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Jess Hollis
Senior Advisor
Fast Track Consenting Team
Ministry for the Environment
8 Willis St
Wellington

Email: fasttrackconsenting@mfe.govt.nz s 9(2)(a)

Kia ora Jess

SANDSPIT ROAD DEVELOPMENT – FAST-TRACKING AND THE MDRS

1. INTRODUCTION

- 1.1 As you know, we act for Box Property Investments Limited (“Box”) in relation to their proposed development of low-rise apartments (“the project”) at 30-40 Sandspit Road and 2-4 Reydon Place, Cockle Bay (“the Site”). This project has been designed in accordance with the standards introduced through the Medium Density Residential Standards (“MDRS”) changes to the Resource Management Act 1991.
- 1.2 As we discussed at the first pre-application meeting, the Site has been identified as being suitable for Auckland’s MDRS zone, and has been zoned as such (Residential - Mixed Housing Urban or “MHUZ”) in Auckland Council’s Proposed Plan Change 78.
- 1.3 A new factor since our earlier discussion is that Auckland Council has applied a qualifying matter on the basis of water and wastewater capacity.
- 1.4 The purpose of this letter is to briefly address how this qualifying matter has been addressed in the application. In short, Box’s engineers have confirmed that there is capacity in the wastewater system as had Watercare in 2021 albeit in relation to a slightly smaller development of 54 dwellings.
- 1.5 However, at this point, we are not clear how the existence of this qualifying matter will influence Auckland Council’s views of the application. Notably:
 - (a) Auckland Council has not had sufficient capacity to provide pre-application feedback throughout 2022.
 - (b) Box has endeavoured to develop the site before through the provisions which enable Integrated Residential Developments within the Single House Zone. The first application was supported by council officers, but it was declined by the Hearings Committee on the basis that it did not have sufficient communal features

to be an “IRD”. Auckland Council subsequently opposed a redesign which had more communal facilities *inter alia* on the basis of impacts on neighbourhood character and amenity).

- (c) Auckland Council might consider that, due to the wastewater qualifying matter, the provisions of the Residential Single House Zone (“SHZ”) remain dominant (and therefore oppose the application being fast-tracked). That would seem like a lost opportunity in circumstances where there are no other reasons to limit intensification and the actual reasoning behind the qualifying matter can be addressed.
- (d) We hope that the MDRS directives and the introduction of PC78 will resolve Auckland Council’s concerns about maintaining the character and amenity of the SHZ. While notification of a plan change can create uncertainty, with PC 78 the key objectives, policies and rules are subject to statutory directions giving decision-makers quite limited discretion as to what may be refused or modified. The various independent panels hearing these fast-track applications over the next 18 months will have to address the question of what must ‘be given effect to’ or ‘had regard to’ and a degree of certainty will emerge as these initial projects are considered. This design was informed by the requirements and opportunities resulting from PC’s 78, 79 and 80. Council’s wastewater concerns can be readily addressed.

1.6 It might be that none of these issues arise, but in circumstances where we may not receive feedback from Auckland Council and MfE does not disclose feedback from the Minister’s consultation process (or give an opportunity to respond to that feedback), it seemed wise to proactively address this matter.

1.7 We address the above matters in more detail below, as follows:

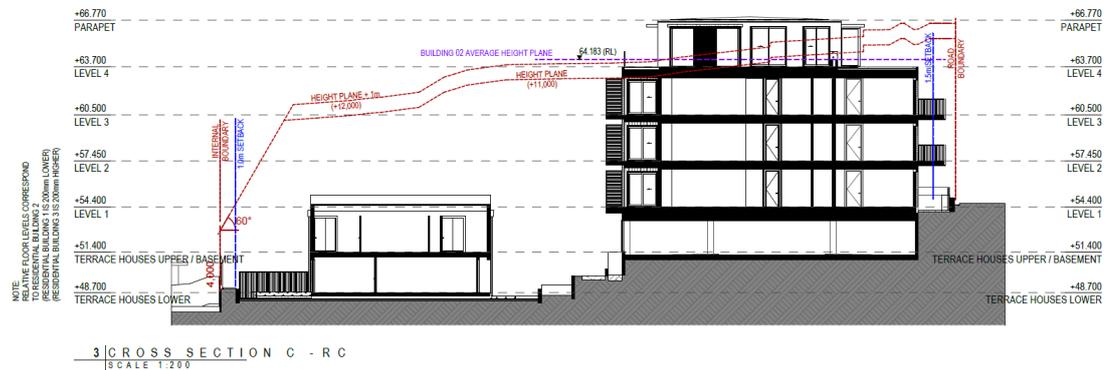
- (a) Background (Section 2);
- (b) Compliance with the water / wastewater infrastructure control (Section 3); and
- (c) SHZ does not preclude the development (Section 4).

