

Before the Independent Hearings Panel

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of Proposed Plan Change (**PC**) 78: Intensification to the Auckland Unitary Plan Operative in Part (**AUP**)

Memorandum of counsel for Auckland Council in response to matters raised at conference on request to pause PC78 held on 3 May 2023

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MAY IT PLEASE THE PANEL

Introduction

- 1 This memorandum of counsel for Auckland Council (**Council**) follows the conference on 3 May 2023 held by the Independent Hearings Panel (**IHP**) about the Council's request to pause the current hearing and alternative dispute resolution / expert conferencing processes for all topics under Proposed Plan Change 78: Intensification (**PC78**).¹
- 2 At the conclusion of the conference, the IHP indicated that the Council could provide a written response to matters raised at the conference.
- 3 This memorandum addresses several issues discussed at the conference. As requested by the IHP, it then goes on to set out the Council's position on any additional topics that may be discrete enough to proceed now in light of the discussion at the conference.

Is a 'pause' not in accordance with the intention of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021?

- 4 Counsel for various submitters (including Mr Allan for Drive Holdings Ltd and others, and Ms Abraham for Eke Panuku and others) submitted at the conference that a pause would create delays that are inconsistent with the purpose of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**).

¹ Memorandum of counsel on behalf of Auckland Council requesting a pause of all hearings and alternative dispute resolution processes for PC78 dated 21 April 2023.

- 5 As indicated in an answer to a question from the IHP, the Council does not agree that a pause is inconsistent with the Amendment Act.
- 6 After all, the Amendment Act introduced provisions into the Resource Management Act 1991 (**RMA**) that enable the Minister for the Environment to make directions relating to time periods for stages of the intensification streamlined planning process,² and to amend these directions.³
- 7 In this case, the Minister's letter dated 6 April 2023 clearly indicates that he considers it is appropriate to extend the time for the Council to notify decisions on the IHP's recommendations until 31 March 2025.⁴
- 8 The Council agrees with Mr Brabant's position explained at the conference that the Minister's letter is effectively a complete answer to the concerns raised by submitters about delays being inconsistent with the purpose of the Amendment Act.
- 9 Further, assuming the IHP releases its recommendations towards the end of the PC78 hearings process, the pause, in and of itself, is unlikely to delay the resolution of the PC78 process. It will instead adjust the period when there are alternative dispute resolution / expert conferencing and hearing processes, and enable these processes to be completed more efficiently.

Efficiency of needing to repeat hearing processes

- 10 As set out in the Council's memorandum dated 21 April 2023 at paragraph [12], a critical reason for the Council's request for a pause is that continuing with consideration of PC78 topics under

² RMA, section 80L.

³ RMA, section 80M.

⁴ As set out in the Resource Management (Direction for the Intensification Streamlined Planning Process to Auckland Council) Notice 2022.

the current programme will likely lead to duplication of time, costs and resources.

- 11 Almost all participants at the conference acknowledged the likely overlap between the Council's planning responses for flooding and natural hazards, and for intensification in the Auckland Light Rail Corridor, and existing PC78 topics. There was also, for the most part, a consensus at the conference that it was appropriate to delay at least some existing PC78 topics.
- 12 However, counsel for various submitters (including Mr Allan for Drive Holdings Ltd and others, and Ms Caldwell for Kāinga Ora) emphasised that they did not share the same degree of alarm as the Council about the potential for duplication of time, costs and resources if many existing PC78 topics are to proceed now.
- 13 On the other hand, counsel for other submitters (including Ms Tree for the Parc Bodies Corporate and others, and Mr Fuller in his memorandum for Stratus Body Corporate) emphasised that the need for further alternative dispute resolution processes and hearings on similar issues to those previously addressed is likely to be inefficient and will impose unnecessary costs. They also highlighted the difficulty of splitting PC78 topics that could proceed from those that should be delayed, given the interrelated nature of the issues within and between topics.
- 14 Consistent with the position of some submitters, the Council remains of the view that continuing with a large number of existing PC78 topics will likely result in significant inefficiencies and unsatisfactory outcomes, including the duplication of time, costs and resources.
- 15 The Council also agrees that splitting up PC78 topics or sub-topics (as suggested by counsel for some submitters like Auckland International Airport and Box Properties Investments Ltd) is unlikely to result in greater efficiency.

