

IN THE MATTER

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

AND

IN THE MATTER

of the Proposed Auckland Unitary Plan ("PAUP") and procedures
established under the relevant legislation to address the submissions
and further submissions processes in relation to the PAUP following
notification of it by the Auckland Council

**CLOSING REMARKS AND POINTS OF CLARIFICATION ON BEHALF OF AUCKLAND
COUNCIL IN RELATION TO TOPIC 075**

WAITĀKERE RANGES

24 NOVEMBER 2015

MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 This memorandum records the matters that the Council wishes to raise by way of summary closing remarks or points of clarification in respect of the main issues in contention at the hearing on Topic 075 Waitākere Ranges. In respect of matters on which no additional information was presented by submitters at the hearing, and the Council's position as outlined in its evidence and legal submissions remains unchanged, the Council has not restated that position in this memorandum.

1.2 In particular this memorandum addresses the following matters:

- (a) in relation to the statutory framework and structure of the heritage area provisions (part 2):
 - (i) the Council's position on whether to provide for Waitākere Range Heritage Area zones (that is, whether to collapse the zone and precinct layers of the current structure);
 - (ii) the suitability of the Rural Conservation zone for the Coastal Settlements precinct;
 - (iii) the relevance of the Auckland Plan to the heritage area provisions;
 - (iv) new precinct requests; and
 - (v) notification;
- (b) in relation to the objectives and policies (part 3):
 - (i) the need for the Council's proposed Waitākere Ranges Heritage Area overlay;
 - (ii) the need for additional precinct-specific objectives and policies;
 - (iii) whether to repeat s8 of the Waitākere Ranges Heritage Area Act 2008 (**WRHAA**) verbatim;
 - (iv) the weight given to economic wellbeing; and
 - (v) the location of objectives and policies relating to infrastructure;
- (c) in relation to land use controls (part 4):
 - (i) secondary and subsidiary dwellings;

- (ii) vehicle movements associated with filming in Titirangi Laingholm and Titirangi Village;
 - (iii) rental of dwellings; and
 - (iv) the activity status of activities not provided for;
- (d) in relation to development controls (part 5):
 - (i) the PAUP controls on driveways, including whether these are more restrictive than those of the operative plan, and their appropriateness for the heritage area;
 - (ii) two matters relating to building coverage;
 - (iii) calculation of, and appropriate limits for, building height;
 - (iv) minimum yard requirements in Titirangi Laingholm; and
 - (v) activity status of a breach of development controls in Titirangi Laingholm;
- (e) in relation to subdivision controls (part 6):
 - (i) transferrable rural site subdivision;
 - (ii) requirements to plant native species;
 - (iii) merits of a proposed consenting 'Design Panel'; and
 - (iv) minimum lot sizes;
- (f) site-specific matters in relation to (part 7):
 - (i) application of the SEA to several properties;
 - (ii) Bethells precinct;
 - (iii) Wainamu precinct;
 - (iv) Waitākere Estate; and
- (g) mapping issues.

1.3 The Council's proposed provisions are included with this memorandum at the following Appendices:

B1 Chapters F7.13 and K7.13 Foothills precinct

B2 Chapters F7.14 and K7.14 Ranges precinct

- B3 Chapters F7.15 and K7.15 Titirangi Laingholm precinct
- B4 Chapters F7.16 and K7.16 Titirangi Village precinct
- B5 Chapters F7.17 and K7.17 Waitākere Coastal Settlements precinct
- B6 Chapters F7.18 and K7.18 Wainamu precinct
- B7 Chapters F7.19 and K7.19 Bethells precinct
- B8 Chapters F7.20 and K7.20 Te Henga precinct
- B9 Chapters F7.21 and K7.21 Waitākere Ranges Regional Park precinct
- C Chapter E6.2 Waitākere Ranges Heritage Area overlay

2. STRUCTURAL ISSUES

Overall

- 2.1 There has been considerable debate regarding the appropriate structure for the heritage area provisions over the course of this Topic. Although often expressed in different terms (overlay, single or multiple zones or precincts) the Council and submitters appear to be largely aligned on the appropriate structure for the plan layers, including the need for the proposed overlay to ensure that the PAUP at a high level addresses the heritage area as a whole. The key outstanding issue is whether or not to collapse the zone and precinct layers of the Council's proposed structure. The Council and submitters appear to agree that, even if the zones and precincts are collapsed, precincts would still be necessary to provide for what are currently sub-precincts (most of which contain only subdivision provisions derived from former structure plans).¹

Precinct vs zone approach

- 2.2 As noted above, the primary outstanding structural issue as between the Council and submitters is whether to retain the proposed zones and precincts (the **precinct approach**) or to collapse those layers, creating one or more special zones (the **zone approach**). As outlined in the Council's legal submissions,² the Council has given extensive consideration to the relative merits of these approaches at each stage of the drafting and hearings process.
- 2.3 The relative merits of the two approaches have shifted in light of amendments to the substantive provisions of the precincts, and as parties understanding of how the different

¹ With the exception perhaps of Barry Kaye, who proposes that the subdivision provisions be moved to another part of the PAUP altogether.

² See discussion at [5.17]-[5.25].

parts of the PAUP fit together has developed.³ The Council's position at the hearing was that, while the issue is finely balanced, the precinct approach remains appropriate.

- 2.4 At the hearing, Judge Kirkpatrick expressed concern in relation to the role of precincts that modify the underlying zones to the extent that the zone was effectively displaced. The Council agrees that there is likely to be a threshold beyond which a zone is so heavily modified by a precinct that it is redundant, and serves only to confuse plan users. Where that is the case, it may be preferable that any remaining zone provisions be incorporated into the precinct, creating a special purpose zone. The more difficult issue is ascertaining the threshold at which a zone is so heavily modified that it ought to be replaced.
- 2.5 Applying that 'test' to the heritage area precincts the Council does not consider that the zones within the heritage area have been rendered redundant by the precincts. Following discussions at the hearing, the Council provided an approximate assessment of the number of activities that remain controlled solely by the underlying zone provisions in respect of each heritage area precinct. That summary shows that a significant number of zone provisions continue to apply unmodified by the relevant precincts and therefore the continuing relevance of that zoning pattern to the heritage area. This also demonstrates that the zone approach favoured by submitters would entail a significant degree of duplication as between different parts of the PAUP; specifically, as between the rural and heritage area zones; and as between the heritage area zones themselves.
- 2.6 While the Council agrees that the WRHAA warrants a tailored approach it considers that its proposed provisions deliver that approach, particularly the proposed overlay which ensures that the Council's policy framework for the heritage area applies equally to Auckland-wide, zone and precinct provisions as they apply to the heritage area. This outcome cannot be delivered by a single or multiple heritage area zones.
- 2.7 The Council does not consider the precinct approach to be unnecessarily confusing for plan users. The Council has acknowledged that the notified plan could have been clearer as to how the zone and precinct layers worked together. It is considered that the precinct track changes included with this memorandum provide significantly greater guidance as to which zone provisions are excluded by the precincts, which are replaced by precinct provisions, and which apply unmodified by the precinct guided by the use of templates developed for this purpose. In the Council's view, these improvements to the precincts reduce the merits of a 'one stop shop' zone approach. This is particularly so where a single zone will not deliver the outcomes required for all areas within the Ranges. Rather multiple zones based on countryside living, rural conservation, local centre and large lot residential zoning patterns would likely be required.

³ In the regard we recall the findings of the Panel's independent advisor, David Wren, whose first precinct diagnostic report of 28 January 2015 did not support a zone approach; see at 15.

- 2.8 As discussed in legal submissions and at the hearing, the Council has been guided in these amendments by the development of a precinct template for the purposes of Topics 080 and 081. At the hearing the Judge suggested, and the Council agreed, that circulation of this template among the IHP and submitters might assist the hearings into Topics 080 and 081. Accordingly, that Template is attached at **Appendix A** to this memorandum.
- 2.9 For the reasons given above, the Council does not support any further structural amendments to the provisions, which are included as **Appendices B1 to B9** to this memorandum.

Inclusion of Public Open Space and Special Purpose zones within precincts

- 2.10 The track changes presented with the Council's primary and rebuttal evidence included Public Open Space (**POS**) and Special Purpose (**SP**) zones within the precincts,⁴ in order to ensure that the common objectives and policies applied to those zones. To ensure that the rules of those precincts (K7.13 – K7.20) did not apply, each rules chapter contained a provision dis-applying that chapter from the relevant POS and SP zones.
- 2.11 As described in the Council's legal submissions, the creation of the Waitākere Ranges Heritage Area overlay ensures the application of the common objectives and policies across the heritage area, and consequently removed the reason for including POS and SP zones within precincts.⁵
- 2.12 Since the hearing, the Council has investigated the possibility of amending the GIS maps to exclude the POS and SP zones. Unfortunately, the Council has found that these areas are often too small to map out without making the GIS maps illegible. The process would result in precinct maps that contained many small holes. These holes (ie, the spatial extent of the POS and SP zones) cannot be clearly labelled, which would potentially make the GIS maps unclear as to which land is within a precinct, and which outside.
- 2.13 Due to this practical constraint, the Council has found it necessary to keep the POS and SP zones mapped within each precinct, although neither the precinct objectives nor rules have any application in those areas. Consequently, the Council has added provisions to the objective and policy chapter for each precinct (F7.13 – F7.20), mirroring the provisions that were in the rules chapters, excluding the precinct provisions from applying in specified POS and SP zones.
- 2.14 The one exception to this relates to the POS zone and School zone within the Foothills - Ōrātia Village sub-precinct. The Council considers that the sub-precinct specific

⁴ Specifically, the Foothills, Ranges, Titirangi Laingholm, Titirangi Village and Coastal Settlements precincts.

