

**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)**

**MINUTE FROM THE HEARING PANEL – 7 NOVEMBER 2023**

**PLAN CHANGE 78 – COUNCIL’S REQUEST FOR DEFERRAL OF HEARINGS**

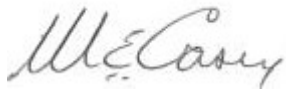
1. Pursuant to section 34 and 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of independent hearing commissioners. The Hearing Panel’s function is to hear the submissions and make a recommendation on them and the Plan Change proposal. Originally, decisions on PC 78 were required to be made by 31 March 2024. On 6 April 2023 the Minister for the Environment granted, at Auckland Council’s request, a 12-month extension until 31 March 2025.
2. The Hearing Panel has received from Auckland Council a memorandum dated 30 October 2023 in response to directions from the Panel that the Council report on certain matters, described below. In its memorandum the Council requests that the Panel defer scheduling any hearings of submissions relating to the Auckland Light Rail Corridor (**ALRC**) and natural hazards.
3. For the reasons set out below, the Panel declines that request, and will proceed to schedule hearings of submissions on all outstanding matters, including those relating to the ALRC and natural hazards, from and including May 2024.
4. The Panel refers by way of background to its directions dated 19 May 2023 and 7 August 2023. They arose out of the Council’s stated intention to notify two variations to PC 78, dealing respectively with natural hazards and the ALRC.
5. In April 2023 the Panel received a request from Auckland Council to pause all hearings and ADR processes for PC 78 pending notification of those variations. After hearing from the Council and several interested submitters, the Panel identified those PC 78 topics and submissions that were sufficiently unrelated to natural hazards and the ALRC that they could proceed with, without the risk of unfairness or duplication once the variations were notified.
6. The Panel has proceeded to hear those topics, and expects to conclude those hearings in April 2024. Thereafter, it has been the Panel’s intention to schedule hearings on the remaining topics, which relate to natural hazards and the ALRC or are affected by either of the proposed variations. There is a large number of such topics covering a wide range of issues raised by submitters.

7. The Panel’s Direction of 19 May 2023 included a requirement that the Council report by 4 July 2023 on progress in establishing and agreeing the scope of the two variations, the work yet to be completed, the timeframe for that work and the likely notification dates for the variations.
8. The Council’s report of 4 July 2023 indicated that work was underway but significant work had still to be undertaken, and requested a further reporting date to update the Panel. In its Direction of 7 August 2023, the Panel directed a further report be provided by 30 October 2023 and stated:

*That report back needs to provide the definitive notification dates for those variations. If those dates cannot be provided, the IHP will be scheduling the hearings of the submissions on the ALRC and natural hazards. This is necessary to enable the IHP to hear and make its recommendations on those submissions within the time limits imposed by the Minister for the Environment.*
9. The Council’s latest report dated 30 October 2023 acknowledges this direction but requests that the Panel not proceed to schedule hearings relating to the ALRC and natural hazards, and requests a further reporting date of 9 February 2024. Council’s reasons include:
  - Council’s Planning, Environment and Parks (**PEP**) Committee has approved a natural hazards engagement plan together with an accompanying Māori engagement plan, and such engagement has yet to be undertaken;
  - the proposed National Policy Statement for Natural Hazards Decision Making (NPS-NHD) is of direct relevance to the variation. This reasoning is unclear as the proposed NPS states at clause 1.5 that nothing in it will apply to the preparation of an IPI under s 80F of the RMA (which PC 78 is). Council’s view is that this prevents a variation to PC 78 that will comprehensively and expeditiously address natural hazards, and that a change to the Auckland Unitary Plan – Operative in Part (**AUP**) may be needed to do so;
  - while good progress has been made on a possible variation for the ALRC, the Council had anticipated receiving Notices of Requirement in August 2023, but that did not occur;
  - the general election on 14 October 2023 has resulted in a change of government, and one of the main parties now in government campaigned on the basis that the ALRC would be cancelled;
  - that party also indicated that policy changes would be made in relation to housing and the Medium Density Residential Standards (MDRS).
10. The Council intends to hold discussions with the incoming government as to the implications of these matters but in the meantime the PEP Committee is unable to give staff clear direction on variations or other possible changes, whether to PC 78 or to the AUP. It will be unable to do so until after its first meeting in February 2024, “at the earliest”.
11. While the Panel notes the complexity of these issues and their interrelationship with PC 78, it is operating under a clear statutory and Ministerial requirement to complete its work in time for

decisions to be made on 31 March 2025 at the latest. It will be unable to do so unless it proceeds in a timely manner with the hearing of the remaining topics and issues.

