

## **Before the Independent Hearing Panel**

**UNDER** The Resource Management Act 1991 ("Act")

**IN THE MATTER** of Proposed Plan Change 78 (Intensification) to the Auckland  
Unitary Plan Operative in Part

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### **Memorandum of counsel on behalf of Andrea Duncan in support of Auckland Council's request for a pause of all hearings**

**Dated: 1 May 2022**

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**Presented for filing by:**



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## **MAY IT PLEASE THE PANEL**

### ***Introduction***

1. This memorandum is filed on behalf of Andrea Duncan (Further Submitter 287) **in support** of Auckland Council's (**Council**) request to pause the current hearing and alternative dispute resolution / expert conferencing processes for all topics under Plan Change 78 (Intensification) (**PC78**) so that Council can undertake natural hazards and flooding investigations work and formulate a planning response.

### ***Submitter's interest in the hearing***

2. Ms Duncan is an owner of a residential property in Avondale. PC 78 proposes to rezone the property and surrounding sites from Mixed Housing Urban to Terraced Housing and Apartment Building as it has been mapped as being within a walkable catchment of the Avondale Railway Station and rezone the land to the east to Mixed Housing Urban (as amended incorporate the Medium Residential Housing Standards contained in Schedule 3A of the RMA (**MDRS**)).
3. The Property is a part of a hydrological sub-catchment that drains water via the public reticulated stormwater network and overland flow paths to the Oakley Creek Council's reticulated network discharges immediately to the north of the property. From the discharge point, stormwater travels south via the Ms Duncan's Property (and other downstream properties) to Oakley Creek. That discharge is already generating significant adverse stormwater effects on the Submitter's property (i.e. increased volume, frequency and duration of runoff, increased scour, erosion, pooling and associated land instability effects) and these effects have increased following intensification in the catchment.
4. Ms Duncan's position is that the stormwater network in the sub-catchment requires upgrading and mitigation works to avoid, remedy or mitigate the adverse and cumulative stormwater effects and that unless or until that happens the properties in the sub-catchment should not be zoned for intensive residential development. Ms Duncan is seeking amendments to stormwater management provisions in the AUP to ensure that adverse stormwater and runoff effects that occur downstream of development sites are adequately assessed on future resource consent applications.
5. Ms Duncan's further submission has been allocated to the following topics:
  - (a) **Topic 008:** Urban Environment Larger Urban Zoning Proposal (Hearing 31 October 2023 – 9 November 2023).

- (b) **Subtopic 009J:** Significant Natural Hazard (hearing deferred).
- (c) **Topic 12:** Infrastructure. Subtopics 12A Appropriateness of Qualifying Matters, 12B Areas with Long Term Infrastructure Constraints (Hearing 4-6 July 2023) and 12D Stormwater disposal constraints (hearing deferred)
- (d) **Topic 13:** Qualifying Matters Additional (Hearing 19-20 July 2023).
- (e) **Topic 15:** Residential. Subtopics 015D Mixed Housing Urban and 015F Residential Zones General (24 August – 7 September 2023).
- (f) **Subtopic 17H:** Walkable Catchments – Avondale Rapid Transit Network (October 10 -17 2023).
- (g) **Topic 18:** Urban Subdivision (Hearing 3 October 2023).

***Support for deferral***

6. Ms Duncan supports the pause of all PC 78 topics hearings for the following reasons:
- (a) Ms Duncan’s primary concern is stormwater. However, because management of urban stormwater is fundamental to where intensification should occur, and on what conditions, Ms Duncan’s submission has (appropriately) been allocated to a number of different topics. Of the above topics, only Topics 009J and Topic 12D have so far been deferred. Accordingly, to participate fully in all the topics relevant to the stormwater issues raised in her submission would be a heavy hearings burden for an individual submitter.
  - (b) In the ordinary course of resource management planning, environmental and infrastructural constraints are identified and then appropriate density and zoning restrictions are applied in response to those environmental factors. Generally, it will be the local authority that will be best placed to identify those constraints and its proposed planning instruments will be underpinned by that technical information. The public then has an opportunity to engage in the public participatory process and respond to the local authority’s proposal.
  - (c) The difficulty faced by all participants in the PC78 process is that the Resource Management (Enabling Housing Supply) Amendment Act has inverted this process, creating a presumption that all residential zones are suitable for MDRS development unless the high evidentiary standard for a qualifying matter can be demonstrated.

- (d) Council's view (paragraph 5 of its Memorandum on Topic 013 dated 20 April 2023) is that the onus of meeting that high evidentiary standard is on a submitter promoting a new, or extension of an existing, qualifying matter.
- (e) Counsel understands that a large number of individual or lay submitters have raised stormwater concerns based on their experience and local knowledge of stormwater and flooding in their local community. It would be highly inefficient for all parties with an interest in stormwater issues to undertake such work individually when Council's response to the recent Auckland flooding may provide important technical information and a useful starting point for all parties to work from.
- (f) Council has also advised that the extent of changes required to PC78 in response to investigations into flooding and natural hazards following the Anniversary weekend flooding could be significant (and may require the Council to initiate a variation to PC78).
- (g) This means that there is a risk of the parties could expend a significant amount of time, effort and resources on PC 78 topics that are not currently deferred only to find that it is no longer necessary or relevant because, it may be, that once stormwater issues are properly assessed by the Council, other issues will fall away. For example, Ms Duncan is a submitter on the extent of Avondale Rapid Transit walkable catchment and a large rezoning proposal for Avondale but her concerns under this topic might be resolved if a revised stormwater qualifying matter that appropriately limits intensification in these areas. Similarly, Ms Duncan's further submission supports amendments proposed to stormwater management provisions in residential zones (Topic 15). It may be that following its investigations Council proposes new management provisions, in which case, it would not be efficient to prepare a case based on the current PC 78 provisions.

***Request to be heard***

- 7. Ms Duncan wishes to be heard at the heard at the conference on the pausing PC78 hearings on 3 May 2023 and requests a 10 minute speaking time.



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**JL Beresford**  
Counsel for Andrea Duncan