

**Ginny Taare**

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**From:** Unitary Plan  
**Sent:** Thursday, 29 September 2022 12:16 pm  
**To:** Unitary Plan  
**Subject:** Unitary Plan Publicly Notified Submission - Plan Change 78 - David Jans  
**Attachments:** Plan Change 78 Sandspit Road and Reydon Place Submission FINAL.pdf

The following customer has submitted a Unitary Plan online submission.

**Contact details**

Full name of submitter: David Jans

Organisation name: Box Property Investments Ltd

Agent's full name: Lance William Hessel

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Auckland 1141

**Submission details**

**This is a submission to:**

Plan change number: Plan Change 78

Plan change name: PC 78: Intensification

**My submission relates to**

Rule or rules:  
Upzoning the site from Single House Zone to Mixed Housing Urban and application of the MDRS.

Infrastructure Constraints - Water and Wastewater Infrastructure Constraints Control

Property address: 30 & 40 Sandspit Road and 2 & 4 Reydon Place, Howick

Map or maps: Refer to the Submission attached.

Other provisions:  
Refer to the attached submission

Do you support or oppose the provisions you have specified? I or we oppose the specific provisions identified

Do you wish to have the provisions you have identified above amended? Yes

The reason for my or our views are:  
The upzoning and application of the MDRS is supported.

The inclusion of the Qualifying Matter of the Water and Wastewater infrastructure constraints control is opposed as unnecessary and unlawful for reasons set out in the submission.

I or we seek the following decision by council: Approve the plan change with the amendments I requested

Details of amendments: Refer to the attached submission.

Submission date: 29 September 2022

Supporting documents

Plan Change 78 Sandspit Road and Reydon Place Submission FINAL.pdf

### **Attend a hearing**

Do you wish to be heard in support of your submission? Yes

Would you consider presenting a joint case at a hearing if others have made a similar submission? Yes

### **Declaration**

Could you gain an advantage in trade competition through this submission? No

Are you directly affected by an effect of the subject matter of this submission that:

- Adversely affects the environment; and
- Does not relate to trade competition or the effects of trade competition.

No

I accept by taking part in this public submission process that my submission (including personal details, names and addresses) will be made public.



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Auckland Council  
Attn: Planning Technician  
Plans and Policy

29 September 2022

**Plan Change 78 Submission : 30 & 40 Sandspit Road and 2 & 4 Reydon Place, Cockle Bay**

The following submission is made on behalf of Box Property Investments Ltd (Box Property), on Plan Change 78 – Intensification (PC78) to the partly operative Auckland Unitary Plan (AUP). PC78 gives effect to requirements of the Medium Density Residential Standards (MDRS). The details of the sites to which this submission relates (sites) and relief sought by way of this submission are provided in **Table 1** below.

*Table 1: Site details*

<b>Site Address</b>	30 & 40 Sandspit Road and 2 & 4 Reydon Place, Howick
<b>Legal Description</b>	30 Sandspit Road: Lot 2 DP 334191. CT 140265 (3781m <sup>2</sup> ) 40 Sandspit Road: Lot 67 DP 52881. CT NA9B/345 (809m <sup>2</sup> ) 2 Reydon Place: Lot 68 DP 52881; Flat 1 DP 65738 and Garage 1 DP 65738. CT NA21C/627 (827m <sup>2</sup> ). 4 Reydon Place: Lot 68 DP 52881; Flat 2 DP 65378 and Garage 2 DP 65738. CT NA21C/628 (827m <sup>2</sup> ). Together the “Sites” Total Site Area 5,417m <sup>2</sup> (All owned by Box Property Investments Ltd).
<b>Current Zoning</b>	Residential – Single House Zone
<b>Proposed Zoning under PC78</b>	Residential – Mixed Housing Urban
<b>Qualifying Matters under PC78</b>	Water and/or Wastewater Constraints Control
<b>Summary of Relief Sought</b>	<ul style="list-style-type: none"> <li>• Include the sites in Mixed Housing Urban zone as currently proposed.</li> <li>• Remove the Water and/or Wastewater Constraints Control as a Qualifying Matter from the sites.</li> </ul>

Box Property is not a trade competitor for the purposes of PC78 and could not gain an advantage in trade competition through this submission.

An aerial image of the sites and surrounds is shown overleaf in **Figure 1**.



Figure 1: Aerial image of the Sites and surrounds from Council Geomaps

Box Property’s submission on the relevant provisions of PC78, as they affect the Sites, is as follows.

