

## **Before the Independent Hearings Panel**

**In the matter** of the Resource Management Act (1991)

**And**

**In the matter** of Plan Change 120: Housing Intensification and Resilience to the Auckland Unitary Plan Operative in Part (**AUP**)

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**Memorandum of counsel on behalf of Auckland Council seeking order for protection of sensitive information under section 42 of the Resource Management Act 1991**

**Date: 27 March 2026**

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## **MAY IT PLEASE THE PANEL**

- 1 As the Independent Hearings Panel (**Panel**) is aware, we act for Auckland Council (**Council**) in relation to Plan Change 120: Housing Intensification and Resilience (**PC120**) to the Auckland Unitary Plan Operative in part (**AUP**).
- 2 The purpose of this memorandum is to seek from the Panel an order under section 42 of the Resource Management Act 1991 (**RMA**) for the protection of sensitive information in a submission lodged on PC120.
- 3 As the Panel is aware, section 42(1)(a) of the RMA, which applies to the Streamlined Planning Process (**SPP**), empowers the Panel on its own motion or on the application of any party to any proceedings or class of proceedings, to make an order protecting sensitive information in the manner outlined in that section. The Panel needs to be satisfied that the order is necessary to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of waahi tapu.
- 4 It has come to the Council's attention that Ngaati te Ata Waiohua, a submitter on PC120 (submitter #5206), has requested that certain culturally sensitive information in its submission be kept confidential and not be made publicly available.
- 5 The Council respectfully considers that the requirements of section 42 are met in respect of this request for the reasons outlined in more detail below. It seeks an indefinite confidentiality order from the Panel under section 42(2)(b) of the RMA that certain sensitive information provided by the submitter may be withheld from its Summary of Decisions Requested Report (**SDR**) and from the version of Ngaati te Ata Waiohua's submission that is published on the Council's and Panel's websites.

## Section 42 of the RMA

6 Section 42 of the RMA, which applies to the SPP process pursuant to clause 85(1) of Schedule 1 of the RMA, relevantly states:<sup>1</sup>

### **42 Protection of sensitive information**

(1) A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary—

(a) to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; ...

and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.

(2) A local authority may make an order for the purpose of subsection (1)—

(a) that the whole or part of any hearing or class of hearing at which the information is likely to be referred to, shall be held with the public excluded (which order shall, for the purposes of subsections (3) to (5) of section 48 of the Local Government Official Information and Meetings Act 1987, be deemed to be a resolution passed under that section):

(b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to any proposal, application, or requirement.

(3) An order made under subsection (2)(b) in relation to—

(a) any matter described in subsection (1)(a) may be expressed to have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the local authority considers appropriate in the circumstances:

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<sup>1</sup> Section 42 applies to the SPP process under clause 85(1) of Schedule 1 of the RMA.

(b) any matter described in subsection (1)(b) may be expressed to have effect from the commencement of any proceedings to which it relates but shall cease to have any effect at the conclusion of those proceedings—

and upon the date that such order ceases to have effect, the provisions of the Local Government Official Information and Meetings Act 1987 shall apply accordingly in respect of any information that was the subject of any such order.

...

(6) In this section—

(a) **information** includes any document or evidence:

...

- 7 Section 42(2) of the RMA empowers the Panel to make an order prohibiting or restricting the communication of any information supplied to it or obtained in the course of a proceeding.
- 8 The courts have confirmed that the power in section 42(2) of the RMA is a discretionary one, and that the exercise of the statutory discretion regarding any confidentiality orders, has to be undertaken in a principled way.<sup>2</sup>
- 9 Under sections 42(2)(b) and 42(3)(a) which apply in this case, if the Panel is minded to make a confidentiality order in the terms sought, that order can be made for an indefinite period or until such date as the Panel considers appropriate. In this case, the Council respectfully considers an order for an indefinite period of time would be most appropriate.

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<sup>2</sup> See for example *Connor Kingi v Northland Regional Council* [2024] NZEnvC 236 and *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 57.

## **Order sought and grounds for application**

- 10 The Council respectfully seeks the following confidentiality order from the Panel in respect of the publication of its SDR in relation to the submission made by Ngaati te Ata Waiohua, and the publication of submission #5206 itself:
  - 10.1 An order prohibiting the disclosure, publication or communication of the following information from the date of the order:
    - 10.1.1 Details and names of sites which have been nominated by Ngaati te Ata Waiohua (through a separate plan change process) for scheduling in Schedule 12 Sites and Places of Significance to Mana Whenua Schedule of the AUP as new sites and places of significance to it;
    - 10.1.2 Maps and any other information indicating the location and potential extent of any new nominated sites of significance to Ngaati te Ata Waiohua;
    - 10.1.3 Te Reo Māori names of any sites of significance to Ngaati te Ata Waiohua that are not in the public domain; and
    - 10.1.4 Information about potential cultural effects on any new nominated sites of significance.
- 11 The application is made on the following grounds:
  - 11.1 The confidential information in Ngaati te Ata Waiohua's submission concerns details of the location of waahi

tapu which have been nominated through a separate plan change process for scheduling in the AUP as new sites and places of significance to mana whenua. Information about such new sites is generally not currently in the public domain. Ngaati te Ata Waiohua's submission also contains other culturally sensitive information that Ngaati te Ata Waiohua has stated is not intended for public release, needs to be handled sensitively, and in accordance with tikanga Māori and the active protection obligations owed to mana whenua;

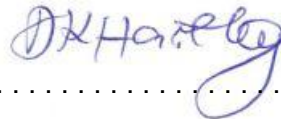
- 11.2 Such sites and any Te Reo Māori names of sites of significance that are not in the public domain are a taonga to Ngaati te Ata Waiohua;
- 11.3 Ngaati te Ata Waiohua has specifically requested that the names, locations and other information pertaining to new nominated sites be kept confidential and not be made publicly available;
- 11.4 Withholding of the information is necessary in order to avoid serious offence to tikanga Māori and the disclosure of the location of waahi tapu that are not currently in the public domain;
- 11.5 The exercise of the Panel's discretion to make the confidentiality order is warranted because in the circumstances of the case:
  - 11.5.1 The importance of avoiding serious offence to tikanga Māori and disclosure of the location of waahi tapu outweighs the public interest in making the sensitive information available in the Council's SDR and the version of Ngaati te

Ata Waiohuria's submission made publicly available;

- 11.5.2 Other submitters on PC120 have an interest in being able to scrutinise the relief that Ngaati te Ata Waiohuria has requested in its submission. Accordingly, the Council proposes retaining all the relief sought by the submitter in the published version of its submission so that other submitters on PC120 are able to understand the relief that has been sought and any implications of such relief;
- 11.5.3 Summarising the relief sought by Ngaati te Ata Waiohuria in the SDR and retaining the stated relief it has sought in its submission while withholding the sensitive information concerning new nominated sites of significance strikes the appropriate balance between the importance of avoiding offence to tikanga Māori and the disclosure of the location of waahi tapu not in the public domain, and the public interest in making the sensitive information available;
- 11.5.4 The terms of the order sought will accordingly not affect public participation in the PC120 process; and
- 11.5.5 The terms of the order sought will also not affect the public interest in the Council's decisions on the Panel's recommendations on submissions on PC120.

12 The Council therefore respectfully requests that the Panel make the indefinite confidentiality order sought on the basis that the requirements of section 42(1)(a) are met.

**Date:** 27 March 2026



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D K Hartley / A F Buchanan  
Counsel for Auckland Council