

Memorandum

To: THE AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

From: AUCKLAND COUNCIL

Subject: AUCKLAND COUNCIL RESOLUTION DATED 24 FEBRUARY 2016 ON OUT OF SCOPE RESIDENTIAL ZONING CHANGES

Date: 29 FEBRUARY 2016

Introduction

1. The Council is filing this memorandum to advise the Panel of an evidential issue arising from the Council's Resolution dated 24 February 2016 on 'out of scope' residential zoning changes. A copy of the relevant parts of that Resolution is attached as **Attachment 1 (Council's Resolution)**.
2. The Council's Resolution records that the timing of the proposed 'out of scope' zoning changes impacts the rights of those potentially affected, where neither submitter or further submitter, and for whom the opportunity to participate in the process is restricted to an Environment Court appeal.
3. Subparagraph (e) of the Council's Resolution resolves as follows:

That the Governing Body:
....

 - (e) In the interests of upholding the principle of natural justice and procedural fairness, withdraw that part of its evidence relating to 'out of scope' zoning changes (other than minor changes correcting errors and anomalies).
4. The Resolution relates only to out of scope changes proposed for Residential rezoning¹, which are not "minor changes correcting errors or anomalies" (**Residential Out of Scope Changes**).
5. This memorandum therefore seeks to withdraw certain parts of the evidence filed on the Council's behalf. For clarity, we advise that the Council no longer supports the Residential Out of Scope Changes proposed in the evidence filed on the Council's behalf for the Topic 081 (Rezoning and Precincts – Geographical areas) (**Topic 081**) hearings.
6. We acknowledge that the withdrawals may raise issues about the way in which the Council will participate in the Topic 081 hearings particularly in terms of attendance of its witnesses, given that it is the Council that is withdrawing parts of the evidence, and not the authors of the evidence that are seeking to withdraw that evidence. We address that matter later in this memorandum.

¹

I.e. Large Lot, Single House, Mixed Housing Suburban, Mixed Housing Urban, Terrace Housing and Apartment Buildings, and Rural and Coastal Settlement.

Withdrawal

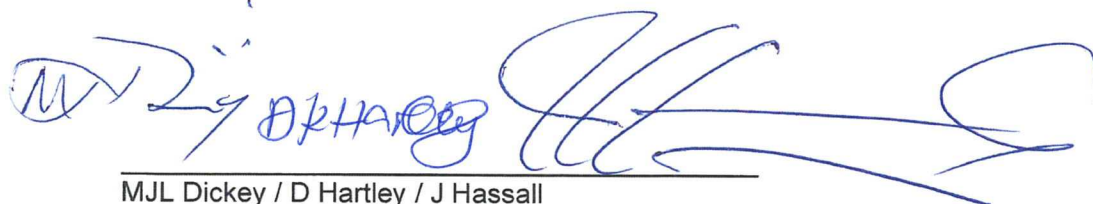
7. We have turned our minds to how best achieve the direction given in the Council's Resolution. The issue is not straight forward because of the interconnected nature of the evidence with, for example, in-scope changes to business zonings only making sense from an expert planning point of view where out-of-scope changes to residential zonings are made.
8. In light of the above, it is not a simple matter of striking out parts of the evidence and, in many cases, we are left with having to rely on a broad indication to the Panel of what is intended. Having said that, we have attempted to indicate below where matters provided in Council's Topic 081 evidence should be withdrawn.
9. Providing amended briefs has been considered as a means of addressing the Council's Resolution. However, that will require more time to achieve than is available before 3 March 2016 when the Council's case is due to commence at the Topic 081 hearing.
10. On the basis of the Council's Resolution, the Council seeks leave from the Panel to withdraw all those parts of the evidence filed on its behalf that relate to the Residential Out of Scope Changes. The main parts of the Evidence Reports that are impacted by this request are those noted as Attachment F to the Evidence Reports and the Attachment E maps which show revised zones for each of the Region's geographical areas, with the properties impacted by Residential Out of Scope Changes identified by blue outlining. Attachment C to the Evidence Reports is also impacted in so far as it contains cross-references to Residential Out of Scope Changes in Attachment F. Therefore the evidence in respect of which leave is sought to withdraw is as follows for each geographical area specific Evidence Report:
 - (a) Attachment C, only insofar as it contains cross-references to Residential Out of Scope Changes in Attachment F;
 - (b) Attachment E, only insofar as the proposed Residential Out of Scope Changes are shown as a blue outline on the Council map for each sub area; and
 - (c) Attachment F as relates to the Residential Out of Scope Changes only.

