and 89 are all expressed in terms of likelihood and raise doubts about the vires of various aspects of the Council's approach.

In the circumstances, NTC considers that, while Mr Somerville's opinion is informative and casts light on the issues, it does not resolve the matter and instead reinforces the need for an early judicial determination to provide clarity. It remains desirable for that clarity to be provided prior to the mediation and hearings on precincts that use framework plans. There are two possible courses of action:

1. First, the Panel could hold a hearing on this legal matter and invite Council and any interested parties to present evidence and submissions. It would then issue its findings, presumably in the form of a minute or determination. Our understanding is that such findings could not be appealed at this stage, however, which leaves open the possibility that appeals might be lodged once the Council issues its decisions on the Panel's recommendations in due course. If such an appeal was successful the Panel, Council and parties would need to revisit the framework plan method.
2. Secondly, the Council could apply to the Environment Court for a declaration regarding the vires of the mechanism. That matter could, conceivably, be heard by Judge Kirkpatrick. Any decision issued in that regard could then be appealed and a definitive position arrived at prior to the mediation and hearings on the affected precincts.

We reiterate that NTC does not propose to take part in any substantive hearing on these matters as it is already heavily committed to the PAUP process and is having to apply its resources judiciously. This note is tendered solely to record our client's thoughts on how best to resolve the issue.

I have copied this email to Jennifer Caldwell and Melinda Dickey as I understand they may be representing Council in this regard.

Regards,  
Douglas Allan

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