

DEMOCRACY ACTION, FS 2746

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

ORAL HEARING: TOPIC 037: MANA WHENUA: 4 JUNE 2015

SUMMARY OF LEGAL POINTS

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL'S ROLE

1. The Panel is a statutory body established under section 128 of the Local Government (Auckland Transitional Provisions) Act 2010 to hold submissions on the proposed plan and then make recommendations to the Auckland Council.
2. It has the role usually taken by a local authority when holding a hearing on a proposed plan.
3. The Panel's Procedural Minute No. 6 (5 August 2014) related to site-specific requests to modify or add items to or delete items from the schedules of the PAUP. It refers to a fundamental principle: "*the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected*" (*Clearwater Resort Limited v Christchurch City Council* AP35/2002 (HC)).
4. The Panel was concerned "*someone might be taken by surprise by changes sought through the submission process, especially by submitters who are not the owner of the affected property*". Another concern was that a number of submissions for new items to be added to the schedules "*may not include certain information that we would regard as essential to any assessment of the scheduling of such items in terms of the relevant objectives and policies and the requirements of section 32 of the RMA*".
5. The Council's legal submission is that "*affected land owner consent or involvement in relation to a submission amending or seeking a new scheduled site should be a necessary consideration for the Panel, alongside other factors relevant to assessing the merits of such a submission and the effect that the relief sought may have.*" (3 June 2015)
6. The Panel is responsible for ensuring procedural fairness has been given to all affected property owners, including those affected by the addition of the 3600 Sites and Place of Value to Mana Whenua. The SVMW overlay and the addition of the 3600 sites is still a draft proposal even though it has (incorrectly) been given immediate legal effect. The affected property owners were "**taken by surprise**". The Council has admitted to having "*insufficient time [] available to assign both values and identity extents*".

7. According to the Environment Court in *Te Rohe Potae O Matangirau Trust v Northland RC* EnvC A107/96 *“The decision-maker must hear the witnesses, whether kaumatua, kuia or not, who have relevant evidence, and the decision-maker must make a finding on the balance of probabilities.*
8. According to the Environment Court in *Winstone Aggregates Ltd v Franklin* DC EnvC A080/02 an evidentiary burden arises for a party alleging facts such as the existence of waahi tapu or other concepts of tikanga Maori. Allegations must be established with objectively probative evidence which satisfies the Court on the balance of probabilities. Mere assertions are inadequate.
9. The Panel can require the Council to make available evidence (s 143 Local Government (Auckland Transitional Provisions) Act 2010). The onus is on the Council to do this, not on affected property owners. The evidence on cultural values should be robust to the standards required by the Environment Court.
10. A number of submitters have requested the deletion of the entire SVMW overlay and the withdrawal of all of the scheduled sites. The Council still considers this overlay as a *“robust schedule of sites that hold value to Mana Whenua”*¹ even though it admits these values and the extent of sites have not been identified.
11. The Local Government (Auckland Transitional Provisions) Act 2010 is unclear on the Panel’s ability to make interim decisions. If the PAUP is left as it is property owners will be stuck with the burden of the Mana Whenua provisions until the Panel makes its final recommendations and the Council acts on them.
12. This goes against the fundamental principle that *“the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected”*.
13. **We ask the Panel to seek a declaratory judgment from the Environment Court on the legality of the SVMW overlay.**

¹ Legal submissions on behalf of Auckland Council, (2 June 2015) para 6.6(e)