

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

**AND**

**IN THE MATTER** of **Private Plan Change 51** – Karaka and Drury Limited (KDL) to the Auckland Unitary Plan – Operative in Part.

**DIRECTION OF THE HEARING PANEL**

**EXPERT CONFERENCING (AND POSSIBLE FACILITATED MEETINGS)**

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. The Hearing Panel has been delegated the authority to hear the plan change request and submissions, and make a decision on the plan change proposal.
2. Plan Change 51 seeks, in summary to:
  - Rezone 33.6 hectares of land in Drury West in the area generally bounded by Drury Creek to the east, Future Urban Zoned land to the west and Karaka Road/State Highway 22 to the south and south east, from Future Urban zone to 15.29 hectares of Business: Town Centre zone, 13.75 hectares of Residential: Terrace Housing and Apartment Buildings zone and 4.61 hectares of Residential: Residential: Mixed Housing Urban zone.
3. The Hearing Panel has received a Memorandum from KDL’s counsel<sup>1</sup> requesting expert conferencing and a memorandum in response from Auckland Council (the submitter)<sup>2</sup>. The specific matters which KDL considered should be the subject of expert conferencing are as follows:
  - (a) Urban design;
  - (b) Transport;
  - (c) Economics; and
  - (d) Planning.
4. The Memorandum also requested Ms Marlene Oliver be appointed as the independent facilitator for the expert conferencing.
5. Clause 8AA of the First Schedule of the RMA – Resolution of Disputes enables a process to resolve disputes between parties. The Hearing Panel considers that it is appropriate to direct expert conferencing for PC 51, as it did for Plan Changes 48 to 50. We understand that many of the issues arising from PC 51 are similar to those of PC 48 - 50. We therefore consider it would be beneficial (and potentially save significant hearing time) to conduct expert conferencing in order to better understand the position of the various parties and ascertain whether any

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<sup>1</sup> Dated 1 June 2021

<sup>2</sup> Dated 2 June 2021

agreement can be reached to reduce, or at least narrow, the issues to be traversed at the hearing.

6. The Hearing Panel, at this stage, directs there be expert conferencing on the following topics
  - Urban design;
  - Transport;
  - Economics; and
  - Planning.
7. We also direct that if necessary an initial facilitated meeting be held to set up the expert conferencing sessions. If this meeting is to be held it can be attended by any party to PC51, and the individual parties can determine which representative(s) will attend. This includes the section 42A report author(s).
8. We direct that Ms Marlene Oliver be appointed as the independent facilitator. We consider there are significant benefits in appointing Ms Oliver given her role as the independent facilitator for Plan Changes 48 – 50 and the range of similar issues as in Plan Change 51.
9. We authorise Ms Oliver 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 any facilitated meeting(s);
  - In conjunction with the Council (as regulator) organise the sessions, times of and venues for conferencing; and determine which expert witnesses (relevant fields) can attend the conferencing sessions; 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.
10. Where possible, the conferencing sessions shall occur prior to exchange of the section 42A Report and all evidence. Under the Panel's Direction - Hearing Dates and Evidence Exchange (dated 31 March 2021) the section 42A report is to be available to all parties on Tuesday 10 August 2021. However, we authorise Ms Marlene Oliver, in conjunction with the parties and the Hearing Panel, to organise the content, dates and time for the expert conferencing sessions, and who may attend those sessions.
11. Conferencing is to be 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.
12. While these directions cannot compel 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

8 June 2021

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
AT AUCKLAND**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE  
TĀMAKI MAKAURAU ROHE**

**IN THE MATTER** of the Resource Management Act  
1991

**AND**

**IN THE MATTER** of an application to **AUCKLAND  
COUNCIL** for private plan change  
51 to the partly operative  
Auckland Unitary Plan by  
**KARAKA AND DRURY LIMITED**

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**MEMORANDUM OF COUNSEL ON BEHALF OF KARAKA AND DRURY LIMITED**

**Dated 1 June 2021**

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## 1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Karaka and Drury Limited ("KDL"), the applicant for private Plan Change 51 ("PC 51") to the partly operative Auckland Unitary Plan ("AUP"). PC 51 seeks to rezone an area of 33.65ha and relates to Stage B2 of the Auranga development in Drury West, which is being undertaken by Ma Development Enterprises Limited ("MADE") which controls the applicant company.
- 1.2 The purpose of this memorandum is to respectfully request that the Panel issue directions for expert conferencing prior to the hearing for PC 51, which has been set down for 6 to 10 September 2021.