2. BACKGROUND

The Project

2.1 The proposal is to provide 70 high-quality residential units across five buildings on the site. Three of the buildings will contain four-level apartments and be up to 12.4m high (plus basement carparking), while the two remaining buildings will contain terraced housing (two storey built form) and be up to 6.5m high.

2.2 In essence, the potential 3rd floor closest to residential neighbours (enabled by MDRS) has been relocated to the apartments facing the road, providing a greater built form at the road interface and a lesser built form (than enabled by MDRS) at the residential interface. See RC3.01



The MDRS

- 2.3 You will be familiar with the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“EHSA”), which introduced the MDRS requirements, which must be incorporated into every relevant residential zone.¹ The EHSA amendments are primarily set out in ss 77E – 77T, 80D – 80N, and 86B – 86BA of the RMA, as well as Schedules 1, 3A, 3B, and 12.
- 2.4 Following the EHSA, the National Policy Statement on Urban Development (“NPS-UD”) was amended to introduce new policies that must be integrated into local planning instruments.²

PC78

- 2.5 PC78 is Auckland Council’s Intensification Planning Instrument (“IPI”) required by the intensification streamlined planning process (“ISPP”) set out in subpart 5A of Part 5 and Part 6 of Schedule 1 of the RMA.³
- 2.6 PC78 proposes to implement the MDRS and NPS-UD requirements in respect of the site and surrounding area by changing the zoning of the area from SHZ to Residential – Mixed Housing Urban Zone (“MHUZ”). THE MHUZ is the most widespread residential zone covering most of urban Auckland, and it replaces almost all the SHZ area in East Auckland.
- 2.7 PC78 describes the MHUZ as a “reasonably high intensity zone” that incorporates the MDRS. The zone anticipates development of typically up to three storeys in a variety of

¹ S 77G(1) RMA; “Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.”

² S 77G(2) RMA; “Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.”

³ S 77G(3) RMA; “When changing its district plan for the first time to incorporate the MDRS and to give effect to policy 3 or policy 5, as the case requires, and to meet its obligations in section 80F, a specified territorial authority must use an IPI and the ISPP.”

sizes and forms, including detached dwellings, terrace housing and low-rise apartments. The MHUZ objectives, policies and standards entirely replace those of the SHZ.

The Infrastructure – Water and/or Wastewater Constraints Control

- 2.8 The “Infrastructure – Water and/or Wastewater Constraints Control” overlay is proposed to apply to a broad area covering several suburbs around Howick, as shown in Figure 1 below. The overlay is shown in blue stripes, spanning from Mellons Bay at the top left down to Shelly Park at bottom right. The site can be seen as the grey dot on the western edge of the overlay area.

