

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

AND

IN THE MATTER **Intensification Planning Instruments Plan Changes (IPI) and related Regional Policy Statement and Plan Changes to the Auckland Unitary Plan – Operative in Part (AUP-OP)**

MINUTE (12 JUNE 2023) FROM THE INDEPENDENT HEARING PANEL

APPLICATIONS TO STRIKE OUT SUBMISSIONS NOT ‘ON’ PLAN CHANGE 78

1. In accordance with Resource Management Act 1991 (RMA) - Part 6 Clause 96 of the First Schedule and sections 34 and 34A, the Auckland Council (the Council) has appointed an Independent Hearing Panel (IHP). The IHP has been delegated to hear submissions and make recommendations to the Council on the IPI plan changes and decisions on the non IPI plan changes.
2. At the preliminary legal interpretation and scope hearing conducted on 3, 4 and 5 April 2023 the issue of scope of relief requested by submissions on PC78 was discussed in some depth. The IHP has issued its interim guidance on the legal interpretation and scope issues considered (refer IHP Interim Guidance, 12 June 2023).
3. The Auckland Council, in its legal submissions for the preliminary hearing, submitted that where we determined that submissions or parts of submissions were not ‘on’ PC78, that the appropriate course of action would be to strike out the submission (or the out-of-scope part(s) of it) under section 41D(1)(b) of the RMA¹. This was on the basis that it “discloses no reasonable or relevant case”. We have treated this submission, which was supported by others who presented to us, as a request for us to exercise this power, which we accept that we have.
4. We have decided to adjourn this request and not to strike out any submissions at this time.
5. The principal reason for this decision is that we have not found any of the submissions identified by the Council for strike out, to be out of scope. Furthermore:
 - a) As we note in IHP’s Interim Guidance the scope of PC78 is broad, both geographically and by reference to the scale and extent of the changes it proposes to the AUP. Consequently, there is a very high threshold for a relief request to not be considered ‘on’ PC78, and we

¹ Clause 98(1)(h) in Part 6 of Schedule 1 of the RMA gives the IHP the powers under section 41D of the RMA. Section 41D(2) of the RMA specifically empowers the IHP to make such a direction 'before, at, or after the hearing'.

are not convinced at this point that any of the submission points requested by the Council to be struck out go beyond this preliminary threshold of acceptability;

- b) To take the strike-out course of action in a consistent and thorough manner, the IHP would need to forensically examine every submission (point) to determine scope, and not just those that have been addressed in legal submissions before us to date;
 - c) Clause 99(2)(b) of Part 6 of Schedule 1, expressly empowers the IHP to make recommendations that are not limited to being within the scope of submissions made on the IPI. This power makes it difficult to say that any specific submission point fails to disclose a reasonable or relevant case, particularly at such an early stage of the hearings process when evidence addresses the various statutory requirements has not been presented; and
 - d) Section 41D(2)(a) enables us to make a direction under this section to strike out submissions before, at, or after the hearing. This means the IHP could still strike out submissions later once it has heard further legal submissions and evidence, if it considered that was the appropriate course.
6. Overall, we are not satisfied that striking out submissions now, in the absence of detailed legal submissions and /or evidence directly on the topic, is the most appropriate and/or efficient option. On this basis, the IHP will hear all submissions and make recommendations based on their merits, but acknowledges that it retains the ability to strike out submissions at any time before it provides its recommendations to the Council.
7. 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



Greg Hill, Chairperson

12 June 2023