

Auckland Unitary Plan

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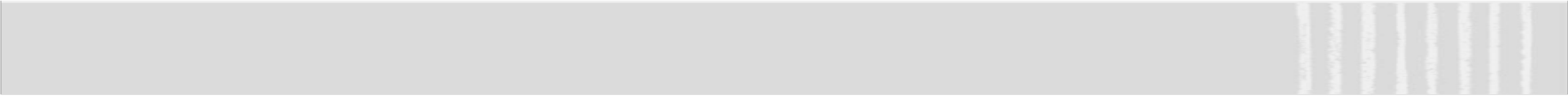
**Role and Processes of the
Independent Hearings Panel**

March 2014





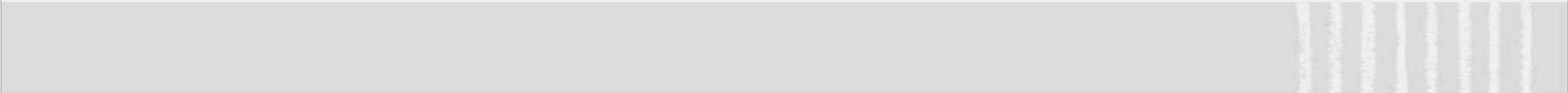
Context

- 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
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Background

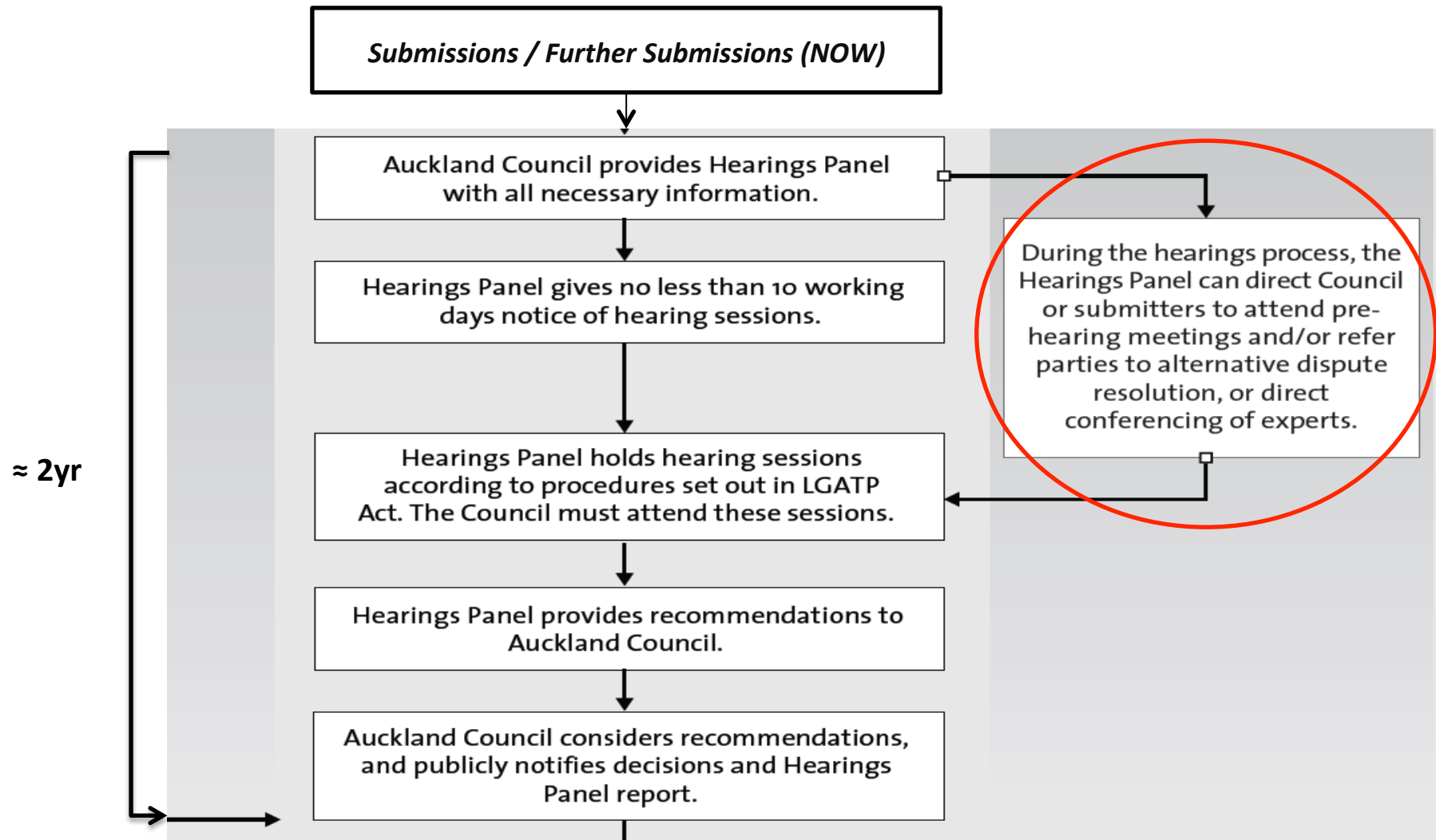
Government policy intent: Better plan-making will lead to good planning outcomes:

