

THE INTENSIFICATION DEBATE CONTINUES – AND YOUR HELP IS NEEDED:

Summary

Auckland Council have now published Plan Change 78, in compliance with recent legislation passed to permit housing intensification across Auckland City and other cities. The revised planning rules are now in place, but there is still an opportunity (until 29 September) to make further submissions citizens believe are required on the plan changes and amendments. These submissions will be considered by an Independent Hearings Panel, who will make recommendations to Council on any further changes they believe are necessary. When submitting, please indicate that you would like to speak to your submission. We can help with that, or maybe use your allocated time.

We believe it is very important for individuals to make further submissions in order to support the changes that permit intensification where it is appropriate (close to city and metropolitan centres) and to get additional safeguards against inappropriate developments in other parts of the city.

In summary, we suggest a number of areas where individuals may wish to make submissions. To minimize work, individual submitters are welcome to copy and paste, or modify, our suggestions as they wish.

A more detailed elaboration of our reasons is given on the following pages. This summary is intended to enable submitters to consider possible points for their own submission. Key points are to:

1. Support the proposed changes to date in Plan Change 78. (We recommend this because we do not want to see these changes weakened by other submissions opposing them).
2. Request the Independent Hearings Panel to introduce long term economic costs as a qualifying matter. A further Plan Change can introduce a time bound, location based, intensification plan that meets the objectives of the legislation, whilst also focussing infrastructure investments within predetermined priority areas. This will have the benefit of (i) enabling Auckland Council to channel developments to areas where there is sufficient infrastructure capacity; (ii) getting maximum value for money from infrastructure investments; (iii) achieving better planned maintenance to be targeted to areas of higher population density, rather than being dispersed across the city; (iv) enabling other providers, such as Ministries of Education and Health, and power and telecommunications companies, to plan their investments to reflect planned population growth.
3. Because of the growing incidences of heavy rainfall and flooding, request stormwater to be included as a qualifying matter, with a wider area-based risk assessment, based on the 100 year flood scenario. Without this, we believe that an increasing risk of flooding, stream erosion and even difficulties obtaining affordable insurance cover will occur. (Cockle Bay is at particular risk because of dependence on streams, soak pits and aged infrastructure).
4. Include immediately all relevant safeguards set out in the New Zealand Coastal Policy statement 2010. (At the moment there are references only to areas of coastal erosion and inundation. The Enabling Act requires the Coastal Policy to be considered).
5. Improve transparency and consistency by including specific specifications on all consent requirements. (In cases where we have raised queries, we have been referred to individual planners for explanations).
6. If you feel it appropriate, then you may wish to request wider areas of the city be included as character areas, in order to preserve our heritage.

SUPPORTING INFORMATION

Introduction

As we have indicated previously, in late 2021, and with only limited consultation, central government passed legislation (the Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021) to support housing intensification throughout Auckland, and fourteen so called Tier 1 territorial authorities. This allows for more housing, including apartments and townhouses, with greater height and density, across most residential areas. There is no requirement for a resource consent. The legislation specifies a limited number of circumstances where such intensification is not permitted – so called “qualifying matters” – but these are limited in scope.

Auckland Council, in compliance with the legislation, has now published Plan Changes (in particular, Plan Change 78) to the Auckland Unitary Plan. These define areas where intensification can occur. In contrast to Auckland City, Christchurch City - which is subject to the same legislation – has been much more rigorous in opposing intensification.

The Auckland Plan Change defines Cockle Bay as Mixed House Urban Zone, meaning the medium density residential standards will apply with immediate effect, allowing up to 3 dwellings of up to 3 storeys height (12 metres, including the roof) to be constructed on individual sections. For Cockle Bay, there are some safeguards in terms of water and wastewater constraints, but no recognition of risks associated with stormwater, despite the dependence on streams and soak pits for drainage in parts of the area, and past flooding history. Only properties flooded by the 100 year (Average Recurrence Interval) floods have “floodplains” as a qualifying matter.

Although the new planning regime is now in place, there is still an opportunity to influence the final shape of the city. Submissions are now open on the new planning rules. All submissions will be considered by an Independent Hearings Panel, who will make recommendations to Auckland Council that could result in further changes. Submissions close on 29 September 2022. There will then be an opportunity to make verbal follow up submissions to the Panel. Recommendations on further changes will be finalised by March 2024.