## 2. SCOPE FOR AND APPROPRIATENESS OF EXPERT CONFERENCING

- 2.1 In accordance with section 39 of the Resource Management Act 1991 ("RMA"), the Panel has a duty, as the duly delegated decision maker on PC 51, to "*establish a [hearing] procedure that is appropriate and fair in the circumstances*". The Environment Court Practice Note 2014 also makes specific provision for expert conferencing in accordance with the protocols set out in Appendix 3 of that Note, as one possible mechanism of alternative dispute resolution.
- 2.2 Accordingly, the Panel has jurisdiction to set its own hearing procedure, including directing that expert conferencing occur prior to the hearing, where that is appropriate.
- 2.3 The Panel has considered that it is appropriate to facilitate expert conferencing for the three plan changes relating to Drury East (being Plan Changes 48 to 50 ("PC 48 to 50")), which were all notified and are proceeding contemporaneously with PC 51. KDL's position is that it is similarly appropriate to convene pre-hearing expert witness conferencing for PC 51.
- 2.4 In particular, as for PC 48 to 50, several of the submissions on PC 51 raise similar issues and or "themes". KDL accordingly considers it would be useful (and potentially save significant hearing time) to conduct expert conferencing, in order to better understand the position of the various submitters and ascertain whether any agreement can be reached to reduce (or at least narrow) the issues to be traversed at the hearing.

## 3. MATTERS FOR CONFERENCING

- 3.1 The specific matters which KDL currently considers should be the subject of expert conferencing are as follows:
- (a) Urban design;
  - (b) Transport;
  - (c) Economics; and
  - (d) Planning.
- 3.2 KDL will advise the Panel promptly if, in the course of hearing preparations, it becomes clear that other matters may also benefit from expert caucusing.

## 4. KDL'S REQUEST AND DIRECTIONS SOUGHT

- 4.1 Accordingly, KDL respectfully requests that the Panel issue directions with respect to the hearing of PC 51 as follows:
- (a) At this stage, there be expert conferencing on four separate topics, being urban design, transport, economics and planning.

- (b) The conferencing sessions occur prior to exchange of the section 42A report and all evidence for Pc 51 (as was the case for PC 48 to 50).
- (c) Subject to availability, Ms Marlene Oliver be appointed as the independent facilitator for the expert conferencing.
- (d) The conferencing be 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.
- (e) The expert conferencing be undertaken in accordance with the following timetable, subject to confirmation of availability of Ms Oliver and all relevant experts:
  - (i) Submitters to express their intention to participate in expert conferencing and advise their appointed expert by **Tuesday 8 June 2021**;
  - (ii) All experts to circulate a summary of their evidence/"will say" statement, and KDL to circulate an agenda for the expert conferencing by Monday **21 June 2021**;
  - (iii) Caucusing to take place in the weeks of **28 June 2021 and 5 July 2021**; and
  - (iv) Joint witness statements from expert conferencing sessions to be filed with the Panel by Friday **16 July 2021**.

4.2 Counsel respectfully thanks the Panel for their consideration of this memorandum.

**DATED this 1<sup>st</sup> day of June 2021**



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**S J Berry / H C Andrews**  
**Counsel for Karaka and Drury Limited**

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE AUCKLAND COUNCIL**

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

**AND**

**IN THE MATTER** of an application for private plan change 51 to the Auckland Unitary Plan by Karaka and Drury Limited

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**MEMORANDUM ON BEHALF OF AUCKLAND COUNCIL (AS SUBMITTER) AND  
AUCKLAND TRANSPORT IN RELATION TO REQUEST FOR EXPERT WITNESS  
CONFERENCING**

**Dated 2 June 2021**

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**BROOKFIELDS  
LAWYERS**

Matthew Allan  
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**AUCKLAND**

**MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of Auckland Council (as submitter) and Auckland Transport (together “**the Submitters**”) in response to the memorandum from counsel for Karaka and Drury Limited (**KDL**) dated 1 June 2021 requesting directions for preparation of ‘will say’ statements and expert conferencing for Private Plan Change 51 (**PPC 51**) in June and July on the following topics:
  - (a) Urban design;
  - (b) Transport;
  - (c) Economics; and
  - (d) Planning.
2. The Submitters intend to call transport and planning evidence on PPC 51, but not urban design and economics evidence.
3. The Submitters have earlier recorded their concerns in relation to expert witness conferencing occurring prior to issuance of the s 42A report and evidence exchange. Those concerns aside, the Submitters’ planning and transport experts are heavily committed over the relevant period and do not have the capacity to participate in expert witness conferencing in the timeframes proposed by KDL (which coincide with evidence preparation in relation to private plan changes 48, 49 and 50).
4. The Submitters’ planning and transport experts will however be available to participate in conferencing after the exchange of evidence for PPC 51, and prior to the PPC 51 hearing. The Submitters request that conferencing on those topics be scheduled accordingly at the end of August / beginning of September (but avoiding dates allocated for the PPC 50 hearing).
5. The Submitters also remain willing to meet with KDL on an informal and without prejudice basis in the meantime.

**DATED** the 2<sup>nd</sup> day of June 2021



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**Matthew Allan / Rowan Ashton**

Counsel for Auckland Council (as submitter) and Auckland Transport