

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER **Intensification Planning Instruments Plan Change (IPI)— Plan Change 78 - to the Auckland Unitary Plan – Operative in Part (AUP)**

MINUTE (15 MARCH 2024) FROM THE INDEPENDENT HEARING PANEL

DEFERRING THE TOPIC 046 AUCKLAND LIGHT RAIL CORRIDOR HEARING

1. The PC 78 Hearing Panel has received a memorandum from Auckland Council¹ requesting a deferral of the Topic 046 Auckland Light Rail (ALR) Corridor hearing and associated evidence exchange, and a request from Balmoral Residents Association Inc² that the hearing be vacated.
2. Paragraph 5 of the Council’s memorandum states:

We are instructed that the Council is currently awaiting government direction before it can progress a planning response for the corridor. We are advised that this will involve all necessary consultation, including that required by clause 3 of Schedule 1 of the RMA. We understand that consultation under clause 3 of Schedule 1 of the RMA did not occur in relation to the Light Rail Corridor when PC78 was being prepared.

3. The Panel appreciates the position Council is in following the Government’s announcement that the ALR is not proceeding, together with the uncertainty surrounding the MDRS. It sees value in allowing the Council additional time to progress the variation, also to address the issues raised by the Balmoral Residents Association in their memo.
4. Accordingly, the Panel will defer the Topic 046 hearing (and associated evidence exchange steps), to the last available dates this year of 10, 11 and 12 December 2024.
5. By deferring the hearing on Topic 046 to those dates, the Panel is unlikely to complete its work in time for Council’s decisions on PC 78 to meet the 31 March 2025 deadline, such that a three-month extension will be required.
6. The Panel understands that Council will need to complete its planning response under Schedule 1 of the RMA and notify the variation in July 2024 if it is to be ready for hearing in December, and to avoid unnecessary further delays and uncertainty around PC 78.

¹ Dated 11 March 2024

² Dated 8 March 2024

7. If the variation has not advanced sufficiently to be heard in December the Panel is likely to proceed with the hearing of Topic 046, including having submitters and their evidence (including any s 32AA analyses) “fill-in” the blanks³, and will set out a process for how this will be done.
8. If a longer extension is granted than the 3 months required as above, the Topic 046 hearing could be deferred further if the Council has been unable to progress the variation in time for a December hearing.
9. The Panel expects Council to report regularly on progress with the intended variation, as well as any responses received from the Government on its request to extend the deadline for finalising PC 78.
10. Any enquiries regarding this Minute, or related matters, should be directed to the Senior Hearing Advisor, Mr. Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz



Matthew Casey, KC
Chairperson

15 March 2024

³ Interim Guidance on Statutory Interpretation and Issues Relating to Scope (Dated 12 June 2023), paragraph 30-46

**TO: AUCKLAND COUNCIL INDEPENDENT HEARING PANEL ON PLAN
CHANGE 78**

**MEMORANDUM ON BEHALF OF BALMORAL RESIDENTS ASSOCIATION
INCORPORATED**

1. This Memorandum is filed by Balmoral Residents Association Incorporated (BRAI). It asks that the Hearing for Topic 046 (Light Rail Corridor) be vacated.
2. BRAI is a further submitter on Topic 046. It opposes the relief sought in respect of Balmoral by Kāinga Ora and a number of other submitters.
3. In summary, that relief seeks that the Auckland Light Rail Corridor Area (ALRC) ,which is at present excluded from Plan Change 78(PC78), be brought within PC78, and that Balmoral be zoned in it as Terrace Housing and Apartment Building (THAB), allowing for apartment blocks of up to six storeys throughout suburban Balmoral.
4. The Panel has scheduled the hearing of submissions on Topic 046 for 22-24 May 2024.

5. On 6 April 2023 Government extended the date for Council to make its determinations on PC78 until 31 March 2025. On 13 May 2023, the Panel agreed to a request from Council to pause the hearings as for the reasons given by Council it considered it appropriate to not schedule any PC 78 hearings at that time.
6. The basis for the deferral was that Council proposed to introduce a Variation or Variations to PC78 to:
 - (a) Bring the Light Rail Corridor Area within PC78:and
 - (b) Address changes needed to PC78 as a result of the significant flooding that occurred in Auckland in January and February 2023.
7. In a Memorandum to the Panel dated 4 July 2024, Council advised that its timetable was
 - Mid October/End November 2023 – public consultation on draft variation to PC78 for the ALRC;
 - • Early February 2024 – Seek endorsement from the PEP Committee to notify the variation(s) in February 2024.
8. In a Memorandum to the Panel dated 30 October 2023, Council advised that it could not tell 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.
9. Balmoral was an area which was significantly affected by flooding in January and February 2023. A number of houses in Balmoral were red-stickered and rendered uninhabitable. Almost the whole of Balmoral is within the ALRC.
10. Government has announced that the Auckland Light Rail project will not be proceeding.
11. At the hearing of Topic 46, BRAI will be contending (inter alia) :
 - that the ALRC should not be brought into PC78; and that if it is:

- residential land in Balmoral should be zoned as single house zone; and
 - the Medium Density Residential Standards (MDRS) should not apply to residential land in Balmoral; and
 - the Balmoral Special Character Areas should be retained as a qualifying matter in PC78
12. Council has not carried out any consultation with BRAI about any proposed variation to PC78, or what provisions (if any) it proposes should apply to Balmoral should submitters succeed in having Balmoral brought within PC78, since its Memorandum dated 4 July 2023.
13. Council has not notified any proposed variation or variations to PC78.
14. BRAI wishes to call planning and other evidence at the hearing of Topic 046. If the hearing is to proceed in May, BRAI needs to brief its witnesses to prepare their evidence now.
15. In the absence of any information or proposals from Council as to whether or not it agrees the ALRC should be brought into the Light Rail Corridor, and if it is what provisions it proposes should apply to residential land in Balmoral, BRAI is unable to determine what evidence it needs to call or to brief its witnesses, and they are unable to prepare any meaningful evidence for the hearing until they receive Council's evidence.
16. Under the evidence exchange timetable for Topic 046, Council is to provide its evidence on Topic 046 on 15 April 2024, and submitters must provide their evidence on 30 April 2024. Rebuttal evidence must then be provided by 14 May 2024.
17. This means BRAI will have only two weeks to reply to what will be a very substantial re-zoning proposal for Balmoral by Council and only another two weeks to respond to Kainga Ora and other submitters' evidence on their major re-zoning proposals for Balmoral.

18. That is insufficient time for BRAI's witnesses to read, understand, and respond to what is expected to be voluminous evidence from Council, Kainga Ora and other submitters whose evidence they wish to contest.

19. In these circumstances, to proceed with a hearing of Topic 046 in May would be unfair and prejudicial to BRAI, and the hearing dates should be vacated

now.

Dated at Auckland this 8th day of March 2024

A handwritten signature in black ink, appearing to read 'John Burns', is written over a horizontal line. The signature is somewhat stylized and cursive.

John Burns

Chair

Balmoral Residents Assn Inc

Email :jaburns@xtra.co.nz

Phone 021-1868212

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 seeking deferral of
Topic 046 Light Rail Corridor hearing and timetable steps to later in
hearing schedule**

Date: 11 March 2024



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 The Independent Hearings Panel (**IHP**) will be aware that Auckland Council (**Council**) recently wrote to the Minister of Housing, Infrastructure, Resource Management Reform and the Minister for the Environment (**Ministers**) on 1 February 2024, and that the correspondence contains a request to the Minister for the Environment under s80M of the Resource Management Act 1991 (**RMA**) seeking a further one-year extension of time for the Council to notify its decisions on the IHP recommendations on Plan Change 78: Intensification (**PC78**) from 31 March 2025 to 31 March 2026.
- 2 The purpose of this memorandum is to respectfully request the deferral of the Topic 046 Light Rail Corridor hearing and evidence exchange dates to later in the IHP's hearing schedule, in light of the Council's recent correspondence with the Ministers.

Context for the request

- 3 In the latest version of the IHP's hearing schedule (updated 7 February 2024) the Topic 046 Light Rail Corridor hearing is scheduled for 22-24 May 2024 inclusive. According to the hearing schedule, the Council's primary evidence is due on Monday 15 April 2024, submitter evidence is due on Tuesday 30 April 2024, rebuttal evidence is due on 14 May 2024 and legal submissions are due on Friday 17 May 2024.
- 4 We are instructed that a response has yet to be received from the Ministers to the Council's recent correspondence. However, in its recent letter to the Ministers, the Council made the following references to the Auckland Light Rail Corridor:
 - *The Government has recently terminated the Auckland Light Rail project. That means we will now need to*

implement the IPI along this corridor (having ‘carved it out’ from the original plan change until the route and station locations were known). However, given the uncertainties around whether the MDRS provisions will remain mandatory, it seems imprudent to progress a variation to the IPI at this stage

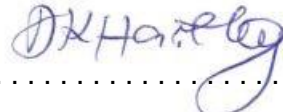
...

The immediate concern for us is the imminent hearing in May on Topic 046 – Light Rail Corridor and the need to complete analysis and evidence. The council’s costs alone are estimated to be in the order of half a million dollars per month for the various IPI hearings, let alone those of the independent hearings panel and submitters. The council’s expert evidence is due to be submitted to the Panel from mid-April onwards, so these costs are already being incurred.

- 5 We are instructed that the Council is currently awaiting government direction before it can progress a planning response for the corridor. We are advised that this will involve all necessary consultation, including that required by clause 3 of Schedule 1 of the RMA. We understand that consultation under clause 3 of Schedule 1 of the RMA did not occur in relation to the Light Rail Corridor when PC78 was being prepared.
- 6 In light of the matters outlined above, the Council respectfully seeks a deferral of the Topic 046 hearing and associated evidence exchange steps to later in the IHP’s hearing schedule to

give time for a response from the Ministers and government direction to be received.

Date: 11 March 2024



.....
D K Hartley / A F Buchanan
Counsel for Auckland Council for
Proposed Plan Change 78