

**UNDER** The Resource Management Act (1991)  
**IN THE MATTER** of Plan Change 120 to the Auckland Unitary Plan

---

**Memorandum on behalf of CDL Land NZ Limited, Drive Holdings Limited, Foodstuffs North Island Limited, Kiwi Property Group Limited, Masfen Holdings Limited, Millennium & Copthorne Hotels NZ Limited, Northcote RD1 Holdings Limited, Tram Lease Limited and Viaduct Harbour Holdings Limited regarding procedural matters**

**30 January 2026**

---

---

**ELLIS GOULD  
LAWYERS  
AUCKLAND**  
REF: Douglas Allan / Alex Devine  
[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)  
[adevine@ellisgould.co.nz](mailto:adevine@ellisgould.co.nz)

**Level 31 Vero Centre  
48 Shortland Street, Auckland  
Tel: 09 307 2172 / Fax: 09 358 5215  
PO Box 1509  
DX CP22003  
AUCKLAND**

**May it please the Panel:**

1. **CDL Land NZ Limited, Drive Holdings Limited, Foodstuffs North Island Limited, Kiwi Property Group Limited, Masfen Holdings Limited, Millennium & Copthorne Hotels NZ Limited, Northcote RD1 Holdings Limited, Tram Lease Limited and Viaduct Harbour Holdings Limited (“the Submitters”)** have each lodged submissions on Plan Change 120 (“**PC120**”) to the Auckland Unitary Plan (“**AUP**”). The submissions address the Council’s proposed natural hazard provisions, together with site-specific matters.
2. Through this memorandum the Submitters ask the Hearing Panel to adopt the following procedural measures:
  - 2.1 That the Panel convenes a pre-hearing conference at which:
    - (a) The Panel, Auckland Council and submitters can address the timetable for progressing PC120; and
    - (b) Council and submitters can seek procedural directions that they consider are necessary or desirable for the smooth and timely running of the PC120 process.
  - 2.2 That the Panel makes provision in its PC120 timetable for mediation and, if considered necessary, expert witness caucusing prior to holding substantive hearings on each topic.

***Prehearing Conference***

3. PC120 as notified is a complex plan change and has elicited a large number of submissions. It addresses two key topics:
  - 3.1 Urban intensification in and around transport nodes and centres in accordance with:
    - (a) Remaining elements of the NPS-Urban Development 2020; and
    - (b) Clause 4 of Schedule 3C of the Resource Management Act; and
  - 3.2 Extensively revised provisions regarding natural hazards with application across the city.

4. Decisions on PC120 currently need to be released by mid-2027 which necessarily will place significant time pressure on Council, submitters and the Panel. Critical to the orderly preparation and presentation of evidence and legal submissions on the plan change will be development of a workable and logical timetable for evidence exchange, hearings and any methods of enabling alternative dispute resolution (discussed below).
5. The Submitters consider that input from Council, submitters and professional advisors will help development of a timetable that is both feasible and practical for all parties and enables compliance by the Panel and Council with the statutory timeframes.
6. Both the proposed AUP and PC78 hearing processes benefited from the respective Panels and submitters, along with Council, having an opportunity to discuss procedural matters at pre-hearing conferences before commencing substantive hearings. It is submitted that the same approach would usefully be adopted in the case of PC120.
7. Government ministers have over recent days indicated that they may elect to amend certain aspects of clause 4, Schedule 3C RMA. While there is no certainty that such changes will be made or their nature, it would seem logical in that event to amend the Act in a way that enables Council to introduce a variation revisiting the zoning and height standards in and around transport nodes and centres, while continuing to pursue the natural hazard provisions unchanged. Such legislative changes would inevitably impact the order in which matters are addressed but, in the absence of a time extension, would not overcome the timing constraints facing all parties.

### ***Mediation***

8. The natural hazards aspects of PC120 involve extensive and complex changes to the AUP provisions and have significant implications for development in coastal locations, in areas potentially susceptible to flooding, and broadly across the city in terms of landslide issues. The Submitters are aware that a large number of submissions have been filed in relation to the natural hazard matters and that parties:

8.1 Have expressed significant concerns regarding the methodology

adopted for identifying hazards, the policy framework proposed to address them, and the related rules; and

- 8.2 Are seeking a wide range of amendments to the proposed provisions
9. Given the complexity and breadth of the natural hazard provisions proposed in PC120 and the scope of the concerns expressed in submissions, the Submitters ask the Panel to refer these matters to mediation prior to holding substantive hearings. That will give submitters and the Council an opportunity to:
    - 9.1 Ensure that the Panel has full information before it when the matters proceed to hearing;
    - 9.2 Collectively identify any information gaps or disagreements and commission research that would assist to resolve such issues;
    - 9.3 Commission witness caucusing if technical matters arise that could be resolved or progressed without requiring the Panel to make decisions on matters where it may not have expertise; and
    - 9.4 Ideally, agree on provisions that address the issues in a way that is acceptable to all parties.
  10. The benefit of mediation is that it allows parties collectively:
    - 10.1 To narrow the issues in dispute; and
    - 10.2 Subject to the Panel being satisfied by any agreed provisions, to enable the Panel to focus on and determine only the most intractable matters.
  11. If the Panel was to refer the issues to a hearing before the possibility of agreement between parties had been explored fully, the litigation risk for all parties (including the prospect of the Panel inadvertently making decisions that are problematic for all participants) is heightened. The consequences for development in Auckland of such an outcome are significant given:
    - 11.1 The physical extent of the city subject to natural hazard notations in the AUP (as amended by PC120) and the Council's GIS

Viewer;

- 11.2 The costs and delays involved in complying with the additional information and consenting requirements proposed in PC120 for those areas; and
  - 11.3 The implications of that regime for realisation in practice of the additional development capacity intended to be enabled by PC120.
12. The Submitters consider that one of the core reasons why the AUP hearing process (2013-2016) was successful was that complex hearing topics were referred to mediation before proceeding to hearing. The allocation of significant time and resources to mediation allowed matters in dispute to be narrowed significantly with the result that the AUP IHP was able to concentrate on resolving residual matters of difference. AUP hearing topic 022 regarding natural hazards and flooding was one matter on which mediation proved particularly helpful.

Dated this 30<sup>th</sup> day of January 2026



---

D A Allan / A K Device  
Counsel for the Submitters