

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

AND

IN THE MATTER of **Private Plan Change 86** – 41- 43 Brigham Creek Road, Whenuapai to the Auckland Unitary Plan

HEARING DIRECTION No. 1 FROM THE HEARING PANEL

EVIDENCE EXCHANGE TIMETABLE AND EXPERT CONFERENCING

1. Pursuant to section 34A of the RMA, Auckland Council (the Council) has appointed the chair of the Hearing Panel – Janine Bell (Chair). The hearing panel members will be appointed shortly. The Hearing Panel's function is to hear the application and submissions and make a decision on the Plan Change proposal, including any changes to it that are within scope of the notified Plan Change. It is also to deal with any procedural matters.
2. In summary, Plan Change 86, aims to rezone 5.2 hectares of land at 41 - 43 Brigham Creek Road, Whenuapai from Future Urban Zone (FUZ) to Residential Mixed Housing Urban (MHU). It also seeks to apply the Stormwater Management Area Flow 1 (SMAF1) overlay to the site.
3. On 24 April 2023, the applicant's legal counsel forwarded a memorandum to the Council that:
 - (a) Outlined that some of the submitter's concerns could be addressed through the adoption of a "precinct" mechanism.
 - (b) Confirmed the applicant's willingness to considering the use of the "precinct" mechanism.
 - (c) Set out the applicant's understanding that the Council was concerned that the precinct provisions would be less enabling than the Medium Density Residential standards in Schedule 3A to the RMA and potentially would be outside the jurisdiction of the PC 86 Hearing Panel.
 - (d) Requested a requirement for expert conferencing ideally in advance of exchange of evidence in chief by the applicant or any submitter.
4. 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 Chair agrees that expert conferencing may be useful following the release of the section 42A report from the council. However, at this stage is not directing expert conferencing to occur.

5. Following the release of the section 42A report, the applicant should confirm whether they still wish to continue with conferencing sessions. It may also be that conferencing, or other alternative dispute resolution processes, may occur at a later stage.
6. The purpose of the conferencing is for the parties' experts to identify, discuss and potentially resolve (or not) whether the issues in contention between them could be resolved through the introduction of a precinct mechanism. This may enable all parties to reduce the scope and length of expert evidence; and to focus on those matters that remain in contention.
7. The Chair directs that any conferencing that is undertaken is to be in accordance with the Environment Court Practice Note 2023. 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.
8. The Chair notes in the applicant's legal counsel memorandum dated 24 April 2023 (paragraph 5) that direct discussions with submitters are ongoing. The panel encourages the applicant to continue with those discussions. Any agreements between parties can be reported to the hearing panel through evidence.
9. In terms of procedural matters, section 41B of the RMA provides that the Council may direct that evidence from any expert be provided to the parties before the hearing. Section 42A of the RMA provides that the Council may prepare a report on the matters to be considered and be provided prior to the hearing. The Chair is aware that a section 42A report is being prepared by the Council.
10. The Chair notes the suggestion from the applicant in its memorandum dated 24 April 2023 (paragraph 6) that "*the Hearing Panel may appropriately ask the section 42A author to revisit his report with reference to the revised provisions in Attachment 1*". The Chair agrees that there is merit in this and has directed the section 42A reporting planner accordingly as set out below.
11. The Chair has considered whether any directions are appropriate under either or both of sections 41B and 42A.
12. Accordingly, on behalf of the Hearing Panel, the Chair directs as follows:
 - (a) Pursuant to section 42A of the RMA, the section 42A hearing report shall be provided to the Council's Hearing Advisor no later than 9.00am, **Friday 30 June 2023**. The section 42A report is to include an assessment of the revised provisions provided by the applicant in their memorandum dated 24 April 2023 (copy attached). The assessment should address whether the s42A reporting planner considers the revised provisions are within scope of the decisions sought in the submissions received to the proposed plan change.

