Plan Change 78

Hearing (as advised - March 28 2023 , Session 3, 2pm – 4pm.)

001A - Plan Making and Procedural

001D - Central Government Process

002 - Medium Density Residential Standards

Submission 1120

Victoria and Phillip Lowe

Our submission maintains

1. **That Plan Change 78 (the Plan Change) imposed on Auckland Council by government was illegal under Section 5 of the Bill of Rights Act (BORA) and Section 5(2) of the RMA. That it is in breach of S 5 (2), S6 (b), S 7 (c) and (f) and S 32 of the Resource Management Act (RMA)**

2. **That the Plan Change omitted the Sensitive Ridgeline in East Auckland and height restrictions over urban residential property to protect it, as a relevant qualifying matter also, re intensification of these properties.**

3. **That the Plan Change re Botany and the South-East Town Centres does not clarify the extent of land rezoned for high rise re the length and breadth of the town centre and the potential impact of this and legally.**

4. **That the Medium Density Residential Standards are not justified and the Plan Change does not enable people to provide for their wellbeing.**

In further clarification of this submission for the IHP Panel,

Point 1. - 001D Central Government Process

Section 5 of BORA deals with "*Justified Limitations*" and makes it clear that limits to people's legal rights (which are not restricted to those stated in BORA) cannot be imposed by law unless they are "*demonstrably justified*."

The limitation we are concerned with is the normal right of appeal to the Environment Court under a Plan Change. We are saying that this right has been unjustifiably removed under The Resource Management (Enabling Housing and

Other Matters) Amendment Act, (the Amendment Act) for this Plan Change on ground of urgency, which does not exist in fact because enough housing supply was enabled under the Unitary Plan (UP) That is, 900,000 additional dwellings were enabled, sufficient for the next 30 years, as quoted in our submission.

Auckland Council, who normally makes and notifies the Plan Changes, knows the normal legal processes required and the reasons for them and it knew that there was an ample supply of housing enabled in Auckland already under the UP so it should have advised government of the lack of need for more housing to be enabled in Auckland and of the Amendment Act's breach of S 5 of BORA.

We are unhappy that our submission over this was not categorised by Council under 001-D Government Process, but instead it was put under 00H - Plan Making and Procedural General when it was very clear our concern was the illegality of central government's process. The right of objection and appeal to an independent Environment Court with a Plan Change has long been accepted and S 5 of BORA ensures that government respects such rights and that it does not exceed its democratic authority by placing unjustified limitations on them.

Our submission / evidence shows that the Plan Change is being effectively dictated by Government and Council when both authorities knew the right of appeal to an independent Court is a normal right in our free and democratic society and that there was no urgency or justifiable ground to withhold this.

Council has since admitted it was required to introduce the Plan Change as it was "*mandated*" (not dictated, implying legitimacy) to do so by government. That no time was allowed for it to assess whether the existing infrastructure, such as, drainage, and land for parks and schools, would be adequate, or to investigate the potential effects of increased traffic, or alternative ways of enabling housing under S 32 of the RMA. This is an incredible admission of Council's breach of its planning requirements under the RMA, which together with its wrong acceptance of the unjustified removal of the right of appeal, makes it clear this IHP must require revocation of the Plan Change. Who could possibly accept and agree that this approach is legitimate and sound planning.

The government dictate, wrongly accepted by a weakly compliant local Authority has rendered the Plan Change submission process in turn, a farce. That is, no one, including the Council, can say or do other than dictated by government, even though the non-assessed effects could hold dire future consequences for the city. Section 5 of BORA also prevented this risk.

The Attorney General, the real applicant by imposing the Plan Changes (not proposing as misrepresented in the public notices) has also given himself the last word in lieu of an independent Environment Court. To add insult to injury the Plan Change was brought into effect upon notification, when there was no urgency justifying this either. This cannot be considered a fair planning process in accordance with S 5 of BORA or S 5 (2) of the RMA, which we will come back to. The Attorney General is a qualified lawyer. He must have known that the Amendment Act and this Plan Change were in breach of both laws.

To explain this, under S 7 of BORA the Attorney General had to bring the Amendment Bill to the attention of the House of Representatives upon introduction of the Bill and to the Governor General, whose primary role is to uphold democracy on behalf of the Crown, before its second reading, where a Bill appears to be inconsistent with any of the rights and freedoms contained in BORA. He unacceptably failed to do this, and our politicians also had a serious lack of due regard for the people's right of appeal under a Plan Change. The Bill of Rights Act is supreme law and although S 4 of BORA gives government the sovereign right to make law, this power is clearly moderated by S 5 of BORA to ensure that any limits to the people's rights are in fact demonstrably justified. This might have seemed debatable re some of the Plan Changes re a need for urgency, but in Auckland it was well known that enough housing supply had been put in place for the next 30 years under the UP, so this limit clearly wasn't justifiable, while the changes being imposed, were clearly major not minor. The Auckland people have been left effectively legally defenceless over a very significant Plan Change which is unlawful in our free and democratic society.