- 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
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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



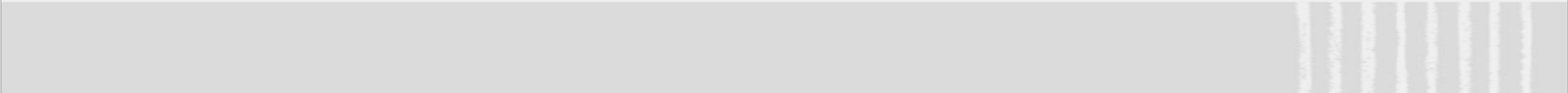


The Hearings Panel

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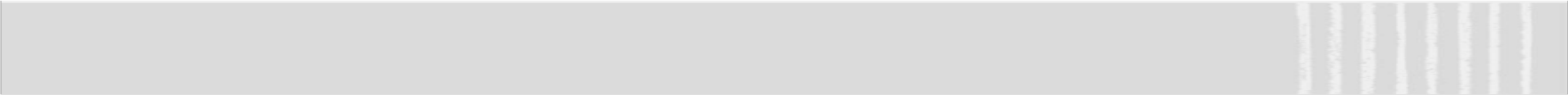


Role of the Hearings Panel

- 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
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Role of the Hearings Panel

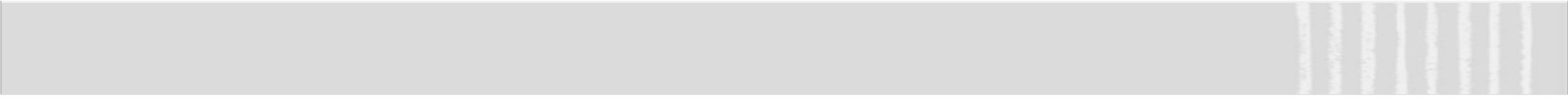
- Oversee the resolution of issues through: pre-hearing meetings, expert witness conferences, ADR and hearings
 - Hear submissions and evidence
 - Evaluate the changes to the notified AUP
 - Make recommendations on submissions with reasons to Auckland Council
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Differences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

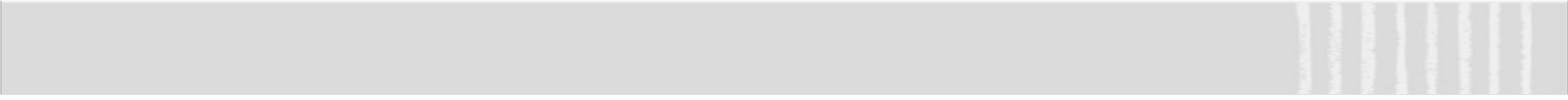
1. Pre-Hearing Meetings
 2. Expert Conferencing (caucusing)
 3. Alternative Dispute Resolution (mediation)
 4. Direct negotiation not involving Panel
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s131 - Pre-hearing meetings

- 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.

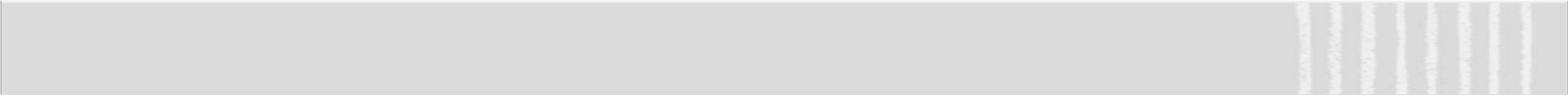


Pre-Hearing Meetings

- 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
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132 Consequences of not attending

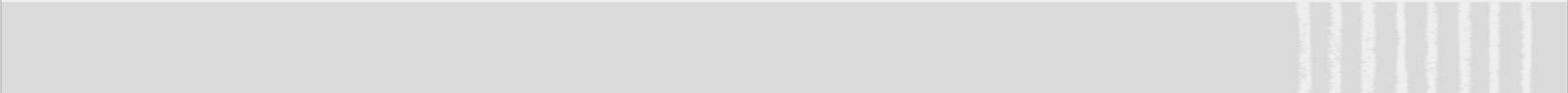
- 1) If a submitter fails to attend a required meeting “without reasonable excuse”
 - 2) Hearings Panel may decline to consider person’s submission
 - 3) No right of appeal
 - 4) No right to join others under section 274
 - 5) Right of objection
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133 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

