

**Intensification Plan Changes – Hearing
Procedures:
December 2022**

Intensification Plan Change Hearing Procedures

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Introduction

1. The Auckland Unitary Plan Intensification Plan Changes (**IPI**) and other related Regional Policy Statement and Plan Changes (**Non IPI Plan Changes**) to the Auckland Unitary Plan – Operative in Part (**AUP**) were notified on 18 August 2022.
2. In accordance with Part 6 Clause 96 of the First Schedule of the Resource Management Act 1991 (**RMA**), for the purposes of the IPI the Auckland Council (**Council**) has appointed an Independent Hearing Panel (**IHP**), which comprises:
 - Greg Hill (Chairperson)
 - Sheena Tepania (Deputy Chairperson)
 - Karyn Kurzeja
 - Richard Knott
 - Juliane Chetham
 - Kitt Littlejohn.
3. The Council has also appointed the same members of the IHP to the non IPI plan changes under s 34 and 34A of the RMA. To avoid confusion and duplication in terms of the IPI and non IPI hearing process we use the term IHP for both IPI and Non IPI Plan Changes ¹.
4. Additional members may be appointed from time to time.

IPI - Plan Change 78 (PC 78)

5. The IHP is required to hear submissions and make recommendations on the PC 78. The Council is then required to decide whether to accept or reject each recommendation of the IHP. If the Council decides to reject any recommendation of the IHP it may provide an alternative recommendation. The Council must then refer the IHP recommendation and any alternative recommendation, together with the authority's reasons for rejecting the recommendation, to the Minister².

Non IPI Plan Changes

6. The IHP has been delegated to hear the submissions and make decisions on the non-IPI Plan Changes and variations. These are:
 - Plan change 79: Amendments to the transport provisions
 - Plan change 80: RPS Well-Functioning Urban Environment, Resilience to the Effects of Climate Change and Qualifying Matters
 - Plan Change 81: Additions to Schedule 14 Historic Heritage Schedule
 - Plan Change 82: Amendments to Schedule 14 Historic Heritage Schedule
 - Plan Change 83: Additions and amendments to Schedule 10 Notable Trees Schedule
 - Variation 4 to PC60: Open Space and Other Rezoning Matters
 - Variation 5 to PC66 (Private): 57 and 57A Schnapper Rock Road.
7. This Hearing Procedures document may be updated from time to time throughout the hearings process.

¹ The appointment is for a chair and a minimum of one member to hear and determine PCs 79 – 83 and to hear and determine the two variations

² First Schedule, Part 6, clause 101

Principles of the Hearing

8. As set out in the glossary, 'Hearing' means the overall process undertaken by the IHP under the RMA, and 'hearing session' means a particular session at which submissions are heard by the IHP as part of the Hearing.
9. The IHP will establish a hearing procedure that:
 - a. is appropriate and fair;
 - b. avoids unnecessary formality; and
 - c. recognises tikanga Māori.
10. In addition, the IHP will:
 - a. be inclusive and acknowledge the broad range of interests, capability and capacity represented in submissions;
 - b. where practicable use collaborative and active participation processes to enhance / complement the formal hearings process;
 - c. act in a fair and transparent manner in proceedings;
 - d. conduct an efficient process which minimises the costs and time to all parties involved in the hearing;
 - e. provide submitters with an adequate opportunity to be heard, while, where necessary, limiting the length of oral presentations, avoiding repetition of information and the presentation of irrelevant material;
 - f. give effect to the Māori Language Act 1987, and receive evidence written or spoken in Māori (see Hearing Administration); and
 - g. recognise New Zealand sign language (see Hearing Administration), and receive evidence in sign language.
11. Timeframes and deadlines stated in this Hearing Procedures document are intended to balance competing considerations arising from:
 - a. ensuring that submitters who wish to be heard have a fair hearing;
 - b. conducting an efficient hearing process; and
 - c. meeting the deadline for recommendations and decisions to the Council as set by the RMA.
12. Such timeframes may be adjusted (either shortened or lengthened) by the IHP to meet particular circumstances, either on application by any submitter or by the IHP's own direction. Failure to meet stated or directed timeframes and deadlines without good reason may result in late material not being considered by the IHP or exclusion from expert conferencing, mediation or hearing sessions.

