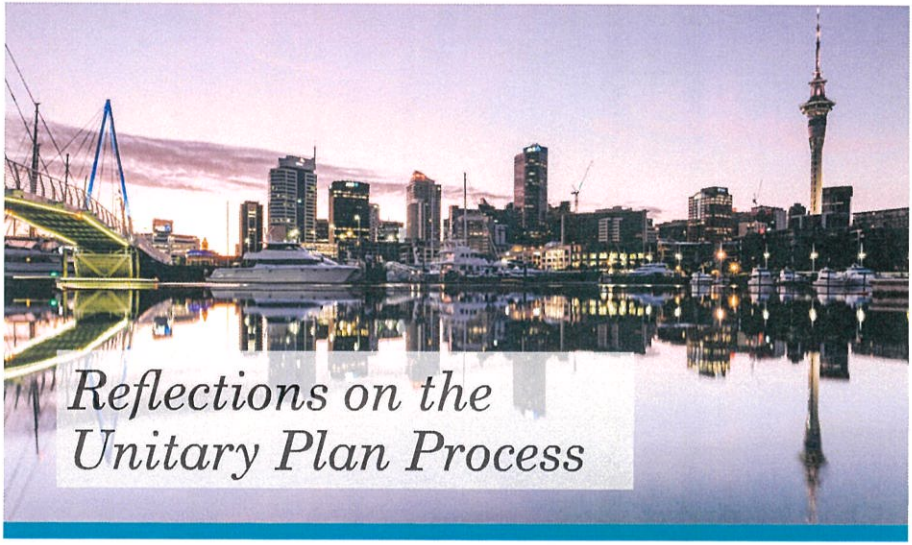

# *Reflections on the Unitary Plan Process*

With only a few appeals now unresolved (including several appeals from the Environment Court to the High Court, as well as *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2018] NZHC 926 and *North Eastern Investments Ltd & Ors v Auckland Council* [2018] NZHC 916 which have been appealed to the Court of Appeal) the Auckland Unitary Plan process which involved the promulgation of the country's first combined Regional Policy Statement, Regional and District Plan, is now drawing to an end. For those heavily involved in the process, which has involved five years of demanding workload, it is an opportunity to reflect on those aspects of the process that worked well and those that perhaps (in retrospect) could have been improved.

The purpose of pt 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) was to provide a "one off ring-fenced process" for the sole purpose of promulgating the first Auckland Unitary Plan (Ministry for the Environment *Departmental Report on the Resource Management Reform Bill 2012* (April 2013) at 190).

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This tailored (and expeditious) process was considered necessary because, under the current process outlined in sch 1 of the RMA it was estimated that the first Unitary Plan would take between six to ten years to become operative. Comparatively, it was expected that under the modified process introduced under the LGATPA, the Unitary Plan would become operative within three years from notification, as outlined in *Franco Belgiorno-Nettis v*

Continued

*Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387, [2018] NZRMA 1:

> *"In my view, the clear purpose of Part 4 of the Act was to facilitate the preparation of the first Auckland combined plan, combining the requirements of a regional policy statement, regional plan, and a district plan by means of a streamlined set of procedures and processes that would enable the Auckland Unitary Plan to be produced within the comparatively short time of three years." (at [110])*

As well as reducing the time needed to make the Unitary Plan operative, the streamlined process was intended to help Auckland Council (the Council) establish a coherent policy and regulatory framework that reduces the complexity and fragmentation arising from having multiple RMA plans (see Ministry for the Environment *Resource Management Amendments 2013: Fact Sheet 4: Auckland Unitary Plan* (September 2013)).

Assessed against those objectives, in general the Unitary Plan can be said to have largely delivered on those objectives. In circumstances where the Ministry for the Environment Departmental Report initially estimated that developing a new combined plan for Auckland could take between six to ten years, the Unitary Plan has been delivered in a largely operative state in close to four years. This is no small feat.

Content wise, the Unitary Plan has also successfully delivered a step change to the way in which Auckland can respond to increasing population growth, along with the current housing supply shortages facing the Region. It is fair to say, that the Unitary Plan has delivered a planning framework which, if implemented in the manner intended by the Auckland Unitary Plan Independent Hearings Panel (Panel), will ensure that Auckland can work towards meeting its goal of being a liveable city for all.