Having water and wastewater issues recognized as a qualifying matter is a partial success. However, we do not believe that adequate safeguards have been included for both our local area and Auckland as a whole. **If you want to secure safeguards that prevent random and intrusive development in areas that are not suited to development, (3 by 3 storey developments next door) we believe it is vital that you make a submission.** It is not vital that every point is covered in your submission. We will all need additional time to finalize good, evidence-based, submissions that avoid wasting the Panel’s time. We do, however, suggest you also ask to be heard by the Panel. This will give you time to refine your thinking and to present a more comprehensive verbal submission. We are prepared to offer further advice and assistance to achieve this.

The legislative failure

We find it incredible that the two major political parties, both of whom claim to have the credentials to make wise decisions on economic management for the country, could have failed to have considered the medium to long term economic costs of a “one size fits all” approach to planning¹. Putting aside the focus on development near city and other centres, which makes good sense, it assumes that all areas of a city are homogeneous, with similar characteristics across all areas. This includes assuming that there is uniform city-wide infrastructure capacity with the same “whole of life” expectation; uniform access to water supply; stormwater drainage; and wastewater treatment and networks; that all areas have equal access to schools, hospitals and medical facilities; that all areas are serviced by financially sustainable transport services; with no undue traffic congestion that requires special measures to alleviate delays, and that there are adequate communications networks, energy supply and social facilities. The legislation assumes that infrastructure has the capacity to cope with ad hoc growth and that there will be no difficulty providing increased capacity for growth

¹ The legislation does specify that nationally significant infrastructure is a qualifying matter that can be used to declare an area unsuitable for intensification

across all areas of the city. The legislation fails to reflect that future random increases in infrastructure use will create random increases in demand for infrastructure capacity, and increased area-specific, volume-driven, planned maintenance, rehabilitation and replacement, with associated costs.

In contrast, sound investment management requires city-wide prioritization. Requirements for additional capacity must be managed on a structured area-by-area basis, built around a location-based development plan. This effects not just Council planning. Ministries responsible for provision of services such as schools and hospitals deserve some certainty about where and when growth will occur, rather than it being randomized across cities.

The legislation and plan change fails to consider priorities and local factors that should influence development within a city that in Auckland's case stretches from Wellsford to Pukekohe. The legislation goes on to assume that all fourteen major territorial centres in New Zealand are identical, and can be subjected to the same rules.

The qualifying matters specified in the legislation² provide only limited opportunities to introduce a development framework that reflects a need to channel development into areas where there is adequate infrastructure capacity to service future growth. The result will be very high medium to long term costs that could be avoided by more structured planning.

Our submission point 2 below endeavours to address this as far as possible within the legislative constraints.

Submission Point 1 – Support for changes to date

Plan Change 78 contains a number of plan changes giving effect to the legislative requirements. Because these may be challenged by other submitters there is a small risk that they could be removed or reduced in their scope. We believe the new provisions, including protection of views from Stockade Hill, need to be supported. The main point of our subsequent submission points is to secure further improvements, as indicated in subsequent submission points.

Submission Point 2 – Channelling growth to locations with capacity to absorb it.

In order to avoid the risk of avoidable costs in the medium to long term, we ask the Independent Hearings Panel to advocate a medium to long term approach that focusses development in areas where there is adequate spare infrastructure capacity to cater for population growth. This is to include non-Council infrastructure such as, schools and medical facilities and green space

Effectively this means including medium to long term economic and opportunity costs (or risks) as a qualifying matter. Consideration must be given to water supply and sewerage systems, including combined wastewater and stormwater; stormwater infrastructure capacity; the long term economic life of infrastructure and planned replacement programmes; road and transport network capacity; and social infrastructure available such as schools, medical facilities, energy supplies, telecommunications networks and green space.

A revised plan change can provide for area-specific timebound zoning changes that reflect planned capacity increase in infrastructure, thus achieving the objectives of the Enabling Act in a long term, cost effective manner.

In our submission to Council prior to the publication of Plan Change 78 we suggested that developers wishing to construct homes in areas where there was insufficient infrastructure capacity be required to pay a premium to offset the need to provide additional infrastructure on a timeline falling outside planned infrastructure development.

