

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**)

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

Date: 30 October 2023



Solicitor on the Record
Contact solicitor

Diana Hartley
Anne Buchanan

diana.hartley@dlapiper.com
anne.buchanan@dlapiper.com

+64 9 300 3826
+64 9 300 3807

Level 15, PwC Tower
15 Customs Street West, Auckland 1010
PO Box 160, Auckland 1140
Tel +64 9 303 2019

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:¹
 - 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.²
- 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

¹ Direction (19 May 2023) from the IHP at [4].

² 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:³

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.

³ 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.

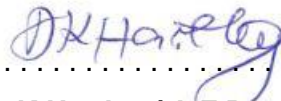
Directions sought

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



.....
D K Hartley / A F Buchanan

Counsel for Auckland Council for
Proposed Plan Change 78