⁵ At [5.7]-[5.8].

objectives and policies should continue to apply in these zones, which are accordingly not excluded from Chapter F7.13.⁶

Suitability of Rural Conservation zone for the Coastal Settlements precinct

- 2.15 At the hearing Judge Kirkpatrick raised concerns regarding the suitability of the Rural Conservation zone for the areas within the Coastal Settlements precinct. In particular, the Judge expressed concern that the objectives and policies of the zone could lead to inappropriate outcomes in the context of resource consent applications for non-complying activities.
- 2.16 Prior to notification of the PAUP the Council considered a range of zones for the Coastal Settlement areas, including the potential to apply a residential zone, such as Rural and Coastal Settlement. However, it is considered that a residential zone would be a poor fit for these areas, because they:
- (a) provide for inappropriate levels of intensive residential development for many of the smaller coastal settlements, such as Huia and Karekare; and
 - (b) are not compatible with the statutory context of the heritage area and its focus on rural character or their location outside of the rural urban boundary.
- 2.17 In contrast, the rural zones are considered to better fit the statutory and environmental context, including many of the activities that take place in the small coastal settlements.
- 2.18 The Council considers that the Rural Conservation zone is the most appropriate of the rural zones in the context of small coastal settlements in the heritage area and will achieve, in particular, the necessarily cautious approach to new rural and residential activities in these highly-sensitive areas. The description of the Rural Conservation zone at Chapter D6.5 is an accurate reflection of the existing environment and desired planning outcomes:⁷

The Rural Conservation zone comprises biophysically distinctive areas in rural Auckland. All have important natural values requiring maintenance and protection. However, they are largely in private ownership and are used for a range of purposes, including residential, low-impact recreational activities, conservation and open space.

Most areas have significant indigenous vegetation cover, are important wildlife habitats, or contain important natural features such as dune lakes. Most have been identified as SEAs, ONLs and areas of OHNC in the Plan.

The purpose of this zone is to enable established rural and residential activities to continue, but to adopt a conservative approach to new land uses, subdivision and development so that the natural values of the zones are maintained and protected.

⁶ See rebuttal evidence of Mr Shields at [[4.19]-[4.20].

⁷ As per Annexure A to the Closing Statement of Auckland Council for Topics 056 and 057, dated 10 July 2015.

- 2.19 The Council has reassessed the objectives and policies of the Rural Conservation zone, as modified by the Coastal Settlements precinct, in particular how the applicable zone objectives and policies would apply to a non-complying consent application. It is accepted that many of the General rural objectives and policies (Chapter D6.1) which focus on rural economy and productivity are a poor fit for the area, and for that reason most have been excluded from applying in the precinct.⁸ Because the inappropriate or inapplicable objectives and policies have been excluded, the outcomes for non-complying consent applications in the precinct are expected to be appropriate.
- 2.20 For these reasons, the Council supports retention of the Rural Conservation zone underlying the Coastal Settlements precinct.

Relevance of the Auckland Plan to development outcomes in the heritage area

- 2.21 The hearing evidence of Barry Kaye and the legal submissions of Ms Masoud-Ansari expressed the view that the Council's proposed provisions for Topic 075 are inappropriate, as they fail to give effect to the Auckland Plan 2012, in particular the goal of providing for 30-40% of future growth in greenfield developments, satellite towns and rural and coastal towns. Ms Masoud-Ansari suggests that there is an "inherent inconsistency" between the Auckland Plan and the WRHAA's direction to avoid urban sprawl in the heritage area.⁹ Notwithstanding the alleged inconsistency, the submitters seek that the PAUP "give effect to" the Auckland Plan directives relating to development and growth in rural areas.¹⁰
- 2.22 The Council does not agree that the WRHAA (or the proposed heritage area provisions that give effect to that Act) and the Auckland Plan are inconsistent. The Auckland Plan does not require or encourage development and growth in all rural areas. Rather, it identifies areas that may be suitable for development, being either 'Future urban' areas, or 'Greenfield areas for investigation'.¹¹ The heritage area does not feature in either development category. Accordingly, it cannot be said that the Auckland Plan contemplates, let alone requires, significant growth within the heritage area.
- 2.23 More fundamentally, to the extent that there is any conflict between the Auckland Plan and the WRHAA, the objectives and purpose of the WRHAA must prevail.¹² In relation to the Topic 075 provisions, the Council also notes that its obligations are to "give effect to" the WRHAA,¹³ and merely to "have regard to" the Auckland Plan.¹⁴ In short, the WRHAA is a higher order planning document which the Council is obliged to implement.

⁸ Coastal Settlements precinct Chapter F7.17, at Appendix B5 to this memorandum.

⁹ Legal submissions of Ms Masoud-Ansari on behalf of several submitters, dated 6 November 2015, at [12]

¹⁰ Ibid, at [29].

¹¹ Depicted on Map D.1 'Development Strategy Auckland-Wide'.

¹² WRHAA, section 18(1).

¹³ WRHAA, sections 10 and 11.

¹⁴ RMA, section 74(2)(b)(i).

New precinct requests

- 2.24 P Roberts and B Armitage (submitter 5270) own a farm, which is only partly within the heritage area boundary (and the Ranges precinct), and otherwise largely surrounded by the heritage area. The submitter wishes to have a new precinct, similar to the proposed Wainamu precinct, apply to the farm.
- 2.25 The Council notes that the property is currently zoned Rural Coastal, which contains provisions that are in many respects significantly more permissive than the heritage area provisions, which make the request somewhat unusual.
- 2.26 From the Council's perspective, the most immediate difficulty with this request is that it does not support the creation of a precinct that straddles the heritage area boundary. Although the land on either side of the side of the boundary is under common ownership, the applicable statutory framework (ie, the WRHAA), and the outcomes that the Council must achieve in the PAUP, are markedly different. While highly prescriptive and property-specific provisions, such as those of the Wainamu precinct, *might* be justifiable and appropriate outside the heritage area, this is far from clear.
- 2.27 On the issue of whether a precinct is justified for that part of the farm that is outside the heritage area (the majority of the property), the Council considers that more information is needed, and notes in this regard the Panel's Interim Guidance 'Best practice to re-zoning, precincts and changes to the Rural Urban Boundary (RUB)', dated 31 July 2015, which is available on the Panel website.
- 2.28 The submitter has justified the relief sought relying heavily on the farm's proximity to the heritage area. Council does not consider this to be sufficient justification for bespoke, property-specific provisions. Relevant differences to the neighbouring properties include:
- (a) the absence of a statute requiring unique planning outcomes;
 - (b) the absence of a recently settled, unique set of legacy planning provisions and, consequently, a lack of reasonable expectation that provisions will be carried through into the PAUP; and
 - (c) that the submitter's property is not subject to any of the heritage area's more restrictive objectives, policies or rules which have justified relaxation of the controls for certain other activities (such as home occupations).
- 2.29 If the submitter wishes to pursue this request, with or without further information in support, the Council considers that the best place to hear that request is now in the context of Topic 081. The Council would support re-allocation of the request, if that is desired.

Notification

- 2.30 The notification provisions of Chapter G remain the subject of debate. The Council's proposed provision is set out at rule 2.4 of Attachment A to the rebuttal evidence of Michele Perwick for Topic 004. The Panel's preferred notification rule is set out in its Interim Guidance on Chapter G, dated 9 October 2015. Both the Council and the Panel have accepted that a precinct can modify the rule in Chapter G for the purposes of a precinct.
- 2.31 Given the ongoing wider debate, the Council has given further consideration to the notification rule that should apply in respect of the heritage area. Given the sensitivity of the environment, the Council considers that applications for resource consent within the heritage area should be subject to the normal tests for notification.

X. *Notification*

X.X *An application to infringe development/land use control will be subject to the normal tests for notification under the relevant sections of the RMA"*

- 2.32 Amendments to that effect have been added to each of the heritage area precincts contained at Appendices B1 to B9 to this memorandum.

