

## **Before the Independent Hearings Panel**

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

**And**

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

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**Memorandum of counsel for Auckland Council in relation to recent  
correspondence with the Minister of Housing, Infrastructure and  
Resource Management Reform, and the Minister for the  
Environment**

**Date: 19 February 2024**

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## MAY IT PLEASE THE PANEL

### Introduction

1 In its Minute of 7 November 2023, the Independent Hearings Panel (**IHP**), set out its reasons for declining a request of Auckland Council (**Council**) to defer scheduling any Proposed Plan Change 78: Intensification (**PC78**) hearings of submissions relating to the Auckland Light Rail Corridor and natural hazards.

2 The Minute records various reasons for the Council's request,<sup>1</sup> and the Council's intention to hold discussions with the (then) incoming government as to the implications of those matters.<sup>2</sup>

3 This memorandum of counsel for the Council addresses paragraph [14] of the Minute, which states:

14. Until the situation is made clearer the Panel will prepare an indicative hearing schedule for the remaining topics and submissions. The first of the hearings will be scheduled for May 2024. If the situation changes and becomes more certain before mid-February 2024 it should be possible to revisit the schedule without undue prejudice having been caused to submitters involved in hearings scheduled for May. However the Panel will expect the Council and submitters to be ready to proceed on the scheduled dates, unless otherwise directed.

4 The purpose of this memorandum is to update the IHP about recent correspondence with the Minister of Housing, Infrastructure, Resource Management Reform and the Minister for the Environment (**Ministers**).

### Recent correspondence with Ministers

5 We are instructed the **attached** letter dated 1 February 2024 has been sent by the Council to the Minister of Housing, Infrastructure

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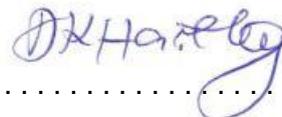
<sup>1</sup> At [9].

<sup>2</sup> At [10].

and Resource Management Reform, and the Minister for the Environment and contains a request to the Minister for the Environment under s80M of the RMA for a further one-year extension of time for the Council to notify its decisions on PC78 from 31 March 2025 to 31 March 2026.

- 6 The various interrelated reasons for the request are set out in the letter, and the Council has asked that the request be treated with urgency.
- 7 We are also instructed that a response has yet to be received from the Ministers to its letter but the Council will update the IHP when it receives a response.
- 8 We anticipate being instructed to provide another memorandum for the consideration of the IHP as soon as the Council receives a response from the Ministers.

**Date:** 19 February 2024



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**D K Hartley / A F Buchanan**  
Counsel for Auckland Council for  
Proposed Plan Change 78

**1 February 2024**

Hon Chris Bishop  
Minister of Housing, Infrastructure, Resource Management Reform  
[C.Bishop@ministers.govt.nz](mailto:C.Bishop@ministers.govt.nz)

Hon Penny Simmonds  
Minister for the Environment  
[P.Simmonds@ministers.govt.nz](mailto:P.Simmonds@ministers.govt.nz)

Tēnā kōrua Ministers

**Planning Framework in Auckland - Intensification Planning Instrument, Natural Hazards and the need for comprehensive change**

Congratulations on your appointment as Ministers in the new Government. We very much look forward to working closely with you and your ministerial colleagues on the important land-use and environmental issues facing Auckland and New Zealand, including getting more houses built.

We have a situation in Auckland where the planning requirements imposed through the National Policy Statement on Urban Development 2020 (NPSUD), the amendments to the Resource Management Act 1991 (RMA) through the bi-partisan Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act), the 2023 Auckland Anniversary floods and Cyclone Gabrielle events and some recent government announcements all combine to create an incoherent set of planning processes. We would appreciate your urgent consideration of this matter and clear direction.

As you will be aware, Auckland Council is one of a number of councils that are part-way through the statutory process of making changes to their RMA policy statements and plans to give effect to the NPSUD and the various requirements of the RMA introduced by the Amendment Act in 2021. The RMA refers to the legal instrument through which these changes are made as an “Intensification Planning Instrument” (IPI). An integral aspect of Auckland Council’s IPI is the required incorporation of “Medium Density Residential Standards” (MDRS) into relevant residential zones.

Auckland Council notified its IPI on 18 August 2022 and appointed an independent hearings panel (the Panel) to hear the submissions and make recommendations back to the council. The Panel commenced the hearing of approximately 3,000 submissions early last year with a view to concluding the hearings by the end of 2023. That would have enabled the council to make its decisions on the IHP recommendations on the IPI within the 31 March 2024 statutory timeframe.

However, due to the devastating impacts of the 2023 Auckland Anniversary floods and Cyclone Gabrielle on the region, the council sought an extension of time to 31 March 2025. The extension was requested on the basis the council needed to make sure its IPI would not increase the risk of people and property being affected by flooding and coastal hazards, and that the council may need to prepare and notify a variation to its IPI. The extension was granted by the former Minister for the Environment, and as a result, the Panel granted the council’s request for the hearings to be put on hold.