As with all new planning processes, however, there are lessons that can be learned, both positive and negative. Looking at one of the positives, the Unitary Plan process demonstrated that with the right people, and with an attitude of working collaboratively together to get things done, it is possible to significantly shorten the time frames in which plan development can occur. However, those heavily involved in the Unitary Plan process will attest to the fact that the time frame in which hearings needed to take place, and ultimately the Panel needed to report its recommendations on the Unitary Plan to the Council, was simply too short (acknowledging that additional Panel members were added during the process, an extension provided and the legislation amended so that the quorum for hearings was two members of the Panel). The result was that, whilst there is a sound planning framework now in place, some of the details of how that framework is delivered, have been overlooked or need to be reworked. This is evident (in part) by the number of corrections and enhancement plan changes that have recently been notified or are to be notified by the Council (see Auckland Council *Plan Change 4: Corrections to technical errors and anomalies in the Auckland Unitary Plan Operative in part, Decision* (31 May 2018) and Auckland Council *Plan Change 10: Historic Heritage Schedule (errors, anomalies and information update)* (25 January 2018)). We also understand an "enhancements" plan change is to be notified mid-late 2018. It should be acknowledged that not all of these plan changes are dealing with technical errors and anomalies, in that some policy changes sought by the Council are also being included. One can only surmise that an extra six months might have enabled these finer details to have been ironed out.

For those involved in the process, the demands of the shortened time frames, the back-to-back hearings, and the need to present complex legal and planning arguments regarding the future of the Region in heavily constrained time-allocations for hearings, came at high financial and personal cost. For others, the demands of the process simply meant they felt unable to have a voice in the process or became overwhelmed by the demands of keeping up with such an ambitious schedule. Again, even a short extension to the time frame in which the Unitary Plan needed to be delivered could have alleviated such issues.

Another process matter that in retrospect could have been improved, was the initial legislative requirement for the Panel to deliver its recommendations on the whole of the proposed plan under section 144(1) of the LGATPA. Whilst the 2015 amendments to the LGATPA did include

the ability for the Panel to make its recommendations in respect of topics when the hearings on individual topics had been completed, this amendment to the legislation occurred near the end of the hearings process and in that regard was simply too late to remedy this shortcoming in the process. As commented on by the Panel's Chairperson on a number of occasions during the process, the ability for the Panel to issue its recommendations on Regional Policy Statement ahead of the balance of the Plan would have greatly improved the efficiency of the process.

At a substantive level, the step change in the intensification required by the planning framework delivered in the Unitary Plan created an obvious tension between intensification objectives and other environmental outcomes sought for the Region. Here, greater central government guidance regarding the need for Auckland as a region to change to accommodate increasing growth might have been beneficial. It also highlighted the need for more robust spatial planning within the Auckland Region such that there is a clear overall direction as to the location of future growth and its attendant supporting infrastructure. Our perception is that within local communities there is a current apprehension regarding the impact of intensification on amenity levels. This, however, is not necessarily the case. High amenity does not necessarily equate to the protection of the status quo, particularly in the context of the protection of built form and character. As a result, other aspects of local amenity, such as access to services and facilities have been de-emphasised. We consider it important for council and central government to demonstrate to these communities that amenity and intensification are not necessarily mutually exclusive. This can be undertaken by changing people's perception around intensification through local and central government focussing funding of future social and other infrastructure in those communities who are experiencing, and are accepting, higher levels of intensification. Greater connectivity between the location of growth, and future amenity services would, in our opinion, assist in better informing communities' perceptions around intensification.

In that regard, another improvement to the process which the Panel's Chairperson made comment on numerous times throughout the hearings process, would have been the ability for the Region's two main infrastructure providers to be able to participate as separate entities in the hearing process, thereby providing direct input into the Panel's understanding regarding the location and constraints on the provision of infrastructure to accommodate future growth.

In our view, the use of technology throughout the Unitary Plan hearings process also had significant benefits for all participants and significantly improved the efficiency of the process. In particular, we found the portals for lodging and viewing evidence and the use of technology in hearings (i.e. large screens to view documents and the use of tablets) to be particularly effective. It is notable that the use of such technology is currently largely absent from the Environment Court, and in our view the Environment Court's efficiency would hugely benefit from its use.

To conclude, in circumstances where the Resource Management Act 1991 continues to come under significant criticism for the role it plays in frustrating growth, while at the same time arguably still failing to adequately manage the environmental outcomes expected by local communities, the Unitary Plan model established by the LGATPA (absent concerns with the speed of the process) can, in retrospect, be said to have been largely successful. The use of an independent hearing panel to hear submissions in the first instance meant that all participants felt that their submissions were being considered in a balanced and independent manner, absent political interference. In retrospect, earlier responsibility by the Panel for the management of the process (i.e. from notification of the Unitary Plan) might also have assisted in approving the efficiency of the process. The fact that the Chair was an Environment Court Judge was also of fundamental importance to the success and legitimacy of the Panel and the general acceptance of its recommendations to the Council on the Unitary Plan. Further, an aspect rightly highlighted by many participants in the process as a key reason for the successes of the Unitary Plan process was the Panel, who were selected for their specialist expertise and who brought a range of important skill sets to the decision-making process.