3. OBJECTIVES AND POLICIES

- 3.1 A limited number of issues relating to the role and content of the proposed overlay arose at the hearing for this Topic, including:
- (a) whether the overlay is needed, or whether the RPS provides sufficient guidance;
 - (b) as noted in the Council's legal submissions, whether further precinct-specific objectives and policies are needed;
 - (c) whether the objectives and policies should repeat verbatim s 8 of the WRHAA;
 - (d) the relative weight given to economic wellbeing in the objectives and policies; and
 - (e) whether the infrastructure objective and policies should be relocated.

Need for an overlay

- 3.2 At the hearing, none of the submitters raised significant concerns with the Council's proposed overlay. As outlined previously submitters have acknowledged that the PAUP at a high level acknowledges the heritage area as a whole.
- 3.3 Panel Member Crawford asked Mr Shields whether the RPS provisions could do the job of the proposed overlay; that is, of providing heritage area-specific objectives and policies across the heritage area, and at all levels of the District Plan hierarchy. The Council

considers that the overlay is necessary, notwithstanding the policy direction given in the RPS, as:

- (a) the Council is required to "give effect to" the WRHAA in its RPS, Regional Plan (RP) and District Plan (DP). While Auckland Utility Operators Group (AUOG) consider this to be unnecessary duplication in the context of a combined plan, the Council does not agree for the reasons at (b) – (d) below;¹⁵
- (b) both the RP and the DP are required to give effect to the RPS.¹⁶ Insofar as RPS and RP/DP provisions relate to the same issues, in the same geographic area, some duplication is perhaps inevitable, particularly given the direction given by the WRHAA in terms of objectives for the area. This does not remove the requirement for either the RP or the DP to give effect to the higher-order RPS;
- (c) for non-complying resource consent applications, the objectives and policies of the RPS do not form part of the 'gateway' test the under s104D of the RMA. While the RPS could be 'tagged' as both RPS, RP and DP, the Panel's Interim Guidance on Chapter G dated 9 March 2015 suggests that the RPS should be kept separate from the RP and DP. Accordingly, the overlay objectives and policies must be both RP and DP provisions to ensure proper consideration in the context of s 104D;
- (d) the district plan is required to state the objectives for the district, the policies to implement the objectives, and the rules (if any) to implement the policies.¹⁷ The objectives and policies of the overlay provide the policy framework for many of the district plan rules, but would not fulfil this function if contained only in the RPS (again, unless those RPS provisions were 'double tagged');
- (e) in a more practical sense, the Council considers the overlay provisions to be so central to the heritage area provisions that they should have some prominence in terms of the PAUP structure, which would be lost if they were contained in the RPS. In this regard, the Council agrees with the Waitākere Ranges Protection Society (WRPS) that:

Inevitably, those common objectives and policies will be applied in different ways in different parts of the Ranges but the provision of locally focused objectives and policies only would risk bringing an atomised approach to the area that might discount or fail to take a consistent approach to the overriding themes expressed in the WRHAA.

¹⁵ WRHAA, sections 10 and 11.

¹⁶ RMA ss 67(3)(c) and 75(3)(c).

¹⁷ RMA s 75(1).

- 3.4 For those reasons the Council is not concerned that the proposed overlay duplicates, to a degree, the provisions of the RPS for the heritage area and continues to support the proposed overlay as set out in **Appendix C** to this memorandum, subject to a couple of minor changes to correct an error agreed with AUOG and for consistency of language.

Whether precinct-specific objectives and policies are needed

- 3.5 Further to discussions at the hearing, the Council wishes to make two further points in relation to the role of the overlay vis a vis the precinct rules.

Relevance of the location of objectives and policies within the district plan

- 3.6 First, the Council wishes to reiterate the view expressed in opening legal submissions that the overlay continues to provide the objective and policy framework or basis for the rules of each precinct.¹⁸ As noted above at 3.3(d), the district plan is required to state the objectives for the district, the policies to implement the objectives, and the rules (if any) to implement the policies. The RMA does not require that the different elements of the district plan need to be located together in the same part of the plan, although practically this is often the case, and the PAUP is generally structured in that manner. However, the RMA does require the Council to clearly identify the provisions of the document that are the RPS, the regional plan, the regional coastal plan, or the district plan, as the case may be.¹⁹ The overlay policy framework has been tagged as RP/DP for this purpose.
- 3.7 The Council does not consider that relocation of the common objectives and policies from one part of the district plan into another (ie, from a precinct layer into the overlay) affects the relationship between those provisions and the precinct rules. The rules for each precinct have been drafted to give effect to those common objectives and policies in the particular context of each precinct, in addition to the precinct and sub-precinct specific objectives and policies. Accordingly, this relocation does not give rise to a need to draft a 'replacement' set of objectives or policies for each precinct. The introductory statement to each of the precinct rules chapters (K7.13 – K7.20) have been amended as follows (underlined) to confirm that relationship:

The rules in this section implement the objectives and policies in Chapter F, section 7.XX [and Chapter E6.2 Waitākere Ranges Heritage Area overlay](#).

Additional precinct-specific objectives and policies

- 3.8 However, as acknowledged in the Council's opening legal submissions the relocation of the common objectives and policies into the overlay had highlighted some areas where there might be gaps in the policy framework.²⁰ On further reflection, the Council

¹⁸ Legal submissions on behalf of Auckland Council, dated 5 November 2015, at [5.11].

¹⁹ Section s 80(8).

²⁰ At [5.11].

considers that some further precinct-specific objectives and policies are necessary to articulate the particular outcomes that the provisions seek to achieve in each of the precincts. Additional or amended provisions objectives and/or policies are now proposed for the:

- (a) Coastal Villages Precinct;
- (b) Ranges precinct;
- (c) Titirangi Village precinct;
- (d) Titirangi Laingholm precinct; and
- (e) Foothills precinct.

- 3.9 The Council appreciates that submitters have not had an opportunity to comment on these proposed new precinct-specific objectives and policies. Subject to the Panel's views, the Council considers it would be appropriate to allow submitters time to provide feedback on the proposed new provisions, with the Council to file a final version of those provisions once it has had an opportunity to consider that feedback. Again, subject to the Panel's views, the Council suggests that submitters' comments be provided by Tuesday 1 December, and that the Council's final version of these provisions be provided on Tuesday 15 December.
- 3.10 To assist this process, a Word version of these new or amended objectives and policies is included at **Appendix F** to this memorandum.

Whether to repeat WRHAA s 8 verbatim

- 3.11 Ms Sandra Coney on behalf of the Waitākere Ranges Local Board seeks that the language used in the PAUP heritage area provisions be amended to precisely reflect the wording used in the objectives of the WRHAA.²¹ For the reasons given below, the Council does not consider this relief to be required or appropriate.
- 3.12 The WRHAA imposes two obligations relevant to this Topic, neither of which requires the verbatim repetition the provisions of the WRHAA. Those obligations are, in summary, that:²²
- (a) the Council must "give effect to" the WRHAA in preparing the PAUP;²³ and

²¹ Supplementary Speaking Notes of Ms Sandra Coney, dated 5 November 2015, at [11]-[17].

²² For a more fulsome discussion of the WRHAA, refer to Legal Submissions on behalf of the Council, dated 5 November 2015 at [3.8]-[3.18].

²³ WRHAA, sections 10 and 11.

- (b) consent planners must have regard (or particular regard) to the purpose and relevant objectives of the WRHAA when considering consent applications in the heritage area.
- 3.13 The Council's obligation in preparing the PAUP is to "give effect to" the WRHAA (ie to implement), not to duplicate the words of the Act. The Council considers that the PAUP best gives effect to the Act by providing guidance on what the Act requires in respect of particular heritage features and more generally development in the area, including how some of the objectives of the Act can be reconciled. That level of guidance would be lost if the PAUP were limited to duplication of the words of the Act.
- 3.14 In relation to the consideration of resource consent applications, the WRHAA requires that decision makers have regard (or particular regard) to the purpose and relevant objectives of the WRHAA. In that context, the words of the proposed overlay will not and cannot amend the words or requirements of the Act itself. The words of the WRHAA as enacted will always be relevant. Given that fact, it is difficult to see what a duplication of that Act would add to consideration of an application.
- 3.15 Again, the purpose of the overlay is not, as the Local Board appears to suggest, to displace the WRHAA in the context of deciding a resource consent application, but rather to give guidance on what is required to give effect to that broader statutory framework in an RMA context.
- 3.16 For the reasons given above, the Council does not support the relief sought by the Local Board.

Objectives and policies providing for economic wellbeing

- 3.17 At the hearing, some submitters reiterated their view that the Council has given insufficient weight to economic wellbeing in the heritage area objectives and policies.²⁴ In contrast, the Local Board submitted that the Council has given much too much weight to economic wellbeing.²⁵
- 3.18 The Council does not agree with the Local Board that the economic wellbeing of the people of the heritage area is a secondary consideration. In particular, the Council does not agree with the Local Board's view that s8 of the WRHAA contains 'primary' and 'secondary' objectives, or that objectives at the start of s8 in regard to protection of heritage features have more weight than those listed later in that section regarding the communities social and economic wellbeing.

