

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER **Plan Change 78 to the Auckland Unitary Plan – Operative in Part (AUP)**

DIRECTION (15 MARCH 2024) FROM THE HEARING PANEL

**EXPERT CONFERENCING - PLAN CHANGE 78 – BONUS FLOOR AREA RATIO PROVISIONS
RELATING TO HISTORIC HERITAGE AND SPECIAL CHARACTER**

1. During the PC 78 hearing for the City Centre Hearing topics it became evident to the Panel that there would be value in expert conferencing on Council’s proposed deletion of the Floor Area Ratio (FAR) provisions; specifically the bonus provisions relating to historic heritage and special character. Both the General Trust Board of the Diocese of Auckland and Heritage New Zealand Pouhere Taonga raised concerns that significant sources of funding for heritage protection and preservation will be lost.
2. We note that the National Policy Statement on Urban Development (NPS-UD) provides for qualifying matters when Council responds to Policy 3(a), including the protection of historic heritage from inappropriate subdivision, use and development as a matter of national importance under s 6(f) of the RMA. Special character might also be considered as a qualifying matter.
3. The Council set out its position in opening legal submissions as follows:

The Council's position on these matters is as set out by Elisabeth Laird and Sarah Wong in their rebuttal evidence. In summary, the Council's position is that it is not appropriate to retain the operative FAR standards and while retaining an amended version of the FAR and bonus FAR standards might be feasible, extensive further analysis is required to assess any amended FAR standards in the context of Policy 3(a) implementation, noting also that no amended provisions have been prepared by relevant submitters or the Council.¹

4. We have heard from the above submitters² that the existing Transferable Development Rights (TDR) provisions of the previous Auckland City District Plan have enabled owners of historic heritage and special character buildings to enter into heritage covenants, in exchange for the granting of bonus historic heritage and special character floorspace which can then be transferred to other sites within the Auckland City Centre³. We understand this floorspace roughly equated to the “airspace” above the relevant buildings, that their owners could not

¹ Council’s opening submissions, para 5.22

² General Trust Board of the Diocese of Auckland and Heritage New Zealand Pouhere Taonga

³ Statement of Evidence of Claire Covington, para 4.3.

develop without compromising their historic heritage or special character values, as an incentive for protection of those values through scheduling and covenants. The consents that provided for the TDRs were based on a required Conservation Plan being prepared for both sites setting out ongoing maintenance needs⁴. We were also told that historic heritage and special character building owners are likely to lose their ability to sell off existing TDRs in order to fund ongoing conservation⁵.

5. As a consequence of the above change being proposed by the Council under PC78, Policy H8.3(27) is proposed to be revised to remove the reference to “*development incentives*”, as a means of “*encourag[ing] the retention and conservation of the city centre’s historic heritage through scheduling*”. Notably however, that policy intention would no longer be reflected in the rules as there are no provisions within PC 78 as notified that would encourage retention and conservation of historic heritage and special character buildings in the City Centre Zone. Under PC 78, this policy is therefore not given effect to through any development standard within the City Centre zone.
6. The Panel further notes that varying forms of TDRs have been enabled through the Auckland Unitary Plan provisions. In rural areas, opportunities for transferable rural lot rights (or the transfer of titles) are generated by protecting bush or wetlands, planting bush or amalgamating titles on prime or elite soils on rural zoned land. Rather than the title being created in the rural area, the option exists to transfer that subdivision right to create additional sites within the Countryside Living zone (across the Auckland region).
7. Ms Claire Covington, planner for the General Trust Board of the Diocese of Auckland has highlighted other offsetting methods currently within the AUP which could work in a similar way to achieve historic heritage and special character bonus floor area. These include offsetting reduced esplanade reserve widths (E38 Policy 25 which provides for offsetting that would result in a positive public benefit as a discretionary activity) or loss of streams (Policy E3 Policy 3.3(4) and E15.3(3) which encourages offsetting for indigenous vegetation and biodiversity values through protection and enhancement measures) through the establishment of other equivalent areas on donor sites⁶.
8. Noting the obvious benefits for historic heritage and city centre special character buildings we consider there is merit in experts in fields relevant to the issues raised exploring options such as for an amended version of the FAR and/or the bonus FAR standards, or alternative provisions that will enable the same or similar outcomes to those which currently exist, including drawing on other examples within the AUP such as those highlighted above.
9. The Panel accordingly directs expert conferencing pursuant to Clause 8AA of the First Schedule of the RMA. The purpose of the conferencing will be for planning and heritage experts to fully explore planning methods that could provide for the retention (albeit potentially in a different form) of bonus provisions for historic heritage and special character.

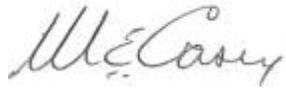
⁴ Ibid

⁵ Statement of Evidence of Claire Covington, para 4.8.

⁶ Statement of Evidence of Claire Covington, Appendix 1: S32AA Analysis

10. While we acknowledge that the experts' opinions may be subject to the Panel's final recommendation on the interpretation of Policy 3(a), we ask the experts to consider whether a solution could be provided on an Auckland-wide basis, potentially similar to other examples provided above, rather than being specific to the City Centre Zone. For clarity, the Panel directs that this conferencing only consider solutions to encourage the retention and enhancement of scheduled historic heritage places and City Centre Zone special character buildings, not places subject to the Special Character Areas Overlay.
11. The experts should also assess the costs and benefits of alternative solutions and provide a s 32AA analysis to support the range of potential planning solutions for the Panel's further consideration.
12. The Panel directs that the conferencing is undertaken in accordance with the Environment Court Practice Note 2023 and in particular – Section 9 - Code of conduct for expert witnesses. Also, those experts participating in the conferencing are to make themselves available to appear at a future reconvened hearing, if required to do so by the Panel.
13. Ms Marlene Oliver is appointed as the independent facilitator for the expert conferencing. Ms Oliver is authorised to:
 - Act as independent facilitator;
 - In conjunction with the Council (as administrator) invite the Council (as the proponent of PC 78) and all submitters to any facilitated meeting;
 - In conjunction with the Council (as administrator) organise the sessions, times of and venues for conferencing; and determine which expert witnesses (relevant fields) can attend the conferencing sessions;
 - Liaise with the Council (as the proponent), submitters, and experts; and
 - Report to the Chair of the Panel on an as required basis on progress with the conferencing sessions and progress on a Joint Witness Statement(s) setting out the outcomes, including matters agreed and not agreed.
14. While the Panel cannot compel parties to take part in the conferencing or compel expert witnesses to attend and participate, we strongly recommend that they do so. These sessions will provide considerable assistance to the Panel.
15. Upon completion of the expert conferencing, the Panel will determine if it requires further information from any of the parties, or if it has additional questions for any of the experts, in which case it is likely that the hearing will be reconvened for that purpose.
16. This is being progressed as a matter specifically reserved from Council's Reply on the City Centre Hearing topics. The Council will be able to provide closing remarks in relation to this specific matter at a future time to be determined by the Panel following discussion with the Council.

17. Any enquiries regarding this Direction, or related matters, should be directed to the Senior Hearings Advisor, Mr Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz.

A handwritten signature in cursive script that reads "McCasey".

Matthew Casey, KC - Chairperson
15 March 2024