12. The Panel is also conscious of the expectations of submitters and others, and the potential for significant unfairness if its work is not completed and decisions issued in good time. A further delay until at least February 2024 before hearings are even scheduled is unsatisfactory. The Panel therefore proposes to schedule hearings of the remaining topics from (and including) May 2024.
13. The Panel accepts that in the meantime, the situation may develop in ways that remove, or significantly reduce, the present uncertainty. The Panel is unable to speculate as to what changes may occur and how they might affect progress with, and finalisation of, PC 78. The Council is therefore encouraged to take these issues up with central government as a matter of priority.
14. Until the situation is made clearer the Panel will prepare an indicative hearing schedule for the remaining topics and submissions. The first of the hearings will be scheduled for May 2024. If the situation changes and becomes more certain before mid- February 2024 it should be possible to revisit the schedule without undue prejudice having been caused to submitters involved in hearings scheduled for May. However the Panel will expect the Council and submitters to be ready to proceed on the scheduled dates, unless otherwise directed.
15. Any enquiries regarding this Minute, or related matters, should be directed to the Senior Hearings Advisor, Mr Sam Otter by email at [npsudhearings@aucklandcouncil.govt.nz](mailto:npsudhearings@aucklandcouncil.govt.nz)



Matthew Casey KC, Chairperson  
7 November 2023

## **Before the Independent Hearings Panel**

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

**And**

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

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**Memorandum of counsel for Auckland Council in response to Hearing  
Panel directions of 19 May 2023 and 7 August 2023**

**Date: 30 October 2023**

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## MAY IT PLEASE THE PANEL

### Introduction

- 1 This memorandum of counsel for Auckland Council (**Council**) responds to the directions of the Independent Hearings Panel (**IHP**) of 19 May 2023 and 7 August 2023.
  
- 2 In its direction of 19 May 2023, the IHP directed to the Council to report on the following:<sup>1</sup>
  - 2.1 The progress in establishing and agreeing the scope of the two variations (relating to natural hazards and the Auckland Light Rail Corridor (**ALRC**));
  - 2.2 The work the Council has already undertaken on the variations;
  - 2.3 The work still to be completed on the variations and their timeframes; and
  - 2.4 The likely notification dates of the variations.
  
- 3 In its direction of 7 August 2023, the IHP directed the Council to report back to the IHP no later than 30 October 2023 on the Council's work programme for both variations and to provide the definitive notification dates for those variations.<sup>2</sup>
  
- 4 The IHP's directions dated 7 August 2023 indicated that if those dates cannot be provided, the IHP will be scheduling the hearings of submissions on the ALRC and natural hazards and that this was necessary to enable the IHP to hear and make its recommendations on those submissions within the time limits imposed by the Minister for the Environment for the Council to

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<sup>1</sup> Direction (19 May 2023) from the IHP at [4].

<sup>2</sup> Direction (7 August 2023) from the IHP at [4].

publicly notify its decisions on recommendations (31 March 2025).

5 The purpose of this memorandum is to update the IHP on the Council's progress made in respect of the variations and to respectfully seek that:

5.1 The IHP does not proceed to schedule the hearings of the submissions on the ALRC and natural hazards (as was indicated in their directions of 7 August 2023) at this time; and

5.2 A further reporting date of 9 February 2024 (being after the first meeting of the Council's Planning, Environment and Parks (**PEP**) Committee 2024) is set.

#### **Work already undertaken on the variations**

6 Since the Council's last report, it has been undertaking ongoing work to progress two variations to the IPI relating to natural hazards and the ALRC.

7 In respect of work already undertaken by the Council regarding natural hazards, we are advised that officers have now completed and secured PEP Committee approval for a natural hazards engagement plan together with an accompanying Māori engagement plan.