²⁴ See hearing statement of Bronwyn Turner, dated 6 November 2015, on behalf of Bronwyn Turner, K and H Turner, and Huia Private Reserve.

²⁵ See Hearing Statement of Ms Coney on behalf of Waitākere Ranges Local Board, at [39]-[47].

- 3.19 Equally, the Council does not accept that it has given insufficient weight to the economic wellbeing of the people and communities of the heritage area in the policy framework. Rather, the Council has sought to enable people and communities to provide for their economic wellbeing to the extent it considers compatible with its obligation to protect, restore and enhance the other heritage features, including those relating to the natural environment.

Location of heritage area infrastructure objective and policies

- 3.20 At the Hearing, AUOG accepted (subject to one minor amendment agreed by the Council) that the proposed Objective 20 and Policies 30 and 31 of the overlay appropriately provided for infrastructure, but requested that these provisions be relocated to Chapter C1.1.²⁶
- 3.21 AUOG's reason for relocating the objective and policies appears to be a concern that a consent planner would not necessarily know to look at the heritage area overlay where the rules for infrastructure are primarily located in the Auckland-wide rules. While the Council accepts this possibility, its preference is to retain the infrastructure objective and policies in the overlay to maintain a holistic framework for the area but also to signal, if necessary, the primacy of the heritage area provisions over the Auckland-wide rules in recognition of the WRHAA's status. For completeness, the Council notes its position is consistent with AUOG's proposed treatment of overlay objectives and policies in its proposed combined utilities chapter as part of Topic 042 (ie that infrastructure-related objectives and policies remain in the overlays).
- 3.22 For those reasons, the Council does not support AUOG's request to relocate the provisions.

Excluded zone and Auckland-wide objectives and policies

- 3.23 As described in the primary evidence of Mr Shields,²⁷ the Council has assessed each precinct against the objectives and policies of the underlying zones and the Auckland-wide chapters, and excluded any objectives and policies that are incompatible with the precinct.
- 3.24 However, both the content and the numbering of the underlying objectives and policies have changed during the course of other Topics. These amendments have required consequential amendments in the precincts, which are included in the track changes with this memorandum.

²⁶ Legal Submissions on behalf of Auckland Utility Operators Group Incorporated and its members, dated 5 November 2015.

²⁷ At [11.1]-[11.2].

4. LAND USE CONTROLS

Subsidiary and secondary dwellings

- 4.1 The rural zone rules provide for 'subsidiary' dwellings, which by definition are limited to dwellings occupied by a dependent relative.²⁸ As explained in the evidence of Ms Pye, the Council does not wish to limit second dwellings within the heritage area to those occupied by dependent relatives, and for that reason the heritage area precincts provide for up to 2 dwellings, but not for 'subsidiary dwellings' in order to maintain the distinction.²⁹
- 4.2 At the hearing, Judge Kirkpatrick indicated that the Panel has reservations about the proposed definition of 'subsidiary dwellings'. In light of that indication the Council has considered whether, if the definition of 'subsidiary dwelling' were to change such that it does not matter who resides in the subsidiary dwelling, consequential amendments could be made to achieve consistency with the underlying zone rules.
- 4.3 The Council considers that if a subsidiary dwelling were not limited to occupation by a dependent relative, or any other class of person, it would be desirable to amend the heritage area precincts so that the current provisions for second dwellings referred to subsidiary dwellings instead. Accordingly, a set of alternative track changes is included at **Appendix D** to this memorandum.
- 4.4 For sake of clarity, the Council wishes to make explicit that this alternative wording would not lead to any substantive difference in the controls applicable in the heritage area precincts, which are more permissive than the underlying zones.

Filming

Vehicle movements

- 4.5 The Council confirms the agreement reached at the hearing that the permitted activity controls on vehicle movements in the Titirangi Laingholm and Titirangi Village precincts should be increased to 200, consistent with the other heritage area precincts. Amendments to this effect are included in the track-changes at Appendices B1 to B9. On this basis the Council understands that the consensus has been reached with Film Auckland regarding the appropriate filming provisions for the heritage area.

Application of the temporary activity controls

- 4.6 At the hearing an issue emerged as to whether the Auckland-wide temporary activity control for vehicle movements (H6.5.2.4.2)³⁰ applies to filming. Following the agreement

²⁸ See Annexure B to Council's closing statement for Topic 057.

²⁹ See primary evidence of Ms Pye at [9.50]-[9.52]; and rebuttal evidence of Ms Pye at [4.36]-[4.41].

³⁰ As per Attachment A to the rebuttal evidence of Juliana Cox for Topic 027.

described at 4.5 above, the issue is not directly relevant to the Topic 075 provisions, but the issue remains a concern for Film Auckland in relation to other areas.

4.7 Temporary activity Chapter H6.5, rule 2.4.2 states:

An event in a residential zone must not generate more than 100 vehicle movements per day on adjacent roads.

4.8 The rebuttal evidence of Ms Pye accepted that the vehicle movement threshold for filming as a permitted activity could increase from 100 per day to 200 per day, in respect of precincts with rural zoning.³¹ But Ms Pye noted rule H6.5.2.4.2, and considered that it would be difficult to justify a more permissive control in the residential settlements of the heritage area.³²

4.9 At the hearing, Mr Hall for Film Auckland expressed the view that, because "filming" is not an "event", rule H6.5.2.4.2 does not apply to filming.

4.10 On further consideration of the issue, the Council confirms that the intention in drafting Chapter H6.5, rule 2.4 was that it would apply to all temporary activities, including filming. The Council accepts that this intention is not clear from the current wording and, accordingly, proposes the following amendments to Chapter H6.5 (Temporary activities), rule 2.4 (Traffic):

1. ~~An event~~ A temporary activity in a rural or future urban zone must not generate more than 500 vehicle movements per day on adjacent roads.
2. ~~An event~~ A temporary activity in a residential zone must not generate more than 100 vehicle movements per day on adjacent roads.

Rental of dwellings

4.11 At the hearing Ms Tessa Robins (submitter 4255) raised concerns about how the proposed Topic 075 provisions might impact the continued rental of a second dwelling on her property, which is let through the book-a-bach website.

4.12 The Council had confirmed at mediation that, irrespective of the PAUP provisions, Ms Robins would likely have existing use rights under s 10 of the RMA. The Council further notes in response to Ms Robin's concerns that the proposed definition of 'visitor accommodation' specifically excludes the "letting of dwellings, including for holiday purposes".³³

4.13 In summary, the Council's proposed provisions will not impose any new consenting requirement on Ms Robins.

³¹ At [4.6].

³² At [[4.5]-[4.6].

³³ Per Attachment A to rebuttal evidence of Robert Buxton for Topic 065.

Activities not provided for

- 4.14 The Council's proposed Chapter G rule 2.2 applies a non-complying default activity status to any activity that is not otherwise provided for:³⁴

Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, discretionary, or prohibited activity is a non-complying activity, unless otherwise specified in the Unitary Plan.

- 4.15 As the heritage area precincts do not contain any direction to the contrary, activities not provided for in the precincts or underlying zones will be non-complying.
- 4.16 Several submitters argued at the hearing that activities not provided for in the heritage area should default to a more permissive status. Ms Bronwyn Turner suggested that the default status should be discretionary, as it is not possible to anticipate every activity that might be appropriate (ie to future-proof the plan).
- 4.17 The Council confirms the position it took in Topic 004, for the reasons given in the hearings for that Topic,³⁵ but has nevertheless considered whether a different default should apply in the heritage area. There is nothing in the context of the heritage area or the submitters' evidence that, in the Council's view, justifies a more relaxed approach than applies elsewhere in the region.
- 4.18 Indeed, the Council considers that there is a stronger case for a non-complying default status than elsewhere in the region, because:
- (a) the heritage area is particularly sensitive to inappropriate development, as recognised and protected against by enactment of the WRHAA;
 - (b) a non-complying status better gives effect to the WRHAA's objectives and purpose, as it focuses the mind of a consent planner who is faced with a novel activity on the objectives and policies of the district plan, through the gateway test of s 104D;
 - (c) the precinct provisions have been drafted relying on the rule that the default status is non-complying. Accordingly, there are many predictably inappropriate activities (eg. most industrial activities) that have not needed to be specifically included in the precincts as non-complying. To amend the default status at this stage of the hearing would likely have many perverse consequences (eg, making industrial activities a discretionary activity in the heritage area);³⁶ and

³⁴ See Attachment A to the Rebuttal Evidence of Michele Perwick for Topic 004, dated 21 November 2014.

³⁵ See Primary Evidence of Michele Perwick, at part 15; Rebuttal Evidence of Michele Perwick, at part 9, and Legal Submissions on behalf of Auckland Council, at part 7.

³⁶ WRHAA, s 8(c)

- (d) there is no need to provide specifically for activities that are yet to be imagined, as the heritage area precincts already enable a modest scale of commercial activity that fits within the category of 'home occupations'. More broadly, the PAUP definitions have been drafted, where possible, with enough flexibility to sensibly apply to future activities and at the very least to activities contemplated within the lifetime of the plan.

