
Auckland Unitary Plan List - Auckland

The purpose of the Auckland Unitary Plan (AUP) list

The purpose of the Auckland Unitary Plan list is to manage litigation resulting from the proposed Auckland Unitary Plan (AUP) to ensure all appeals and judicial review proceedings relating to the AUP are dealt with as quickly as the High Court's resources permit.

The list began in October 2016. There are 41 appeals on a question of law and eight judicial review applications are currently before the High Court and on the list.

Legislative background to AUP

The 49 legal challenges arise as a result of the development of the first Unitary Plan for Auckland.

This process is provided for under Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 ([the Act](#)). The Act has enabled a fast-tracked planning process for Auckland:

- The Auckland Council (the Council) was required to develop a Proposed Unitary Plan, publically notify that plan and call for submissions on the plan.
- An expert Independent Hearings Panel (the Panel) was appointed to hear submitters and make recommendations to the Council on the provisions of the final Unitary Plan. The Panel was required to issue a report of recommendations to the Council.
- The Council was then required to make decisions on the contents of all parts of the Unitary Plan following receipt of the Panel's recommendations, and to publically notify its decisions.
- Those who submitted to the Panel were permitted to appeal the Council's decisions. The Act also preserved the right for parties to apply for judicial review the Council's decision.

- The Act also makes provision for certain appeals to be made to the Environment Court.

Categorisation of the proceedings

All AUP proceedings were referred to the list Judge, Justice Whata.

The first case management conference for all the AUP proceedings was held on 14 October 2016. The purpose of the conference was to determine issues around

- The categorisation of proceedings
- Service
- Overlapping appeals before the Environment Court
- Timetabling
- Joinder of interested parties and
- Security for costs.

At the first case management conference it was resolved that the appeals and review proceedings would be divided into three categories:

- Category 1 – appeals/applications benefitting from settlement discussions.
- Category 2 – scope and/or zoning changes.
- Category 3 – issue specific appeals/applications.

Category 1 (matters capable of reaching settlement)

The category 1 proceedings are all matters that appear to warrant discussions between the Council and the relevant parties as to whether they can be settled by consent. These proceedings, which are listed in **Table 1**.

Category 1 timings

These proceedings have been adjourned to a further case management conference in December, to enable the parties to discuss possible early resolution of these matters.

Category 2 (scope, zoning)

The category 2 proceedings, set out in **Table 2**, include as a primary issue whether the Panel had scope to make the zoning recommendations it did in relation to affected land areas, and the associated zoning decisions that were made by the Council.

The Court resolved to proceed by way of the *preliminary question procedure*. The *preliminary question procedure* is provided for in [r 10.15](#) of the High Court Rules, which permits the Court to make orders that any question be decided separately from any other question(s) in the proceeding, and to formulate the question that is to be decided separately. This may occur at any time in the proceeding: before, during or after the trial. The purpose of the rule is to speed up the proceedings by limiting the scope of the trial in advance. In some cases, the procedure disposes of the need for a trial altogether.

The Court has ordered that a test case (or test cases) be prepared by the Council and the parties for the purpose of resolving the issue of the scope of the jurisdiction of the Panel to make recommendations. The objective of the test case(s) will be to provide a principled framework for the resolution of the individual appeals and/or review proceedings.

Category 2 timings

The High Court has set aside five days to hear the test case(s), commencing 28 November 2016. On 11 November 2016, the Council will file with the High Court the proposed test case(s).

The Category 2 proceedings which do not form part of the test case(s) will otherwise be adjourned to a further case management conference in December, after the decision on the test case(s) has been released.

Category 3 (other matters)

The category 3 matters relate to discrete (non-zoning) issues. They are set out in **Table 3**. They have been categorised as “priority” and “non-priority” proceedings. The “priority” proceedings are those that have the greatest impact on the operability of the Unitary Plan.

Category 3 timings

The High Court has set aside 10 days to resolve the “priority” proceedings, commencing 13 February 2017.

The “non-priority” proceedings have been adjourned to a further case management conference in December.

