

Request for delegated authority for appeals on Plan Change 4, Auckland Unitary Plan

File No.:

Purpose

1. To advise the Committee of the two appeals received on Plan Change 4: Administrative Plan Change; and to seek the appropriate delegations.

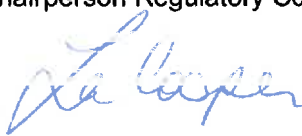


Executive Summary

2. Under the Governing Body Terms of Reference (GB/2016/237), the Planning Committee holds the delegation for plan changes and other matters relevant to the Auckland Unitary Plan ('the Unitary Plan').
3. However, the Regulatory Committee holds the responsibility for regulatory hearings and appeal matters.
4. Plan Change 4: Administrative Plan Change ('Plan Change 4') sought to correct technical errors and anomalies in the Unitary Plan. In accordance with its delegated authority, it was made operative in part, by the Planning Committee at its 4 September meeting (PLA/2018/85).
5. However the appeals to Plan Change 4 are a matter for the Regulatory Committee.
6. There are two appeals on Plan Change 4 on separate matters. These are:
 - an appeal from Housing New Zealand Corporation ('HNZC') to the proposed amendments to Chapter E12: Land Disturbance , Activity Table E12.4.2
 - an appeal from Pine Harbour Marina Limited on provisions in the Pine Harbour Precinct.
7. Staff seeks delegation from the Regulatory Committee to enter into negotiations and attend court mediation to either resolve the issues raised in the appeal or narrow down the issues for any Environment Court hearing.
8. Delegation is sought under urgency as council is attending a court-assisted mediation on 25 September 2018 for the appeal by HNZC. This is prior to the next meeting of the Regulatory Committee.
9. Attachment A of this report contains the relevant agenda item to the Planning Committee 4 September meeting. It sets out Plan Change 4 process, timeframes and other matters in detail.

Recommendation

That the Regulatory Committee:

- a) delegate to the council's Legal Services (Regulatory Litigation) and relevant Plans and Places staff, the authority to enter into discussions and/or attend mediation/s for the purpose of exploring settlements, or reaching agreements on any amendments to Plan Change 4; or refining issues prior to a Court hearing

Report Recommendations accepted under urgency	Councillor Linda Cooper Chairperson Regulatory Committee 
Date:	Deputy Mayor Bill Cashmore Deputy Chairperson Regulatory Committee 
	Member Glenn Wilcox Independent Māori Statutory Board 

Discussion

10. Plan Change 4: Administrative Plan Change ('Plan Change 4') seeks to correct technical errors and anomalies in the Auckland Unitary Plan (the Unitary Plan).
11. Technical matters and anomalies include matters such as incorrect references and provisions that lead to nonsensical outcomes. If a remedy to an error required a shift in a policy position, or the solution was unclear, it was excluded from the scope of Plan Change 4.
12. Schedule 1 of the Resource Management Act 1991 sets out the process for a change to a policy statement or plan. Plan Change 4 adhered to the plan change process.
13. Attachment A contains the report to the Planning Committee's 4 September 2018 meeting. It outlines these plan change process and other matters in more detail.
14. In accordance with its delegations, the Planning Committee made Plan Change 4 operative in part, with the exception of:
 - proposed amendments subject to appeals and
 - regional coastal plan amendments, that require the approval of the Minister of Conservation.
15. Two appeals have been received on Plan Change 4, one from the Pine Harbour Marina Limited and one from Housing New Zealand Corporation ('HNZC').

Appeal received by Housing New Zealand Corporation

16. The appeal from Housing New Zealand Corporation relates to amendments made to Chapter E12: Land Disturbance – District, Activity Table E12.4.2.
17. Plan Change 4 reinstates controls on land disturbance (on earthworks of more than 5m³) in the Special Character Areas- Residential Isthmus C. The proposed amendment will control earthworks on the slopes of four maunga.
18. This control on earthworks was introduced into the legacy Auckland City Council Isthmus District Plan through Plan Change 192. The PAUP retained these earthworks provisions. Auckland Council evidence to the Independent Hearings Panel indicated the intention to retain these earthwork provisions and include it in the relevant chapters on land disturbance.
19. In the Unitary Plan, these earthworks provisions are currently included in Chapter E26: Infrastructure, but not mirrored in E12: Land Disturbance (District). Staff investigated this omission and fixed it through Plan Change 4.
20. In its submission, Housing New Zealand Corporation expressed concerns that this change seeks to introduce another 'heritage' related matter to the Unitary Plan, rather than to correct an error.
21. The commissioner's decision report agreed with staff, that this particular provision was inadvertently excluded from the Unitary Plan, and Plan Change 4 seeks to reinstate this.
22. Housing New Zealand Corporation is appealing this decision.
23. Court assisted mediation on this appeal is scheduled for 25 September 2018.
24. Staff seek the delegation to enter into discussions to explore settlement options.
25. Staff also seek the delegation to the Chair and the Deputy Chair, to approve any changes to Plan Change 4, following outcomes from negotiation of these appeals.

Appeal received by Pine Harbour Marina Limited

26. Pine Harbour Marina Limited's appeal relates to provisions in the Pine Harbour Precinct (Chapter I431). Staff proposed a handful of amendments to the Pine Harbour Precinct that corrected references.
27. In its submission in 2017, Pine Harbour Marina Limited proposed changes to provisions that were not proposed for change under Plan Change 4.
28. Staff did not support these proposed changes on the basis they were outside of the scope of the plan change. Also, staff did not have the opportunity to appropriately consult with affected parties on any proposals put forward by Pine Harbour Marina Limited.
29. In its decision report, the commissioners agreed with staff and found Pine Harbour Marina Limited's submission to be out of scope of Plan Change 4 and that its changes should be progressed as a separate plan change.
30. Pine Harbour Marina Limited is appealing this decision and seeks to incorporate its proposed changes as part of Plan Change 4.
31. The appeal is progressing between parties prior to court assisted mediation.

Consideration

Local Board Views

32. Local boards' comments and views were considered as part of this plan change process (Attachment A).
33. Housing New Zealand Corporation appeal on earthworks does not relate to a specific local board area. No local board views will be sought on this matter.

34. Staff will update the Franklin Local Board about the appeal on the Pine Harbour Precinct provisions.

Maori Impact Statement

35. Feedback and views of 19 iwi authorities and Tūpuna Maunga o Tāmaki Makaurau Authority were considered as part of the plan change process (Attachment A).
36. Tūpuna Maunga o Tāmaki Makaurau Authority will be updated on the progress of the Housing New Zealand Corporation appeal as appropriate.

Implementation

37. The resolution of appeals by agreement between the parties, where possible, provides the best financial outcome and use of staff resources. Where agreement cannot be reached, specialist consultant resources can still be reduced by negotiations, even though evidence preparation and presentation at a court hearing will still proceed.
38. Delegations to help effective case management will assist discussions and may negate the need for a hearing.
- 39.

Attachments

No.	Title	
A	Link to the Report to Planning Committee 4 September 2018	

Signatories

Authors	Jasmin Kaur, Planner, Auckland wide,, Plans and Places Department
Authoriser	Phill Reid, Manager, Auckland wide, Plans and Places Department