4.19 Accordingly, the Council does not support amending the application of Chapter G rule 2.2 in the heritage area precincts.

5. DEVELOPMENT CONTROLS

Driveways

5.1 Evidence presented at the hearing on behalf of the Woodlands Park Trust seeks that the Auckland-wide rules relating to driveway length be excluded from applying in the Titirangi Laingholm precinct, arguing that these rules are more restrictive than those in Auckland Council Operative District Plan (Waitākere Section).

5.2 Similarly, Mr Mitchell suggested at the hearing that the Ranges precinct controls on driveways, particularly in relation to driveway length and passing bays, are inappropriately restrictive, and seek that the provisions be amended to reflect those of the Operative District Plan.

5.3 Contrary to the view of the submitters, the Council considers that the PAUP controls on driveway length are generally more permissive than the Operative Plan controls.

Operative District Plan driveway design standards

5.4 The Operative Plan provides for driveways as a controlled activity, subject to meeting certain standards, in areas that are now within the proposed Ranges, Titirangi Laingholm, Titirangi Village (excluding Commercial sub-precinct), Coastal Settlements, Wainamu, Bethells, and Te Henga precincts.³⁷

5.5 Those standards/controls only relate to gradient and provision for on-site turning. However, one of the matters of control/discretion is "specifying design parameters to be used in the construction of driveways".³⁸ The associated assessment criterion is "the extent to which driveways provide safe and efficient vehicular access from the road to buildings".³⁹ These matters are assessed in accordance with the Waitākere City Council *Code of Practice for City Infrastructure and Development, Engineering Standards Manual*,

³⁷ Bush Living Environment rule 10.2; and Waitākere Ranges Environment rule 9.2.

³⁸ See Bush Living Environment rule 10 and Waitākere Ranges Environment rule 9.

³⁹ Bush Living Environment Assessment criterion 10(b) and Waitākere Ranges Environment Assessment criterion 9(b).

Section 3 Appendix 3, "Parking and Driveway Guidelines" (**Code of Practice**), which provides a wide range of detailed design standards, including as to maximum length.

PAUP driveway design standards

- 5.6 In contrast, the PAUP permits driveways which are accessory to a site's primary activity, subject to complying with relevant development controls.⁴⁰ These development controls are generally contained in Chapters H1.2.3.4.3 and H1.2.3.4.4 of the PAUP and detail the permitted dimensions and gradients for driveways in all zones.
- 5.7 Although the above development controls do not restrict how long a driveway may be, they do require passing bays to be provided once it exceeds a specified length. For residential zones, a passing bay is required once a driveway exceeds 50m in length, and every 50m thereafter. In rural zones, a passing bay is required once a driveway exceeds 100m in length, and every 100m thereafter.
- 5.8 The PAUP driveway design standards are generally considered to be more permissive than the Operative District Plan, given that there is no requirement to obtain a resource consent (subject to meeting the design standards). The PAUP driveway controls are also more transparent, in that the relevant design standards are clearly set out, rather than applying as de facto standards by way of a Code of Practice.
- 5.9 Accordingly, the Council does not agree that the Auckland-wide provisions for driveways are more restrictive than those of the Operative Plan, or that they should be subject to modification in relation to the heritage area precincts.

Calculating building coverage

Whether decks are included

- 5.10 Uncovered decks are included within the definition of 'building', but are specifically excluded from the areas relevant for calculating 'building coverage'.⁴¹ Mr Lenihan (submitter 851) reiterated at the hearing his concern that uncovered decks might nevertheless be included in any calculation of building coverage.
- 5.11 The Council considers that the definitions are sufficiently clear, and confirms that uncovered decks are not to be included in the calculation of building coverage.

Building coverage in Coastal Settlements

- 5.12 Bobby Carol (submitter 6646) raised concerns at the hearing that the Council was proposing to decrease the maximum building coverage in the Coastal Settlements

⁴⁰ Council's track-change version of table 14 in Chapter H1.2.3.4.3 of the PAUP (dated 7 September 2015) for Topic 044 (Transport Rules and Other).

⁴¹ See Attachment A to Rebuttal Evidence of Robert Buxton, dated 3 November 2015.

precinct from 15% to 10%, and that this would diminish residents' ability to catch and store essential rainwater.

- 5.13 The Council is unsure what gave rise to the impression that a decrease in building coverage was proposed, but confirms that a maximum of 15% is proposed and provided for in the rules.

Building height

Calculating building height

- 5.14 Mr Lenihan reiterated at the hearing his concern that the PAUP provides only for a rolling average height calculation, and not an average height calculation. As set out in the rebuttal evidence of Ms Pye, the definitions have been amended during the course of Topic 065 (Definitions) to allow for either a 'Rolling Height Method' or an 'Average Ground Level Method' calculation.⁴²
- 5.15 Notwithstanding that change, the illustrations provided by Mr Lenihan at the hearing of the outcomes of the "Council's Rules" show only the outcomes of applying the rolling height method, so do not accurately reflect the outcomes that will be provided for. The Council remains of the view that this definitional change will address Mr Lenihan's concerns.

10 metre height control

- 5.16 Mr Lenihan seeks that the 10 metre height control proposed for the Titirangi Laingholm precinct be increased to 12 metres. The Council accepts that allowing taller buildings may, as Mr Lenihan suggests, reduce pressure for vegetation clearance, but notes that Mr Lenihan has not suggested any corresponding reduction in the permitted building coverage rules to deliver this outcome.
- 5.17 The Council also considers that relaxation of the height control is not appropriate, as 12 metres allows a 3 storey building, which is likely to sit above the vegetation canopy. The adverse effects of such developments, including cumulative effects, would be contrary to the WRHAA objective of protecting, restoring and enhancing the area's heritage features, including in particular the subservience of the built environment to the area's natural landscapes.⁴³

Yard requirements in Titirangi Laingholm precinct

- 5.18 Mr Lenihan submitted at the hearing that the proposed 3 metre minimum yard requirements for the Titirangi Laingholm precinct be relaxed, as this is in keeping with the

⁴² See Attachment A to the Rebuttal of Robert Buxton for Topic 065, dated 3 November 2015. Figure 1 illustrates a Rolling Height Method, and Figure 2 illustrates an Average Ground Level Method.

⁴³ WRHAA, ss 8(a) and 7(2)(i); reflected in common objective 9.

existing character of the area, and may reduce the need for vegetation clearance elsewhere on a site.

- 5.19 My Pye has reconsidered the provisions, and concluded that the 3m yard strikes the right balance of protection of natural values and built character values for the Titirangi-Laingholm area.
- 5.20 The precinct provisions have already been relaxed from the 10m front yard requirements that applied to the Bush Living Environment in the Operative District Plan, and which apply to the Large Lot zone in the PAUP, to take into account the issues raised by Mr Lenihan.
- 5.21 Ms Gilbert considers that front yard vegetation has an important role in filtering views of dwellings from the roads throughout the Ranges and that adverse effects on the ranges landscape may result as a consequence of buildings potentially being more exposed to the road network. In Titirangi and Laingholm, where buildings are not at least partially screened by vegetation, there is the risk of a suburban character developing, which erodes the perception of the ranges as a unique bush living environment. Ms Gilbert has also highlighted that the majority of people experience the Ranges landscape in the view from the road, therefore the importance of protecting this outlook should not be underestimated.
- 5.22 The Council does not therefore support any further relaxation of this control. There may be occasions where relaxation of the 3m yard may achieve a better outcome in terms of ecological or character values. A discretionary status appropriately provides for consideration of relaxation of the yard setback in appropriate circumstances.
- 5.23 Given the extent to which the yard control has already been reduced (ie from 10m to 3m), and the statutory objective of ensuring that the built environment remains subservient to the natural environment, discretionary status appropriately signals to plan users that any further encroachment into front yards is not generally anticipated. Council considers that this control and associated default activity status strikes the right balance between appropriate protection of natural character while allowing a degree of flexibility.

Activity status of a breach of development controls in Titirangi Laingholm

- 5.24 Mr Lenihan at the hearing requested that infringements of development controls should be a restricted discretionary activity, rather than a discretionary activity.
- 5.25 The Council has reconsidered the activity status of developments that do not comply with the permitted building height, yard and coverage controls. The provisions as attached to the rebuttal evidence of Mr Shields included:
- (a) discretionary activity status for buildings not complying with the height controls;

- (b) discretionary activity status for buildings not complying with the yard controls; and
- (c) restricted activity discretionary status for buildings not complying with the building coverage control, and discretionary activity status for buildings exceeding a second threshold.

Breach of the yard controls

5.26 The yard controls for Titirangi Laingholm are discussed in some detail above from paragraph 5.18. The Council notes again that:

- (a) Ms Pye has proposed to decrease the minimum yard required for a permitted activity from 10 metres to 3 metres, which is considered permissive, but acceptable; and
- (b) the landscape and character of the environment is at risk from the adverse cumulative effects of dwellings locating on the road frontage.