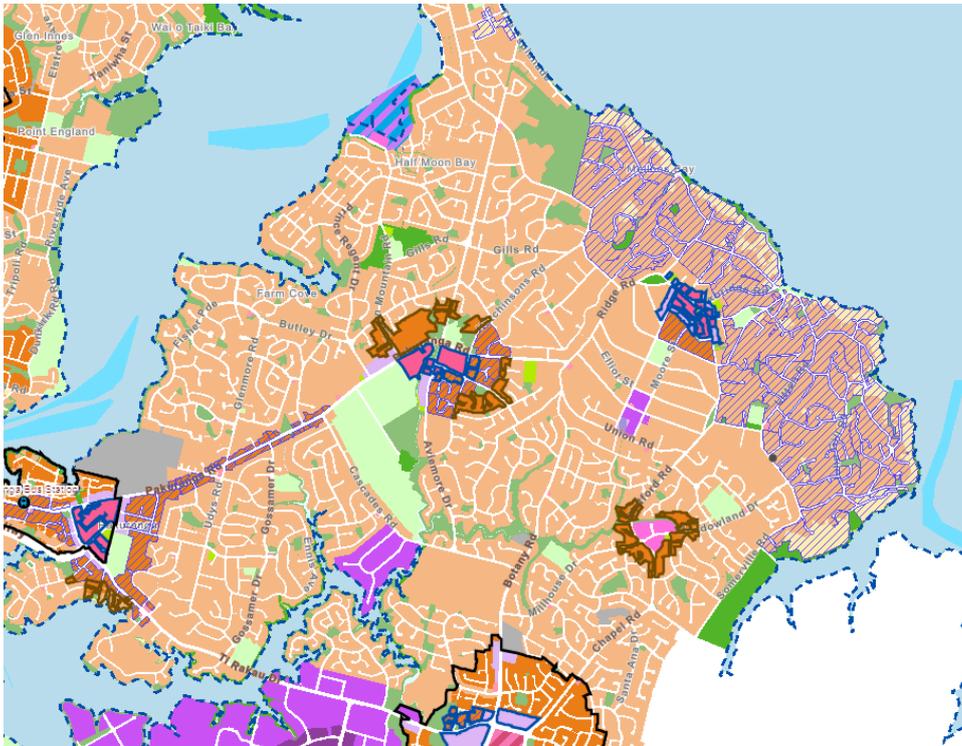


Figure 1. Infrastructure – Water and/or Wastewater Constraints Control shown in blue stripes.

- 2.9 The location of the site in respect of the overlay can be seen in more detail in Figure 2 below.

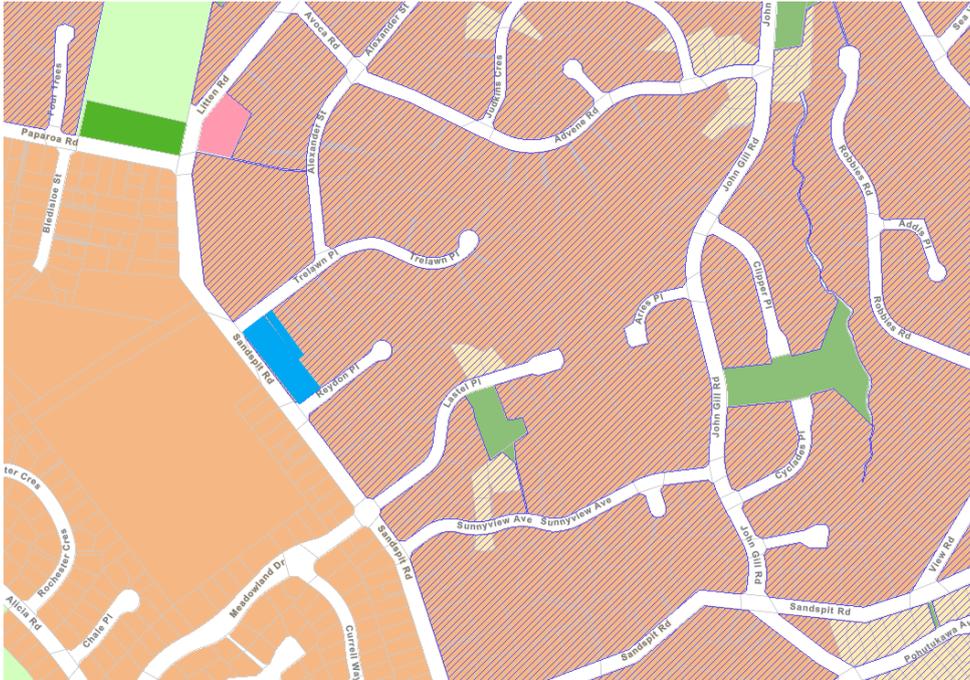


Figure 2. The site shown in solid blue.

