

Before the Independent Hearings Panel

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

And

In the matter of Plan Change 78: Intensification (**PC78**) to the
Auckland Unitary Plan Operative in Part (**AUP**)

**Reporting memorandum of counsel on behalf of Auckland Council to
the Independent Hearings Panel in response to directions from the
Independent Hearings Panel dated 16 September 2024 and 24 March
2025**

Date: 1 April 2025



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MAY IT PLEASE THE PANEL

Introduction

- 1 This memorandum is filed on behalf of the Auckland Council (**Council**) in response to the Direction from the Independent Hearings Panel (**Panel**) dated 16 September 2024 (**September Direction**) and further to the Council's reporting memoranda dated 30 September 2024, 30 October 2024, 2 and 20 December 2024, and 15 and 30 January 2025, and 28 February 2025.
- 2 In paragraph 5 of the September Direction, the Panel requested that the Council provides an update on its interaction with the Minister responsible for RMA reform (Hon Chris Bishop) and/or the Ministry for the Environment (**Ministry**) and the status of any proposed variations to Plan Change 78: Intensification (**PC78**) by 30 September 2024 and monthly thereafter.
- 3 Accordingly, this memorandum provides a further update to the Panel further to the Council's previous reporting memorandum dated 28 February 2025, regarding the matters the Council was asked to report on.
- 4 This memorandum also addresses the Minute and Direction issued by the Panel to Council dated 24 March 2025 (**March Direction**). In paragraph [12] of the March Direction, the Panel directed the Council to provide:
 - 4.1 A high level, indicative programme (including time periods) for the resumption of hearings through to when the Council will need the Panel's recommendation in order to make a decision on PC78 by 31 March 2026; and
 - 4.2 An indication of how the Council proposes in those hearings to address the Light Rail Corridor and issues relating to natural hazards.

The Council's interaction with Hon Chris Bishop and/or the Ministry

- 5 As the Panel is aware, the Council received correspondence from Hon Chris Bishop (**Minister**) that is directly relevant to PC78, dated 12 March 2025 (**Minister's letter**). The Council provided a copy of the Minister's letter to the Panel in its memorandum dated 14 March 2025.
- 6 We are instructed that the Council has not received any further correspondence from the Minister that is directly relevant to PC78 since the Minister's letter dated 12 March 2025.

Status of Light Rail Corridor and natural hazards planning responses

- 7 In our memorandum dated 30 January 2025 we advised that we were instructed that work continues on the Auckland Light Rail Corridor planning response and the qualifying matters in the Corridor, as well as on the natural hazards planning response.
- 8 Although the Council is no longer required to notify a plan change or similar to address the management of significant risks from natural hazards and the Light Rail Corridor by 30 April 2025, we are instructed that work is still continuing on the natural hazards planning response.

High level indicative hearing programme

- 9 As acknowledged in the Minister's letter, the Council has requested a bespoke solution for Auckland in the context of the current Resource Management Act 1991 (**RMA**) reform, which would enable the Council to withdraw PC78 in part and enable the Council to notify a comprehensive plan change giving effect to intensification directives and including a natural hazards planning response for the region.
- 10 We are advised that the Council considers it is likely to have a better understanding of which, if any, PC78 hearing topics may

need to still progress in mid-June, when the Environment Select Committee is due to report back to Parliament on the Resource Management (Consenting and Other System Changes) Amendment Bill. The Council would propose to update the Panel, once it has more certainty in that regard.

- 11 The Council is also very mindful about submitters and ratepayers expending resources and incurring costs, which may prove to be unnecessary or which may be overtaken by other events.
- 12 The Council therefore respectfully proposes a hearing programme whereby PC78 hearings recommence at the beginning of September 2025 at the earliest. At a high level, the Council suggests that any resumed hearings could occur from early September to early December 2025.
- 13 We are advised that the Council considers that, if it received the Panel's recommendations on submissions on PC78 by 20 February 2026, there would be sufficient time for it to be able to make its decisions on the Panel's recommendations on PC78 and publicly notify the decisions by 31 March 2026. We are also instructed that the Council would be amenable to receiving the Panel's recommendations in parts if the Panel proposes to release its recommendation reports to the Council in that manner.

How the Council proposes to address natural hazards and the Light Rail Corridor in any resumed PC78 hearings

Natural hazards

- 14 As the Panel will be aware, the High Court in its decision in *Kāpiti Coast District Council v Waikanae Land Company Limited*¹ confirmed that text, purpose and context of section 80E of the RMA supported an interpretation that "consequential on" requires

¹ *Kāpiti Coast District Council v Waikanae Land Company Limited* [2024] NZHC 1654.

any amendments or inclusions strictly to be such as to moderate the effect upon the status quo that the MDRS would otherwise have, not to limit the level of development previously permitted.

- 15 We are advised that, in light of the High Court's decision in *Waikanae Land* and in the current absence of any legislative change to section 80E of the RMA, the Council proposes in any reconvened PC78 hearings to support and defend the approach taken in PC78 as notified. This is to identify the management of significant risks from natural hazards as an existing qualifying matter, given the operative Auckland Unitary Plan Operative in part (**AUP**) provisions concerning natural hazard risks.

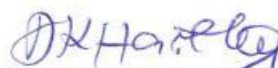
Light Rail Corridor

- 16 We are instructed that the Council respectfully considers that if the RMA amendments do not enable the Council to withdraw PC78 in part and notify a comprehensive plan change and the Light Rail Corridor area is to be incorporated into PC78, then this would need to occur by way of a variation to PC78. If so, the Council also considers that it may need to seek a further extension of time from the Minister in which to enable the Panel to complete its PC78 hearings, for the Panel to make its recommendations, and for the Council to publicly notify its decisions on the IHP recommendations on PC78.
- 17 Therefore, we are advised that the Council's preference would be to deal with the Light Rail Corridor area subsequently through a comprehensive planning response, which also incorporates the natural hazards planning response that the Council is currently working on.

Next update

- 18 In accordance with the September Direction, the Council will provide the next update to the Panel by 1 May 2025, unless the Panel directs otherwise.

Date: 1 April 2025



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Counsel for Auckland Council for
PC78