5.27 Given that context, the Council does not consider that restricted discretionary status for non-compliant yards is appropriate. Rather, a discretionary activity status is appropriate where "particular regard" must be had to the purpose of the WRHAA and the relevant objectives.

Breach of the height controls

5.28 The height controls are discussed above at 5.14. The Council notes in addition to that discussion that:

- (a) the height controls provide more flexible outcomes that Mr Lenihan appears to understand (in relation to calculation methods); and
- (b) the importance of maintaining and protecting the subservience of built development to the natural landscape,⁴⁴ and the vulnerability of the landscape to cumulative adverse effects from building height.

5.29 In that context, the Council does not agree that a restricted discretionary status is appropriate for buildings above the permitted heights, or that this would adequately protect the precinct heritage features.

Breach of the building coverage controls

5.30 As described above, a breach of these controls is already a restricted discretionary activity, subject to a further threshold at which point a discretionary activity status applies.

⁴⁴ WRHAA, s 7(2)(i).

The Council considers that these controls are sufficiently flexible, while clearly signalling to plan users the design outcomes contemplated.

6. SUBDIVISION CONTROLS

Transferrable Rural Site Subdivision

- 6.1 The evidence of Dr Bellingham on behalf of several submitters has raised issues relating to the application of the transferrable rural site subdivision (TRSS) provisions in the heritage area, particularly in relation to areas with Rural Conservation zoning.
- 6.2 These issues have largely been addressed in the primary evidence of Mr Lau,⁴⁵ and the legal submissions on behalf of Council⁴⁶ and the Council has not altered its position. The Council does however make the following additional comments in response to Dr Bellingham's presentation at the hearing.

SEA protection process – whether to reduce the 5ha minimum

- 6.3 At the hearing for this Topic 075, Dr Bellingham argued for a reduction in the 5ha minimum area of SEA required to qualify for TRSS under the SEA Protection process. This issue was also raised in the context of Topic 057.
- 6.4 In her rebuttal evidence for Topic 057, Shona Myers, the Council's Ecologist explained the rationale for applying a 5ha minimum to provide for additional subdivision development via transferable rights and in situ (non-transferable) subdivision:⁴⁷

A 5 hectare natural area will be more sustainable and ecologically viable than a 2 hectare natural area. Larger natural areas are able to support more species and are more viable and resilient to external influences such as weeds and edge effects. The species area relationship (the larger a natural area, the more species it can support) is used internationally in nature conservation for reserve design. A larger natural area creates a larger area of habitat and provides more significant ecosystem services. Smaller remnants have increased edge effects and increased threats from high light conditions, lower humidity and increased weed invasion.

- 6.5 Notwithstanding the above comments, Ms Myers highlighted that smaller SEAs may be used to contribute towards achieving the 5ha minimum.⁴⁸

The PAUP rules proposed by Mr Mosley do provide for the protection and restoration of SEAs less than 5ha in size, but require restoration planting that is contiguous to an existing SEA to make these natural areas larger and more resilient.

⁴⁵ At [8.15].

⁴⁶ At [11.16] – [11.23].

⁴⁷ At [6.5].

⁴⁸ At [6.6].

- 6.6 This is reflected in Council's latest track-change version of Chapter H5.2.3.3.7, which allows restoration planting to contribute towards achieving a minimum 5ha SEA that is required to provide for in situ subdivision.⁴⁹
- 6.7 The submitters in this Topic have not provided any ecological evidence to suggest that smaller areas of SEA would give rise to ecological benefits sufficient to justify the grant of additional subdivision entitlements. Accordingly, the Council does not support the requested amendments to the TRSS provisions.

Amalgamation process – whether to reinstate Rural Conservation as donor sites

- 6.8 The notified Chapter H5.2.3.3.5 of the PAUP included Rural Conservation in the list of eligible donor sites for TRSS under the site amalgamation process, but was deleted in the track changes for primary evidence for Topic 057. A number of submitters in that Topic sought to reinstate the Rural Conservation zone. Mr Bellingham on behalf of Mr Mitchel in this Topic also seeks to reinstate the Rural Conservation zone as an eligible donor site.
- 6.9 The amalgamation process for TRSS is intended to address a particular concern: the need to rationalise parcels of elite or prime land. This does not apply to the Rural Conservation zone or Ranges precinct. Barry Mosley's primary evidence for Topic 057 does not support reinstatement of the Rural Conservation zone, on the grounds that the SEA protection process described above (Chapter H5.2.3.3.7) is the most appropriate mechanism to address the fragmentation of land in the Rural Conservation zone.⁵⁰
- 6.10 For these reasons, the Council does not support any amendment to the TRSS provisions in the context of the heritage area precincts.

Requirement to plant native species

- 6.11 Mr Mitchell (submitter 4727) raised an objection at the hearing regarding provisions of the Foothills precinct that require the planting of native species as part of a subdivision. Mr Mitchel considers that exotic species might be more in keeping with the character of the area. These provisions have largely been carried into the PAUP from the Swanson and Ōrātia Structure Plan decisions of the Environment Court.
- 6.12 The Council agrees that exotic species are an important part of the character of the foothills, including, for example, its orchards. However, the requirement for planting as part of a subdivision relates to Indicative Enhancement Areas and SEAs, which generally follow water courses. The purpose of these requirements is to enhance ecological function, which the Council considers is properly addressed by a requirement for planting of native species.

⁴⁹ See track changes at Attachment A to the Closing Statement of Auckland Council for topic 064, dated 19 November 2015.

⁵⁰ At [10.21].

- 6.13 These enhancement and SEA areas are also clearly defined by reference to precinct plans. Property owners are, of course, free to plant exotic species elsewhere on the proposed lots, as they see fit.
- 6.14 For these reasons the Council does not support any changes to the planting requirements in the Foothills.

The proposed Design Panel

- 6.15 Ms Masoud-Ansari, and Ms Bayly suggested at the hearing, on behalf of several submitters, that the Council should establish a Design Panel to consider and make recommendations on applications for development within the heritage area which could deliver flexibility and better design outcomes. Although unclear, the Council understood that the proposed Design Panel would not have decision making power, but something approaching a de facto power (the parameters of the Panel approach had yet to be settled by the submitters).
- 6.16 The submitters' proposal is interesting. However, the Council considers that the proposed Panel could only provide an advisory function in the consenting process, which may simply add further cost to applicants, without delivering any obvious benefits. The Council considers the national and regional significance of the area, coupled with its sensitivity to the pressures of 'urban creep' and urbanisation generally, are such that it would not be appropriate to delegate Council's planning and consenting function to an unaccountable third party. Accordingly, while an advisory Panel may have some merit in assisting the Council does not support the submitters proposed Panel approach to consenting in the Foothills or heritage area ore generally.

Subdivision beyond that provided for in the Foothills – Ōrātia sub-precinct

- 6.17 The Council has proposed that subdivision in the Foothills – Ōrātia sub-precinct, beyond the density identified in the Ōrātia Structure Plan decisions (now shown on Precinct Plan 12), should be a discretionary activity.⁵¹
- 6.18 The Waitākere Ranges Protection Society have raised concerns with this approach, and seek that the activity status be changed to prohibited, as is the default status in the Swanson South sub-precinct.⁵²
- 6.19 For the reasons set out in the evidence of Mr Lau, and for the reasons discussed at the hearing, the Council considers that there is some limited potential for further subdivision capacity in the Ōrātia sub-precinct, and so it is appropriate to retain the ability to grant

⁵¹ Foothills precinct, rule 4.2.1(c).

⁵² Legal Submissions on behalf of the Waitākere Ranges Protection Society, 6 November 2015, at [24]-[30].

consent in exceptional circumstances. That is not considered to be the case in relation to the Swanson South sub-precinct.

- 6.20 However, on further reflection, the Council agrees with the WRPS that a non-complying default status in the Ōrātia sub-precinct would be a more appropriate activity status, as it would retain the ability to grant consents in appropriate circumstances, but would more clearly signal to plan users that further subdivision is not generally anticipated in this area. The track-changes included with this memorandum have been amended accordingly.

