

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

AND

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

DIRECTION FROM THE HEARINGS PANEL - 19 APRIL 2024

PLAN CHANGE 78 - CASE MANAGEMENT CONFERENCE TO ADDRESS MINISTERIAL DIRECTION

1. Pursuant to section 34 and 34A of the RMA, Auckland Council (**Council**) has appointed a Hearings Panel consisting of independent hearings commissioners. The Panel's function is to hear the submissions on Plan Change 78 (**PC 78**) and make its recommendations to Council.
2. This Minute is issued in preparation for the case management conference to be convened by the Panel on Monday, 29 April 2024, following the Minister's Direction to the Council and the Council's response.
3. Following receipt of the letter to the Council from the Minister Responsible for RMA Reform (**Minister**) dated 26 March 2024 the Panel issued a minute on 4 April 2024 which requested, among other things, a report from the Council following a meeting of the Planning, Environment and Parks Committee (**PEP Committee**) to be held on 11 April 2024.
4. The Panel has received a Memorandum from Council dated 18 April 2024 (**Council's Memorandum**) (attached) in response to the 4 April 2024 Minute. Attached to the Memorandum is the Gazette Notice of the Minister's direction to the Council, dated 25 March 2024 (**Direction**). Although it was only published on 15 April 2024, and comes into force on 22 April 2024, the Direction is in general terms the same as the Minister's letter of 26 March 2024¹.
5. The Direction directs the Council to notify a plan change or similar to address the management of significant risks from natural hazards by 30 April 2025 and also by that date to enable intensification within the Auckland Light Rail Corridor in appropriate areas. Council is to continue to progress the parts of PC 78 subject to Policies 3 and 4 of the NPS – UD, where practicable given these directions.
6. The Council's Memorandum records the resolutions of the PEP Committee responding to the Direction and sets out its position on aspects of PC 78 that can be progressed by the Panel in the meantime.
7. Paragraph 9 states:

¹ It includes an explicit direction pursuant to s 80L(1)(c) RMA extending the deadline by which the Council is to notify its decisions on PC 78, to 31 March 2026, clarifying a point noted at para 12 of the Panel's 4 April 2024 Minute.

...the hearing topics that the Panel can proceed with are those hearings topics or parts of hearing topics remaining that relate to the Business - City Centre zone, City Centre precincts, and qualifying matters applying to the City Centre zone and precincts (i.e matters relating to the Council's National Policy Statement on Urban Development 2020 Policy 3(a) and accompanying Policy 4 City Centre related intensification response).

8. The PEP Committee resolutions record that Council does not intend to progress a variation to PC 78 for the Auckland Light Rail Corridor with urgency. This would indicate Council's view is that the Direction does not require intensification to actually be enabled by 30 April 2025, which was a matter the Panel sought clarification of in its 4 April 2024 Minute.
9. The Direction records the expectation that Council will continue to progress the parts of PC 78 that are subject to Policies 3 and 4 of the NPS-UD where practicable, and subject to the directions as to the timing of a plan change (or similar) relating to natural hazards and the Light Rail Corridor. The PEP Committee's resolutions and Council's response indicate its view that this is practicable in relation to the City Centre Zone (including its Precincts) and the qualifying matters that apply to it; and not practicable in respect of all other aspects of PC 78.
10. The Panel acknowledges the uncertainty this presents for participants in the hearings process, and is interested to understand if submitters have a view on the council's proposed approach, and how this might impact on the Panel's proposal to continue with hearing topics over the next year.
11. In balancing the above, the Panel is also mindful of the ever increasing challenge for it to discharge its legislative duties and complete its work in time for Council to notify its decisions on PC78 by 31 March 2026.