2.10 The PC78 Water and Wastewater Servicing Constraints Section 32 and section 77J and 77L new (other matter) qualifying matter Evaluation Report (“s 32 Report”) sets out the basis for the overlay as follows:⁴

Wastewater:

Capacity issues in the Howick Interceptor, Bucklands Beach, Mellons Bay Branch and the Cockle Bay Branch Sewer.

Water:

The existing Howick Loop transmission watermain can support additional growth however this represents a significant resilience constraint. Further intensification / growth represents greater impact to customer level of service should the performance of the existing infrastructure be compromised.

3. COMPLIANCE WITH THE INFRASTRUCTURE – WATER AND/OR WASTEWATER CONSTRAINTS CONTROL

Sufficient capacity

3.1 DHC Consulting has provided a memorandum in respect of engineering and servicing (Appendix H), which confirms there is wastewater capacity for 70 dwellings on the site. DHC also notes a potential option to connect to wastewater infrastructure on Western side of Sandspit Rd, outside the overlay area.

⁴ S 32 Report Attachment Two: Water and Wastewater Servicing Constraint Maps, at p6.

- 3.2 DHC’s memorandum confirms there is sufficient water supply, as was accepted by the Council in respect of the earlier application.
- 3.3 We are about to commence engagement with Watercare. It seems likely that they will agree that there is sufficient capacity available because sufficient wastewater capacity has previously been confirmed for 54 dwellings on the site under an earlier application by Box.
- 3.4 In proceedings before the Environment Court last year regarding an earlier IRD proposal counsel for Auckland Council submitted a Memorandum that confirmed the site had sufficient water and wastewater capacity for the proposed development.⁵ The Memorandum states that, based on specialist memoranda including from Watercare:

6.4 the stormwater effects will be acceptable and will result in less than minor adverse effects on the environment;

6.5 there is sufficient wastewater capacity to service the development and conditions are proposed to ensure appropriate provision is made for the upgrade of the downstream network in the event that it is determined that there is insufficient capacity;

6.6 sufficient water supply is proposed;

4. PROJECT IS NOT PRECLUDED BY THE SHZ RULES

- 4.1 Even if the SHZ provisions apply there are multiple pathways to obtaining consent.
- 4.2 Civix’s planning analysis regarding assessment of the project against the SHZ objectives and policies notes:⁶
- *The reference to planned residential character contains the word “predominantly”. This application will not change the overall character of Cockle Bay from being predominantly one to two storey buildings.*
 - *The residential interface is proposed as a two storey built form.*
 - *I consider that the term “planned residential character” needs to be reconsidered in light of the MDRS and Auckland Council’s decision that the SHZ zone not apply anywhere in Auckland. Thus the term “planned residential character” must extend to what the MDRS anticipates. I acknowledge that this necessitates reading down the reference to 1-2 stories.*
 - *The full MDRS / MHUZ-M zone applies on the other side of Sandspit Road, which will strongly influence current and future character (future environment).*
- 4.3 From a timing perspective, the Independent Hearings Panel is unlikely to wait until 2024 to release all of its recommendations; some may come through in 2023.

⁵ Memorandum of Counsel on behalf of Auckland Council dated 29 April 2021 in respect of ENV-2020-AKL-000184.

⁶ Appendix O: Civix planning letter.

- 4.4 Even if Auckland Council delays making decisions on the IHP's recommendations, it would still have to do so before the latest time that an expert consenting panel would need to make a decision on Box's project (though Box does not want to wait that long).
- 4.5 Ultimately these are all matters best left for the expert consenting panel and the Minister does not need to make a determination on them, which is the usual approach where matters of technical assessment / evaluation are required.



Nga mihi / kind regards

Andrew Braggins

Director

The Environmental Lawyers

s 9(2)(a)



www.theenvironmentallawyers.co.nz