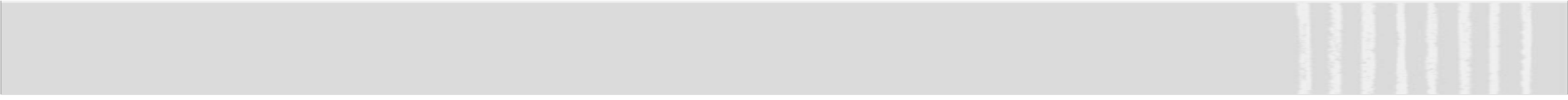
- Qualification – evidential standard
 - Code of Conduct – as for Court
 - Caucusing – independent facilitators
 - Agenda and report – Practice Note template and circulation of “will say” statements
 - Outcome – Clarification and possible resolution of issues relating to expert opinion
 - Not resolution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

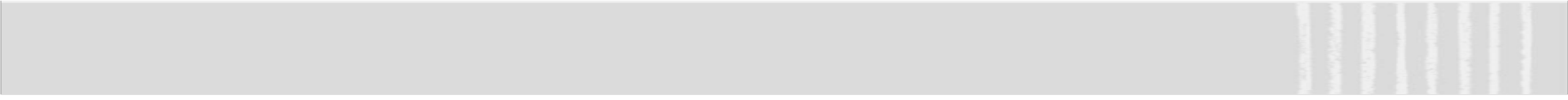


Mediation

- 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?
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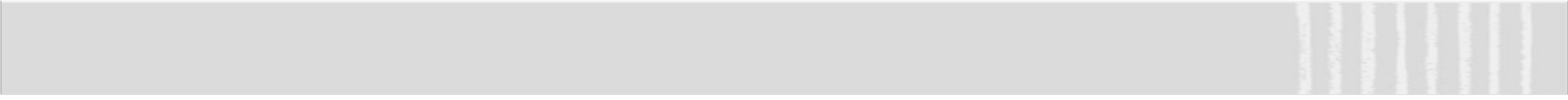


Hearings

- 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
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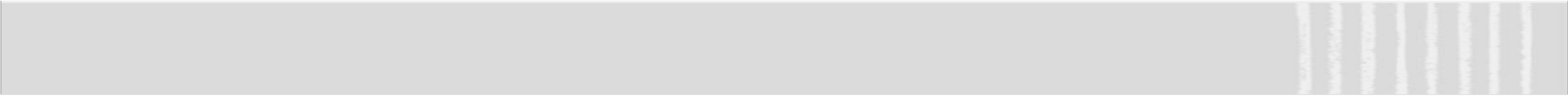


Options

- Choice of methods
 - Timing / Delay – series or parallel processes
 - Overlap / Duplication
 - Lay / Expert Resources
 - Panel oversight
 - Best outcomes
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Auckland Council's role - Officers

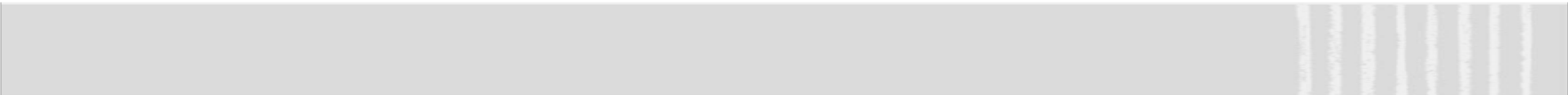
- Responsible for proposed Unitary Plan and administration of submission process
 - Provide resources to the Hearings Panel to deliver robust and timely recommendations
 - Advocate for its own position during course of pre-hearing and hearing processes
 - Separate from Panel's office and staff
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Governing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

Auckland Council makes decisions on Panel recommendations

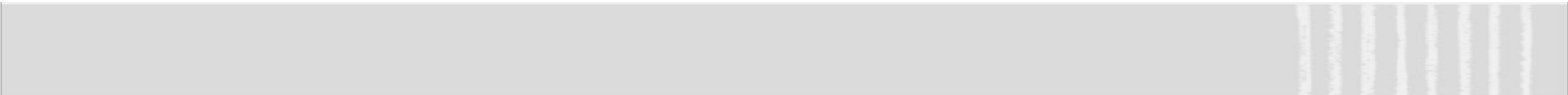
- Where it accepts recommendations:
 - limited to High Court Appeals on a point of law
 - except where Hearings Panel recommendation is beyond scope of submission
- Where it rejects recommendations:
 - Environment Court appeals on substance





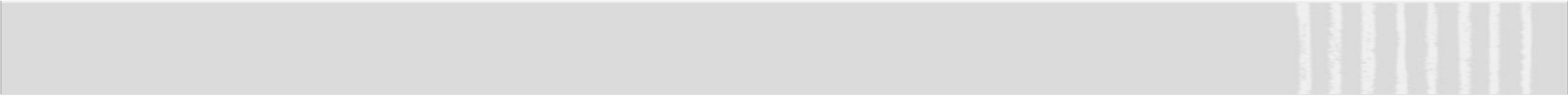
Designations and Heritage Orders

- 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
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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
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