Even with this extension, the reality is that continuing with the IPI process in Auckland no longer seems a pragmatic way forward for the following reasons:

- The 2023 Auckland Anniversary floods and Cyclone Gabrielle weather events may require down-zoning of properties and changes in regulatory settings for development in natural hazard areas. Under the current legislation, this can only be done once the IPI has been completed (please refer to the **attached** letter to the former Minister for the Environment), meaning that we will complete an intensification plan change and then need to immediately follow it with a plan change that will alter the zoning of some of those areas again.
- The Government's direction that changes will be made to the MDRS provisions to allow councils to opt out. Mayor Brown has indicated he would like to opt out of MDRS in some areas, so if council chooses to do so, this would result in either a fundamental change to the council's IPI or the need to withdraw and notify a new plan change of some sort. Council (and therefore ratepayers) and submitters will be put to unnecessary costs if the IPI hearings continue through 2024, and then a decision is made by Council to significantly amend or remove the MDRS provisions.
- The Government has recently terminated the Auckland Light Rail project. That means we will now need to implement the IPI along this corridor (having 'carved it out' from the original plan change until the route and station locations were known). However, given the uncertainties around whether the MDRS provisions will remain mandatory, it seems imprudent to progress a variation to the IPI at this stage.
- The likelihood of other changes to the planning framework, including National Policy Statements, climate adaptation and the RMA, which will likely directly affect the IPI and the Auckland Unitary Plan.

The combination of all these issues means that council is unable to give due consideration to these land use matters in a coherent manner. The current process will require multiple plan changes (or variations), public engagement, evidence, and hearings and importantly, duplication of effort and costs for all involved. The process dictates the duplication which, if considered from a regulatory impact perspective, may be unintended but is very difficult to justify and is unnecessary. It is an example of national legislation which is not fit-for-purpose for Auckland and results in duplication of process and excessive costs for all involved.

However, we are confident that there are options open to you to remedy the immediate process issues so that we can work together to ensure Auckland continues to develop and intensify in the right areas with due consideration of the challenges of natural hazards. These options may include:

- Amending s80G(1)(c) of the RMA to allow council to withdraw the IPI in whole or in part;
- Amending s80E of the RMA, to enable council to include new provisions for developing in natural hazard areas as part of the IPI which may be more restrictive than the status quo;
- Amending various RMA provisions, including section 77G, section 80E and clause 25(4A) of Schedule 1 of the RMA, to make it clear that the incorporation of MDRS is optional (and no longer mandatory).
- Providing a further one-year extension of time under s80M (3) of the RMA for Auckland Council to notify its decisions on the IPI, in response to the Council's request under s80M(2) for an amendment to the current direction dated 15 August 2023. This will enable the independent hearings panel to pause the hearing process while the Government amends

legislation or provides new direction as has been signalled and for council to consider the implications of these changes; and

- Clearly and urgently advise council that you are not expecting us to continue with the current process until the Government amends legislation or provides new direction as has been signalled.

The immediate concern for us is the imminent hearing in May on Topic 046 – Light Rail Corridor and the need to complete analysis and evidence. The council's costs alone are estimated to be in the order of half a million dollars per month for the various IPI hearings, let alone those of the independent hearings panel and submitters. The council's expert evidence is due to be submitted to the Panel from mid-April onwards, so these costs are already being incurred.

Under section 80M(2) of the RMA, as an interim measure to enable the IHP to once again pause the hearing process while the Government amends legislation or provides new direction and for the Council to consider the implications of these changes, the Council requests an amendment to the direction made to the Council on 15 August 2023 to provide for a further one-year extension of time for Auckland Council to notify its decisions on Plan Change 78 – Intensification (the Auckland Council's IPI) from 31 March 2025 to 31 March 2026.

We therefore ask that you treat this request with urgency and advise us as soon as possible of your decision. Our priority is to make the best use of ratepayers' money while responding pragmatically to the direction of our new government and importantly, getting more houses built. We welcome the opportunity to work with you on a sensible, forward-looking solution for Auckland.

Thank you for your consideration of this matter. Please do not hesitate to contact us if you have any questions. Additionally, we understand the Mayor's Office has already invited Hon Bishop to meet in Auckland.