Submission Point 3 - Include stormwater infrastructure as a qualifying matter

The plan change rightly includes reference to combined wastewater and stormwater infrastructure as a qualifying matter. It makes no provision for areas such as Cockle Bay (and other parts of Auckland)

² See Reference at conclusion of this Discussion Paper

where stormwater is not fully accommodated within fixed infrastructure. In these locations streams, flow paths and soak pits are important elements of the stormwater systems. Allowing intensification on sections currently serviced by soak pits reduces permeable areas and opportunities for natural absorption of stormwater. It increases the risk of increased flows in streams and overland flow paths, and flooding. As with the previous submission point, unplanned intensification introduces a high risk of avoidable medium to long term economic costs in terms of stream erosion and increased flooding. Indirect costs are likely to be incurred by property owners because of increased stream maintenance and insurance premiums – if in fact they are able to obtain insurance in locations with a record of flooding and erosion. This risk is already demonstrated in other parts of the country and globally. It can be avoided by excluding areas from intensification where stormwater infrastructure is inadequate and there is a track record of flooding.

Although the Cockle Bay catchment is identified as being subject to the Water and Wastewater constraints control, it appears that this is intended to be applied in an ad hoc manner, giving residents no assurance of consistent application of principles within the area. This raises an issue of equity. For instance, it is stated that applications for individual properties will be assessed against whether there is adequate capacity, including reticulated water and wastewater, and water for firefighting, and whether there is the ability to connect dwelling(s) to reticulated and wastewater networks. As an isolated case this makes sense. In a wider context it has the potential for introducing huge inconsistencies, and a risk of “first come, first served” developments. As an example, there was a question of wastewater capacity for the original application for 71 apartments proposed for 30 – 40 Sandspit Road, Cockle Bay. If such an application was approved, even though the sewerage network was nearing capacity, then it moves the area closer to the point where subsequent development applications must be declined because maximum capacity had been reached, or there is a significant risk of future sewerage overflows effecting residents over a wider area. A wider spatially based prioritization- based methodology for determining growth areas based on infrastructure capacity overcomes development based on micro-level assessments.

The current revised development application for apartments at the same location, currently before the Environment Court, revealed flawed calculations by the developer for the stormwater retention / detention tanks. Adequate capacity tanks will mitigate some of the above risks, but not eliminate them completely. A definitive ruling is required on how the calculations are to be undertaken, and sampling of specific installations will be necessary to ensure compliance, with penalties for failures. There is also a question, not answered in our queries to Auckland Council, about following the required code of practice.

We request the Hearings Panel to recommend to Council: (i) that stormwater be included as a qualifying matter for all development sites; (ii) that no intensification be permitted adjacent to streams, flow paths, flood plains and other locations with a risk of flooding in the future; (iii) the correct basis for calculating capacity of retention / detention tanks; (iv) a requirement to follow all required codes of practice, in particular in all areas defined as being subject to a stormwater constraint.

Submission Point 4 - Include areas subject to compliance with Coastal Policy Statement as a qualifying matter.

The Enabling legislation specifies that a qualifying matter is compliance with National Policy Statements and the New Zealand Coastal Policy Statement. The Coastal Policy does not appear in the legend or on the Plan change 78 Information Sheets as a qualifying matter. The map show areas at risk of coastal erosion and coastal inundation, but gives no indication of which properties are subject to constraints to enable them to comply with the Coastal Policy. In the case of Cockle Bay, with a number of streams providing stormwater drainage, we would argue that policy compliance extends beyond properties adjacent to the beach, as the whole catchment drains down to the beach, and there is already quantified evidence of increased sedimentation – in contradiction to the Coastal Policy provisions.

Our submission to Council at the time that the Plan Change was being prepared indicated 3 objectives and 9 policies that have a particular relevance to Auckland coastal areas. In response to our query to Council about the scope of protections under Plan change 78 and legislated coastal

policy, the response was that Council wishes “to avoid development in areas subject to coastal inundation and erosion, with a preferred approach of rezoning all affected properties and a new low residential zone”. However, Council goes on to state that this cannot be addressed through Plan Change 78. It will be covered in a future Coastal hazard Plan Change (at an unspecified time). No other changes to incorporate Coastal policy objectives and policies are mentioned in response to our queries.

We submit that the statement of qualifying matters (Information Sheets 7 and 8, Parts 1 and 2) be expanded to include the Coastal Policy objectives and policies which must be complied with, and that properties effected be identified on the maps. We submit that properties must be identified based on the risk and effects related to the Coastal policy – for instance whether they effect, or are likely to effect, water quality and marine ecosystems through increased sedimentation or cumulative effects³.