8 Officers have also been reviewing and preparing a submission to the government on the proposed National Policy Statement for Natural Hazards Decision Making (**NPS-NHD**). Alongside the issue of section 80E as discussed below, this proposed NPS is of direct relevance to the preparation of changes to the Auckland Unitary Plan Operative in part (**AUP**) as clause 1.5 provides that nothing in the NPS applies to a specified territorial authority when it is preparing an intensification planning instrument under section

80F of the Act. The government has signalled that this NPS-NHD will not be gazetted until 'early 2024'.

- 9 In respect of work already undertaken by the Council regarding the ALRC, we are advised that the Council has made good progress in preparing a possible variation to PC78 for the Auckland Light Rail Corridor. The Council had anticipated receiving notices of requirement for Auckland Light Rail in August 2023, but that did not occur.
- 10 The Council now requires clarity from the incoming government on whether the project will proceed (given recent indications that it will not), to determine the most appropriate way forward.

#### **Impact of general election and section 80E RMA procedural issue**

- 11 Following the General Election on 14 October 2023, which has seen a change in Government (to be finalised following the special vote count being completed on or before 3 November 2023) the IHP will be aware that the national political landscape has changed and this could have a significant impact on PC78.
- 12 In this regard, the National Party, which is likely to form a coalition government, campaigned on the basis of the following relevant policy changes to be made in its first 100 days:<sup>3</sup>

Cancel Labour's Auckland Light Rail project

Begin work on National's Going for Housing Growth policy, to extend housing supply, build infrastructure and give councils flexibility over MDRS standards.

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<sup>3</sup> National's 100 Day Action Plan, page 3, [100\\_Day\\_Action\\_Plan.pdf \(nationbuilder.com\)](https://www.nationbuilder.com) accessed on 19 October 2023.

- 13 We are advised that the Mayor intends to have discussions with the incoming Government on what this means for the Council and for PC78.
- 14 As a result of this major shift, counsel for the Council are advised that the Council's Planning, Environment and Parks Committee is unlikely to be able to provide staff with clear direction on the variations (or other possible changes to the Auckland Unitary Plan Operative in part (**AUP**)) until after its first meeting in 2024, being in February, at the earliest.
- 15 If the ALRC project is not progressed, this will inevitably affect the content of a variation for the ALRC area.
- 16 With respect to natural hazards, there is a procedural issue. As raised with the Minister most recently on 12 October 2023, the Council considers that section 80E of the RMA prevents a variation to PC78 to comprehensively and expeditiously address the risks associated with significant natural hazards including flooding, being progressed by the Council. In light of the work undertaken to date by the Council, we are instructed it appears more likely that the changes to the AUP that will be needed to most appropriately address natural hazards issues will require a planning response that goes beyond making the Medium Density Residential Standards and building heights and density of urban form anticipated by Policy 3 of the National Policy Statement on Urban Development 2020 less enabling.
- 17 Without legislative change, in order to progress the required matters in one comprehensive stage, the Council would need to wait until PC78 is made operative, and then promote a subsequent plan change to the AUP. The Council's issues with section 80E have been acknowledged by the Minister.
- 18 In the circumstances, the Council considers that there would likely be significant and potentially unnecessary costs to the Council and submitters to schedule any further hearings until the



Council's discussions with the incoming Government have concluded, any legislative changes are made by the incoming Government (indicatively within 100 days) and the full implications for PC78 are known.

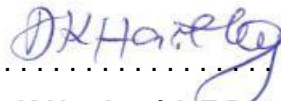
**Directions sought**

19 For the above reasons the Council cannot currently advise the IHP when a variation for the ALRC will be notified and whether natural hazard issues will be able to be comprehensively addressed via a variation to PC78. The Council therefore respectfully requests that:

19.1 The IHP does not proceed to schedule the hearings of the submissions on the ALRC and natural hazards at this time; and

19.2 A further reporting date of 9 February 2024 is set.

**Date:** 30 October 2023



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**D K Hartley / A F Buchanan**

Counsel for Auckland Council for  
Proposed Plan Change 78