- (b) The section 42A hearing report will be on the Council's website no later than midday, **Monday 3 July 2023**.
 - (c) Pursuant to sections 41B(1) and (2) of the RMA, the Applicant's expert evidence (evidence given by a professional with specialist qualifications and experience) is to be provided to the Council's Hearing Advisor no later than 12.00 midday, **Monday 17 July 2023** and will be made available on Council's website by 5.00pm that same day.
 - (d) Pursuant to sections 41B(3) and (4) of the RMA, any person who intends to call expert evidence at the hearing (evidence given by a professional with specialist qualifications and experience) is to provide that evidence to the Council's Hearing Advisor no later than no later than 12.00 midday, **Monday 31 July 2023** and will be made available on Council's website by 5.00pm that same day.
 - (e) Pursuant to section 42A RMA, the Council may, in response to the expert evidence provided by the applicant and submitters, provide an updated set of plan provisions (track changes) as an addendum to the Section 42A report by **midday, Monday 7 August 2023** with any supporting commentary or rebuttal evidence as needed and will be made available on Council's website by 5.00pm that same day.
 - (f) A hearing date is to be set after 14 August 2023.
13. While these Directions do not apply to lay or non-expert statements/evidence, the Hearing Panel would appreciate any written statements to be presented at the hearing by submitters to be provided to the Council's Hearing Advisor no later than 5.00 pm, **Thursday 10 August 2023**.
14. The Hearing Panel also encourages parties to pre-circulate any opening legal submissions in advance of the hearing, preferably no later than the 5.00 pm, **Thursday 10 August 2023**. The Hearing Panel and other parties will be assisted if the legal submissions can be pre-read.
15. The purpose of these Directions is to provide the opportunity for the Hearing Panel and the other parties to have read and considered any legal submissions, evidence or statements in advance of the hearing to assist in understanding the case being presented. As the Hearing Panel will have read all the pre-circulated material before the hearing, there will be no need for it to be read out. An executive summary maybe read out or the key points highlighted.
16. If it is determined that expert conferencing is necessary following the release of the section 42A report, the above evidence exchange timetable will be revised accordingly.

17. Any enquiries regarding this Direction or related matters should be directed to the Council's Hearings Manager, Julie McKee, by email at julie.mckee@aucklandcouncil.govt.nz.

A handwritten signature in blue ink, appearing to read 'J Bell', with a large loop on the left side and a horizontal line under the 'Bell' part.

Janine Bell, Chairperson
25 May 2023

**BEFORE A PANEL OF INDEPENDENT HEARINGS
COMMISSIONERS APPOINTED BY AUCKLAND COUNCIL**

IN THE MATTER

of the Resource Management
Act 1991

A N D

IN THE MATTER

of a request for Private Plan
Change 86 to the Auckland
Unitary Plan (Operative in
Part) by 41-43 Brigham Creek
Road JV

**MEMORANDUM OF COUNSEL WITH ADDITIONAL INFORMATION AND
REQUESTING DIRECTIONS AS TO EXPERT CONFERENCING**

24 April 2023

**ELLIS GOULD
LAWYERS
AUCKLAND**

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AUCKLAND**

MAY IT PLEASE THE HEARINGS PANEL

Precinct provisions and qualifying matters

1. 41-43 Brigham Creek Road JV (“**BCJV**”) is the applicant for Private Plan Change 86 to the Auckland Unitary Plan (“**PPC86**”). It also a further submitter on PPC86.
2. Some submitters on PPC86 have suggested that adopting a “precinct” mechanism for the PPC86 area could assist to address matters raised in their submissions. In its further submission BCJV has confirmed that it is open to considering the use of precinct provisions if it can be demonstrated that this approach is an efficient and effective method to address resource management matters. It produced a set of draft precinct provisions and a precinct plan and attached those to its further submissions for consideration by submitters and in the interests of transparency.
3. Subsequently, the Council’s reporting team has identified a potential legal issue in relation to the precinct provisions produced by BCJV. In summary, the issue is whether the precinct provisions would be “less enabling” than the Medium Density Residential Standards in Schedule 3A to the RMA (“**MDRS**”) as they relate to the subdivision of land, and therefore:
 - (a) Pursuant to section 77I of the RMA, could only be included in the precinct to the extent necessary to accommodate a “qualifying matter”; and
 - (b) Potentially, would be outside the jurisdiction of the Hearing Panel appointed to hear PPC86, as the Intensification Planning Instrument notified by the Council to incorporate the MDRS into relevant residential zones (Plan Change 78), and consider (among other things) whether qualifying matters apply in relevant locations, is being heard by a separate independent hearings panel.