Submission Point 5 – In order to secure full transparency and consistency, the plan change be more prescriptive within the new planning rules on what requirements must be met.

In theory this submission should not be required. However, experience suggests otherwise. We give 4 examples:

Firstly, in a current case before the Environment court there are different interpretations on the application of climate change projections relating to rainfall projections and calculations, and applicability to new consent applications for multiple dwellings, compared to applications that are compliant with existing rules. After expert consultation, Council has already had to require revised calculation for stormwater retention and detention tanks once, but the revised calculations remain in dispute. The mere fact that experts can disagree on the interpretation means that the rules lack clarity. This needs to be formally resolved with a consistent interpretation.

Secondly, as indicated in the previous paragraph, there is scope for different interpretations of GDO1 (Stormwater Management Devices in the Auckland Region, Amendment 2, December 2017), a part of the AUP, and the Code of Practice. An updated Plan Change document can eliminate this debate by clarifying the rules for all parties. The mere fact that this is disputed before the Environment Court indicates significant scope for different interpretation. This ambiguity must be eliminated for the benefit of all stakeholders.

Thirdly we have raised queries with Council on interpretation of the new guidelines. The mere fact that we had to ask the questions indicates that the situation is not clear. Council staff responsible for resolving the queries were not able to provide an answer, and referred us to the planner and engineers for our area⁴. This raises the scenario, not only of lack of transparency but also

³ These effects are one example. (Policy 4, Integration). This is only 1 of the relevant objectives and policies. Other objectives and policies must also be incorporated.

⁴ *Our question to Council:* Please confirm or otherwise that irrespective of the presence or absence of other qualifying matters, stormwater quality and quantify management is required for all sites in accordance with the provisions of the relevant sections of the existing AUP, Council's Code of Practice and Council's design guidelines. Specifically, sections E1, E8, E10, E36, and E38 of the AUP, the use of GDO1(SWMD- Amendment 2) and the Stormwater Code of Practice are applicable.

Council responses to this and similar questions: “All development must be checked through the Councils building consent process and / or infrastructure-Development engineering section of the Council.”

“The relevant codes for checking should be verified with the Council's Resource Consent team (for the relevant area) and Development Engineers.”

“In terms of legal effect and how MDRS affects properties, you would need to discuss this matter with the Principal Specialist Planner in the Resource Consents Department for the Cockle Bay area. They have detailed advice about the application of QM's and its relationship with MDRS.”

“However, as stated earlier, for specific sites and application of the MDRS standard and how the QM affects development, please check with the resource consents team responsible for the area.”

inconsistency of interpretation between different geographical areas of the city. This is further illustrated by the dispute related to the recent felling of trees, including trees stated to be protected or “significant”, at the former UNITEC Arboretum, in order to make way for a new housing development⁵.

Fourthly we note that although the Regional Policy Statement is referred to in Sections E1 of the revised AUP, the forgoing scope for omissions means that it is desirable that the policy statement requirements are fully integrated into the more specific policies, objectives and criteria for reviewing consent applications, and the relevant sections of the Building Code.

We request that the Independent Hearings Panel recommend that these safeguards of specifying all relevant criteria to be considered be incorporated into relevant sections of an updated a Plan Change.

Submission Point 6 – Special Character areas

This is more subjective. It is our belief that parts of the city do have distinct characteristics that give the area a unique character. These risk being destroyed under the revised plan change, which has been driven by the legislation. We ask the Independent Hearings Panel to urgently recommend to Council that the criteria used to assess which areas of the city deserve protection be interpreted more liberally in order to retain the overall appearance of larger areas of the city, and the associated heritage.

References: Resource Management Act (Enabling Housing and Other Matters) Enabling Act 2021

Section 77I Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones

A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

- (a) a matter of national importance that decision makers are required to recognise and provide for under section 6: 2021 No 59 Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 Part 1 s 9 9
- (b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:
- (c) a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:
- (d) a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:
- (e) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:
- (f) open space provided for public use, but only in relation to land that is open space:
- (g) the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order:
- (h) a matter necessary to implement, or to ensure consistency with, iwi participation legislation:
- (i) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:
- (j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.

⁵ Reported by the Tree Council 22 September 2022