Conflicts of Interest

13. A fundamental pre-requisite to a fair and transparent hearing process is an obligation on all Commissioners to bring an independent view and open mind to the role, free of any conflicts of interest that could result in bias and/or predetermination.
14. Subject to the RMA, the IHP is responsible for determining its own procedures for the conduct of the hearings throughout the hearing process.
15. The IHP has agreed that where a panel member:
 - a. has previously advocated or provided technical advice advocating for a policy or provision to be included in a proposed plan or a draft plan; or
 - b. advocated for a particular outcome in relation to a plan change or resource consent; or
 - c. advocated for or appeared as a witness for a past client; or
 - d. holds a property interest;which may result in an actual or perceived bias, he or she will be required to disclose such positions or perceived conflicts to the Chairperson prior to any hearing session.
16. The Chairperson (or, in the case of issues affecting the Chairperson, the Deputy Chairperson) will decide on a course of action, which may include:
 - a. removing the member from that part of the hearing session and from deliberations and decision making on a matter; or
 - b. seeking whether parties are content that the Panel member hear a particular matter in which those submitters are involved; or
 - c. determining that the potential conflict is not material to the matters to be considered.
17. Mediators and facilitators appointed by the IHP are also subject to the same general considerations as the IHP in relation to conflicts of interest. However, as mediators and facilitators are not involved in hearing sessions, deliberations on submissions or the making of recommendations to the Auckland Council, the course of action taken in relation to any apparent conflict of interest may be different.

Role of Independent Support Staff

18. The IHP has an office of support staff. The role of the support staff will include:
 - a. hearing notifications and schedules;
 - b. meeting arrangements;
 - c. appointing and managing facilitators and mediators;
 - d. commissioning of independent experts or research on behalf of the IHP if required;

- e. making available hearing directions/advisory notices or decisions;
 - f. making available evidence and reports received by the IHP;
 - g. handling public and media enquiries to the IHP;
 - h. preparing the Parties and Issues Reports; and
 - i. to assist the IHP, under its instruction, drafting of some recommendation reports (for timing and efficiency reasons).
19. The support staff will manage the IHP’s webpages on the Auckland Council website (**website**) to ensure relevant information relating to the above is correctly displayed and updated. The website will contain information that is specific to the hearings process.

Communications from the Hearing Panel

20. A communication from the IHP may include:
- a. a **Notice of pre-Hearing Conference** – at which general or specific procedural or preliminary matters may be discussed;
 - b. a **Procedural Minute**;
 - c. a **Direction** – including, but not limited to, a general directive of the IHP requiring a response from one or more parties;
 - d. an **Advisory notice** – information applying to one or more of the parties;
 - e. a **Notice of an alternative dispute resolution process**, including:
 - o A meeting;
 - o Mediation;
 - o expert conferencing; or
 - f. a **Notice of Hearing** – which sets out the dates, times and places (venue) of the hearing sessions;
 - g. **Interim Guidance**.
21. Communications from the IHP relating to procedural matters generally will be issued by the Senior Hearings Advisor or one of the IHP’s support staff (on the IHP’s behalf) and on the website.

Communications to the Hearing Panel

22. No person should attempt to communicate directly with the IHP or any member of the Panel except during a hearing session.
23. All communications (including all general enquiries, procedural requests and documents to be provided) to the IHP are to be sent to:
- a. Email: npsudhearings@aucklandcouncil.govt.nz

- b. Mail: IPI - NPSUD Independent Hearings Panel, Private Bag 92300, Victoria Street West, Auckland 1142
 - c. Delivery: Ground Floor, Auckland Town Hall, 301 Queen Street, Auckland Central.
24. Every communication to the IHP must clearly state in its heading or opening paragraph:
- a. the name of the submitter who or on whose behalf the communication is from;
 - b. the submission number; and
 - c. the relevant Hearing Topic name and number.
25. Any communication or request made to the IHP or any document provided to it will, be treated as official information which is publicly available unless good reason for withholding it exists. Where appropriate in the opinion of the IHP, such communications, requests or documents may be posted on the website.