4. BCJV does not consider that the PPC86 Hearing Panel is necessarily barred from considering whether qualifying matters exist which justify the application of precinct provisions less enabling than the MDRS. However, BCJV also considers it unnecessary for the PPC86 Hearing Panel to resolve this legal issue. It is neither necessary, nor was it BCJV's intention, that the PPC86 precinct provisions be less enabling than the MDRS. Accordingly, BCJV has produced a revised version of its draft precinct provisions which are attached as **Attachment 1** to this memorandum.
5. BCJV notes that direct discussions with relevant submitters have been ongoing, and further changes to these precinct provisions are likely to be proposed. However, it was considered appropriate to confine the scope of changes to the proposed precinct provisions to those necessary to address the legal issue raised by Council at this stage, until such time as those discussions (including expert conferencing including other submitters, if directed by the Hearing Panel) have been concluded.
6. In accordance with Council's usual practice, the Council's reporting planner is in the process of preparing the section 42A report for the hearing based upon PPC86 as lodged, and the submissions and further submissions received. BCJV respectfully suggests that, to the extent that the legal issue summarised above influences the content and/or recommendation of the section 42A report, the Hearing Panel may appropriately ask the section 42A author to revisit his report with reference to the revised provisions in Attachment 1.

Expert conferencing

7. BCJV understands that the Council is in the process of appointing a hearing chairperson and commissioners to hear submissions on PPC86. Once appointed, the hearing chairperson will likely make timetable directions including for the exchange of evidence in advance of the hearing.
8. Counsel's experience with similar private plan changes is that the scope of issues requiring determination by the Hearing Panel is likely to be significantly reduced if those timetable directions incorporate a requirement for expert conferencing. BCJV therefore respectfully requests that any timetable directed by the hearing chair incorporate a requirement for expert

conferencing, ideally in advance of exchange of evidence in chief by the applicant or any submitter.

DATED this 24th day of April 2023



Daniel Sadler

Counsel for 41-43 Brigham Creek JV

I1. 41-43 Brigham Creek Precinct

I1.1. Precinct Description

The 41-43 Brigham Creek Precinct applies to 5.1921ha of land in Whenuapai. 41-43 Brigham Creek precinct seeks to realise the vision stated within the Whenuapai Structure Plan 2016.

The purpose of this precinct is to enable the transition from semi-rural land uses to the redevelopment of a residential area in an integrated and comprehensive manner. The precinct will rely on the underlying provisions of the Stormwater Management Area Flow 1, Subdivision – Urban, Residential – Mixed Housing Urban zone chapters of the AUP OP. Development is anticipated to accommodate up to 230 dwellings/residential lots.

No development can occur until the land within the Precinct is able to be connected to the new wastewater pump station on Brigham Creek Road as part of the Northern Interceptor upgrade.

Additionally, the precinct will ensure subdivision and development provides for the necessary transport infrastructure, including urban standard of frontages along Brigham Creek Road and Mamari Road, and connectivity through the Precinct.

The zoning of land within this precinct is Residential – Mixed Housing Urban Zone with a SMAF1 overlay.

All relevant overlay, Auckland-wide and zone provisions apply in this precinct unless otherwise specified below.

I1.2. Objectives [dp]

(1) The Precinct is developed for urban residential activities in a comprehensive and integrated way.

Three Waters Infrastructure

(2) Establish the infrastructure necessary to service development within the Precinct in a coordinated and timely way.

(3) Development shall be coordinated with the upgrading of the Northern Interceptor and Wastewater Pump Station on Brigham Creek Road in a manner that avoids adverse effects on the environment.

(4) Stormwater quality is managed to avoid, as far as practicable, or otherwise minimise or mitigate adverse effects on the receiving environment.

Transport

(5) Subdivision and development that provides for the safe and efficient operation of the current and future transport network for all modes.

All relevant overlay, Auckland-wide and zone objectives apply in this precinct in addition to those specified above.

I1.3. Policies [dp]

General

(1) 41-43 Brigham Creek precinct is developed in a comprehensive and integrated way to ensure development is appropriately serviced and will not result in adverse environmental effects that cannot be avoided or mitigated.