For the avoidance of doubt this request does not include evidence containing proposals for out of scope changes that respond to errors/anomalies and evidence relating to in or out of scope changes relating to Business, Rural, and Future Urban zones.
11. We note also that the Council's resolution has a potential impact on a small number of precincts where the Council's evidence supported a Residential Out of Scope Change. A further update will be provided to the Panel prior to the commencement of the hearing on the affected precincts.
12. In the normal course, evidence that is withdrawn would usually be physically marked as such. Given the difficulties associated with physically withdrawing part of the evidence from the website, we ask that the evidence affected by the Council's Resolution be marked "Withdrawn in part".
13. We anticipate that the Panel and submitters will be assisted by maps which depict the Council's revised position (i.e. deleting Residential Out of Scope Changes, except errors / anomalies). It is envisaged that they will be made available at the opening of the Council's case on rezoning, with the Council's opening legal submissions. To clarify, the zonings for the properties impacted by the Residential Out of Scope changes will revert to the zoning in the PAUP as notified as a result of the Council's Resolution.

Council Participation at Hearing

14. The Council will participate in the hearing addressing the Panel on proposed in-scope Residential changes, and all changes proposed for Business, Future Urban zoning within the Rural Urban Boundary, and all Rural zoning (including out of scope changes), and all other minor changes that address errors and anomalies. For reasons noted below, the matter of which witnesses will attend the hearing (and the extent of their involvement) is still being determined.
15. We draw three matters to the Panel's attention:
 - (a) Council witnesses are presently assessing the implications of the Council's Resolution for 'in-scope' Residential changes (for instance, to determine whether the withdrawal of *out of scope* changes affects their view of proposals for *in scope* zoning changes);
 - (b) As part of this assessment, Council witnesses are also considering the implications of the Council's Resolution for their Evidence Reports generally. In this regard, we note that an issue has arisen as to whether the proposed changes to Business, Rural, and Future Urban zones will be supported by the attendance of Council witnesses; and
 - (c) Council witnesses (except for a small number who are not affected by the change in Council's position) may be placed in an untenable position where they are not able to comply with their obligations under the Code of Conduct for Expert Witnesses and support the Council's Resolution.
16. We recognise that the current situation is unusual. The Council seeks guidance from the Panel as to how the matters referred to in paragraphs 15(b) and 15(c) could best be managed. The Council's preferred option (subject to the outcome of the assessment referred to above) is for a witness to be called to address and assist the Panel in relation to the Business, Rural, and Future Urban zoning aspects of their evidence provided that any questions are confined to those matters only and for the Panel to confirm that it will not itself question the witness on matters which no longer form part of the Council's case nor allow cross-examination of the witnesses on those matters. Without such confirmation, the Council will not be able to call those affected witnesses.

Dated this 29th day of February 2016



MJL Dickey / D Hartley / J Hassall

ATTACHMENT 1

Council Resolution number GB/2016/18 dated 24 February 2016

“That the Governing Body:

- a) revoke the Unitary Plan Committee decision of 10 November 2015:

That the Unitary Plan Committee:

a) *confirms the proposed zoning changes as shown on maps under separate cover for the Central and West Auckland geographic areas as Council’s position.*

b) *supports the approach to zoning changes which are not directly supported by any submission, but which give effect to the Regional Policy Statement in the Proposed Auckland Unitary Plan (as proposed to be amended by the Council), and which are the most appropriate way to achieve the objectives of the Proposed Auckland Unitary Plan.*

- b) revoke the Unitary Plan Committee decision of 24 November 2015:

That the Unitary Plan Committee:

a) *confirms the proposed zoning changes as shown on maps (Attachment C, D and E) for the North and South Auckland geographic areas as Council’s position.*

and replace them with:

That the Governing Body:

a) *remove from the proposed Auckland Unitary Plan maps the ‘out of scope’ zoning changes made on 10 November 2015, which were not directly supported by any submission, and that this now be confirmed as Auckland Council’s position.*

b) *remove from the proposed Auckland Unitary Plan maps the ‘out of scope’ zoning changes made on 24 November 2015, which were not directly supported by any submission, and that this now be confirmed as Auckland Council’s position.*

That the Governing Body:

- c) note that the proposed ‘out of scope’ zoning changes (other than minor changes correcting errors or anomalies) seek to modify the Proposed Auckland Unitary Plan in a substantial way.
- d) note that the timing of the proposed ‘out of scope’ zoning changes impacts the rights of those potentially affected, where neither submitter or further submitter, and for whom the opportunity to participate in the process is restricted to Environment Court appeal.
- e) in the interests of upholding the principle of natural justice and procedural fairness, withdraw that part of its evidence relating to ‘out of scope’ zoning changes (other than minor changes correcting errors and anomalies).”