

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER **Plan Change 78 to the Auckland Unitary Plan – Operative in Part (AUP)**

DIRECTION (25 JUNE 2024) FROM THE HEARING PANEL

BONUS PROVISIONS RELATING TO HISTORIC HERITAGE AND SPECIAL CHARACTER AND THE CITY CENTRE

1. Pursuant to sections 34 and 34A of the RMA, Auckland Council (Council) has appointed an Independent Hearings Panel (**Panel**) consisting of independent hearings commissioners. The Panel’s function is to hear the submissions on Plan Change 78 (**PC 78**) and make its recommendations to Council.
2. At the conclusion of the PC78 hearing for the City Centre Hearing topics held in February and March 2024, the Panel directed expert conferencing to explore potential planning methods to retain bonus provisions for historic heritage and special character¹.
3. A Joint Witness Statement (the JWS, dated 30 April 2024) was produced by experts representing Auckland Council and interested parties.
4. The Panel has considered the JWS and requires additional information to complete its deliberations on potential options for this matter.
5. The Panel notes that no views were presented in the JWS relating to the possible option of Transferable Development Rights (TDR) to exceed height limits in the City Centre Zone as a heritage and special character bonus (if the Panel were to determine that height limits should apply in any part of that zone).
6. The Panel accordingly **directs** that the Council provide additional evidence on this possible option.
7. The Panel **invites** any interested parties who have made submissions on the City Centre Zone to also provide evidence on this possible option.
8. The evidence should address:

¹ Expert Conferencing – Plan Change 78 – Bonus floor area ration provisions relating to Historic Heritage and Special Character, Direction from the Hearing Panel dated 15 March 2024

- I. If the City Centre Zone is to include height limits, could these height limits be exceeded in exchange for protecting heritage or character buildings through mechanisms such as TDR?
 - II. If such a framework were to exist, what could the provisions look like?
 - III. Are there any areas within the City Centre Zone where such a mechanism shouldn't apply (e.g. specific or all precincts, or any other areas)?
9. The evidence must not address scope issues, as these have already been well canvassed in the JWS.
10. The evidence must be provided to the Senior Hearings advisor, Mr. Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz, by no later than midday Monday 22 July 2024. The same filing date applies to both the Council and any interested parties. Any rebuttal evidence must be provided by no later than midday Monday 5 August 2024.
11. Once the Panel has received and considered the evidence, the Panel will determine whether a reconvened hearing is necessary. If so, the Panel anticipate that the matters raised in this Direction may be considered in the same weeks as the City Centre Outstanding Matters hearing commencing on Wednesday 21 August 2024.
12. Any enquiries regarding this Direction, or related matters, should be directed to the Senior Hearings Advisor, Mr Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz.



Matthew Casey, KC - Chairperson
25 June 2024

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of Intensification Planning Instrument Proposed Plan Change 78: Intensification (**PC78**) to the Auckland Unitary Plan Operative in Part (**AUP**)

JOINT WITNESS STATEMENT IN RELATION TO:

Bonus provisions relating to Historic Heritage and Special Character

Expert conferencing held on	30 April 2024
Venue	Online
Independent facilitator	Marlene Oliver
Secretariat planner	Wayne Siu

1. Attendance

1.1. The list of participants is included in the schedule at the end of this Statement.

2. Basis of attendance and Environment Court Practice Note 2023

2.1. All participants agree to the following:

- a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- c) They will make themselves available to appear before the Independent Hearing Panel;
- d) This statement is to be filed with the Independent Hearing Panel and posted on the Council's website.

3. Matters considered at conferencing – agenda and outcomes

3.1 Scope

All experts agree that this expert conference is occurring as part of PC78 as notified and submissions that have been received. As such the scope of the topic is limited to the City Centre zone and precincts.

However, the experts acknowledge that the directions from the IHP do relate to other parts of the region and in recognition of that, the agenda for this session provides for a

wider discussion and the outcomes of that are recorded in the following parts of this JWS.

3.2 Transferable development rights under RMA

3.2.1 **All experts** agree that as a matter of first principle, bonus/transferrable development rights (TDRs) are an appropriate tool under the RMA. In particular, TDRs can promote positive effects.

3.3 City Centre Zone

3.3.1 *Could an amended floor area ratio control be applied across the City Centre Zone which would satisfy the requirements of Policy 3(a) of the NPS-UD?*

3.3.1.1 Acknowledging that experts have different interpretations of Policy 3(a), **all experts** agree that an appropriate qualifying matter would need to be applied if an amended FAR control was to be applied across the City Centre Zone.