Service and provision of documents

26. Formal service of documents for the hearing process will be by way of email and posting them on the website unless submitters have been advised directly by the IHP that another form of service is required.
27. The IHP support staff will not directly notify submitters of documents being posted on the website unless there is a legal requirement to do so or otherwise directed to do so by the IHP.

Mediation - (Clause 8AA - Schedule 1 of the RMA)

28. Mediation will normally be encouraged by the IHP in any case where it appears that the issues are suitable for being mediated.
29. If parties' consent, the IHP may refer a matter to mediation or to another alternative dispute resolution process. The parties will be advised of the scope of a mediation session and of the time, date and venue of the mediation by way of email, or by telephone.
30. The IHP will appoint a mediator or a person to facilitate the mediation or other process, and the person who conducts the mediation must report the outcome to the IHP. However, material will not be included in the report without a person's consent if the material was communicated or made available by the person on a without-prejudice basis.
31. This report will take the form of a joint statement signed by the parties in attendance that will include the following matters:
- a. the names and contact details of the people who attended;
 - b. the matters and issues that were agreed among submitters and the resource management reasons supporting that agreement;

- c. any matters or issues that were not agreed and a concise summary of the outstanding issues between the submitters.
32. All parties attending mediation, whether personally or by way of representative, must be authorised to be able to agree (or disagree) or otherwise settle the matters and issues that are the subject of the mediation.
33. Mediation will be undertaken in a pro-active way by the appointed mediators. This may involve parties being contacted by mediators prior to scheduled mediation. Mediators may also present questions to participants and/or request that certain matters be addressed prior to mediation.
34. With the agreement of parties, mediation will focus on a marked-up version of the relevant provisions of the IPI/Non IPI Plan Changes. This will in most cases be provided in advance by the Council but any other party may bring a marked-up version to the mediation.
35. Mediation is undertaken to arrive, at one or more joint statements of changes to the IPI/Non IPI Plan Changes that address the relevant matters within s32AA RMA. Mediation may result in: all parties or some parties agreeing - or none of the parties agreeing.
36. Mediation can include the use of expert conferences to determine matters of fact or expert opinion. This can occur as a sub-set to the mediation with agreed positions on facts (between expert witnesses) contributing back into ongoing mediation.
37. Mediation will **not** be open to members of the public or to submitters who are not directly involved in that mediation.

Expert Conferencing - (Clause 8AA - Schedule 1 of the RMA)

38. The IHP may, at any time prior to or during the Hearing, direct that a conference of experts be held. Expert conferencing will normally only be directed where one or more specific issues which are the subject of expert evidence require separate conferencing.
39. The IHP or a member of the IHP will decide whether a person has appropriate qualifications, expertise and experience to be qualified to attend as an expert at an expert conference.
40. Participation in expert conferencing (including communication related to any conference) is limited to the experts: lay submitters and lawyers are not entitled to participate in this process. The IHP requires that the contact details of experts be provided so that its facilitators can make direct contact with experts to organise expert conferencing. Failure by a submitter or their lawyer to supply contact details for experts is likely to result in those experts not receiving communication about expert conferencing.
41. In order to enable all experts to know in advance the opinions and reasons for opinions of other experts, a member of the IHP or a person appointed by the IHP may direct the experts to prepare a summary of expert opinion in advance of the expert conferencing. All summaries of expert opinion are to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2014. All summaries of expert opinion are to be

served on the expert conference facilitator and participating experts no later than 3 working days prior to the expert conference.

42. The IHP will have the same expectations of expert witnesses as set out in the Environment Court's Practice Note, including in particular:
 - a. an expert witness has an overriding duty to assist the IHP impartially on matters within the expert's area of expertise;
 - b. an expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
43. In addition, every person at an expert conference who is participating in his or her role as an expert witness must agree to comply with the Code of Conduct for such witnesses and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.
44. An expert conference will be facilitated by a person appointed by the IHP. The facilitator of a conference must, no more than five working days after the conference, prepare a report on the conference and provide it in writing or electronically to the IHP and the persons who attended the conference.
45. The report on the expert conference will take the form of a joint witness statement (**JWS**) signed by the experts and will include the following matters:
 - a. the matters and issues that are agreed between the experts (including key facts and assumptions and identification of any methodology or standards used by the experts in arriving at their opinions and reasons for differences in methodology and standards (if any));
 - b. the issues upon which the experts cannot agree and the reasons for their disagreement;
 - c. identification of published standards or papers relied upon in coming to their opinions, including identification of all material regarded by the experts as primary data;
 - d. confirmation that in producing the statement the experts have complied with the Code of Conduct for Expert Witnesses.
46. Expert conferencing will **not** be open to members of the public or to submitters who are not experts.