16 It is also noted that Ms Caldwell submitted for Kāinga Ora that proceeding now with most topics may allow submitters, the Council and respective experts more time to appropriately consider the proposed changes and give the IHP more time to examine the key issues. This may be the case in some respects, but that will likely be in the context of longer and potentially more unwieldy alternative dispute resolution and hearing processes, some of which will need to be repeated (at least in part). The Council continues to consider that the ultimate result will likely be increased complexity and costs for all participants.

Prioritisation of centres response

17 Mr Allan for Drive Holdings Ltd and others suggested at the conference that there are many aspects of PC78 that are highly unlikely to be affected by the work being undertaken by the Council in terms of its planning responses for flooding and natural hazards. On this basis, Mr Allan submitted that matters unrelated to the weather events should be brought forward for hearing, with matters related to the weather events delayed.

18 Mr Allan advocated for reprioritising the IHP's timetable to focus on the application of Policy 3 of the National Policy Statement on Urban Development 2020 (**NPS-UD**) with an order focusing on matters of broad relevance to centres first, followed by application of Policy 3 of the NPS-UD to the City Centre zone (including its precincts), Metropolitan Centre zones and their environs, Town Centre zones and their environs, Local Centre zones and their environs, and Neighbourhood Centre zones and their environs.

19 According to Mr Allan, next in order would be matters of broad relevance to incorporating the medium density residential standards into relevant residential zones, followed by site specific issues. This issue is addressed further separately below.

20 In the context of the suggestion that centres should be prioritised Mr Allan expressed a view that supporters of a pause were

concerned with these latter residential, non-centres related issues. The Council does not agree with this observation, and notes that a memorandum of counsel for Precinct Properties New Zealand Ltd (a submitter with an interest in centres) was tabled at the conference indicating support for deferral of PC78 as a whole.

21 With respect to the 'centres now' approach advocated for by Mr Allan, the Council's view is that more information on the Council's planning responses for flooding and natural hazards should be available before proceeding with the substantive consideration of centres issues, including whether it is appropriate for there to be increased development capacity in centres in response to Policy 3 of the NPS-UD. In this regard, the Council agrees with the submissions of Mr Webb for St Marys Bay Association, Ms Tree for the Parc Bodies Corporate and others, and Mr Fuller for Stratus Body Corporate that the intensification response in PC78 is best considered holistically and in a comprehensive way. As discussed by Mr Webb, most PC78 topics are interlinked.

22 Of further relevance to this, as signalled at the conference by counsel for the Council it is possible that a variation to PC78 to address natural hazards and flooding issues may, in addition to having a spatial component, involve bespoke provisions in zone chapters of the Auckland Unitary Plan Operative in part. This could include the Business zones chapters. The Council also notes the likely overlap of centres issues with the planning response to the Auckland Light Rail Corridor.

Viaduct Harbour and Wynyard Precincts

23 Counsel for Eke Panuku, Ms Abraham, submitted that the Viaduct Harbour Precinct and Wynyard Precinct (within the City Centre zone) could be dealt with discretely and that those hearing topics could proceed now.

24 Ms Abraham expressed the view that the key issues within those precincts were amenity issues, which flooding issues were

unlikely to prejudice and that height issues could potentially be put aside.

25 Similarly, as set out above counsel for Viaduct Harbour Holdings Ltd and others, Mr Allan suggested in his submissions that hearings relating to the application of Policy 3 to the City Centre zone including its precincts should be a priority.

26 The Council does not agree that it would be appropriate to proceed with hearing topics relating to the Viaduct Harbour Precinct and Wynyard Precinct at this time, particularly as some submitters are seeking increased development opportunities and others are seeking the status quo provisions.

27 Given that the recent rain events impacted both Precincts, the Council agrees with submitters such as Stratus Body Corporate and the Parc Bodies Corporate and others that these hearing topics should not proceed before the Council's current natural hazards and flooding investigations work is complete and a variation notified. The Council position is that it is important to have a better understanding of flooding and coastal inundation risks and potential planning responses before proceeding with discussions on issues such as increased development opportunities in the Precincts.

Residential zones

28 Ms Abraham submitted on behalf of Templeton Group at the conference that there was no reason why the hearings relating to the Residential – Terrace Housing and Apartments Buildings (**THAB**) zone and the Residential – Mixed Housing Urban (**MHU**) zone cannot go ahead now.

29 Ms Caldwell on behalf of Kāinga Ora and Mr Allan on behalf of Drive Holdings Ltd and others appeared to suggest that there was no reason why the residential zones provisions hearing topics could not go ahead (following the centres zones provisions).