3.3.1.2 **All experts** agree that this would require a qualifying matter (QM) to be applied across the whole City Centre, even on sites that are not heritage or special character sites. The framework of the NPS-UD and the RMA would need to be addressed by an amended floor area ratio control applied across the City Centre zone and precincts.

3.3.1.3 **Elisabeth Laird, Sarah Wong, Megan Walker, and Clare Covington** consider that PC78 as notified removes important incentives for the conservation and maintenance of heritage and special character building in the City Centre. For this reason, they consider that an amended floor area ratio control (or similar provisions) should be implemented to achieve positive heritage and special character outcomes.

3.3.1.4 **Karl Cook and Michael Campbell** considers the appropriateness of an amended floor area ratio control under the NPS-UD and sections 77N to 77O and section 32 of the RMA would need to be addressed.

3.3.1.5 **Elisabeth Laird, Sarah Wong, Megan Walker, and Clare Covington** agree with Karl Cook and Michael Campbell's comment (para 3.3.1.4) but confirm that their comments in para 3.3.1.3 reflect their position.

3.3.1.6 Summary comment: **the experts** consider that the answer to 3.3.1 is 'yes – it *could* be', but subject to the qualifications identified by the experts above which address matters around 'necessity and appropriateness'.

3.4 Outside of the City Centre Zone

3.4.1 *Would it be possible from a planning perspective to award any bonus/transferrable development rights for the protection of scheduled historic heritage places in zones outside of the city centre?*

3.4.2 *Is it necessary to award any bonus/transferrable development rights for the protection of scheduled historic heritage places in zones outside of the city centre?*

3.4.3 *Should any potential bonus/transferrable development right apply within the urban environment, or should they apply across the entire Auckland region?*

3.4.3.1 In response to the three sub paras above, **all experts** agree that it is most likely possible to develop a TDR system across the wider urban area, but a significant amount of work would be required to develop a comprehensive, whole-of-plan approach. It requires a wider context and statutory framework than the city centre and the NPS-UD / PC78.

3.4.3.2 **All experts** agree that a TDR system could result in wider positive effects through enabling the maintenance, and encouraging the retention and conservation, of scheduled historic heritage buildings.

3.5 Preliminary high-level consideration of options

All experts have reached a common point of view above in the JWS about scope and wider urban areas (outside of the city centre) aspects. The experts consider that the most appropriate course of action for the balance of this expert conference is to focus on PC78 and the submissions and address matters which may assist the panel.

3.5.1 Attachment 1 to this JWS tabulates an initial evaluation of the five options that were identified in Clare Covington's evidence (Statement of Evidence, dated 8 December 2023, for the City Centre Hearings PC78¹, see also attachment 2). The experts did not consider any other additional options in this expert conferencing sessions due to insufficient time. In summary the evaluation of the five options is:

3.5.1.1 **Karl Cook and Michael Campbell** consider that Option 3 is the most appropriate as:

- It gives effect to the objectives of PC78 and best achieves the NPS-UD;
- Chapter D17 of the AUP supports and enables the protection, maintenance, restoration and conservation of scheduled historic heritage places and protects them from inappropriate subdivision, use and development, and recognises and provides for s6(f) of the RMA; and

¹ Accessed on 30 April 2024:

<https://hearing.aucklandcouncil.govt.nz/h724/Evidence/Anglican%20Diocese,%20Planning%20Evidence,%20Covington.pdf>

- Other methods (including public and private funding for owners of heritage buildings) are available to encourage the retention and conservation of the city centre’s historic heritage.

3.5.1.2 **Clare Covington** considers that Option 2 is most appropriate as it would be consistent with the NPS UD in realising as much development capacity as possible in the City Centre (Policy 3), modified to the extent necessary to recognise the national significance of the protection of historic heritage under s 6(f).

3.5.1.3 **Elisabeth Laird, Sarah Wong and Megan Walker** consider that Option 2 is most appropriate as it would be consistent with the NPS UD in realising as much development capacity as possible in the City Centre (Policy 3), modified to the extent necessary to recognise the national significance of the protection of historic heritage under s 6(f), and to provide for special character in the City Centre. If Option 2 is progressed by the panel, an overview of the additional work required is set out in Attachment 1.

3.6 Further detailed matters raised by the panel are listed below with a response from the experts.

Question	Response
How should potential receiving areas (i.e. lots where owners can purchase additional floorspace, additional subdivision etc.) be determined?	Additional detail to be developed in any future work program.
Could bonus/transferrable development rights consist of a subdivision right, an amended floor area ratio, or could a hybrid approach be taken i.e. in different zones? Note: Change this to more specifically reflect responses from attendees	For City Centre, a structure already exists. For outside City Centre, this is out of scope, as addressed earlier in this JWS.
How would the plan ensure that a conservation or character plan were prepared and implemented in the case of	Additional detail to be developed in any future work program.

