

# **Auckland Unitary Plan**

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## **Role and Processes of the Independent Hearings Panel**

**March 2014**



# Context

- New governance arrangements in Auckland
- First Unitary Plan to include RPS, Regional & Coastal Plan and District Plan
- The Auckland and NZ economy cannot afford a drawn out plan-making process

# Background

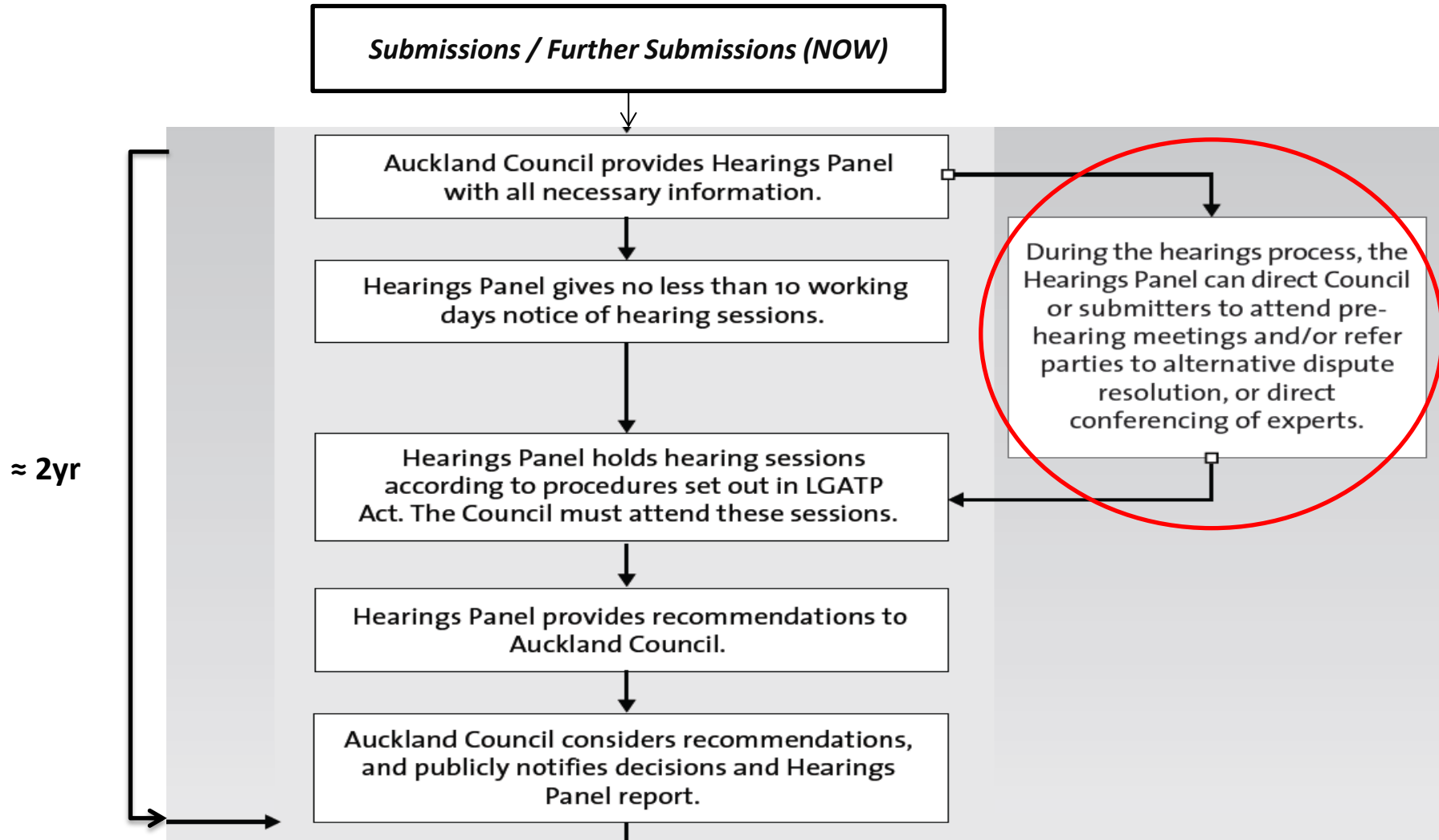
Government policy intent: Better plan-making will lead to good planning outcomes:

- Greater emphasis on finding collaborative solutions
- Less litigation
- Improved Plan integration
- Hard trade-offs in plans
- Better public engagement throughout plan making
- More timely plans

# Background

- New Auckland process
- Maintains fundamentals of RMA schedule 1 process:
  - Public participation
  - Council makes decisions
- With some significant changes:
  - Restrictions on merit appeals
  - An Independent Hearings Panel

# Overall Process



# The Hearings Panel

- Auckland Unitary Plan Independent Hearings Panel
- [www.aupihp.govt.nz](http://www.aupihp.govt.nz)
- 205 Queen Street, Levels 15 and 16
- Hearing, meeting and office facilities
- Dedicated staff for office management, planning support and hearings administration

