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Auckland Unitary Plan Independent Hearings Panel
Level 15, Tower One
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Re: Assessment of the Vires of Unitary Plan provisions for Framework Plans

The Auckland Unitary Plan Hearings Panel ("Panel") has on 13 March 2015 received independent legal advice from Dr Somerville QC on several questions arising from Framework Plan ("FP") provisions contained in the Proposed Auckland Unitary Plan ("PAUP").

The assessment comes to the conclusion that several of the proposed FP provisions are likely to be either *ultra vires* specific sections of the RMA or raise issues involving the principle of non-derogation of grant.

I consider the main findings of the legal assessment to be:

1. A resource consent application within a precinct where a FP is required but there is no existing FP, will need to be considered on its merits and without its activity status being linked to the existence or presence of an approved FP (see no. 63 of the assessment).
2. FP provisions providing "incentives" to encourage the mechanism to be used may be *ultra vires* section 76(3) of the RMA (see no. 88 of the assessment).
3. A planning framework that allows an individual landowner to apply for a FP as a land use over another owner's land without that owner agreeing is likely to raise issues involving the principle of non-derogation of grant (see no. 89 of the assessment).
4. Allowing a FP to apply to land in a precinct when other landowners in that precinct refuse to allow the FP to be given effect to on their land would also raise the principle of non-derogation of grant for the landowner holding the resource consent for the FP (see no. 89 of the assessment).
5. An incentive rule for application for a resource consent for a FP on the basis that a FP can exceed performance standards in a precinct is likely to be against section 76(3) of the RMA (see no. 88 of the assessment).

As a result there are serious doubts regarding the legitimacy of FPs involving properties of several landowners that have not agreed to this approach.

In light of the findings of the legal assessment, all provisions in the PAUP relating to FPs should be reviewed and, where necessary, amended accordingly.

It would be helpful if Auckland Council could provide a revised version of these provisions in time before the judicial conference scheduled for 13 April 2015.

After receipt of the revised version of the provisions, it will be possible to comment further.

Yours sincerely,



Karl Schweder