Table 1 - Category 1 proceedings

#	Priority	CIV	Type	Appellant / Applicant and counsel	Panel topic	Interested parties and counsel
1	Low	2338	Appeal	Ancona Properties Limited (R Brabant)	080, 081 - Rezoning and Precincts	Save our Saint Heliers Inc (R Enright)
2	Low	2296	Appeal	Bayswater Marina Limited (D Nolan QC)	080, 081 - Rezoning and Precincts	Bayswater Community Committee Inc (K Littlejohn)
3	Low	2317	Appeal	Karaka North Village Limited	080, 081 - Rezoning and Precincts	
4	Low	2284	Appeal	Kawau Island Access Organisation Incorporated (Litigant in person)	019 - Natural features, Landscape and Character 080, 081 - Rezoning and Precincts	
5	Low	2314	Appeal	Minister of Defence (R Dixon)	080, 081 - Rezoning and Precincts	NZ Retail Property Group Ltd (D Minhinnick) Westgate Joint Venture (R Stellar) Nuich Trust (R Stellar) Fred Taylor Group Joint Venture (R Stellar) Hugh Green Ltd (M Casey QC) Western City Holdings Ltd (R Bartlett QC) Ian Bertram Midgley & Graham Andrew Midgley (R Bartlett QC) Stride Property Ltd (B Tree) Stride Holdings Ltd (B Tree)

6	Low	2340	Appeal	Reidy, Kleoeten, Ruatotara Limited (Tama Hovell on instructions from Helen Atkins)	080, 081 - Rezoning and Precincts	
7	Low	2309	Appeal	Samson Corporation Limited and Sterling Nominees Limited (J Brabant and R Brabant)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
8	Low	2310	Appeal	Samson Corporation Limited and Sterling Nominees Limited (J Brabant and R Brabant)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
9	Low	2311	Appeal	Samson Corporation Limited and Sterling Nominees Limited (J Brabant and R Brabant)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
10	Low	2319	Appeal	Southern Gateway (Manukau) Limited (A Beatson and M Batistich)	080, 081 - Rezoning and Precincts	
11	Low	2318	Appeal	University of Auckland (J Brabant and R Brabant)	024 – Genetically Modified Organisms	Soil & Health Association of NZ Inc (R Makgill) Whangarei District Council (G Mathias) Federated Farmers of IN Inc (R Garner)
12	Low	2347	Appeal	Waste Management NZ Ltd (J Gregory)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
13	Low	2348	Judicial	Waste	080, 081 -	

			Review	Management NZ Ltd (J Gregory)	Rezoning and Precincts	
14	Low	2312	Appeal	Waytemore Forests Ltd (M Williams)	080, 081 - Rezoning and Precincts	
15	Low	2460	Appeal	Woolmore; Malcolm; And Morris; Alastair & Sonya (Litigant in person)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)

Table 2 – Category 2 proceedings

#	CIV	Type	Appellant / applicant and counsel	Panel topic	Interested parties and counsel
16	2336	Appeal	Albany North Landowners (M Baker-Galloway)	028 - Future Urban	
17	2298	Appeal	Auckland Memorial Park Limited (T Mullins)	080, 081 - Rezoning and Precincts	BAA Land Holdings Ltd (P Mulligan)
18	2323	Appeal	Auckland University of Technology (M Casey QC)	080, 081 - Rezoning and Precincts	Housing NZ Corp ((C Kirman)
19	2333	Appeal	Belgiorno-Nettis, Franco	016, 017 – RUB: North/West and RUB: South 080, 081 - Rezoning and Precincts	
20	2335	Judicial review	Belgiorno-Nettis, Franco (S Ryan)	016, 017 – RUB: North/West and RUB: South 080, 081 - Rezoning and Precincts	No 12 Lomond Ltd (C Malone) Crown Mutual Ltd (D Minhinnick) Crown Pacific Finance Ltd (D Minhinnick) State Advances Corp Ltd (D Minhinnick) Monaro Properties Ltd (D Minhinnick) Takapuna Properties Ltd (D Minhinnick) Verdot Investments Ltd (D Minhinnick) Monte Holdings Ltd (D Minhinnick) Stingray Bay Farms Ltd (D Minhinnick) AJK Investments Ltd (D Minhinnick) G&C Worger Family Trust (D Minhinnick) Northcote RD1 Holdings Ltd (D Allan) W Smale Ltd (D Allan)

