

BEFORE THE AUCKLAND COUNCIL INDEPENDENT HEARINGS PANEL

UNDER the Resource Management Act 1991 (**RMA**)

AND
IN THE MATTER OF Plan Change 78 to the Auckland Unitary Plan –
Operative in Part to give effect to the National Policy
Statement – Urban Development 2020 (**NPS-UD**)

AND a submission (# 2240) and further submission (# 493)
from Stratis Body Corporate, 83 Halsey St, Lighter
Quay

**MEMORANDUM FROM STRATIS BODY CORPORATE ON THE 12 MONTH
EXTENSION TO MAKE A DECISION ON PC78**

1 May 2023

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May it please the Panel:

1. This Memorandum is from Stratis Body Corporate 343562 (**Stratis**) located in Lighter Quay at 83 Halsey St, and in response to the Direction from the Panel of 26 April 2023. In summary, Stratis fully supports the Council request of 24 April for a deferral of 1 year to the caucusing, mediation, and hearing timetable for PC78.
2. I may not be able to attend the Conference on Wednesday, subject to the duration of a High Court hearing, but arrangements have been made for Stratis to be represented.
3. The Panel will be aware that Stratis filed a Memorandum of 14 April, requesting an extension for the topics that it has an interest in. The grounds for the extension are condensed and updated in this Memorandum but the previous Memo is also still relevant.
4. The extension will best enable the “integrated management” of natural and physical resources and the “avoidance or mitigation of natural hazards”, to be achieved (s31).
5. The Panel will be aware that planning best practice, regarding the development of policy and rules, is to first undertake “baseline” assessment, of the natural and physical environment, to properly understand the nature of the issues to be addressed. Only when that understanding is suitably robust is it appropriate to proceed to the next stage of developing a range of potential policy options, that are assessed under s32, to determine which responses will best address the issues identified (and meet the requirements of Part 2 of the Act).
6. Cyclone Gabrielle has shown up glaring gaps in our knowledge of just how vulnerable the region is when subjected to extreme weather events. Another “atmospheric river” is affecting the country at the time of writing this Memo.
7. It is important to note that the extension has not only been granted to undertake natural hazard and flooding “investigation work”, but to “formulate a planning response”. The second stage is critical and arguably more complex, and challenging, than the gathering of the base data on past events and modelling future events.

8. If PC78 facilitates further development in areas that are at risk of hazards, without adequate investigations, that would not recognise and provide for an important matter of national importance (s6(h)).
9. Regarding the circumstances of Lighter Quay and the Stratis building, the Panel heard in opening legal submissions, about the Anniversary Weekend flooding of Halsey Street and the Sofitel, which is still under repair. Submissions also drew attention to the risk of coastal inundation in the Viaduct.
10. The additional investigatory work on hazards, and the planning response work that the Council is undertaking is necessary, and this work is essential to meet the requirements of s31. It is expected that there will need to be a Variation to Chapter AUP-E36 – Natural Hazards and Flooding, from the current 1% annual exceedance probability and the 1m sea level rise prediction. For the Viaduct, this is likely to be 1.7m as recommended in the MfE Interim Guidance on the Use of New Sea-Level Rise Projections (July 2022), Table 3 & Category B, for “Intensification”.
11. Regarding the current programme of topics, ADR, and hearing dates, Stratis cannot see how matters such as the Viaduct Precinct provisions (Topic 020G-1211) can be progressed ahead of Significant Natural Hazards (Topic 009J). One of the main reasons for Stratis opposing the major height increases, being sought by Viaduct Harbour Holdings Limited, is due to hazards risks. Until those risks are better understood, with respect, negotiations and a hearing on this topic would be largely “hypothetical”.
12. There is a logical linear progression from base information to policy/rules. It is inevitable that trying to progress the policies/rules/zoning ahead of reliable hazards information, would inevitably mean holding 2 disjunctive hearings for the same topic. In my submission, this would be an inefficient use of the Panel time and expertise and require the parties to incur much higher costs.
13. While not the only issue, in my submission, in the Viaduct and many other parts of the region, natural hazards will be the determining intensification issue. Natural hazards are to be “avoided” or “mitigated” (RPS Policy B2.4.2(5)(b)) which PC78 must “give effect” to (s75). This is very directive language (*King Salmon*).

14. Stratis would like to be consulted on the scope of the work being planned by the Council. For example, on coastal hazard and flooding in the Viaduct, Stratis has engaged Richard-Reinen Hamill from Tonkin and Taylor. He is a leading expert in this field and can help to ensure that the scope of work will provide the Panel with the information it needs for robust decision making.
15. In terms of the relief that Stratis is seeking, which generally supports the Council notified version of PC78, regarding the Viaduct Precinct provisions, Stratis would not support the zoning/rules topic being progressed this year. In my submission, only after the Council work programme has been completed, and the parties have had sufficient time to analyse the results, should topics that have any hazards component, be scheduled for ADR and hearings, on the substantive issues.
16. Regarding splitting topics that could potentially proceed, from the ones that should be delayed, the need for “integrated” decision making means this is difficult. Also, a very extended, and “start stop” hearing schedule, means it is much harder to maintain continuity between topics and momentum, for both the parties and the Panel. The final planning provisions need to be integrated both vertically and horizontally, and separating topics by up to a year would make this harder to achieve and be an inefficient process.
17. Scheduling hearings in the second half of next year is, with respect, a realistic timeframe for PC78 topics to be heard.

DATED at AUCKLAND this *1st* day of May 2023

Stratis Body Corporate
by its barrister and duly authorised agent



Peter Fuller