Case Management Conference

12. As signaled in our 4 April 2024 Minute, the Panel will hold a **Case Management Conference** on Monday 29 April 2024, and **directs** the Council to appear at that conference and address the matters set out below. The Panel also invites the participation of submitters as set out below.
13. The Conference will be held **Monday 29 April 2024**, commencing at 9.30am in the Council Chambers, Auckland Town Hall, 301 Queen Street.
14. The purpose of the Conference is so that:
 - (i) The Council is to provide its detailed reasons for identifying the City Centre (and related matters) as the only hearing topics in the context of Policies 3 and 4 of the NPS-UD which the Panel can hear prior to the incorporation of the plan change(s) or variation(s) relating to natural hazards and the Light Rail Corridor;
 - (ii) The Council and submitters may identify and address the Panel on which topics or matters may need to be heard in order complete the City Centre hearings;
 - (iii) Submitters may state their views on the Council's position and identify any other hearing topics that might proceed in 2024 and 2025; and

- (iv) All parties to state their views on the practicalities (including future attendance for hearings) around meeting the 31 March 2026 deadline.
15. Those submitters who would like to present at the conference are asked to advise Mr Otter by close of business on Tuesday 23 April 2024 and indicate how much time they are likely to require. The Panel has in mind that each presentation should take no more than 15 mins, but should the conference be oversubscribed presentation time may be restricted to 10 mins.
16. The Panel will accept written material tendered at the conference of no more than 3 pages. You are required to provide 9 hard copies of the written material and a digital copy. For those unable to attend in person, the Panel will accept tabled submissions until the close of business on Monday 29 April 2024. All written material received will be placed on the conference webpage.
17. Any enquiries regarding this Minute, or related matters, should be directed to the Senior Hearings Advisor, Mr Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz



Matthew Casey, KC
Chairperson
19 April 2024

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 in response to Minute
and directions of Panel dated 4 April 2024**

Date: 18 April 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 This memorandum of counsel for Auckland Council (**Council**) responds to the direction of the Independent Hearings Panel (**Panel**) in its Minute dated 4 April 2024.

- 2 The Panel directed the Council to report back to the Panel following its consideration of the letter from the Minister of Housing, Infrastructure and RMA Reform (**Minister**) as soon as possible (but no later than Thursday 18 April 2024) after the Planning, Environment and Parks (**PEP**) Committee meeting on 11 April 2024.¹

- 3 In its Minute of 4 April 2024, the Panel addressed a number of aspects of the Minister's letter dated 26 March 2024. The Panel also requested that the Council seek clarification from the Minister as to his intentions with regard to:²
 - 3.1 Whether intensification within the Light Rail Corridor is to be enabled (as opposed to notified) by 30 April 2025; and

 - 3.2 Whether the Minister's letter constitutes a direction pursuant to section 80L(1)(c) of the Resource Management Act 1991 (**RMA**) that the Council is to complete its PC78 process by 31 March 2026 (or some other date).

- 4 The purpose of this memorandum is to:

¹ At [16].

² At [15].

- 4.1 Update the Panel regarding the resolutions of the Council's PEP Committee at its meeting on 11 April 2024;
- 4.2 Update the Panel with regard to the Minister's direction under sections 80L and 80M of the RMA; and
- 4.3 Outline the Council's position regarding the PC78 hearing topics that it considers the Panel could potentially proceed with, in advance of the PC78 case management conference that the Panel proposes to convene.

PEP Committee resolutions

- 5 We are instructed that at its meeting on 11 April 2024, the PEP Committee considered the Minister's letter and resolved as follows:

Resolution number PEPCC/2024/24

MOVED by Chairperson R Hills, seconded by Mayor W Brown: That the Planning, Environment and Parks Committee:

- a) tuhi ā-taipitopito / note the letter from the Minister for Resource Management Reform granting an additional one-year extension for the council to publicly notify decisions on the Independent Hearings Panel's recommendations on Proposed Plan Change 78 – Intensification from 31 March 2025 to 31 March 2026
- b) tuhi ā-taipitopito / note the expectations from the Minister for Resource Management Reform, including the expectation to progress policies 3 and 4 of the National Policy Statement on Urban Development as far as practicable
- c) ohia / endorse progressing the City Centre zone, its precincts, and “qualifying matters” (to the extent the “qualifying matters” are relevant to the City Centre zone and its precincts) to become operative and
- e) whakaae / agree that most efficient way forward for the remainder of Proposed Plan Change 78 is for the government to amend the Resource Management Act 1991 to enable the council to integrate the following matters:
 - i) Auckland Light Rail Corridor (that was excluded from PC78 on notification)
 - ii) strengthened provisions relating to natural hazards

iii) extent of incorporation of Medium Density Residential Standards into all relevant residential zones (subject to the government amending legislation as announced)

iv) remaining parts of policies 3 and 4 of the National Policy Statement on Urban Development.