					Fred Thomas Drive Investments Ltd (D Allan)
21	2351	Judicial review	Bunnings Limited	080, 081 - Rezoning and Precincts	
22	2326	Appeal	Character Coalition Incorporated and Auckland 2040 Incorporated (D Minhinnick)	059, 060, 062, 063 - Residential 080, 081 - Rezoning and Precincts	Westgate Joint Venture (R Stellar) Nuich Trust (R Stellar) Hugh Green Ltd (M Casey QC) Ian Bertram Midgley & Graham Andrew Midgley (R Bartlett QC) National Trading Co of NZ Ltd NZ Retail Property Group Ltd
23	2327	Judicial review	Character Coalition Incorporated and Auckland 2040 Incorporated (R Brabant and R Enright)	059, 060, 062, 063 - Residential 080, 081 - Rezoning and Precincts	Tamaki Redevelopment Co (B Loutit) Ryman Healthcare Ltd (J Gregory) Retirement Villages Assoc of NZ Inc (J Gregory) Property Council NZ (Minister for the Environment (C Kirman)
24	2322	Appeal	Hollander, Stephen (M Casey QC)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
25	2321	Appeal	Howick Ratepayers and Residents Association Incorporated and W Moffatt (M Savage)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
26	2320	Appeal	JPR Enterprises, Derek Sullivan and Wendy Dragt, Counties Storage Limited, L & L Enterprises, and Anthony and Nicky Wijdeven (R Makgill)	028 - Future Urban 080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
27	2324	Appeal	North Eastern Investments Limited and Heritage Land Limited	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)

			(J Maassen)		
28	2325	Judicial review	North Eastern Investments Limited and Heritage Land Limited (J Maassen)	016, 017 – RUB: North/West and RUB: South 080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
29	2349	Judicial review	Straits Protection Society Incorporated, The (R Enright)	016, 017 – RUB: North/West and RUB: South	
30	2350	Judicial review	Strand Holdings Limited (D Minhinnick on instructions from S Pilkinton and A Arthur-Young)	050 - City Centre 080, 081 - Rezoning and Precincts	Ngati Whatua Orakei Whai Rawa Ltd (R Devine) Centro Investments Ltd (D Minhinnick)
31	2344	Appeal	Summerset Group Holdings Limited (R Bartlett QC)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
32	2305	Appeal	Valerie Close Residents Group (D Minhinnick)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
33	2341	Appeal	Villages New Zealand Limited (Tama Hovell on instructions from Helen Atkins)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
34	2316	Appeal	Wallace Group Limited (J Brabant and R Brabant)	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
(41)	2331	Appeal	Man O' War Farm Limited	019 - Natural features, Landscape and Character	Royal Forest & Bird Protection Society of NZ Inc (S Gepp) Federated Farmers of NZ Inc (R Gardner) Environment Defence Society Inc (R Enright)
(44)	2302	Appeal	South Epsom Planning Group Incorporated and Three Kings United Incorporated	016, 017 – RUB: North/West and RUB: South 080/081 - Rezoning and Precincts	Fletcher Residential Ltd (B Loutit) Minister for the Environment (C Kirman) Housing NZ Corp (C Kirman)

Table 3 – Category 3 proceedings

#	Priority	CIV	Type	Appellant / applicant and counsel	Panel topic	Interested parties and counsel
35	Non-priority	2313	Appeal	Arena Living Limited (L Player Bishop on instructions from G Cleary)	059, 060, 062, 063 - Residential 080, 081 - Rezoning and Precincts	Auckland Presbyterian Hospital Trustees Inc (D Minhinick)
36	Non-priority	2308	Appeal	Auckland Presbyterian Hospital Trustees Incorporated (D Minhinick)	080, 081 - Rezoning and Precincts	
37	Non-priority	2299	Appeal	Federated Farmers of New Zealand Incorporated (R Gardner)	019 - Natural features, Landscape and Character 024 – Genetically Modified Organisms 033 and 034 – General Coastal Marine zone and activities and Other Coastal zones	Housing NZ Corp (C Kirman) Man O'War Farm Ltd (M Williams & M Casey) Royal Forest & Bird Protection Society of NZ Inc (S Gepp) Environmental Defence Society Inc (R Enright) Soil & Health Assoc of NZ Inc (R Makgill) Whangarei District Council (G Mathias)
38	Non-priority	2339	Appeal	Horticulture New Zealand Incorporated (Tama Hovell on instructions from Helen Atkins)	011 - RPS: Rural 038 - Contaminated Land 056 and 057 - Rural Objectives and Policies & Rural	Federated Farmers of NZ Inc (R Gardner)