Due to the Amendment Act, the dictated Plan Change is in breach of S 5 (2) of the RMA, the purpose of this Act requiring the sustainable management of natural and physical resources (quote) *"in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety."* The RMA makes it clear that <u>people and communities</u> are to be enabled to provide for their wellbeing as cited so that government and Council, by denying them a normal power of expression under a dictated Plan Change without right of appeal to an Environment Court for no justifiable reason, with no impact assessment requirement, or time to do this work, was clearly **<u>not</u>** enabling people and communities to manage their wellbeing in breach of the law. The IHP must advise the government that the Amendment Act is in breach of S 5 of BORA and S 5 (2) of the RMA and the Plan Change in breach of S 5 (2) of the RMA. The Plan Change must be revoked.

Point 2. 001A - Plan Making and Procedural

Re the Sensitive Ridgeline (SRL) located along Point View Drive. Council has advised re its omission of the SRL under the Plan Change, that it did not include the SRL because of its location within the rural zone and that they only looked at matters falling within or pertaining to the urban zones.

Whereas the SRL does pertain to matters within the urban zone re height restrictions over urban residential properties to the west of Point View Drive to protect the SRL, the line of hills forming a backdrop to the east of the city.

This Plan Making and Procedural error must be addressed. We are asking the IHP to include the SRL under the Plan Change to ensure the 9-metre height restriction placed over adjacent urban property to protect the SRL, is upheld.

The SRL originally followed the rural urban boundary with an 8-metre height restriction over adjacent urban property until this was raised and altered to accommodate a Special Housing Zone that was forced upon the people at the last minute under the UP, removing their right of appeal over it. As a result of this, the SRL height restriction was raised to 9 metres.

The SRL has been upheld for many decades by the Local Authority, but it appears that it is now being made irrelevant to the city because of its location in the rural area which is obviously a false spurious argument to enable the higher and more intensive development in front of it under the Plan Change. i.e., 12-metre-high buildings to 6 stories plus (which Kaianga Ora wants extended further north still in front of the SRL without any reference to it.

The omission of the SRL is illegal under S 6 (b) of the RMA which requires - *"The protection of outstanding natural features and landscapes from landscapes from inappropriate subdivision, use and development. "*
The Council's definition of the SRL along Point View Drive and it legal duty under S 6 b of the RMA to acknowledge and protect its existence for the views to and from it as by height restrictions historically, must be upheld by the IHP.

Point 3 – 001A Plan Making and Procedural

The point made in our submission is that high rise development of 6 stories plus 800 metres around a metropolitan town centre does not reveal the true extent of an area intensified for high rise development because it reads as if taken from the centre of a town centre, whereas the area of impact is much greater if measured around the length and breadth of the town centre. Ditto re town centres with a 400-metre walking distance. This needs to be clarified.

This is important re a potentially much higher population, much greater visual impact, increased need for infrastructure, amount of traffic generated, re the pressure on amenities and the overall effect on the quality of the environment.

This is legally relevant also. Under S 7 (c) of the RMA , persons exercising functions and powers under the Act must have particular regard for the "*maintenance and enhancement of amenity values*", and under S 7 (f) RMA "*maintenance and enhancement of the quality of the environment.*"

The extent of areas to be intensified /impacted by the walkable distances must be very clear so the above legal requirements can be properly assessed and met or the IHP has no choice but to decline the Plan Change under the law.

The Council has already admitted it has done no work in this regard and there is no knowing how high buildings might go - so despite the unclear extent of area impacted, the Plan Change must be declined under law because there is no way that the IHP or the Authority can ensure that amenity values and the quality of the environment will be maintained and enhanced. Which is required to maintain the wellbeing of people and communities under S 5 (2) of the RMA.

Point 4 – 002 Medium Density Residential Standards

As stated in our submission, there is no shortage of housing supply after the Unitary Plan and no justification therefore for the much higher and increased density building standards. Lowered amenity values from the loss of sunlight, privacy, views, lack of outdoor living space and for trees, will make it much harder for people and neighbours to provide for their wellbeing, which is in breach of S 5 (2) of the RMA. The Authority has not investigated alternative methods of housing supply, as required under S 32 of the RMA. The right of appeal and re adverse effects has been withheld unjustly re no real urgency. The IHP must decline the Plan Change re its illegal imposition under S 5 of BORA and for its failure to uphold and to ensure the purpose of the RMA.