f) tuhi ā-taipitopito / note that the approach outlined in clause e) is prevented by the Resource Management Act 1991 as it currently stands

g) tuhi ā-taipitopito / note that the government has committed to enacting a legislative change relating to Medium Density Residential Standards being made optional by the end of 2024, and that the option to not incorporate Medium Density Residential Standards into all relevant residential zones will come with caveats

Further correspondence with the Minister for Resource Management Reform

h) whakaae / agree that as a matter of urgency, the Mayor, Chair and Deputy Chair of the Planning, Environment and Parks Committee should write to the Minister for Resource Management Reform confirming the position stated in clause e) above and including the strongly held view that:

i) the hearings on the submissions on the City Centre zone, its precincts, and “qualifying matters” (to the extent the “qualifying matters” are relevant to the City Centre zone and its precincts) are almost complete, and could be progressed to become operative

ii) it is committed to progressing the new plan change at pace while the government is progressing the legislative change relating to Medium Density Residential Standards that it has committed to, and notifying a plan change within three months of the legislative change being enacted

iii) it supports a streamlined process for the new plan change that gives immediate legal effect to provisions relating to natural hazards, and is open to discussing whether some of the intensification aspects of the new plan change should take effect at the time of notification.

Response to the Independent Hearings Panel

i) whakaae / agree the council should provide the Independent Hearings Panel with a copy of the letter referred to in clause h) and confirm the council will not be progressing a variation to Proposed Plan Change 78 for the Auckland Light Rail corridor with urgency, but will be able to notify a variation to Proposed Plan Change 78 for the Auckland Light Rail corridor (if the government does not allow the council to withdraw Proposed Plan Change 78 in part) by 30 April 2025.

Direction to the Council under sections 80L and 80M of the RMA

- 6 On 15 April 2024, the Minister (under section 7 of the Constitution Act 1986) gave notice in the New Zealand Gazette of a direction to the Council under sections 80L and 80M of the RMA that the Council is required to notify its decisions on the Panel's recommendations on PC78 under clause 102 of Schedule 1 of the RMA no later than 31 March 2026.
- 7 A copy of The Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Amendment Notice 2024 (notice no. 2024-sl1708) is **attached** to this memorandum. The notice comes into force on 22 April 2024.

The Council's position on PC78 hearing topics that can be progressed by the Panel

- 8 The Panel's Minute dated 4 April 2024 recorded that it proposes to convene a case management conference to discuss what course to take, including identifying any topics that the Panel can proceed with.
- 9 The Council's position is that the hearing topics that the Panel can proceed with are those hearings topics or parts of hearing topics remaining that relate to the Business - City Centre zone, City Centre precincts, and qualifying matters applying to the City Centre zone and precincts (i.e matters relating to the Council's National Policy Statement on Urban Development 2020 Policy 3(a) and accompanying Policy 4 City Centre related intensification response).
- 10 By way of example, submission points 2240.11 from Stratis Body Corporate and 801.1 from Golden Bay Cement requesting the inclusion of new qualifying matters for the Viaduct Harbour Precinct and City Centre Zone respectively have been allocated to Hearing Topic 013 Qualifying Matters - (Additional). The

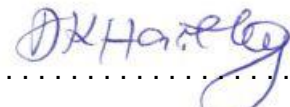
Council respectfully suggests that the Panel could convene a further hearing to ensure that all submission points affecting the City Centre zone and precincts have been captured and that these could be the subject of recommendations by the Panel.