**Upzoning to Mixed Housing Urban**

Box Property supports the proposed upzoning of the sites from ‘Single House Zone’ (SHZ) to ‘Mixed Housing Urban’ (MHU), as this is consistent with the requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (EHSA). No relevant qualifying matters (such as historic heritage) relate to the sites that would otherwise necessitate a lower density zone or other such restrictions.

Relief sought:

- Upzone sites to the MHU zone as currently proposed in PC78.

1302.1

**Qualifying Matter – Infrastructure Capacity**

The sites have been identified within the ‘Infrastructure Capacity’ control under PC78 due to water and / or wastewater infrastructure constraints. Box Property opposes infrastructure capacity being applied to the sites as a qualifying matter (QM) by way of PC78.

While Box Property acknowledges that some areas of Auckland have substandard infrastructure networks, this should not prevent upzoning and intensification. Typically, there are a number of different approaches for dealing with infrastructure constraints, including localised upgrades to more comprehensive infrastructure funding agreements, or on-site solutions such

as soakage or mitigation tanks. It is also common for developers to fund infrastructure upgrades to enable development and this is frequently factored into budgets and decision making.

Box Property's position is that an example of a more suitable approach to this issue is the Mount Roskill / Owairaka area, which when initially developed in the 1960s / 1970s had a basic infrastructure network that was not suitable for intensification. Under the AUP, much of this area was upzoned to enable higher density housing, with MHU and Terrace Housing and Apartment Building (THAB) zoning being applied. Infrastructure in this area has been progressively upgraded to cope with the intensification and has been constructed by Piritahi, often in collaboration with private developers. In this process, the upzoning came first, which enabled certainty for infrastructure upgrades to be funded and constructed, and now the area is being progressively redeveloped with medium and higher density housing. Box Property's position is that this is a far more appropriate and robust approach to the upzoning requirements of the MDRS and NPS-UD than that proposed by PC78.

#### Qualifying Matter for Infrastructure Constraints not justified on the basis of site specific assessment

Auckland Council proposes to include a new overlay / qualifying matter restricting MDRS and the associated zoning called "Water and Wastewater Servicing Constraints".

The rationale for this restriction is set out in the Introduction to the Section 32 and section 77 J and 77L new (other matter) Evaluation Report as follows:<sup>1</sup>

*"In summary Water and Wastewater Servicing Constraints is a necessary qualifying matter to be included in PPC78 to justify limiting further residential intensification than anticipated by the MDRS and Policy 3 NPS-UD for some sites in Auckland. **Restrictions on intensification need to be in place on sites with identified servicing constraints until the appropriate measures are in place to justify the removal of the constraint.** This is because there are sites within Auckland which are affected by either a constrained water supply or wastewater service or combined wastewater and stormwater networks because of historical or environmental factors. As directed by the Auckland Regional Policy Statement 2016 ("ARPS") policies and outlined in council evidence at the hearings to the Proposed AUP3 these sites were generally zoned residential Single House zone under the Proposed AUP to reflect the presence of this constraint. Where the Terraced House and Apartment zone was applied in an area subject to such a constraint, the Proposed AUP provided for a resource consent to be required to enable the presence of the constraint to be assessed **to ensure that resource consents are not approved for proposed developments that cannot be serviced without generating significant environmental or health and safety effects.**"*

For the reasons set out below the above rationale is incorrect:

- The Building Act 2004, the Building Code and the Local Government Act 2002 prevent connection to the water or wastewater network without Watercare's permission.
- Watercare has not undertaken a site by site assessment associated with this proposed control – contrary to its obligations / Auckland Council's obligations under the RMA s77L).
- In fact, Watercare has recently assessed the Sites and confirmed that they do have capacity.

#### Site specific analysis

Watercare has recently assessed the capacity of the wastewater system to service the Sites as a result of the Applicant seeking resource consent for a 54 unit integrated development on the Sites by way of a direct referral application to the Environment Court ENV-2020-AKL-000184. On 29 April 2021 Counsel for Auckland Council, Stephen Quinn filed a memorandum with the Environment Court advising as follows:

Water and Wastewater:

"6.5 There is sufficient wastewater capacity to service the development and conditions are proposed to ensure

<sup>1</sup> <https://www.aucklandcouncil.govt.nz/UnitaryPlanDocuments/41-pc-78-section-32-water-and-wastewater-servicing-constraints.pdf>

*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.”

Stormwater

*“The stormwater effects will be acceptable and will result in less than minor adverse effects on the environment”*

As a result of the foregoing:

- There is no reasonable likelihood of any development proceeding and connecting to the water and wastewater systems without Watercare’s approval – leading to adverse environmental effects
- Watercare have confirmed that there is capacity in the system for a much larger development than would be permitted by PC78.