Ngā mihi



**Richard Hills**  
Chair | Planning, Environment and Parks  
Committee  
Councillor | North Shore Ward



**Angela Dalton**  
Deputy Chair | Planning, Environment and  
Parks Committee  
Councillor | Manurewa-Papakura Ward

cc. Hon David Seymour  
Minister of Regulation  
[D.Seymour@ministers.govt.nz](mailto:D.Seymour@ministers.govt.nz)

12<sup>th</sup> October 2023

Hon David Parker  
Minister for the Environment  
[d.parker@ministers.govt.nz](mailto:d.parker@ministers.govt.nz)

Tēnā koe Minister

### Issues relating to section 80E of the Resource Management Act 1991

1. We refer to your letter dated 4 October 2023, in response to the Council's letter of 31 August 2023 in relation to the Council's intensification planning instrument (**IPI**), Proposed Plan Change 78: Intensification (**PC78**).
2. As noted in your letter, the Council considers that section 80E of the Resource Management Act 1991 (**RMA**) prevents a variation to the IPI to comprehensively address the risks associated with significant natural hazards. The reason that the Council is currently progressing a separate plan change to provide a more fulsome response to managing the significant natural hazards in the Auckland region, is because it cannot undertake a variation to the IPI due to section 80E.
3. The Council remains of the view that section 80E would need to be amended, to enable the Council to undertake a variation to PC78 to propose the most appropriate provisions (including zoning) for properties that are subject to natural hazards and/or flooding. Section 80E needs to be amended for the Council to expeditiously propose the most appropriate provisions for properties that are subject to natural hazards and/or flooding.
4. If the provisions of the RMA are not changed, the Council will need to wait until PC78 is operative (with the Council currently required to publicly notify its decisions on PC78 by 31 March 2025) to notify a separate plan change to the Auckland Unitary Plan on natural hazards and flooding.
5. In your letter dated 6 April 2023<sup>1</sup>, you stated that improved housing affordability and resilience are both critical issues for the Government and for Auckland. The Council agrees that these are critical issues for Auckland and is seeking that these issues be comprehensively addressed through PC78.
6. The Council has previously provided proposed draft amendments to s80E of the RMA, and Council staff would be happy to discuss these proposed amendments further with MfE officials.
7. Staff have considered the draft Proposed National Policy Statement for Natural Hazard Decision-making 2023 (**NPS-HZD**) and note that clause 1.5 of the NPS-HZD provides that it does not apply when the Council is preparing an IPI under section 80F of the RMA. Section 80F(3)(b) requires the IPI to be prepared in accordance with clause 95 of Schedule 1 of the RMA and any requirements specified by the Minister in a direction made under section 80L. Clause 95(2)(p) enables the Council to notify a variation to the IPI.

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<sup>1</sup> This letter responded to the Council's letter dated 17 March 2023, which sought an extension of time for the Council to publicly notify its decisions on PC78.

8. The Council understands that clause 1.5 of the NPS-HZD would not prevent the Council from notifying a variation to PC78 to manage natural hazards and flooding (if section 80E were to be amended), but notes that the Council's variation would not be required to give effect to the NPS-HZD.
9. As you are aware, the Council had been undertaking ongoing work to progress two variations to the IPI: (1) Natural Hazards; and (2) the Auckland Light Rail Corridor (ALRC). The Council is required to report to the Independent Hearings Panel (IHP) for the IPI on the Council's work programme for both variations no later than **30 October 2023**.
10. The Council is also required to provide a report to the Ministry for the Environment on **15 November 2023** about its progress of the intensification streamlined planning process. The report is required to demonstrate how the Council is having regard to the statement of expectations and identify any issues which may affect the Council's ability to comply with the Minister's Direction.
11. The Minister for the Environment's Statement of Expectations Additional Direction for the Intensification Streamlined Planning Process for Auckland Council is as follows:

In accordance with clause 80L(2) of the RMA, the Minister for the Environment's expectations for Auckland Council are that in the extended period by which Auckland Council must notify decisions on the independent hearings panel's recommendations, the Council will:

1. Investigate impacts arising from the significant flooding and landslides caused by extreme weather during Auckland Anniversary weekend and Cyclone Gabrielle in 2023, and the implications for land-use planning, infrastructure, and other policy settings;
  2. Determine if a variation is required in order to:
    - a. Apply qualifying matters to recognise and provide for matters of national importance, in particular the management of significant risks from natural hazards.
    - b. **Ensure that through its intensification planning instrument, intensification is enabled in low natural hazard risk areas and ensure new development is avoided in high natural hazard areas unless the level of risk can be reduced to a tolerable level.**
12. The Council is seeking the ability to ensure that new development is avoided in high natural hazard areas (unless the level of risk can be reduced to a tolerable level). As outlined above, section 80E of the RMA prevents the Council from notifying a variation to the IPI to comprehensively address the risks associated with significant natural hazards. In its report to the IHP on 30 October 2023, the Council will need to advise the IHP that section 80E is preventing the Council from progressing a variation on natural hazards.
  13. Please do not hesitate to contact me, Councillor Dalton or Megan Tyler, Chief of Strategy at Auckland Council [megan.tyler@aucklandcouncil.govt.nz](mailto:megan.tyler@aucklandcouncil.govt.nz) for further information or if you wish to discuss.

Ngā mihi



**Richard Hills**  
Chair | Planning, Environment and Parks  
Committee  
Councillor | North Shore Ward



**Angela Dalton**  
Deputy Chair | Planning, Environment and  
Parks Committee  
Councillor | Manurewa-Papakura Ward