

**BEFORE A PANEL OF INDEPENDENT HEARINGS
COMMISSIONERS APPOINTED BY AUCKLAND COUNCIL**

IN THE MATTER

of the Resource Management
Act 1991

A N D

IN THE MATTER

of Plan Change 78 to the
Auckland Unitary Plan
(Operative in Part)

**MEMORANDUM OF COUNSEL ON BEHALF OF KARAKA HARBOURSIDE
ESTATES LIMITED**

6 June 2023

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Daniel Sadlier

**Level 31 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND**

MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. Karaka Harbourside Estates Limited (“**KHEL**”) lodged a submission (#998) in relation to Plan Change 78 to the Auckland Unitary Plan (Operative in Part) (“**Submission**” and “**PC78**”).
2. The purpose of this memorandum is to confirm KHEL’s position in relation to its remaining relief points, and its proposed involvement in the hearing process going forward.

The KHEL Submission

3. The Submission relates to the following aspects of PC78:
 - (a) Council’s identification of a “Maori Relationship with Taonga” qualifying matter in relation to Pararēkau Island (“**MRWTQM**”);
 - (b) The proposed zoning of Pararēkau Island as Low Density Residential Zone in reliance on the MRWTQM; and
 - (c) Proposed amendments to the provisions of the Pararēkau and Kopuahingahinga Precinct to “give effect to” the MRWTQM.
4. The Submission seeks the following relief in relation to PC78:
 - (a) Deletion of the MRWTQM, or deletion of its application from Pararēkau Island (relief point 998.1);
 - (b) Deletion of all proposed amendments to the Pararēkau and Kopuahingahinga Precinct (relief point 998.2);
 - (c) Rezoning to Residential – Mixed Housing Urban those parts of Pararēkau Island that are not subject of spatially identified qualifying matters (other than the Precinct, and flood plains) identified on the map viewer supporting PC78 (relief point 998.3); and
 - (d) Other further and consequential relief necessary to give effect to the submission.

5. KHEL has formally withdrawn relief point 998.3 by email dated 19 May 2023.

Use of qualifying matters

6. KHEL remains of the view that:
 - (a) The Council's identification of the MRWTQM is likely an overreach in terms of "qualifying matters" permissible pursuant to section 771 of the Resource Management Act 1991 ("**RMA**");
 - (b) That in any event, a qualifying matter may justify making the Medium Density Residential Standards ("**MDRS**") less enabling of development in relation to a relevant residential zone that the qualifying matter applies to, but cannot be used to justify changes that are less enabling of development than the *status quo* applying to the relevant residential zone (*Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056); and
 - (c) The changes proposed by PC78 to the provisions of the Pararēkau and Kopuahingahinga Precinct introduce new objectives, policies and rules which would be less enabling than the unamended provisions of the precinct by introducing additional considerations as part of any future resource consent application(s) to be made for subdivision or development within the precinct.

KHEL will not actively pursue submission

7. Notwithstanding its concerns regarding the lawfulness of the changes, KHEL has concluded that changes to the Pararēkau and Kopuahingahinga Precinct proposed by PC78 can be supported from a planning perspective. It considers that the nature and extent of mana whenua values associated with the precinct are best addressed by mana whenua themselves, and would not propose calling evidence in relation to these matters in any event.
8. KHEL accepts and recognises the significance of the Hingaia Islands to mana whenua, and considers it appropriate that effects on mana whenua values are considered as part of any consent process for the

redevelopment of Pararēkau Island. KHEL has sought to, and will continue to, involve mana whenua in resource consent processes to ensure these values are appropriately identified and addressed.

9. In the circumstances, notwithstanding its concerns in relation to the lawfulness of the approach taken in PC78, KHEL has decided not to actively pursue its extant submission points (998.1 and 998.2). KHEL therefore confirms that it will not participate any further in the PC78 hearing processes, including in any expert conferencing or other ADR processes in relation to the plan change.

DATED this 6th day of June 2023



Daniel Sadler

Counsel for Karaka Harbourside Estates Limited