

BEFORE THE AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

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 on the Auckland Unitary Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF TODD PROPERTY IN
RELATION TO INTERIM RECOMMENDATIONS ON THE REGIONAL PLAN
POLICY STATEMENT**



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May it please the Panel:

1. While potentially creating an additional volume of work for the already pressured Independent Hearings Panel ("the Panel"), it is submitted that understanding what direction the Panel's deliberations on the RPS are taking at this time would greatly assist with, and simplifying the process for, the remainder of the Proposed Auckland Unitary Plan Hearings process and relieve pressure further down the track.
2. As stated previously, Todd Property recognises that this hearing process is unique; that the Panel is under strict time constraints and that a practical, collegial and "good faith" approach needs to be adopted by all parties to this process if the Panel is to meet the statutory time frame set out in the Local Government (Auckland Transitional Provisions Act 2010).
3. As a general comment, Todd Property does not oppose the approach proposed by Russell McVeigh in its letter of the 16th of December 2014 to the extent that a track changed version of the RPS along with the Panel's interim recommendation in the first half of 2015 would greatly assist all parties in preparing and providing focused evidence on the Regional and District Plan provisions.
4. At the same time, Todd Property expresses some concern with the revelation by Auckland Council that it intends to adduce further evidence on the RPS at the lower tier hearings and, potentially, with any party wishing to re-litigate matters already heard, unless this has been traversed with, and agreed to, by the Panel.
5. Todd Property does not share the view expressed by Auckland Council that the Regional Policy Statement "vertically integrates" with the lower tier plan provisions. Todd Property holds the conventional view that the RPS sits atop the hierarchy of Regional and District Plan provisions from which the lower order provisions cascade "giving effect to" the policies and objectives in the Regional Policy Statement.
6. Todd Property has no particular view on the level of formality, or the preferred legal mechanism for providing the track changes to the RPS text and agrees with the Council that a range of options are open to the Panel.
7. Todd Property submits that whatever course the Panel elects to follow, it needs to be cognisant of avoiding delays and potential appeals on any interim/final recommendation affecting the ongoing process and in this respect the less formal approach may be more appropriate providing an

indication of the Panel's current thinking without binding the Panel. To that end, therefore, Todd Property favours the informal process expressed in the memorandum filed by Ellis Gould.

8. If the Panel determines that it is unable to provide an interim decision on the entire Regional Policy Statement in early 2015, it is submitted that at least high level direction from the Panel as to its current position on certain protocol matters would be extremely helpful to all parties. This will allow these critical matters to cascade downwards from the RPS as required by statute and would ensure that parties would not seek to spend considerable effort (and the Panel's time) attempting to influence the RPS from the "bottom up".
9. Based on the involvement of Todd Property in the process to date, it would appear that if the Panel's time does not allow a full interim position on the whole of the RPS, the key aspects of the RPS that would greatly benefit the rest of the process could be limited to a red-lined track version of the RPS that addresses the following issues:
 - (a) Whether there will be a rural urban boundary; whether and by what means it can be changed; how proposals for Urban Development outside this boundary are to be considered.
 - (b) Whether affordable/retained affordable housing will be mandatory.
 - (c) Validity of the proposed land release programme.
 - (d) Clarification as to whether there is a hierarchy of Issues in the RPS and how conflict between objectives and policies that use directive language (for example "avoiding") and "are to be addressed".
10. Finally, Todd Property considers that in order to effectively and efficiently produce evidence to assist the Panel going forward in the process, it is essential that there be at least a red-lined version provided in a Minute issued by the Panel giving an indication of the Panel's current thinking on the RPS as described above and, additionally, that the Panel provides direction that the red-lined version removes the need for witnesses to give evidence that addresses, for instance, the operative RPS and that the redlined version takes priority.

DATED at Auckland on this the 23rd day of January 2015



A handwritten signature in black ink, appearing to read 'SJ Simons', is written over a horizontal line.

SJ Simons

Counsel for Todd Property Limited