Hearing sessions

47. All submitters who indicated on their submissions that they wish to be heard will be provided with a hearing notification letter advising of the date, time and venue of the hearing sessions prior to the evidence pre-circulation dates set out below, or at least 10 working days in advance of the hearing.
48. Submitters will arrange a time to attend the hearing by completing the appearance form for the topic and sending it to the hearing advisor. The hearing advisor will create a schedule of speakers and make it available to the parties. However, the

IHP may make changes to the hearing schedule and may request submitters to come at a specific time. All notices of hearing sessions for each topic, and any updates, will be available on the website.

49. The IHP would prefer submitters presenting at hearing sessions to appear in person. However, if this is not possible or practicable, they may appear via MS Teams. Submitters will need to advise the hearing advisor if they plan to appear via MS Teams when they return the appearance form, or, if their circumstances change as soon as practicable or no later than 2 hours ahead of their speaking slot. This is to enable the hearings adviser to update the hearing schedule and to make it possible for the submitter to turn on their microphone and camera.
50. A MS Teams link will be created for each hearing and published on the hearing page. Online attendees will need to adhere to the protocols that accompany the Teams link. Please note that only those who have indicated they presenting online will have their microphones and cameras enabled.
51. Hearing sessions will be open to members of the public to attend as observers in person or via MS Teams. Unless there are reasons in terms of section 42 of the RMA for protecting sensitive information that requires whole or part of a hearing session be held with the public excluded or by prohibiting or restricting the publication or communication of any information supplied to or obtained by the IHP.
52. At each hearing session no fewer than 2 members of the IHP must be present. The IHP will determine how many members will attend each hearing session.
53. In the event that a submitter has failed to pre-circulate evidence as required by the IHP's directions, then hard copies of any evidence to be presented at a hearing session must be provided on the day. These shall be given to the hearing advisor on arrival, and an electronic copy shall be provided to npsudhearings@aucklandcouncil.govt.nz within 24 hours of the submitter's appearance.

Format of Hearing Evidence

54. It is important for the Council and submitters to ensure that evidence is succinct and focussed; clearly setting out the issues and the changes being sought. The Council and submitters are requested to:
 - a. provide a summary statement at the beginning of the evidence, generally no more than 3 pages long;
 - b. focus the evidence on matters not agreed (particularly if mediation and/or expert conferencing has been held);
 - c. clearly separate the matters agreed from the matters not agreed (particularly if mediation and/or expert conferencing has been held); and
 - d. set out the relief sought (in terms of revised provisions or spatial area) in an Appendix as opposed to in the text of the evidence. This will make it much clearer about the changes sought.
55. All statements of evidence and legal submissions shall be:
 - a. headed clearly with:

- i. the name of the submitter who or on whose behalf the document is being lodged;
 - ii. the submission number;
 - iii. the Hearing Topic name and number;
 - iv. whether it is primary or rebuttal evidence;
 - v. if containing the evidence or submissions of someone other than the submitter, the name of that witness or counsel; and
 - vi. the date; and
- b. set out and formatted in a way that is easy to read and refer to;
 - c. in sequentially numbered paragraphs with coherently numbered or lettered sub-paragraphs; and
 - d. lodged electronically in either unsecured and searchable .pdf or unsecured .doc format.
56. For all expert evidence (in addition to the above):
- a. the full name and occupation/expertise of the witness;
 - b. matters of qualification and adherence to the code of conduct for expert witnesses in the Environment court's Code of Conduct;
 - c. a summary of the principal issues that the witness addresses in the statement;
 - d. is relevant, succinct, focused and free from unnecessary repetition; and
 - e. where changes are sought to the notified provisions, they are accompanied by an appropriate section 32AA evaluation.
57. The content of evidence and legal submissions should include, in appropriate places, cross-references to the submission point numbering as set out in the Council's Summary of Decisions Requested.
58. Any tables, figures or diagrams in any statement of evidence shall be numbered, titled and cross-referenced to the relevant text of the evidence.
59. Submitters are requested to list matters of agreement in an appendix so that the body of their evidence is focused on matters which are not agreed.
60. Each submitter must present as part of their evidence an appendix which lists the changes they seek to the provisions of the IPI/Non IPI Plan Changes, supported by amended text and drawings.
61. Changes to text should be shown in marked-up format as underlined additions and struck-through deletions. Changes to text should **not** be presented using a tracked-change word-processing tool because of the problems created by such tools for numbering and formatting, but utilise ~~striketrough~~ and underline in a colour that is different to the original text and any other changes incorporated into the document by other parties. Where the Council includes marked-up changes to provisions with

its evidence, submitters changes should, where possible, be based on those versions.

62. Changes to drawings (including maps) should include that relevant Plan drawing (as notified) and the version that the submitter seeks to substitute.
63. Statements of evidence shall be focussed on the particular provisions of the IPI/Non IPI Plan Changes which are of concern to the submitter and which the submission seeks to change. Incidental or background material or references should be placed in appendices.
64. All **expert evidence** is to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in the most current Environment Court Practice Note.
65. All **expert evidence** must set out the key facts and assumptions relied upon, identify the methodology and standards used in arriving at any opinion and clearly explain the opinion arrived at.
66. Where a witness is giving the same or similar evidence for more than one submitter on the same topic, all such statements of evidence should identify all submitters for whom the evidence is being given and whether there are any material differences between the statements.

Pre-circulation of evidence and legal submissions

67. The purpose of pre-circulation of evidence is to ensure all parties, and the IHP, understand the issues that are to be presented prior to the hearing session commencing. It will also enable a much more efficient hearings process.
68. The IHP will direct the pre-circulation of all Council and Submitter expert evidence, for any particular hearing session. Specific Directions will be issued when the hearings schedule is completed. Where no other specific directions are made, the pre-circulation of evidence shall be in accordance with paragraphs below. The IHP will also request the pre-circulation of all legal submissions and non-expert evidence.
69. A sequential evidence exchange programme shall be undertaken as follows:
 - a. the **Auckland Council** shall provide its primary statements of evidence to the IHP for uploading to the website at least **25 working days** prior to the hearing to which such evidence relates;
 - b. all other **submitters** shall provide their primary statements of evidence (both expert and non-expert) to the IHP for uploading to the website at least **15 working days** prior to the hearing to which such evidence relates; and
 - c. the evidence of other submitters shall address the Council's evidence, including any rebuttal of it, in their primary statements of evidence.
 - d. Any **rebuttal evidence** shall be provided to the IHP for uploading to the website no later than **5 working days** prior to the hearing to which such evidence relates.
 - e. The IHP encourages all parties to pre-circulate their opening **legal submissions** at least **3 working days** in advance of the hearing session. Any opening/legal submissions by the Council shall identify the relevant

proposed plan provisions and shall state clearly the Council's position in relation to those provisions and the reasons for that position.

Presentation of evidence for other hearing topics

70. At a hearing session on a topic, the IHP will generally allow the presentation of evidence relating to other hearing topics subject to the following requirements and limitations:
- a. the evidence must be on submission points at the same IPI/Non IPI Plan Change level (i.e. the Regional Policy Statement or the District Plan within the AUP);
 - b. the evidence must be presented at the earliest session in the order of hearings on the same IPI/Non IPI Plan Change level;
 - c. the evidence must state all hearing topic numbers that the evidence relates to;
 - d. the evidence exchange dates must be met in relation to the earliest affected topic so that other primary submitters on that topic have notice of it; and
 - e. submitters who choose to present evidence on this basis are responsible for attending or not attending the other hearings to which their evidence relates and any consequences for the submitter's case that flow from this choice.
71. The IHP directs all parties to address in their primary evidence any relevant evidence of other parties presented at any earlier hearing. Rebuttal evidence for a hearing topic should be confined to addressing material raised for the first time in the primary evidence for that topic. The reason for this is to assist the IHP in dealing with large volumes of evidence by ensuring that relevant material is put before the IHP at the earliest opportunity and not left until a few days before the hearing. Parties who do not do this and who delay presenting their response to material presented earlier run the risk that the late material will not be considered by the IHP.