# Role of the Hearings Panel

- Statutory Body appointed by Ministers of Environment and Conservation
- Local Government (Auckland Transitional Provisions) Act 2010
- Independent of Auckland Council
- Separate office
- Staff supplied by Auckland Council but separate to AUP team and responsible to Panel on day-to-day basis

# Role of the Hearings Panel

- Oversee the resolution of issues through: pre-hearing meetings, expert witness conferences, ADR and hearings
- Hear submissions and evidence
- Evaluate the changes to the notified AUP
- Make recommendations on submissions with reasons to Auckland Council



# Differences with RMA Sched 1

- Hearings Panel can:
  - Direct pre-hearing meetings and expert caucusing, and facilitate mediation
  - Permit cross-examination or not
  - In specific circumstances has the ability to direct the Council to undertake a variation
  - If necessary, can make recommendations outside the scope of submissions

# Pre-hearing Processes

1. Pre-Hearing Meetings
2. Expert Conferencing (caucusing)
3. Alternative Dispute Resolution (mediation)
4. Direct negotiation not involving Panel

## s131 - Pre-hearing meetings

- 1) A meeting for the purpose of clarifying or facilitating resolution of a matter or an issue relating to the proposed plan.
- 2) Parties include: Submitters, Council and any other persons that the Hearings Panel considers appropriate, including experts.
- 3) Chaired by a member of the Panel or other person appointed by Chair
- 4) Report to hearing:
  - a) What was clarified or resolved by the parties attending;
  - b) What matters remain outstanding between parties; and
  - c) Any other matters or issues identified.
- 5) Cannot include any information provided on a 'without-prejudice' basis.

# Pre-Hearing Meetings

- Structure – by wider topic, specific provisions or separate sites
- Marshall submissions – grouping and order
- Identify issues
- Facilitate future processes
- Essentially procedural - Not likely to be substantive sessions

## 132 Consequences of not attending

- 1) If a submitter fails to attend a required meeting “without reasonable excuse”
- 2) Hearings Panel may decline to consider person’s submission
- 3) No right of appeal
- 4) No right to join others under section 274
- 5) Right of objection

## 133 Conferencing of Experts

- 1) The Panel may direct a conference of experts to clarify or facilitate resolution of an issue relating to the Plan.
- 2) Facilitated by a member of or other person appointed by Panel who will report process to the Panel and attendees
- 3) Shall not include any information provide on a without prejudice basis
- 4) Council may attend an expert conference if authorised to do so by the Hearings Panel.

# Experts

- Qualification – evidential standard
- Code of Conduct – as for Court
- Caucusing – independent facilitators
- Agenda and report – Practice Note template and circulation of “will say” statements
- Outcome – Clarification and possible resolution of issues relating to expert opinion
- Not resolution of issues in submission

# 134 Alternate Dispute Resolution

- 1) The Panel may at any time refer a matter to mediation or ADR if appropriate, likely to resolve issues and submitters consent.
- 2) Parties include submitters (1 or more), Council and any other persons considered appropriate by Panel.
- 3) A **mediator** must be appointed by the Hearings Panel
- 4) The mediator must report outcomes
- 5) The report from ADR must not include any information provided in process on a 'without-prejudice basis.



# Mediation

- Format - generally as if Court-assisted
- Independent mediators
- May be appointed for certain knowledge or skills
- Consensual process
- Likely to follow expert caucusing
- Other ADR processes?

# Hearings

- Quorum of 3 Panel members
- Management of conflicts of interest
- Hearing procedures to be issued
- Likely directions for evidence and process
- Cross-examination likely to be limited
- Appropriate tikanga will be observed

# Options

- Choice of methods
- Timing / Delay – series or parallel processes
- Overlap / Duplication
- Lay / Expert Resources
- Panel oversight
- Best outcomes

# Auckland Council's role - Officers

- Responsible for proposed Unitary Plan and administration of submission process
- Provide resources to the Hearings Panel to deliver robust and timely recommendations
- Advocate for its own position during course of pre-hearing and hearing processes
- Separate from Panel's office and staff

# Governing Body's role

Auckland Council makes decisions on Panel recommendations

- Where it accepts recommendations:
  - limited to High Court Appeals on a point of law
  - except where Hearings Panel recommendation is beyond scope of submission
- Where it rejects recommendations:
  - Environment Court appeals on substance

# Designations and Heritage Orders

- Council “decision” is recommendation to requiring authority
- Appeal rights to Environment Court depend on
  - ownership of relevant land and
  - whether requiring authority accepts recommendation of
    - Hearings Panel (for Council designations) or
    - Auckland Council (for other designations)

# Ministry for Environment's role

- Representing the Ministry's interests in the administration of the LG(ATP)A and the RMA
- Monitor and identify lessons for wider RM reform programme

# Next

- There is a lot to do
- Once we all have the summary of submissions, we can plan and prepare in more detail
- The Panel is expecting positive approaches, constructive debates, and mutual goodwill based on a shared goal of the most appropriate Unitary Plan for Auckland