

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 requesting a pause of all hearings and alternative dispute resolution processes for PC78

Date: 21 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**).
- 2 As the Independent Hearings Panel (**IHP**) is aware, the Council's request for a 12-month extension to the timeframe for the Council to make its decisions in response to the IHP's recommendations in respect of Proposed Plan Change 78: Intensification (**PC78**) was granted by the Minister for the Environment on 6 April 2023.
- 3 As a result of this decision by the Minister, we have been instructed to respectfully request that the IHP pause the current hearing and alternative dispute resolution / expert conferencing processes for all topics under PC78 for the time-being and counsel is available to attend a conference at short notice to discuss this request.
- 4 We are further instructed that the Council does not request any deferral to the hearings currently scheduled for the related non-Intensification Planning Instrument plan changes, being:
 - 4.1 Proposed Plan Change 79: Amendments to the Transport Provisions;
 - 4.2 Proposed Plan Change 80: RPS Well-Functioning Urban Environment, Resilience to the Effects of Climate Change and Qualifying Matters (with the exception of the topics related to climate change and natural hazards, which could also be paused);
 - 4.3 Proposed Plan Change 81: Additions to Schedule 14 Historic Heritage Schedule;

- 4.4 Proposed Plan Change 82: Amendments to Schedule 14 Historic Heritage Schedule; and
- 4.5 Proposed Plan Change 83: Additions and Amendments to Schedule 10 Notable Trees Schedule.

Context for the request

- 5 As the IHP is aware, a 12-month extension has been granted by the Minister for the Environment¹ to the time for the Council to publicly notify its decisions on the IHP recommendations on PC78 so that the Council can undertake natural hazards and flooding investigations work and formulate a planning response. In the Minister's letter advising that the Council had been granted the 12-month extension requested for making a decision on PC78, the Minister also referred to the Council implementing the intensification provisions in the Auckland Light Rail Corridor within the same time period as addressing natural hazards / flooding issues.
- 6 The 12-month extension for the Council's decision-making on PC78 means that the Council's decisions on IHP recommendations are now required to be publicly notified by 31 March 2025.
- 7 The IHP directed on 17 April 2023 the deferral of PC78 topics concerning natural hazards and stormwater management, namely:
 - 7.1 Topic 009J Qualifying Matters A-I - Significant Natural Hazards;

¹ Letter dated 6 April 2023, attached to the IHP Minute of 13 April 2023.

- 7.2 Topic 010C Qualifying Matters - (Other) Natural Hazards (less significant);
 - 7.3 Topic 012D Qualifying Matters - (Infrastructure) - Stormwater disposal constraint; and
 - 7.4 Topic 015A Residential - Low Density Residential Zone (as it relates to natural hazards and stormwater management and infrastructure provision).
- 8 In directing the deferral of these topics, the IHP noted that it would re-schedule hearing dates for these topics once the Council process for addressing these matters is known, and the implications on the overall hearing schedule has been determined in light of the 12-month extension.

Reasons for the request

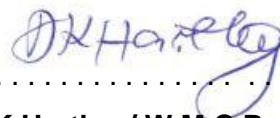
- 9 There are a number of reasons why all hearings and alternative dispute resolution / expert conferencing processes for PC78 are respectfully requested to be paused for the time-being.
- 10 Firstly, we are advised that Council officers working on the investigations into flooding and natural hazards following the Anniversary weekend flooding consider that the extent of changes required to PC78 could be significant, and may require the Council to consider initiating a variation to PC78 towards the end of this year / early next year.
- 11 Secondly, we are advised that Council officers understand that the Notices of Requirement for Auckland Light Rail are likely to be lodged in August 2023, and as a result Council officers consider that the Council's planning response for the Auckland Light Rail Corridor may not be notified until the end of this year / early next year, several months later than originally anticipated.

- 12 Lastly, and most critically, the Council's planning responses for flooding and natural hazards, and for intensification in the Auckland Light Rail Corridor are likely to relate to or overlap with multiple existing PC78 topics currently set down for hearing and alternative dispute resolution / expert conferencing processes between April and December 2023. Continuing with consideration of PC78 topics under the current programme would ultimately lead to duplication of time, costs and resources for all parties.
- 13 In light of this, it is respectfully considered that it would be more efficient for the IHP, submitters, and the Council, to pause all hearings and preparatory steps on PC78 at this point in time. Progressing with the current programme runs a high risk of new submitters joining the process in 2024 and alternative dispute resolution / expert conferencing processes and hearings having to be re-run with new participants.

Directions sought

- 14 For the reasons set out in this memorandum it is therefore respectfully requested that the IHP pauses the current hearing and alternative dispute resolution / expert conferencing processes for all topics under PC78 for the time-being and counsel is available to attend a conference at short notice to discuss this request. We also respectfully suggest that consideration be given at any conference as to whether there are any PC78 topics that are considered discrete enough to be considered at this time.

Date: 21 April 2023



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Counsel for Auckland Council for
proposed Plan Change 78