Further correspondence with Minister

- 11 We are also instructed that the further letter foreshadowed in the PEP resolutions above has not yet been sent to the Minister from the Mayor, Chair and Deputy Chair of the PEP Committee. We are advised that subsequent conversations are likely to occur directly with the Minister.

- 12 We are also advised that the Council will update the Panel further and provide a copy of the correspondence, once the letter has been sent to the Minister.

Date: 18 April 2024



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

The Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Amendment Notice 2024

The Minister Responsible for RMA Reform (under section 7 of the Constitution Act 1986) gives notice of the following direction made under sections 80L and 80M of the Resource Management Act 1991 (RMA). The direction is secondary legislation for the purpose of the Legislation Act 2019 and is administered by the Ministry for the Environment.

Title and Commencement

(1) This notice is the Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Amendment Notice 2024.

(2) The direction comes into force on 22 April 2024.

Minister Responsible for RMA Reform's Amended Directions for the Intensification Streamlined Planning Process to Auckland Council (made under section 7 of the Constitution Act 1986)

(3) In accordance with sections 80L(1)(c), 80L(1)(d) and 80M of the RMA, the Minister directs that Auckland Council must:

- a. notify its decisions on the independent hearing panel's recommendations on Plan Change 78 under clause 102 of Schedule 1 of the RMA no later than 31 March 2026.

Minister Responsible for RMA Reform's Statement of Expectations for the Intensification Streamlined Planning Process for Auckland Council (made under section 7 of the Constitution Act 1986)

(4) In accordance with clause 80L(2) of the RMA, the Minister's expectations for Auckland Council are to:

- a. Notify a plan change, or similar, to address the management of significant risks from natural hazards by 30 April 2025.
- b. Enable intensification within the Auckland Light Rail corridor, and ensure intensification is enabled in appropriate areas by 30 April 2025.
- c. Continue to progress the parts of the Plan Change 78 subject to Policy 3 and Policy 4 of the National Policy Statement on Urban Development where practicable given the expectations outlined in (5)(a) and (5)(b) above.
- d. Prior to notifying plan changes, or similar, on natural hazards, and to implement the National Policy Statement on Urban Development and the Medium Density Residential Standards in the Auckland Light Rail corridor, notify the Minister Responsible for RMA Reform on the impacts on Auckland's development capacity.

(5) The Minister expects Auckland Council officers to work closely with Ministry for the Environment officials on workable solutions to implement clause (5) above.

Minister Responsible for RMA Reform's Additional Direction for the Intensification Streamlined Planning Process to Auckland Council

In accordance with clause 80L(1)(d) of the RMA, the Minister Responsible for RMA Reform directs Auckland Council to provide a report to the Ministry for the Environment on 31 May 2024 and every three months after that date, about its progress on Plan Change 78 and any related plan changes or variations, including any plan change relating to natural hazards. The report shall demonstrate how the Council is having regard to the statement of expectations and identify any issues which may affect the Council's ability to comply with the Minister's Direction.

Principal Notice Amended

This direction amends "The Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Notice 2022" published in the [New Zealand Gazette, 27 April 2022, Notice No. 2022-s11599](#), only to the extent specified in this notice.

Previous Amendment Notice Revoked

The Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Amendment Notice 2023, published in the [New Zealand Gazette, 31 August 2023, Notice No. 2023-s14042](#), is revoked.

Copies of the above notices are available free of charge on the Ministry for the Environment's website: <http://environment.govt.nz>.

Dated at Wellington this 25th day of March 2024.

HON CHRIS BISHOP, Minister Responsible for RMA Reform.

Notes

- i. This direction must be complied with.

NEW ZEALAND GAZETTE

- ii. Part 6 of Schedule 1 of the RMA specifies the requirements of any Intensification Streamlined Planning Process.
- iii. Section 80M of the RMA provides the Minister the ability to amend this direction on their own initiative or following a request from Auckland Council.
- iv. Auckland Council may, in accordance with section 80M of the RMA, apply in writing to the Minister for an amendment to the direction.

2024-sl1708

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