

Memorandum

24 November 2021

To: Commissioners
Robert Scott, Juliane Chetham, Gavin Lister and Councillor Chris Darby

From: Eryn Shields
Team Leader, Regional, North, West and Islands Planning, Plans and Places

Subject: Proposed Plan Change 5 (Whenuapai Plan Change) – Variation 1 Update #3

1. The purpose of this Memorandum is to update the Panel on progress on the development of Variation 1 to Proposed Plan Change 5 Whenuapai.
2. In the Memo to the Panel on 03 August 2021, I provided the following update
This further technical work continues, but is not completed. This now includes consideration of the implications of the 8 June 2021 Environment Court decision (NZEnvC 082) relating to the implementation of the National Policy Statement on Urban Development. This means that the notification of variation 1 will be further delayed, as Council seeks to resolve those matters.
3. Since this time Council staff have continued to work with the Supporting Growth Alliance, the Council's Development Programme Office and Auckland Transport to clarify the nature of the infrastructure funding and financing requirements associated with Plan Change 5. Progress is being made on this matter, however there remains a substantial deficit in terms of the funding of infrastructure for the wider transport network. Council has also been awaiting the decisions on the suite of Drury private plan changes (in terms of the commissioners' decisions relating to the funding to infrastructure) as that may assist in informing a way forward in Plan Change 5.
4. Council has been considering the Government's Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill that is currently before Parliament. Council has made a submission to the Environment Select Committee. The amendments in the Bill, if enacted, will affect the Council's approach to infrastructure funding and financing.
5. The Bill also includes an amendment to Schedule 12. The new Clause 31 that is proposed to be inserted will affect Plan Change 5. Plan Change 5 does not include the Medium Density Residential Standards contained in a new Schedule 3A that is to be included in the Act. If Clause 31 proceeds as drafted, Plan Change 5 will have to be withdrawn. Council has made a submission to the Environment Select Committee on this matter (amongst others) and I attach the relevant paragraphs (4.77 – 4.82) as Appendix 1. The Council considers it to be appropriate to await the passage of the Bill before determining what next steps are taken for Plan Change 5.
6. I will update the Panel following the passage of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill. Council may, in some cases, undertake further meetings with submitters to Plan Change 5 as part of determining the next steps.



Nāku noa, nā

Eryn Shields
APPENDIX 1

Excerpt from Auckland Council submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

- 4.77 Auckland Council is currently processing 33 private plan change requests, 20 of which are already notified for submissions. Private plan change requests are initiated by landowners and involve significant expenditure to prepare the analysis to support their requests. Given the significant expenditure involved, several prospective applicants who are at the pre-lodgement phase with the council have expressed concerns about the Bill's provisions, as have some applicants concerned their requests will be withdrawn. A number of council plan changes are also progressing through the Schedule 1 process.

¹⁵ Limited appeal rights (to the Environment Court) were available where the council rejected a recommendation of the IHP, or where the council accepted a recommendation by the IHP that was 'out of scope' of submission - refer s156(1)(b) and s156(3) of the Local Government (Auckland Transitional Provisions) Act 2010

- 4.78 The Bill requires private plan changes and council plan changes to be withdrawn if they have not been heard by February 2022. The council notes that the provisions as currently drafted rely on applicants voluntarily withdrawing their private plan changes. The council cannot compel them to do so. There are several private plan changes where hearings have been accelerated or commissioners have issued directions to applicants advising them of the Bill's provisions to avoid potential conflicts with the Bill. The Bill's process requirements are unclear and create uncertainty for councils and applicants.
- 4.79 Not all plan changes would be captured by the provisions in the Bill requiring withdrawal. It is unclear whether private plan changes are intended to be processed contemporaneously by councils as the intensification planning instrument is prepared, heard, determined and then integrated. If the government wishes councils to consider withdrawn private plan changes as part of its response to NPS UD, that should be more clearly articulated in the Bill. The council notes that it only adopts private plan changes where there are very clear and significant public benefits.
- 4.80 Clause 31 (Schedule 12) of the Bill does not capture all relevant private plan changes. An accepted plan change cannot be modified by the applicant until evidence is submitted at a hearing. There is no opportunity to modify the private plan change after the clause 24 stage. This means that the private plan change applicant cannot modify their proposal to incorporate MDRS until the hearing which may be so different from what was notified that there would be natural justice/scope issues preventing it, or they will have to withdraw and resubmit the private plan change.
- 4.81 It is also unclear whether councils are meant to include land subject to private plan change requests within the intensification planning instrument, and if so, whether that includes private plan changes where a hearing is complete by February 2022. Commissioners will often leave hearings open after the presentation of evidence to enable issues that arose during the hearing to be resolved. The Bill as currently drafted may prejudice the process by requiring commissioners to close off hearings so as not to risk the private plan change from being withdrawn. It is also unclear what occurs where a decision may not have been released and/or private plan changes that are subject to appeal (i.e. should councils include that land in its planning instrument when the same matter is before the Environment Court?). Given the brief time to prepare the planning instrument by August 2022, this requires clarification.
- 4.82 In summary, the council supports the concerns raised by the private plan change applicants with whom it has spoken, but would need to have a clearer understanding of the intentions behind this aspect of the Bill before being able to offer a potential solution.