Three Waters Infrastructure

- (2) Subdivision and development shall be sequenced to ensure new titles are not issued prior to water infrastructure being in place.
- (3) Avoid subdivision, use and development that does not align with the upgrading and provision of wastewater services, particularly the Northern Interceptor and Brigham Creek Rd pump station.
- (4) Require subdivision and development to achieve stormwater quality treatment of stormwater runoff from contaminant-generating impervious areas within the precinct to be consistent with the treatment train approach outlined in the Stormwater Management Plan including:
- a. The use of inert building materials to eliminate or minimise the generation and discharge of contaminants; and
 - b. Treat runoff from public road carriageways and carparks at or near source by a water quality device designed in accordance with GD01.

Transport

- (5) Require subdivision and development to:
- a. Provide for Brigham Creek Road and Mamari Road to be widened in the future for the planned frequent public transport and active transport network;
 - b. Deliver an urban standard of frontage to Brigham Creek Road and Mamari Road, including at a minimum, footpaths and pedestrian connectivity;
 - c. Provide for connectivity through the development between Mamari Road and Brigham Creek Road.

All relevant overlay, Auckland-wide and zone policies apply in this precinct in addition to those specified above.

I1.4. Activity table [dp]

All relevant overlay, Auckland-wide and zone activity tables apply unless the activity is listed in Activity Table IX1.4.1 below.

Table IX.4.1 specifies the activity status of land use and subdivision activities in the 41-43 Brigham Creek Precinct pursuant to sections 9(3) and section 11 of the Resource Management Act 1991.

Table I1.4.1 Activity table

Activity		Activity status
Development		
(A1)	<u>Subdivision provided for as a permitted activity in E38.4.1 or E38.4.2.</u>	P
(A2)	<u>Subdivision provided for as a controlled activity in E38.4.1 or E38.4.2.</u>	C
(A4A3)	Subdivision or development prior to the Northern Interceptor Wastewater pump station becoming operational, <u>and not otherwise provided for under (A1) or (A2).</u>	NC
(A2A4)	Subdivision and development not meeting Precinct standards undertaken following completion of the Northern Interceptor Wastewater pump station, <u>and not otherwise provided for under (A1) or (A2).</u>	RD
Residential Activity		
(A3)	4 - 230 dwellings within the Precinct.	RD
(A4)	231 or more dwellings.	D

11.5. Notification

- (1) Any application for resource consent for an activity listed in Activity Table IX.4.1 above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purpose of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

11.6. Standards

All relevant overlay, Auckland-wide and zone standards apply to the activities listed in Activity Table IX.4.1 unless otherwise specified below.

Activities (A1) and (A2) in Activity Table IX.4.1 must comply with relevant standards for permitted and controlled activities set out in Chapter E38.

~~All activities (A3) – (A6) listed~~ in Activity Table IX.4.1 must also comply with Standards IX.6.1 – IX.6.3.

Where there is any conflict or difference between standards in this Precinct and the Auckland-wide and zone standards, the standards in this Precinct will apply.

11.6.1. Stormwater Management

Purpose:

- To ensure
 - (1) Hydrological Mitigation

- a. All new or redeveloped impervious surfaces (including roads) which discharge to the southern catchments must provide:
 - i. Retention (volume reduction) of at least 5mm runoff depth for the impervious area for which hydrology mitigation is required; and
 - ii. Detention (temporary storage) and a drain down period of 24 hours for the difference between the predevelopment and post-development runoff volumes from the 95th percentile, 24-hour rainfall event minus the 5mm retention volume or any greater retention volume that is achieved, over the impervious area for which hydrology mitigation is required.
- b. Clause (a) does not apply where:
 - i. A suitably qualified person has confirmed that soil infiltration rates are less than 2mm/hr or there is no area on the site of sufficient size to accommodate all required infiltration that is free of geotechnical limitations (including slope, setback from infrastructure, building structures or boundaries and water table depth); and
 - ii. Rainwater reuse is not available because:
 - 1. The quality of the stormwater runoff is not suitable for on-site reuse (i.e. for non-potable water supply, garden/crop irrigation or toilet flushing); or
 - 2. There are no activities occurring on the site that can re-use the full 5mm retention volume of water.
- c. If at the time of subdivision, a communal device has been constructed to provide for the above requirements for multiple allotments, a condition and consent notice are required for the provision of the connection and ongoing maintenance of the communal device..