<p>the awarding of bonus/transferrable development rights?</p>	
<p>Would it be appropriate to distinguish between Category A and Category B (and A*) places? How might this distinction be made? How might properties in scheduled Historic Heritage Areas be managed?</p>	<p>Additional detail to be developed in any future work program.</p>
<p>Would there need to be any specific or different provisions to allow for the protection of scheduled archaeological sites?</p>	<p>Out of scope of PC78. The City Centre bonus provisions refer to heritage buildings not archaeological sites.</p>

3.7 Summary of the experts' response to the IHP's directions

- 3.7.1 The matters raised by the Panel relating to areas outside of the City Centre zone and precincts are considered by the experts to be out of scope of PC78 and the submissions.
- 3.7.2 For the City Centre zone and precincts, the experts have identified at least two options that could address TDRs for Historic Heritage and Special Character. These are identified in this JWS as Option 2 and Option 3. The experts consider that further work is required to develop Option 2, in particular the preparation of any proposed plan provisions. The experts consider that Option 3 does not require further work as sufficient material has been presented as part of PC78 as notified and during the hearings.

4 PARTICIPANTS TO JOINT WITNESS STATEMENT

4.1 The participants to this Joint Witness Statement, as listed below, confirm that:

- a) They agree that the outcome(s) of the expert conferencing are as recorded in this statement; and
- b) They agree to the introduction of the attached information – Refer to paras 3.1 – 3.7 above and Attachments 1 and 2; and
- c) They have read the Environment Court’s Practice Note 2023 and agree to comply with it; and
- d) The matters addressed in this statement are within their area of expertise; and
- e) As this session was held online, in the interests of efficiency, it was agreed that each expert would verbally confirm their position to the Facilitator and this is recorded in the schedule below.

4.2 Confirmed online 30 April 2024

Expert’s name and expertise	Party	Expert’s confirmation (refer para 4.1)
Clare Covington (Planning)	General Trust Board of the Anglican Diocese	Yes
Megan Walker (Historic Heritage)	Auckland Council	Yes
Elisabeth Laird (Planning)	Auckland Council	Yes
Sarah Wong (Planning)	Auckland Council	Yes
Noel Reardon (Historic Heritage and Planning)	Auckland Council	Yes – attended for items 3.1-3.4.
Karl Cook (Planning)	Precinct Properties, SkyCity	Yes
Robin Byron (Built Heritage)	Heritage New Zealand	Attended as an observer from 11.30 to 2.30. She does not wish to register her name against any of the agenda items.
Michael Campbell (Planning)	Masfen	Yes

Attachment 1: Preliminary High-level consideration of options (refer to JWS item 3.5 above)

Facilitator’s note: Unless other specified, the comments recorded in the following table reflect the agreed position of all experts participating in this expert conference.

Options as identified by Clare Covington’s s32AA in her EIC (relevant section extracted as attachment 2)	Comments and/or agreed changes to options	S32AA (in addition / matters of difference to those outlined in attachment 2)	Consideration in relation to NPS-UD requirements	Additional work needed
<p>Option 1 Retain current Unitary Plan rules</p>		<p>Inefficient as it creates duplication of provisions (and/or tension between provisions) between FAR and the amended/new standards managing built form.</p> <p>Poor effectiveness to deal with issue of the positive effects from encouraging development to conserve / maintain heritage and in doing so, provide a benefit to the public.</p>	<p>Does not give effect to Policy 3(a). Noting it retains a non-complying activity status for infringing Maximum Floor Area Ratio (MFAR).</p> <p>Karl Cook considers that this option does not involve a qualifying matter under s77O(a) because historic heritage is not a qualifying matter that applies to the whole of the City Centre Zone or s77(j) because the matter of historic heritage does not make the additional development capacity proposed under PC78 inappropriate when considered across the whole of the City Centre Zone.</p> <p>Karl Cook considers that however, if it was considered a relevant qualifying matter, the evaluation under s77P(3) or s77R (if a j ‘other matter’), the level development under Policy 3(a) of the NPS-UD is not incompatible with historic heritage as a qualifying matter and is therefore no an appropriate restriction on development capacity.</p> <p>Clare Covington considers s6(f) RMA is a qualifying matter that is appropriate for the City Centre in consideration of maintenance/ enhancement of the special character and heritage of the City Centre</p>	<p>Minimal.</p> <ul style="list-style-type: none"> • Re-inserting provisions and references to provisions in City Centre Zone and precincts. • Some consequential changes to provisions may be required. • QM assessment
<p>Option 2 Amend PC78 to include a modified version of</p>	<p>Would need to amend purpose of FAR standards – no longer about managing scale, but about positive effects.</p>		<p>Similar in relation to QM as per option 1 above, albeit the Policy 3(a) concerns are slightly less.</p>	<p>Moderate</p>

