

UNDER the Local Government (Auckland Transitional Provisions) Act 2010, and the Resource Management Act 1991

IN THE MATTER of the proposed Auckland Unitary Plan

AND

IN THE MATTER submissions by Ngati Whatua Orakei Whai Rawa Limited (Submitter No. 883) on the proposed Auckland Unitary Plan

MEMORANDUM OF COUNSEL REGARDING THE ISSUE OF FRAMEWORK PLANS

DATED 27 MARCH 2015

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MAY IT PLEASE THE HEARINGS PANEL:

1. This memorandum is filed on behalf of Ngati Whatua Orakei Whai Rawa Limited (**Whai Rawa**), which has made a number of submissions on the proposed Auckland Unitary Plan (**PAUP**). Many of Whai Rawa's submissions and proprietary interests relate to or are potentially impacted by provisions of the PAUP which incorporate Framework Plans. Accordingly, Whai Rawa is interested in Framework Plans, and in particular the issues raised by the Panel as addressed by Dr. Royden Somerville QC in his letter to the Hearings Panel dated 13 March 2015.
2. Whai Rawa is particularly interested in the Panel's questions numbered 1, 3 and 4 as addressed to in Mr Somerville's opinion. These matters are relevant to Whai Rawa's land holdings at Quay Park, which are part of the Quay Park Precinct in respect of which Framework Plans are relevant. Whai Rawa also owns land in other precincts, so has a general interest in Framework Plans.
3. Counsel therefore responds to the Panel's invitation to provide written correspondence in relation to Mr Somerville's legal advice.
4. In respect of questions 1, 3 and 4, the following submissions are made:
 - (a) Framework Plans should not be required to be in place prior to applications for resource consent being filed in order to avoid a non-complying activity status. It is not appropriate to make an activity a non-complying activity simply because there is no pre-existing approved Framework Plan (Question 1).
 - (b) It is appropriate to consider consistency with an approved Framework Plan as a matter for assessment when considering a resource consent application (Question 3).
 - (c) It is appropriate to provide "incentives" (noting that this term is not necessarily accepted as accurately representing the position) through the Framework Plan process to enable additional development potential for a precinct. The Framework Plan process includes consideration of the potential environmental effects of enabling increased development

potential and there is therefore an 'effects link' to enabling additional development potential (Question 4).

5. We also refer to Mr Somerville's discussion regarding notification rules for Framework Plans (Question 4). We respectfully suggest that this is an issue as to the merits of notification, rather than being a *vires* issue.
6. We note that the Framework Plans are to be considered as part of the upcoming City Centre 050 Hearing Topic, in particular with regard to the Quay Park Precinct. The Council's evidence is due to be filed for this hearing topic on 2 April 2015. The Council's evidence and any proposed amendments to the Framework Plan provisions of the PAUP may affect the way in which Framework Plans are to be approached (at least as proposed by the Council). Whai Rawa reserves the right to respond to that evidence as is appropriate, including considering the issues raised by Mr Somerville in the context of any proposed amendments to the Framework Plan provisions.
7. Counsel wishes to participate in the judicial conference for this issue on 13 April 2015.

DATED 27 March 2015



D R Clay
Counsel for **NGATI WHATUA ORAKEI**
WHAI RAWA LIMITED