Late, supplementary or rebuttal evidence

72. Late or supplementary evidence will only be accepted at a hearing session:
- a. where circumstances make it necessary for such evidence to be provided; and
 - b. with the leave of the IHP.
73. Rebuttal evidence will only be accepted as evidence before the IHP if it is strictly in rebuttal to matters already raised in evidence and contains no material relating to new issues not previously raised in evidence. Rebuttal that simply restates primary evidence will not be accepted.

Pre-reading of the submissions and the evidence

74. The IHP will, in most cases, have pre-read submissions and evidence in advance of the hearing. Due to this, there will be no need for submissions and evidence to be read out. An executive summary may be read out or the key points highlighted.

75. Before or at a hearing session, the IHP may:
 - a. direct the order that submissions and evidence are to be presented;
 - b. direct that submissions and evidence be recorded, taken as read, or limited to matters in dispute;
 - c. direct a submitter, when presenting a submission or evidence, to present it within a time limit;
 - d. request a submitter to provide further information.

Hearing session presentation

76. All expert and non-expert witnesses can attend hearing sessions in person (preferred by IHP) or via MS Teams.
77. All submitters or their representatives will need to be prepared to:
 - a. confine their presentation to 10 minutes;
 - b. present a concise summary of the case in support of their submission;
 - c. explain relevant figures, plans and tables in their evidence; and
 - d. summarise any changes to their evidence for any reasons including as a result of mediation or conferencing.
78. Where a submitter seeks more than the 10-minute time allocation for presentation of their case, they need to apply to the IHP for approval by submitting the time extension request form (a form is on the website). The form is to be provided with the submitter's evidence 15 working days before the hearing, or by any other deadline specified by the IHP.
79. Submitters should not assume that presentation time will be extended automatically on the basis of calling expert witnesses or presenting a joint case with other submitters. The IHP expects every submitter to organise their case to be succinct and focussed on the key issues and the specific changes that are sought to the IPI/Non IPI Plan Changes. Where demand for hearing time exceeds supply, the IHP will limit presentations in order to ensure that all submitters who wish to be heard get a reasonable opportunity for that to happen.
80. **Tabled evidence:** If you are unable to attend the hearing in person or online, non-expert evidence may be tabled.

Cross-examination and questioning for Plan change 78 only

81. The IHP may permit cross-examination or questioning of an expert witness at the hearings for Plan Change 78 (clause 98(4) of the RMA). Cross-examination or questioning of the expert witness will normally only be permitted where:
 - a. it assists the IHP to better understand an issue that is relevant to the preparation of its recommendations;

- b. the witness is an expert witness;
 - c. conflicting evidence is being put to a witness to confirm their view; or
 - d. there are disputed issues of fact.
82. There is no obligation on the person cross-examining to put their case to opposing witnesses through cross-examination. That requirement of s92 Evidence Act 2006 (also known as the rule in *Browne v Dunn* (1893) 6 R 67) does not apply to the evidential process before the IHP.
83. The Notice of Hearing for a hearing session will request that parties complete the cross-examination request form and return it to the Hearings Advisor no later than 10 working days prior to the hearing session unless otherwise directed by the IHP. The requestor is to include the witness to be questioned, the topics to be covered in cross-examination and an estimate of the time likely to be required to cross-examine each witness. The IHP will then determine whether to allow such cross-examination and, if cross-examination is allowed, which witnesses may be questioned, which topics may be covered and how long such cross-examination may take.
84. The party that wishes to cross-examine must also send the notice to the party calling the particular witness/witnesses.
85. The IHP will make all notices of cross-examination and its determination in respect of such notices available on the website.
86. Following cross-examination, the IHP will allow re-examination of witnesses by the party that called them.