30 However, the Council observes that the MHU and THAB zones are the principal zones through which residential intensification is proposed in PC78, including in walkable catchments. There is therefore likely to be an increased number of submissions on these zone provisions from new submitters when a variation on the Auckland Light Rail Corridor area is notified. As also foreshadowed by counsel for the Council in answer to questions from the IHP during the conference it is possible that a planning response addressing natural hazards and flooding may involve changes to existing standards or potentially the introduction of new standards within the MHU and THAB zone provisions. For all of these reasons the Council considers that it would not be efficient to proceed with hearings about PC78 provisions within these residential zones.

Special Character Areas

31 At the conference, Chairperson Hill queried whether the Council agreed with the position of some submitters (including Seaview Road Residents Group and the Character Coalition) that there was merit in the IHP hearing and determining the submissions seeking additional properties and/or areas be subject to the Special Character Area Overlay qualifying matter.

32 Notably, counsel for Seaview Road Residents Group and others, Mr Enright, highlighted that any delay should not cause undue prejudice (which could result from the operation of section 86BA of the RMA).⁵

33 Counsel are instructed that the Council has sympathy for the concerns raised by submitters. However, the Council is also concerned that there is likely to be new submitters interested in the Special Character Areas qualifying matter hearing topics who

⁵ Under which the Medium Density Residential Standard permitted activity density standards have immediate legal effect where a proposal is for up to 3 dwellings per site, the proposal complies with all of the density standards, and the site is not within a qualifying matter area or a new residential zone.

join the PC78 hearings process once a variation within the Auckland Light Right Corridor area is notified. Again, it would be inefficient for special character area issues to potentially need to be revisited multiple times. In addition, the issue of the extent of the Special Character Area Overlay qualifying matter has the potential to affect the intensification response elsewhere in PC78.

Special Housing Areas

- 34 During the conference, Commissioner Kerzeja asked if the Council would revisit its position on Special Housing Area Precincts and look to include them in a work programme to be progressed during any pause.
- 35 Some background to this question and the Council's position on the scope issues arising in this context are set out in its legal submissions in relation to interpretation and scope issues dated 27 March 2023 at paragraph [26] to [28].
- 36 Because of the nature of the provisions in issue, the changes that would be necessary are, in the Council's view, beyond the scope of an intensification planning instrument and would require a standard plan change. The Council has considered Commissioner Kerzeja's question following the conference and counsel are instructed that the Council will be scoping what work is required to progress such a plan change during any pause.

PC78 topics that the Council considers to be sufficiently discrete to proceed now

- 37 In summary, having heard from submitters and having considered the issues raised by the IHP at the conference, the Council continues to be of the view that there are relatively few PC78 topics that are discrete enough to proceed now. The Council does not consider that there are any additional hearing topics to those listed in paragraph 5 of its memorandum dated 1 May 2023 that are likely to be discrete enough to proceed now.

- 38 At the conference, the IHP usefully pointed out that some of the topics that the Council currently considers to be sufficiently discrete depend on the IHP agreeing with the Council's position on scope issues (that have not yet been the subject of IHP recommendations or guidance). The Council agrees with this observation, particularly in respect of the following PC78 topics:
- 38.1 Topic 007A Outside Urban Environment - Excluded from IPI;
 - 38.2 Topic 007B Outside Urban Environment - Future Urban Land Proposals;
 - 38.3 Topic 007C Outside Urban Environment - SHA Precincts;
 - 38.4 Topic 015B Residential - Single House Zone; and
 - 38.5 Topic 015C Residential - Mixed Housing Suburban Zone.

39 The Council would therefore be grateful to receive an indication of the IHP's view on scope issues as they relate to the PC78 topics listed above.

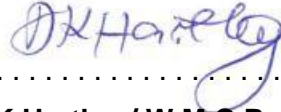
40 By way of clarification, the Council further confirms that it considers that all of the Proposed Plan Change 80: RPS Well-Functioning Urban Environment, Resilience to the Effects of Climate Change and Qualifying Matters topics (including Topic 004 PC80 Climate Change Resilience) can proceed now.

Conclusion

41 For the reasons discussed at the conference and outlined in this memorandum and the Council's previous memoranda of 21 April

2023 and 1 May 2023, the Council respectfully requests that the IHP directs that the majority of PC78 topics be paused for now.

Date: 5 May 2023



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proposed Plan Change 78