(2) Water Quality

- a. Runoff from impervious surfaces associated with surface car parking areas and vehicle access shall provide water quality treatment, including
 - i. Provision of a device(s) or system appropriately sized in accordance with GD01; or
 - ii. Where alternative devices are proposed, it must be demonstrated that such devices are designed to achieve an equivalent level of contaminant or sediment removal performance to that of GD01; and
 - iii. Be in accordance with an approved Stormwater Management Plan.

I1.6.2. Building Setback and Connectivity

Purpose:

- To enable for the future required widening of Brigham Creek Road and Mamari Road

- (1) A 10-m wide building setback must be provided along the entire frontage of the land adjoining Brigham Creek Road measured from the legal road boundary that existed at the year of 2022. No buildings, structure or part of a building shall be constructed within this 10-m setback.
- (2) A 11.86-m wide building setback must be provided along the frontage of the land adjoining Mamari Road measured from the legal road boundary that existed at the year of 2022. No buildings, structure or part of a building shall be constructed within this 11.86-m setback.
- (3) A minimum 2.5m front yard setback shall be measured from the building setback in (1) and (2) above.
- (4) Provision for a road connection between Mamari Road and Brigham Creek.

I1.7. Assessment – controlled activities

Activity (A2) in Activity Table IX.4.1 is subject to the relevant assessment criteria and matters for control applying to controlled activities and set out in Chapter E38.

~~There are no controlled activities in this precinct.~~

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I1.8. Assessment – restricted discretionary activities

I1.8.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the overlays, Auckland-wide or zones provisions:

- (1) Subdivision and development
 - a. The effects of development on wastewater infrastructure timing and capacities.
 - b. Infrastructure and servicing.
 - c. Any staging of subdivision.
 - d. Alignment with the MHU zone subdivision provisions.
 - e. The matters of discretion listed in E38.12.1(7)
- (2) Between 4 and 230 dwellings per site
 - a. The matters of discretion listed in H5.8.1(2)
- (3) Non-compliance with Standard I1.6.1(1) – Stormwater Management
 - a. The matters of discretion listed in E10.8.1(1).
 - b. Any approved Stormwater Management Plan.
- (4) Non-compliance with Standard I1.6.1(2) – Stormwater Management
 - a. The matters of discretion listed in E9.8.1(1).
 - b. Any approved Stormwater Management Plan.

(5) Transport infrastructure

- a. The effects of the proposal on the future ability to construct the road corridors and connection shown in Precinct Plan.
- b. Whether the proposal will enable the safe and efficient functioning of the current and future transport network.

I1.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities, in addition to the assessment criteria specified for the relevant restricted discretionary activities in the overlays, Auckland-wide or zones provisions:

- (1) Subdivision and development that is consistent with:
 - a. The objectives and policies of the precinct or achieves the equivalent or better outcome;
 - b. The assessment criteria listed in E38.12.2(7).
- (2) For four - 230 dwellings per site:
 - a. The assessment criteria listed in H5.8.2(2).
- (3) Non-compliance with Standard I1.6.1(1) – Stormwater Management
 - a. The assessment criteria listed in E10.8.2(1).
 - b. Consistency of the proposed stormwater management devices with any approved Stormwater Management Plan.
- (4) Non-compliance with Standard I1.6.1(2) – Stormwater Management
 - a. The assessment criteria listed in E9.8.2(1).
 - b. Consistency of the proposed stormwater management devices with any approved Stormwater Management Plan.
- (5) Safe and efficient operation of the current and future transport network
 - i. Whether the frontage along Brigham Creek Road is designed and constructed to an urban standard, including at a minimum footpath, and connectivity to the footpath network.
 - ii. Whether the frontage along Mamari Road is designed and constructed to an urban standard, including at a minimum footpath, and connectivity to the footpath network.
 - iii. Whether a road connection between Brigham Creek Road and Mamari Road is enabled through the design and layout of the subdivision.

I1.9. Special information requirements

There are no special information requirements in this precinct.