					Activities and Controls	
39	Priority	2261	Appeal	Independent Maori Statutory Board (Tama Hovell)	009 – RPS: Mana Whenua 036 - Maori Land and Treaty Settlement Land 037 - Mana Whenua Sites	Auckland Utility Operators Inc (D Minhinnick) Lee Warwick Short (S Franks) Federated Farmers of NZ (R Gardner) Housing NZ Corp (C Kirman) Self, John, Adriana and Roger Clark of Trustees of Self Family Trust (R Bartlett QC)
40	Non-priority	2289	Appeal	Kiwi Property Group Limited and Kiwi Income Property Trust (D Allan)	051-054 – Centre Zones	North Harbour Business Assoc Inc (Business Association) (J Brinsdon)
41	Priority	2331	Appeal	Man O' War Farm Limited	019 - Natural features, Landscape and Character	Royal Forest & Bird Protection Society of NZ Inc (S Gepp) Federated Farmers of NZ Inc (R Gardner) Environment Defence Society Inc (R Enright)
42	Priority	2343	Appeal	Royal Forest and Bird Protection Society of New Zealand Incorporated	006 – RPS: Natural Resources and 007 - RPS Climate Change 023 - SEA and vegetation management 033 and 034 – General Coastal Marine zone and activities and Other Coastal zones	NZ Forestry Transport Agency (C Sheard) Fulton Hogan Ltd (B Matheson & R Bartlett QC) Winstone Aggregates (B Matheson & R Bartlett QC) Brookby Quarries Ltd (B Matheson & R Bartlett QC) Stevenson Group Ltd (B Matheson & R Bartlett QC) Pine Harbour Marina

						(D Minihinnick) Housing NZ Corp (C Kirman) Man O'War Farm Ltd (M Williams & M Casey QC) Winstones Aggregates (A Division of Fletcher Concrete and Infrastructure Ltd) (B Matheson) Federated Farmers of NZ Inc (R Gardner)
43	Priority	2328	Appeal	Ryman Healthcare Limited, The Retirement Villages Association of New Zealand Incorporated	059, 060, 062, 063 - Residential	Housing NZ Corp (C Kirman)
44	Priority	2302	Appeal	South Epsom Planning Group Incorporated and Three Kings United Incorporated	016, 017 – RUB: North/West and RUB: South 080/081 - Rezoning and Precincts	Fletcher Residential Ltd (B Loutit) Minister for the Environment (C Kirman) Housing NZ Corp (C Kirman)
45	Priority	2330	Appeal	Transpower New Zealand Limited	042 - Infrastructure	Hugh Green Ltd (M Casey QC) Housing NZ Corp (C Kirman) CDL Land NZ Ltd (D Allan) Wesley College Trust Board (C Malone) Grafton Downs Ltd (C Malone) Federated Farmers of NZ Inc (R Gardner) Greater East Tamaki Business Assoc Inc (Dr Grant Hewitson (not counsel)) Rosebank Business Assoc Inc (Dr Grant Hewitson (Not counsel))

						Vector Ltd (D Minhinnick)
46	Non-priority	2276	Appeal	Viaduct Harbour Holdings Limited	051-054 - Centre Zones	Body Corporate (B Tree)
47	Non-priority	2290	Appeal	Waitakere Ranges Protection Society Incorporated	075 - Waitakere Ranges	Environment al Defence Society Inc (M Wright)
48	Non-priority	2306	Appeal	Weiti Development Limited	080, 081 - Rezoning and Precincts	Housing NZ Corp (C Kirman)
49	Non-priority	2307	Judicial review	Weiti Development Limited	080, 081 - Rezoning and Precincts	Royal Forest & Bird Protection Society of NZ Inc (S Gepp) Long Bay – Okura Great Park Society (M Williams) Okura Environmental Group (M Williams) Forest and Bird (North Shore) Inc (M Williams) East Coast Bays Coastal Protection Society Inc (Friends of Okura Bush) (M Williams) Okura Residents and Ratepayers Assoc Inc (M Williams) Keep Okura Green Inc (M Williams) Dacre Cottage Management Committee (M Williams)