Minimum lot sizes

- 6.21 The appropriate minimum lot sizes for subdivision in the Ranges and Coastal Settlements precincts have been addressed at some length in: the primary and hearing evidence of Mr Barry Kaye on behalf of several submitters; in the primary and rebuttal evidence of Mr Lau and Ms Gilbert on behalf of the Council; the Council's legal submissions; and, in relation to rural subdivision more generally, in Topic 057 (Rural activities and controls).
- 6.22 At the hearing Mr Kaye presented further evidence seeking relaxation of the minimum lot sizes. However, the Council does not consider that this presentation included any new material information, and remains opposed to the relief sought by Mr Kaye, primarily because both Ms Gilbert and Mr Lau remain concerned about potential effects on landform features, vegetation and the potential scale of built development that could result from the proposed relaxation of the subdivision controls.
- 6.23 In the absence of any detailed assessments, and given the potential effects in this sensitive environment, the submitters' proposal is not supported by the Council. As outlined its opening submissions, while the Council accepts that flexibility can be a desirable outcome in certain environments, it also considers that the sensitivity of the heritage area and its clear statutory directives means that rules allowing ad-hoc subdivision proposals must be carefully assessed both in terms of site-specific implications but also cumulative and precedent effects. One of the objectives of the WRHAA is to avoid ad-hoc development where that would lead to on-going erosion of the area's landscapes and values. In this regard the Council considers that the subdivision 'flexibility' sought by the submitters (particularly in the absence of any detailed assessment) runs counter to the Act's objectives.

7. SITE-SPECIFIC MATTERS

Application of the SEA

7.1 As raised by Ms Masoud-Ansari and Mr Kaye, some submitters' concerns as to the application of the SEA overlay to their properties remain unresolved.⁵³ The Council does not propose any further significant changes to the SEA mapping, although some amendments to correct minor errors have been agreed. In relation to the submitters represented by Ms Masoud-Ansari and Mr Kaye, the Council's position was set out in the evidence for Topic 023 as follows:

- (a) 200 Forest Hill Rd, Waiatarua (Steinstra, submission 4599-1): minor boundary amendments have been agreed;⁵⁴
- (b) 1130 Huia Rd (John & Pien Wise, submission 4724-44): the Council does not agree to remove the SEA from a walking track on the property, and notes that maintenance of the track is permitted under the SEA rules;⁵⁵ and
- (c) 69-71 Opanuku Rd (Hugh Neville Jackson, 4173-1; 4173-9): the parties have agreed a boundary adjustment at a discussion day.⁵⁶

7.2 The Council does not propose to make any further amendments to the SEA provisions in this Topic.

Bethells precinct

Outstanding issues

7.3 Ms Bethell has raised a number of concerns at the hearing, including

- (a) an objection to the extent to which the precinct is subject to the ONL and SEA overlays;
- (b) seeking relocation of the approved building platforms on the precinct map;
- (c) the activity status of subdivision; and
- (d) whether an additional (sixth) dwelling could be provided for as a controlled activity.

7.4 The Council and Ms Bethell agreed at the hearing that a site visit would assist to resolve some of these issues, particularly in relation to ONL mapping issues and resulting

⁵³ See hearing evidence of Mr Kaye, at [97].

⁵⁴ Auckland Council Joint Ecologists' Statement in Primary evidence, Appendix 3 – Part B (Agree in part).

⁵⁵ As set out in the Auckland Council Joint Ecologists' Statement in Primary evidence, Appendix 3 – Part C (Disagree), at pages 121-122.

⁵⁶ Described in the Auckland Council Joint Ecologists' Statement in Primary evidence, Appendix 3 Part A1 (Signed agreements).

landscape and character effects. The parties have been in contact, and have arranged a site visit for early December. Accordingly, the Council respectfully requests additional time to finalise these provisions and, subject to the agreement of the Panel, proposes to submit a further closing statement on these matters by Wednesday 9 December. In the event that the Council and Ms Bethell are unable to reach agreement on all of the outstanding issues, the Council expects that Ms Bethell will wish to file a response. Given the upcoming Christmas break the Council will leave that filing date to the Panel's discretion.

Wainamu precinct

7.5 The Est EJM Wheeler Trust (**Trust**) and the Council have reached a high level of agreement. At the time of the hearing, the outstanding issues in relation to the Wainamu precinct related to:

- (a) maximum separation distance for second dwellings;
- (b) maximum building coverage;
- (c) maximum visitor numbers for visitor accommodation;
- (d) screening of home occupations; and
- (e) the application of the SEA.

Maximum building separation

7.6 At the hearing, the Trust sought the removal of the maximum building control at clause 1(d) of Rule 2.2, which requires that the second dwelling be located within 6m of the other dwelling on the site. The Trust considered that the 6m separation was superfluous as the location of any second dwelling proposed would be assessed as part of a restricted discretionary activity resource consent. The Council would therefore be able to consider the potential adverse effects of a second dwelling, including any measures to prevent the two dwellings being subdivided as part of that consent process.

7.7 The Council agrees that the 6m separation is redundant, subject to the addition of a new matter of discretion and an assessment criterion. These amendments will ensure that adequate consideration is given to building location, to avoid adverse landscape and visual effects given the property is located in an ONL:

- (a) A new restricted discretionary matter for discretion:

aa. location in relation to protection of landscape values

- (b) A new restricted discretionary assessment criterion:

ix. Second dwellings must be located to avoid any adverse landscape and visual effects

Maximum building coverage

- 7.8 The Trust seeks to increase maximum building coverage from 300m² to 800m².
- 7.9 In her rebuttal evidence for this Topic, Ms Pye does not support an increase to the maximum building coverage for the Wainamu Precinct, as building coverage in excess of 300m² is appropriately provided for as a restricted discretionary activity up to a maximum of 15%. This is considered appropriate when viewed in the context of the surrounding landscape values, being 'coastal ONL' for which the PAUP overly provisions apply a maximum permitted building coverage of 50m².
- 7.10 Similarly, Ms Gilbert's evidence highlights the sensitivity of the landscape to built development and notes that the arrangement, form, design, materiality, height and colour of buildings have the potential to generate more than minor adverse landscape and visual effects. Ms Gilbert's evidence advises that in the absence of detailed information it is not possible to possible to conclude with any certainty that the substantial increase in building coverage would not generate 'no more than minor' adverse landscape and visual effects, as is required within a coastal ONL.
- 7.11 For these reasons the Council does not support any changes to the maximum coverage provisions in the Wainamu precinct.

Maximum visitor numbers

- 7.12 The Trust seeks to have the permitted number of guests within the Wainamu precinct to be increased from 20 to 40. Mr Brown stated that visitor numbers at that level would be unlikely to create adverse effects, taking into account the size of the property and the small scale of the accommodation.⁵⁷
- 7.13 On further consideration of this issue, the Council is satisfied that the size of the precinct can accommodate up to 40 guests. However, the Council considers that the visual impact of additional built infrastructure should be subject to additional assessment given that the area is an ONL.
- 7.14 Although visitor accommodation located near the building platforms indicated on the precinct plan will have limited visibility from the surrounding area, visitor accommodation is not limited to those areas of the precinct. There are prominent ridgelines within the property that are more visible from the surrounding landscape.
- 7.15 The Council therefore proposes to amend the visitor accommodation provisions for the Wainamu precinct so that up to 20 guests is permitted, and up to 40 guests is restricted discretionary. The following restricted discretionary assessment criterion has also been

⁵⁷ Primary planning evidence by Mr Philip Brown for EJM Wheeler Trust

proposed to ensure that visual effects are largely internalised taking into account the topography of the property:

adverse effects of visitor accommodation, including visual effects and operational effects e.g, noise, vehicle movements, rubbish facilities should be minimised and as far as possible internalised to the site

Screening of homestays

- 7.16 Mr Brown in his primary statement of evidence for the Trust was concerned about the rule that required a homestay to be entirely screened where the Wainamu landscape is a predominantly open, pastoral environment.
- 7.17 The Council agrees with this reasoning and has deleted clause 2(c) from Rule 2.3 in the track changes included at Appendix B6 to this memorandum.

SEA coverage

- 7.18 The Council and the Trust agreed during the course of Topic 023 that the SEA boundaries would be adjusted to remove the overlay from some tracks and exotic forestry, and from the firewood lot. The Council can confirm that those mapping amendments are in the course of being addressed.

Waitākere Estate

Building coverage

- 7.19 Ranges precinct Rule 2.8 provides for the expansion of a lawfully established activity, (including visitor accommodation) as a restricted discretionary activity, subject to compliance with the precinct development controls for building coverage. The Waitākere Estate enjoys a site-specific exception to this requirement. Rule 2.81(d) provides that an expansion of an activity on 2 Lots within the Waitākere Estate is a as a restricted discretionary activity, up to 400m² additional building coverage above that which existed on the site at 8 December 2009.
- 7.20 These provisions have their origin in Plan Change 36. As the submitter has noted,⁵⁸ these provisions were developed following extensive consultation, and were the subject of a consent order dated 14 March 2013. The submitter nevertheless opposed the retention of these provisions on the ground that the entitlement was "undermined" by the proposed overlays and precinct objectives and policies.⁵⁹

⁵⁸ Submission 4288, at [27].

⁵⁹ At [28].