<p>the current Unitary Plan rules</p>	<p>Would changes need to be made to the BFAR and MTFAR levels to align with the additional development capacity enabled by the increase in General Height?</p> <p>Would other bonuses as well as heritage and special character floorspace need to be retained?</p> <ul style="list-style-type: none"> • Could be difficult for MTFAR to be achieved without additional bonuses. • TDRs as only bonus means system has become primarily financial and for most sites would not be able to achieve as part of the development. This could lead to adverse outcomes. 		<p>Amending activity status of MTFAR would enable additional development capacity.</p> <p>Retaining NC activity status for infringing BFAR without a bonus would need to be due to a QM. This QM would need to be assessed against the relevant RMA sections.</p> <p>Karl: as per option 1</p>	<ul style="list-style-type: none"> • Modelling to work out appropriate BFAR and MTFAR levels • Re-writing provisions. • QM assessment
<p>Option 3 Retain PC78 as per Council's evidence</p>	<p>This is the option as per notified PC78. We acknowledge that the panel has directed this conferencing to consider other options as well.</p>		<p>As per the Council's evidence in that it enables additional development capacity as directed by Policy 3(a).</p>	<p>No further work required.</p>
<p>Option 4 Amended policies for Offsetting using heritage bonus floor area</p>	<p>Could address only the city centre but also appropriate to the rest of the urban area.</p> <p>More appropriate for a whole-of-plan review.</p>	<p>Uncertain as detailed provisions are unknown at this stage.</p>	<p>Uncertain as detailed provisions are unknown at this stage.</p> <p>This will need an appropriate qualifying matter which will apply across the whole City Centre, even on sites that are not heritage or special character sites.</p>	<p>Significant</p> <p>Full options assessment (likely to end up with several sub-options)</p> <p>Drafting new provisions</p> <p>Testing effect of provisions</p> <p>QM assessment</p>
<p>Option 5 Amended matters of discretion and assessment criteria relating to heritage bonus floor area</p>		<p>Poor effectiveness to deal with issue of the positive effects from encouraging development to conserve / maintain heritage and in doing so, provide a benefit to the public.</p>	<p>Will not raise significant issues with Policy 3(a) of the NPS-UD.</p>	<p>Moderate</p> <p>Drafting new provisions</p> <p>Testing effect of provisions</p> <p>QM assessment</p>

Attachment 2: Appendix 1, Statement of Evidence of Clare Covington (dated 8 December 2023) for the City Centre Hearings PC78



APPENDIX 1: S32AA ANALYSIS

The following analysis is made under s32AA of the Act for the proposed changes to the City Centre Zone provisions relating to Heritage Bonus Floor Area Ratios.

S32AA ANALYSIS FOR THE CITY CENTRE ZONE BONUS HERITAGE FLOOR AREA PROVISIONS		
Provisions		Evaluation
<p>Option 1 Retain current Unitary Plan rules</p>	<p>Under this approach, the existing Unitary Plan rules would remain providing for historic heritage sites to create transferable development rights which can be used on other sites in the City Centre to create bonus floor area.</p>	<p>Benefits TDRs can still be applied for bonus floor area and therefore retain their value. Heritage building maintenance funding can be secured ensuring their ongoing conservation.</p> <p>Costs Restricts development in the City Centre. Non-complying activity status creates uncertainty and additional consenting burdens for applications seeking an infringement of floor area rules, along with the presumption that such activities are not anticipated or where greater scrutiny is required for some reason (where, from an urban form perspective, the effects are appropriate).</p>
<p>Option 2 Amend PC78 to include a modified version of the current Unitary Plan rules</p>	<p>This option would require an amendment of the existing floor area ratio rules to allow for an increase in the basic and maximum floor area ratios to increase development potential and still provide restrictions through which bonus floor area provisions could be applied.</p> <p>An amendment to the infringement of floor area limits from non-complying to discretionary (or, potentially, restricted discretionary) would signal the acceptance of these proposals subject to an assessment of effects</p>	<p>Benefits As per Option 1, TDRs retain value and use for conservation however this has the potential to be at a lower level (reducing their value and therefore provision for conservation funds).</p> <p>Costs Restricts development in the City Centre but to a lesser extent than Option 1</p>
<p>Option 3</p>	<p>Under this option, there would no longer be any rules that set floor area limits and no bonus floor area provisions</p>	<p>Benefits</p>

