

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

AND

IN THE MATTER **Intensification Planning Instrument Plan Change (IPI) - Plan Change 78 (and related variations) - and the Regional Policy Statement and Plan Changes Change 79 and 80 (non IPI Plan Changes) - to the Auckland Unitary Plan – Operative in Part (AUP-OP).**

MINUTE FROM THE HEARING PANEL 19 May 2023

RESPONDING TO THE COUNCIL’S MEMORANDUM¹ REGARDING TOPIC ALLOCATION OF SUBMISSION POINTS AND EVIDENCE FOR PLAN CHANGE 78

1. In accordance with the Resource Management Act 1991 (RMA) - Part 6 Clause 96 of the First Schedule and sections 34 and 34A, the Auckland Council (the Council) has appointed an Independent Hearing Panel (IHP). The IHP has been delegated to hear submissions and make recommendations to the Council on the IPI plan changes and decisions on the non IPI Plan Changes. Its delegations also include addressing any procedural matters.
2. The IHP has reviewed the Council’s Memorandum in terms of “*submission points allocated to PC 78 hearing topics that do not relate to the relevant topic or are the subject of issues being addressed by evidence in other hearing topics*”. As the IHP understand it, the identification of hearings topics has been determined from the Council’s coding framework and the Summary of Decisions Requested (SDR). It appears to us the ‘problem’ lies with the coding framework itself.
3. In paragraphs 9 and 10 of the Council’s Memorandum, Counsel sets out its proposed solution to the issue. It states:

To address the issue in an efficient way, the Council proposes the following approach in terms of its evidence:

Identifying the relevant submission point(s) that do not relate to the relevant topic or are the subject of issues being addressed by evidence in other hearing topics; and

Identifying the relevant hearing topic(s) where the substance of the relevant submission point(s) will be addressed in evidence (or have already been addressed in evidence).

In conjunction with this approach, the Council proposes to maintain a version of the summary of decisions requested on PC78 on its website with additional columns recording both additional allocation requests granted by the IHP and the relevant hearing topic(s) where the substance of the relevant submission point(s) will be addressed in evidence (or have already been addressed in evidence)

¹ 28 April 2023

4. The IHP does not support the Council's proposed solution. It appears to us this solution would allow the Council to 'override' the IHP's Additional Allocation Request process and directly reallocate submissions (for its own purpose) without agreement by the IHP or submitters. It would also require parties to have to find out how their submission(s) are to be dealt with looking at the Council's website and not the IHP's webpage.
5. Given the Council has requested a pause to the PC 78 hearings, which the IHP has partially agreed to², there is time for the Council to 'fix' this issue. It is the IHP's view that as the issue arises from the Council's coding framework, the solution would be for the Council to correct this. The IHP recommends that the Council engage with the affected parties who would be subject to change, and then notify an erratum (the Council having already issued five errata, so will have a good understanding of the processes involved). Such a process would give parties an opportunity to view the Council's revised allocated coding and have the opportunity to respond in advance of the Council notifying an errata.
6. As the IHP secretariat will have to reschedule hearings affected by the Council "pause" request, it may be timely to undertake the above process now so that the parties are correctly assigned to codes and to the IHP's hearing topics by the time the hearings are due for scheduling.
7. However, before the IHP agrees to any changes, the IHP requests the Council liaise with the IHP's secretariat (Ms Spratt – the Independent Hearings Panel Manager) to discuss this issue. The IHP will then re-consider this matter.
8. Any enquiries regarding this Minute, or related matters, should be directed to the Council's Senior Hearing Advisor, Mr Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz.



Greg Hill - Chairperson
Independent Hearings Panel

19 May 2023

² Direction dated 12 May 2023

Before the Independent Hearings Panel

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

And

In the matter of Proposed Plan Change (**PC**) 78: Intensification to the
Auckland Unitary Plan Operative in Part (**AUP**)

**Memorandum of counsel on behalf of Auckland Council in respect of
topic allocation of submission points and evidence**

Date: 28 April 2023



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MAY IT PLEASE THE PANEL

Introduction

- 1 This memorandum of counsel is filed on behalf of Auckland Council (**Council**) in relation to a procedural issue with implications for evidence and hearings in relation to upcoming Proposed Plan Change 78 (**PC78**) hearing topics.
- 2 The issue that has been identified by the Council is that there are submission points allocated to PC78 hearing topics that do not relate to the relevant topic or are the subject of issues being addressed by evidence in other hearing topics.
- 3 The purpose of this memorandum is to advise the Independent Hearings Panel (**IHP**) of the issue and advise the IHP of the Council's proposed approach to addressing the issue going forward.
- 4 The Council requests an indication from the IHP if it considers that the Council's proposed approach would be acceptable and of assistance to it.

The issue and the Council's proposed approach to address it

- 5 The IHP's Hearing Procedures currently provide that the IHP will be flexible about presentation of evidence at a hearing session on a topic at another hearing topic (but subject to the restrictions set out in paragraphs [70]-[71] of the IHP's Hearing Procedures dated March 2023).
- 6 The IHP also provides submitters with the option of allocating their submission points to additional hearing topics, and has developed a form for this purpose. There are several examples of the IHP granting additional allocation requests by submitters.

- 7 No equivalent procedure is currently provided for by the IHP to enable the Council to address submission points that may be the subject of issues being addressed by evidence in other hearing topics.
- 8 Council witnesses are now experiencing an issue in that they are identifying submission points allocated to PC78 hearing topics that do not relate to the relevant topic or are the subject of issues being addressed by evidence in other hearing topics. The issue is significant in that the relevant Council witnesses are not necessarily as well placed to address the substance of the relevant submission points as other Council witnesses in the context of other hearing topics. In some cases, the relevant Council witnesses may not have relevant subject matter expertise to address the substance of the submission points in their evidence.
- 9 To address the issue in an efficient way, the Council proposes the following approach in terms of its evidence:
- 9.1 Identifying the relevant submission point(s) that do not relate to the relevant topic or are the subject of issues being addressed by evidence in other hearing topics; and
- 9.2 Identifying the relevant hearing topic(s) where the substance of the relevant submission point(s) will be addressed in evidence (or have already been addressed in evidence).
- 10 In conjunction with this approach, the Council proposes to maintain a version of the summary of decisions requested on PC78 on its website with additional columns recording both additional allocation requests granted by the IHP and the relevant hearing topic(s) where the substance of the relevant submission point(s) will be addressed in evidence (or have already been addressed in evidence).

- 11 The Council respectfully requests an indication from the IHP if it considers that the Council's proposed approach outlined in this memorandum would be acceptable and of assistance to it.

Date: 28 April 2023

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D K Hartley / W M C Randal
Counsel for Auckland Council for
proposed Plan Change 78