As a result, there is no reasonable or rational basis for the “*Water and Wastewater Servicing Constraints*” overlay and it must be removed from the Properties.

### **Building Act 2004 and Building Code**

A resource consent is only one part of the suite of regulatory approvals required before works can commence on a development. Building Consent is also required. More specifically in terms of the Building Act:

- Section 17 of the Building Act requires that all building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.
- Section 5 of the Building Act provides that building work includes either for, or in connection with, the construction, alteration, demolition, or removal of a building or on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the Building Code.
- Section 40 of the Building Act provides that:

A person must not carry out any building work except in accordance with a building consent.

A person commits an offence if the person fails to comply with this section.

- In terms of the Building Code:
  - Clause G12.2 requires that *Buildings* provided with water outlets, *sanitary fixtures*, or *sanitary appliances* must have safe and *adequate* water supplies.
  - G13.2 requires that *Buildings* in which *sanitary fixtures* and *sanitary appliances* using water-borne waste disposal are installed must be provided with—  
*an adequate plumbing and drainage system to carry foul water to appropriate outfalls; and  
if no sewer is available, an adequate system for the storage, treatment, and disposal of foul water.*
  - G13.3.3 requires that where a *sewer* connection is available, the drainage system shall be connected to the *sewer*, and the connection shall be made in a manner that avoids damage to the *sewer* and is to the approval of the *network utility operator*.

### **Local Government Act 2002**

Section 225 of the Local Government Act 2002 provides that it is an offence to carry out work on or in relation to a waterworks without first:

- notifying the local authority of the intention to carry out the work; and
- obtaining written authorisation from the local authority, with terms or conditions the local authority thinks fit.

### Alternative methods

In order for Infrastructure Constraints to be used to apply a QM to any site, S771(j) and S77L of the Resource Management Act 1991 (RMA, as inserted in accordance with the EHSA) require that the PC78 S32 Assessment completes a site-specific analysis to identify the Sites to which the QM relates and to use that analysis as a basis for applying the QM to that site.

In this regard, while it is understood that a catchment type assessment has been completed for the Howick/Pakuranga location, in relation to the sites, there have been no assessments by the Council/Watercare of the capacity and servicing options proving that there are not infrastructure options for the Site.

To the extent that minor downstream capacity issues might arise due to old cracked pipes, tree roots in pipes or similar matters – those are issues which arise across Auckland irrespective of Watercare’s general network analysis and are therefore ineligible reasons not to zone the Sites in accordance with the MDRS.

### Unnecessary and complicated provisions

It is noted that there are different planning provisions applied to the QM’s of “*Dwellings within the Infrastructure – Combined Wastewater Network Control*” and the “*Dwellings within the Infrastructure – Stormwater Disposal Constraints Control*” and the “*Dwellings within the Infrastructure – Water and Wastewater Constraints Control*”.

For “*Dwellings within the Infrastructure – Combined Wastewater Network Control*” and the “*Dwellings within the Infrastructure – Stormwater Disposal Constraints Control*” up to three dwellings per site are provided for as a permitted activity (Rule H5.4.1(A3) and four or more are treated as a restricted discretionary activity (H5.4.1(A4) subject to compliance with standards (these are Standards H5.6.3B and H5.6.3C respectively).

By contrast, for *Dwellings within the Infrastructure – Water and Wastewater Constraints Control* only one dwelling per site is provided for as a permitted activity (Rule H5.4.1(A14B), and two or more dwellings per site is provided for as a restricted discretionary activity (Rule H5.4.1(A14C).

There appears to be no reason or justification for why different planning provisions should be applied to the *Dwellings within the Infrastructure – Water and Wastewater Constraints Control*, when the premise for all three infrastructure QMs is the same. Further, such a complex planning framework (being the rules referenced above, together with associated standards H5.6.3B and H5.6.3C) is unnecessary, when the issue of infrastructure provision is already adequately addressed via other legislation, including the Building Act 2004, the Building Code and the Local Government Act 2002.

On the basis of the above, Box Property’s position is that while there may be catchments within Auckland that have known infrastructure issues, the generic approach of applying these QM’s to these catchments only serves to add unnecessary restrictions and additional provisions, potentially for little benefit. Existing plan provisions and legislation already adequately enables consideration of whether sites can be adequately serviced or not as they are developed, as demonstrated by the Mount Roskill/Owairaka area example outlined above.

Relief sought:

- Remove the Water and/or Wastewater Constraints Control Qualifying Matter from PC78 from the Sites.

1302.2

Kind Regards.



BLAIR MCLEAN - PLANNER

CIVIX PLANNING | ENGINEERING | SURVEYING