

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

**AND**

**IN THE MATTER** of **Private Plan Change 49** – Fulton Hogan Land Development Limited and **Private Plan Change 50** – Oyster Capital Limited.

**SECOND DIRECTION OF THE HEARING PANEL**

**RESOLUTION OF DISPUTES – MEDIATIONS AND EXPERT CONFERENCING**

1. Pursuant to section 34 and 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of independent hearing commissioners - Greg Hill (Chairperson), Mark Farnsworth and Karyn Kurzeja. Other commissioners may be appointed where a particular area of expertise is required. The Hearing Panel has been delegated the authority to hear the application and submissions and make a decision on the Plan Change proposal.
2. Plan Change 49 seeks, in summary to:
  - Rezone 184 hectares of land in the area generally bounded by Waihoehoe Road, Drury Hills Road and Fitzgerald Road, from Future Urban to 2 hectares of Business: Mixed Use zone, 22 hectares of Residential: Terrace Housing and Apartment Buildings zoning; 65 hectares of Residential: Mixed Housing Urban zoning and 95 hectares of Residential: Mixed Housing Suburban zoned land.
3. Plan Change 50 seeks, in summary to:
  - Rezone 48.9 hectares of land located to the north of Waihoehoe Road and east of the North Island Main Trunk Railway, from Future Urban to Residential: Terrace Housing and Apartment Buildings zone.
4. On the 19 and 22 April 2021 the Hearing Panel issued Directions in relation to the resolution of disputes (Mediation and Expert Conferencing) for Plan Change 48 – Kiwi Property No. 2.
5. The applicants for Plan Changes 49 and 50 have requested the same dispute resolution process that we have directed for Plan Change 48. Given that the plan change areas are contiguous; that (as we understand it) they have the same or similar issues in relation to stormwater, traffic and transportation and planning as Plan Change 48; and that many of the parties (and experts) are the same across the three plan changes, we make the same directions as we have for Plan Change 48.
6. Rather than repeat the Plan Change 48 Directions, we direct that those Directions apply to Plan Changes 49 and 50. The Plan Change 48 Directions are attached.
7. As we set out in the Plan Change 48 Directions, Ms Marlene Oliver has been appointed as the independent facilitator. She is also appointed as the independent facilitator for Plan Changes 49

and 50. Ms Oliver is authorised to carry out the functions for the three plan changes set out in the Plan Change 48 Directions.

8. Ms Julie McKee, Council's Hearing Manager, will be making contact regarding who will be attending the first mediation session, its timing and location.
9. Any enquiries regarding these Directions or related matters should be to Ms Julie McKee by email at [Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz).



Greg Hill - Chairperson

27 April 2021

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

**AND**

**IN THE MATTER** of **Private Plan Change 48** – Kiwi Property No. 2 - land generally bounded by Great South Road, Waihoehoe Road, Fitzgerald Road and the Hingaia Stream (Drury East) to the Auckland Unitary Plan – Operative in Part.

## **SECOND DIRECTION OF THE HEARING PANEL**

### **EXPERT CONFERENCING**

1. Pursuant to section 34 and 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of independent hearing commissioners - Greg Hill (Chairperson), Mark Farnsworth and Karyn Kurzeja. Other commissioners may be appointed where a particular area of expertise is required. The Hearing Panel has been delegated the authority to hear the application and submissions and make a decision on the Plan Change proposal.
2. Plan Change 48 seeks, in summary to:
  - Rezone 95 hectares of land in the area generally bounded by Great South Road, Waihoehoe Road, Fitzgerald Road and the Hingaia Stream, from Future Urban to approximately 35 hectares of Business: Metropolitan Centre zone, approximately 51.5 ha of Business: Mixed Use zonesurrounding the Metropolitan Centre and approximately 8.5ha of Open Space:Informal Recreation zone adjoining the Hingaia Stream.
3. Clause 8AA – Resolution of Disputes of the First Schedule of the RMA enables a process to resolve disputes between parties. Accordingly, in terms of this Plan Change the Hearing Panel directs expert conferencing.
4. The purpose of the conferencing is for the parties’ experts to identity, discuss and potentially resolve (or not) the issues in contention between them. This may enable all parties to reduce the scope and length of the section 42A report and expert evidence; and to focus on those matters that remain in contention.
5. At this stage the Hearing Panel directs there be expert conferencing on three separate topics – being:
  - Stormwater;
  - Traffic and transportation - including in particular the thresholds proposed in PC48; and
  - Planning.
6. The sessions on stormwater issues are to be attended by stormwater experts and planners, to the extent that the planners have an interest in the PC48 provisions addressing stormwater

matters. Those experts include those of the applicant, Council as regulator (providing technical input to the section 42A report) and all submitters. The principal section 42A report author may attend these sessions.