- 7.21 The evidence presented on behalf of the submitter seeks that the provision be retained, but that an additional 850m²,⁶⁰ or 600 m²,⁶¹ be provided for. The submitter also seeks that the baseline for assessing additional coverage be amended from 8 December 2009, to the date that the PAUP becomes operative. In relation to the baseline date, the Council notes that the submitter has not stated what the effect of the change will be (ie, how much additional building coverage, if any, has been added since 8 December 2009).
- 7.22 The Council considers that the provisions are more enabling than is suggested in the evidence on behalf of the submitter. The Estate is comprised of a number of separate lots. The Council's proposed rule 2.8 applies to an activity on any site, and the building coverage controls also apply on a site-by-site basis. The exemption from the coverage controls relate to only 2 lots of the Estate, and not to the whole 33ha of the Estate, as described in the legal submissions of Ms Masoud-Ansari.⁶² The other sites that comprise the Estate are individually entitled to make use of rule 2.8, and will be individually subject to the building coverage requirements.
- 7.23 It is acknowledged that Ms Pye mistakenly understood that this property-specific entitlement was awarded to reflect the fact that existing development on the property already exceeded the 15% building coverage threshold.⁶³ Notwithstanding, Ms Pye considers that the current provisions which provide for 400m² additional coverage to that which exists on the site at 8 December 2009 is an appropriate threshold to retain for restricted discretionary status. She considers that development which exceeds the additional 400m² coverage has the potential to significantly alter the character and amenity values of the surrounding heritage area, and should be subject to full assessment as a discretionary activity.
- 7.24 Given that context, and for the following reasons, the Council does not support the request to increase the building coverage allowed as a restricted discretionary activity:
- (a) the Council's proposed provisions are an accurate translation of the Operative District Plan and Plan Change 36;
 - (b) the provisions were the subject of a recent consent order, and the submitter has not presented any evidence suggesting that the planning context has changed since that date;

⁶⁰ Per evidence of Mr Barry Kaye, dated 14 October 2015, at [97].

⁶¹ Per legal submissions of Ms Masoud-Ansari, dated 6 November 2015, at [84].

⁶² At [83].

⁶³ At [6.13].

- (c) other submitters on the PAUP were also party to the Plan Change 36 proceedings, including the WRPS, who do not support the requested increase for additional building coverage;⁶⁴
- (d) the Council's proposed provisions provide for expansions of up to 400m² as a restricted discretionary activity, and for larger expansions as a discretionary activity, which the Council considers provides the submitter with sufficient flexibility, without being unduly restrictive; and
- (e) expansions of over 400m² have the potential to significantly alter the character and amenity values of the surrounding heritage area, and it is appropriate that these be fully considered as a discretionary activity.

Guest numbers, vehicle movements, restaurants ancillary to visitor accommodation.

- 7.25 Mr Kaye for the Waitākere Estate also seeks in relation to maximum guest numbers, an increase from 20 to 75, an increase in maximum vehicle movements from 50 to 150 per day, and amendments to enable ancillary or additional restaurant and café activities with a maximum GFA of 450m².
- 7.26 Ms Pye has reconsidered the requested amendments and supports retaining the current provisions (activity status and land use controls) for visitor accommodation, restaurants and cafes, and expansion of existing activities (including restaurants). Ms Pye does not support increasing the current thresholds for guest numbers, restaurants GFA, and associated vehicle movements on the grounds that the current activity status and thresholds are appropriately aligned to retain the character and amenity values of the surrounding area.
- 7.27 As set out in Ms Pye's rebuttal evidence, the proposed increase in the number of guests, restaurant activities and associated traffic movements into and out of the subject site particularly if considered in terms of cumulative effects would be a significant change in the scale and intensity of activity at the Waitākere Estate and has the potential for altering the character and amenity of the surrounding area. Accordingly, any such proposal is more properly considered as a discretionary activity.

8. MAPPING

- 8.1 A number of amendments to the heritage area maps have been proposed in the course of Topic 075, including in relation to the pdf maps embedded in the text of the PAUP, and in relation to the GIS. These changes were explained in evidence and the amended maps presented at the hearing. For completeness, these changes are also summarised below.

⁶⁴ Rebuttal evidence of Mr James Hook, at [4].

8.2 The notified District Plan provisions for the heritage area included a number of 'Precinct Plan' maps, depicting areas that were not able to be mapped in GIS. Many of these maps have been subject to change, while others have become unnecessary and are proposed to be deleted. Updated versions of the precinct plans that remain necessary are included as **Appendices E1 to E11** to this memorandum, and are as follows:

E1 Precinct Plan 2 – Foothills Ōrātia sub-precinct.

- (i) In response to the relief sought by submissions 5391-1, 5432-4 and 5984-1, the map has been amended to remove enhancement areas from sites at 134, 136, 138 & 140 Shaw Road, Ōrātia. These areas are already provided for on-site as subdivision of the parent site was previously completed in accordance with District Plan subdivision provisions that apply in the Ōrātia Structure Plan area, and which now apply to sites in the Foothills Ōrātia sub-precinct.
- (ii) A sub-precinct boundary has also been added.
- (iii) The proposed lot boundaries (shown in red) do not always correctly align with the existing parcel lot boundaries (shown in grey). The Council is undertaking amendments to the map to ensure that the two boundaries line up, but this is an intricate process and will take some time to complete.

E2 Precinct Plan 3 – Foothills Swanson South sub-precinct.

- (i) Mapping of Significant Ecological Areas (SEAs) has been amended to reflect changes resulting from hearing Topic 023, and the visual depiction of SEAs has been amended to align with how overlay is depicted in the Unitary Plan.
- (ii) Lot allocation for 780 Swanson Road has been changed from '2' to '4' to reflect Council's recommended lot allocation for site in evidence tabled at hearing.

E3 Precinct Plan 5 – Foothills Swanson South site 2.

E4 Precinct Plan 6 – Foothills Swanson South site 3.

- (i) No changes have been made to Precinct Plans 5 and 6.

- E5 Precinct Plan 7 – Foothills Swanson South Site 4.
- (i) The permitted building area has been amended to reflect Council’s recommended subdivision provisions for the site in evidence tabled at hearing.
- E6 Precinct Plan 10 – Foothills Swanson South Site 7
- (i) No amendments have been made to this precinct plan.
- E7 Precinct Plan 11 – Foothills Ōrātia Village sub-precinct.
- (i) Minor amendments have been made to show the sub-precinct boundary, correct the map legend and to refer to Areas 1 – 3.
- E8 Precinct Plan 18 – Wainamu precinct.
- (i) In response to submission 6753-31, an esplanade reserve notation has been included on the plan so that it reflects a similar notation on the corresponding Large Property Management Area plan in the Operative District Plan.
- (ii) In response to submission 6753 from Est EJM Wheeler Trust and a request by Jim Wheeler at mediation on 11 September 2015, the reference to ‘sand’ area in the plan legend has been amended to ‘Eco-camping area’.
- E9 Precinct Plan 20 – Te Henga precinct.
- (i) No changes have been made.
- E10 Precinct Plan 21 – Waitākere Ranges Heritage Area precincts.
- (i) This map reflects the spatial extent of precincts in the heritage area, as proposed by the Council.
- E11 Precinct Plan 22 – Waitākere Ranges Heritage Area sub-precincts.
- (i) This is a new precinct plan, which reflects the spatial extent of sub-precincts in the heritage area, as proposed by the Council.

8.3 An updated Precinct Plan 19 relating to the Bethells Precinct has not been included with these maps, as it remains the subject of discussions between the Council and the affected landowner. This map will be provided with the memorandum described at 7.4 above.

8.4 The following notified precinct plans are proposed to be deleted:

- (a) Precinct Plan 1 – Ōrātia Special Subdivision Area.
 - (i) This area is now the 'Ranges - Ōrātia Sub-Precinct', and is mapped in GIS.
- (b) Precinct Plan 4 – Swanson South Site 1; Precinct Plan 8 – Swanson South Site 5; and Precinct Plan 9 – Swanson South Site 6.
 - (i) These sites were subdivided under the Operative District Plan, such that the provisions and map reflecting the Structure Plan entitlements are no longer needed.
- (c) Precinct Plans 12 – 15, Sub-precinct B sites 1 – 4.
 - (i) These maps relate to areas now referred to as the Ranges – Rural Bush Living precinct, and are mapped in GIS.
- (d) Precinct Plan 16 – Titirangi Laingholm Policy Area.
 - (i) The Titirangi Laingholm precinct and sub-precinct boundaries are now mapped in GIS.
- (e) Precinct Plan 17 – Titirangi Village.
 - (i) An updated Precinct Plan 17 – Titirangi Village was provided at the hearing to illustrate the spatial extent of the Council's proposed sub-precincts. All features of that map are able to be captured in GIS, and the map is to be deleted.

9. AMENDMENTS CONSEQUENTIAL TO TOPICS 016/017 AND 080/081

- 9.1 We note that the outcomes of Topics 016 and 017 (RUB North / West and RUB South) may require consequential amendments to heritage area precinct provisions. Similarly, any changes to zoning within the heritage area may require consequential amendments to the precincts. The Council therefore reserves the right to revisit the heritage area precinct provisions if necessary following the conclusion of the hearings for those topics.

Vanessa Evitt / Jeremy Wilson / James Hassall

24 November 2015