S32AA ANALYSIS FOR THE CITY CENTRE ZONE BONUS HERITAGE FLOOR AREA PROVISIONS		
<p>Retain PC78 as per Council's evidence</p>		<p>Satisfies Policy 3 direction of NPS-UD for removing restrictions on development in the City Centre.</p> <p>Costs</p> <p>Potentially results in poor urban outcomes across the City Centre.</p> <p>With no floor area limits there is no longer a need to seek bonus floor area as part of any development proposal.</p> <p>The existing TDRs obtained at Heritage sites in the City Centre become worthless and these properties no longer gain any benefit from the covenants placed over their sites. As a result, heritage sites like St Matthew's and St Paul's could be at risk and suffer negative consequences such as a lack of maintenance and general deterioration of building fabric.</p>
<p>Option 4</p> <p>Amended policies for Offsetting using heritage bonus floor area</p>	<p>This option would involve new provisions being inserted into PC78 to provide for offsetting as part of development proposals whereby floor area gained through infringements of building standards could be offset through obtaining heritage bonus floor area from donor sites.</p> <p>This could work in a similar way to the current Unitary Plan approach to offsetting reduced esplanade reserve widths (E38 Policy 25 which provides for offsetting that would result in a positive public benefit as a discretionary activity) or loss of streams (refer to Policy E3 Policy 3.3(4) and E15.3(3) which encourages offsetting for indigenous vegetation and biodiversity values through protection and enhancement measures) through the establishment of other equivalent areas on donor sites.</p> <p>Council have an inhouse practice for the methodology that applies to loss of stream length through planting and protecting a stream at another donor site. A similar methodology could be applied for heritage floor space offsetting that is not included as a rule in the AUP but instead is required through objectives and policies.</p>	<p>Benefits</p> <p>The incentive to obtain heritage bonus floor area remains, ensuring the TDRs retain some value and are encouraged to be used.</p> <p>Development potential is increased as per the current PC78 provisions.</p> <p>Costs</p> <p>This approach does not allow testing of the methodology through this plan change process and may lead to flexibility in the use and amount of floor area required on a case by case basis. This would lead to uncertainty in approach for developers and reduction in the use and therefore value of TDRs for heritage sites.</p>
<p>Option 5</p> <p>Amended matters of discretion and</p>	<p>PC78 would be amended so that infringements of building height and building bulk controls would include in the matters of discretion and assessment criteria a consideration/requirement to show how the proposal</p>	<p>Benefits</p> <p>The incentive to obtain heritage bonus floor area remains, ensuring the TDRs retain some value and are encouraged to be used.</p>

S32AA ANALYSIS FOR THE CITY CENTRE ZONE BONUS HERITAGE FLOOR AREA PROVISIONS		
assessment criteria relating to heritage bonus floor area	provides for heritage conservation such as through the use of bonus heritage floor area.	<p>Development potential is increased as per the current PC78 provisions.</p> <p>Costs</p> <p>Having flexibility with no requirement to use bonus floor area means they are less likely to be used. This reduces their value and means they are likely to be used less.</p> <p>Without the funds from TDRs, the heritage sites may not be able to maintain their properties possibly leading to the loss of a matter of national significance and reducing the overall amenity of the City Centre.</p>

Expert Conference attendance sheet

Topic: Bonus Provisions relating to Historic Heritage and Special Character

Date: 30 April 2024

Facilitator: Marlene Oliver

Location: Online

Submission number	Submitter name	Representative at mediation	Email	Notes
1089	General Trust Board of the Anglican Diocese	Clare Covington (Planning)	c.covington@harrisingrierson.com	
N/A	Auckland Council	Megan Walker (Historic Heritage)	Megan.walker@aucklandcouncil.govt.nz	
N/A	Auckland Council	Elisabeth Laird (Planning)	Elisabeth.laird@aucklandcouncil.govt.nz	
N/A	Auckland Council	Sarah Wong (Planning)	Sarah.wong@aucklandcouncil.govt.nz	
N/A	Auckland Council	Noel Reardon (Historic Heritage and Planning)	Noel.reardon@aucklandcouncil.govt.nz	9.30 to 12.14
1068, 946	Precinct Properties, SkyCity	Karl Cook (Planning)	karlc@barker.co.nz	
872	Heritage New Zealand Pouhere Taonga	Robin Byron (Built Heritage)	rbyron@heritage.org.nz	Observed from 11.35am - 2.30pm
1655	Masfen Holdings Ltd	Michael Campbell (Planning)	Michael@campbellbrown.co.nz	