

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

**AND**

**IN THE MATTER** **Intensification Planning Instruments Plan Changes (IPI) and related Regional Policy Statement and Plan Changes to the Auckland Unitary Plan – Operative in Part (AUP-OP)**

**DIRECTION (20 APRIL 2023) FROM THE HEARING PANEL**

**RESPONDING TO THE COUNCIL’S MEMORANDA (DATED 20 APRIL 2023) RELATING TO:**

**DEFERRING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS AND HEARINGS IN RELATION TO TOPIC 013 - QUALIFYING MATTERS - ADDITIONAL.**

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 received the Council’s Memorandum<sup>1</sup> seeking that the IHP vacates the alternative dispute resolution process and the deferral of the hearings of Topic 013.
3. Paragraph 9 of the Council’s Memorandum states:

*In the circumstances [set out in the Memorandum] the Council respectfully requests that the IHP vacates the expert witness conferencing session currently scheduled for Topic 013 on 4 May along with deferring the hearing. The Council respectfully considers this to be the most efficient use of resources in light of the matters discussed above.*

4. For the reasons set out in Memorandum, the IHP directs that the scheduled alternative dispute resolution be vacated and the hearings on this topic be deferred.
5. Any enquiries regarding this Direction, or related matters, should be directed to the council’s Senior Hearing Advisor, Mr Sam Otter by email at [npsudhearings@aucklandcouncil.govt.nz](mailto:npsudhearings@aucklandcouncil.govt.nz).



Greg Hill Chairperson

20 April 2023

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<sup>1</sup> Dated 20 April 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**)

**And**

**In the matter of** Hearing Topic 013 Qualifying Matters - Additional

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**Memorandum of counsel on behalf of Auckland Council regarding  
Topic 013 Qualifying Matters - Additional**

**Date: 20 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 Topic 013 Qualifying Matters - Additional. The Council seeks directions from the Independent Hearings Panel (**IHP**) vacating the expert witness conferencing session currently scheduled for 4 May 2023 along with deferring the hearing currently scheduled to commence on 19 July 2023.

### **Reasons and directions sought**

- 2 Topic 013 relates to additional qualifying matters being proposed by submitters.
- 3 As recorded in the IHP's draft parties and issues report for Topic 013 (updated on 21 March 2023):
  - 3.1 The additional qualifying matters proposed relate to specific geographic areas (e.g. Cockle Bay, Devonport, Freemans Bay/St Marys Bay, Herald Island, Hillpark, Red Beach, Warkworth, Whangaparāoa) and issues (eg transport, infrastructure, character, ecology, landscape, views); and
  - 3.2 There are 159 primary submission points and 1,185 further submission points allocated to Topic 013.
- 4 Expert witness conferencing on Topic 013 is currently scheduled for 4 May 2023, with a hearing scheduled for 19 and 20 July 2023. Evidence exchange will therefore commence in early June 2023 in accordance with the sequential evidence programme set out in the IHP's Hearing Procedures dated March 2023. All these steps are imminent.

5 At the preliminary hearing before the IHP on interpretation and scope issues on 3-5 April 2023, the Council understood that there was general acceptance that any party could seek the inclusion of new or the extension of existing qualifying matters. In this context, the Council's position was that the onus would be on the submitter promoting a new qualifying matter or seeking extension of an existing qualifying matter to provide sufficiently comprehensive evidence to satisfy the requirements for a section 32 evaluation report specified in sections 77J, 77K and 77L, and sections 77P, 77Q and 77R of the Resource Management Act 1991 as relevant to the nature of the qualifying matter in question. The Council's position was also subject to qualifications around the scope issues raised by the inclusion of new or extension of existing qualifying matters.

6 In the context of the 12-month extension granted by the Minister for the Environment to the time for publicly notifying its decisions on the IHP recommendations on Proposed Plan Change 78 (**PC78**), and the evidential issue just addressed, the Council considers that rather than proceeding with expert conferencing on 4 May and then proceeding to a hearing on 19 and 20 June 2023 the IHP's, Council's and submitter's resources would more efficiently be utilised by:

6.1 The existing directions being deferred; and

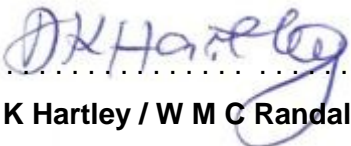
6.2 The Council and submitters being given more time to engage on the information that submitters have in support of their relevant submission points, and the extent to which this information may satisfy the relevant section 32 evaluation requirements.

7 The Council does not have a sense of the volume or complexity of the information that submitters may have to support the inclusion of new or the extension of existing qualifying matters at this time. The Council is therefore not yet able to provide the IHP

with an indication of an appropriate timetable for expert witness conferencing and the hearing on Topic 013.

- 8 The Council should however be well placed to do this following engagement with submitters on the information they may have to support the inclusion of new or extension of existing qualifying matters. The Council considers that this process could take place informally, without the need for directions from the IHP at this stage.
- 9 In the circumstances, the Council respectfully requests that the IHP vacates the expert witness conferencing session currently scheduled for Topic 013 on 4 May along with deferring the hearing. The Council respectfully considers this to be the most efficient use of resources in light of the matters discussed above.

**Date:** 20 April 2023

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