Auckland Council closing remarks

87. After all submitters have presented their cases at a hearing of a topic, the IHP may call upon Auckland Council to provide closing remarks. Closing remarks can be presented either orally at the end of the hearing or in writing within 5 working days after the hearing or both. They are limited to a summary of Auckland Council's case having heard all of the evidence. Closing remarks can include an updated marked-up version of the relevant IPI/Non IPI Plan Change provisions for that topic. No additional evidence or new information can be introduced at this time without the leave of the IHP.
88. Where such written remarks are provided, they will be made available on the website under the relevant hearing topic.

Power to summon witnesses

89. Clause 98(1) (d) of the RMA provides that section 4D of the Commissions of Inquiry Act 1908 applies to each hearing session as if the IHP were a Commission, and the Hearing were an inquiry. Section 4D(1) of the Commissions of Inquiry Act 1908 provides that:

For the purposes of the inquiry the Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's

possession or under that person's control that are relevant to the subject of the inquiry.

90. Reasons must be provided in support of any application to summon a witness to attend a hearing.
91. A summons to a witness to appear at a hearing session must be in the prescribed form and signed by the Chairperson.
92. Clause 21 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 provides that the prescribed form is Form 39.
93. Form 39 provides that the party on whose behalf the summons is issued is required to pay the witness the witness fees, allowances, and travelling expenses according to the scales prescribed by regulations made under the Criminal Procedure Act 2011.
94. On receipt of an application in accordance with clauses in this section, the IHP will then determine whether to grant such application and, if granted, what terms or conditions may attach to any summons that is issued.

Legal counsel to assist the IHP

95. The IHP may appoint a legal advisor to assist it. The IHP may request the legal advisor to provide advice or assist on specific issues before, during, or after the hearing, by way of producing memoranda, cross-examining of witnesses, attending the hearing, making representations, or such other functions as the IHP considers appropriate.
96. The IHP has a discretion over disclosure of or waiver of legal privilege in any legal advice it receives. The IHP will normally make available to submitters its legal advice where such advice relates to a matter arising from the content of a submission or the substantive consideration of a submission relating to an issue, plan provision or site.

Hearing administration

Venue

97. The IHP is based in the Town Hall, Auckland Central. Hearing sessions will take place in the Town Hall or at an alternative venue, as identified in a notice of hearing.
98. Alternative hearing rooms may be utilised to cater for larger groups of submitters for the purposes of pre-hearing meetings or for pre-hearing and hearing processes relating to particular geographic areas.
99. Due to the nature of available hearing space, not all members of the public may be able to attend hearings in person. Additional space outside the hearing room may be available to watch proceedings via a screen. Alternatively, members of the public may contact the Senior Hearings Advisor to get a link to the MS Teams hearing meeting (see above para 65 for MS Teams protocol at hearings).

100. Some venues have restricted access at the main entrance such as stairs. If you require assistance with alternate access, please inform the Hearings Advisor prior to the hearing day.

Presenting in Te Reo

101. Any party, representative or witness may speak in te reo Māori at a hearing session. The IHP require at least 15 days' notice of the requirement for a te reo Māori interpreter so that we can ensure we have a "competent interpreter" available. Any karakia, powhiri, or mihi will not be translated into English unless requested before the hearing.
102. If evidence is to be given in te reo Māori, that evidence is to be pre-circulated in accordance with the rules for pre-circulation of evidence and legal submissions above. The IHP would also appreciate an English translation of that evidence and/or legal submission be provided at the same time.

Presenting in New Zealand Sign Language

103. Any party, representative or witness may present in New Zealand Sign Language. The IHP support staff would appreciate notice of the requirement for an NZSL interpreter once you are aware you will be presenting on a topic. However, the IHP support staff must be informed no later than 15 working days prior to the hearing session of the intention to use New Zealand Sign Language so that an interpreter can be arranged.

Assistance

104. Any person seeking assistance in relation to the IHP's procedures may contact the IHP's support staff.

Dated at Auckland this 6th day of December 2022



Greg Hill
Chairperson
Independent Hearings Panel