7. The sessions on traffic and transportation matters are to be attended by traffic and transportation experts and planners, to the extent that the planners have an interest in the PC48 provisions addressing these matters. Those experts include those of the applicant, Council as regulator (providing technical input to the section 42A report) and all submitters. The principal section 42A report author may attend these sessions.
8. The sessions on planning matters are to be attended by the planning experts to address the planning provisions in PC48. Those experts include those of the applicant, Council as regulator (we understand the principal section 42A report author is a planner) and all submitters.
9. The conferencing sessions shall occur prior to exchange of the section 42A report and all evidence. Under the Direction - Hearing Dates and Evidence Exchange (31 March 2021) the section 42A report is to be available to all parties on the 17 June 2021. Therefore the conferencing sessions ought to be completed by the end of May 2021. It may also be that conferencing, or other alternative dispute resolution processes, may occur at later stage.
10. The Hearing Panel directs that conferencing is undertaken in accordance with the Environment Court Practice Note 2014 and in particular - Appendix 3 - Protocol for Expert Witness Conferences. This includes section 3 of that Appendix - The Role of Counsel in expert conferencing. Also, those experts participating in the conferencing are to make themselves available to appear at the hearing in person if required to do so by the Hearing Panel.
11. That Ms Marlene Oliver is to be appointed as the independent facilitator. She is authorised to:
  - Act as independent facilitator;
  - In conjunction with the Council (as regulator) invite the applicant, all submitters and the Council as regulator (in its section 42A reporting function) to advise whether their expert witnesses in the relevant fields will attend the conferencing sessions;
  - Liaise with the applicant, submitters, Council as regulator (in its section 42A reporting function) and experts who register an interest in attending the conferencing;
  - In conjunction with the Council (as regulator) organise the sessions, times of and venues for conferencing; and
  - Report to the Chair of the Hearing Panel on an as required basis on progress with the conferencing sessions and progress on a Joint Witness Statement(s) setting out the matters agreed and not agreed.
12. That, accordingly, all parties are to inform the Council's Hearing Manager, Ms Julie McKee by email (address below) of the expert witnesses (name, expertise and contact details) who will attend the conferencing sessions. This is to be provided to Ms McKee no later than **4.00 pm Friday 23 April 2021**.
13. While these directions cannot compel all of the parties to agree to take part in the conferencing sessions or compel expert witnesses to attend and participate, we strongly recommend that they

do so. These sessions will provide a degree of formality for those parties and witnesses who attend in an effort to clarify and narrow the issues in contention. This should ensure that the hearing is more efficient than if the conferencing sessions were not held.

Any enquiries regarding these Directions or related matters should be directed to the Council's Hearing Manager, Ms Julie McKee by email at [Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz).

A handwritten signature in black ink, appearing to read "Greg Hill", followed by a period.

Greg Hill - Chairperson

19 April 2021

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

**AND**

**IN THE MATTER** of **Private Plan Change 48** – Kiwi Property No. 2 - land generally bounded by Great South Road, Waihoehoe Road, Fitzgerald Road and the Hingaia Stream (Drury East) to the Auckland Unitary Plan – Operative in Part.

### **THIRD DIRECTION OF THE HEARING PANEL**

#### **RESOLUTION OF DISPUTES**

1. On the 19 April 2021 the Hearing Panel issued the Second Direction related to PC 48 and expert conferencing. The purpose of this Direction is to clarify the Second Direction with respect to the 'first step' of the expert conferencing process.
2. The 'first step' would be to commence with a facilitated mediation session of the parties. On reflection, this was not clear in the Second Direction. The purpose of this session would be to clarify the issues in contention and the process(es) and timing by which those issues may be able to be resolved or narrowed.
3. This session can be attended by any party to PC48, and the parties can determine which representative(s) will attend. This includes the section 42A report author(s). We encourage parties to be represented at this session.
4. Again we direct this session be undertaken in accordance with the Environment Court Practice Note 2014. We note this encourages, among other things, co-operation between the parties in the early identification of issues and the use of efficient and cost-effective processes.
5. As set out in the Second Direction, Ms Marlene Oliver has been appointed as the independent facilitator. She, in conjunction with the Council (as regulator), will organise the session including its timing and location.
6. The output from the session may be an agreed statement, to be filed with the Hearing Panel, setting out any agreed outcome(s). This may also include whether or not the Second Direction (dated 19 April 2021) should be amended or refined.

Any enquiries regarding this Direction or any related matters should be directed to the Council's Hearing Manager, Ms Julie McKee by email at [Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz).



Greg Hill - Chairperson  
22 April 2021