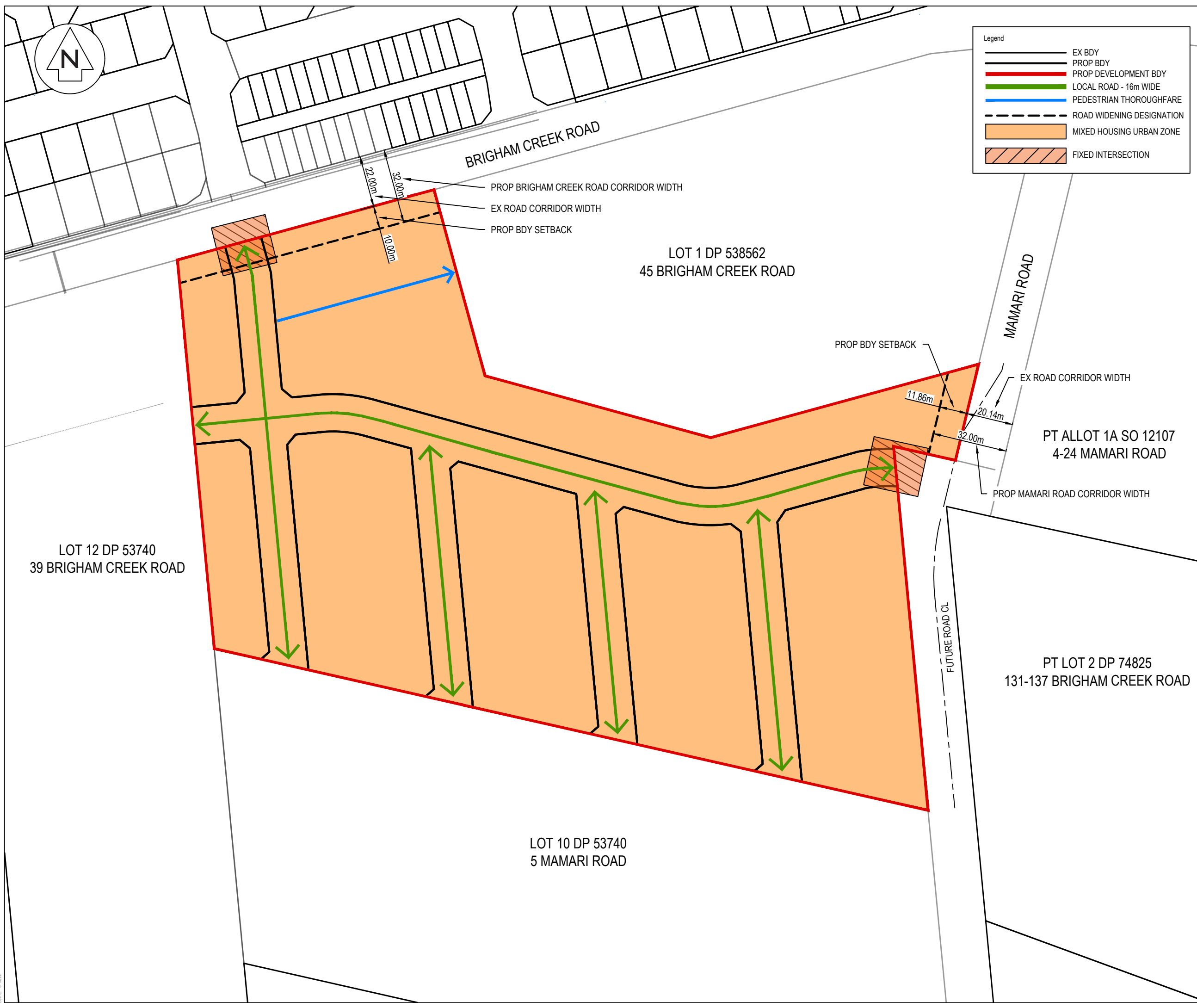
I1.10. Precinct plan

There is a Precinct Plan for this Precinct – refer to attached.



Legend	
	EX BDY
	PROP BDY
	PROP DEVELOPMENT BDY
	LOCAL ROAD - 16m WIDE
	PEDESTRIAN THOROUGHFARE
	ROAD WIDENING DESIGNATION
	MIXED HOUSING URBAN ZONE
	FIXED INTERSECTION

- Notes
1. All works to be in accordance with Auckland council standards.
 2. Boundaries are subject to final survey.



Rev	Description	By	Date
C	PLAN CHANGE	AP	05/22
B	PLAN CHANGE	AP	11/21
Survey	-	-	-
Design	AP	11/21	
Drawn	-	-	-
Checked	WM	11/21	

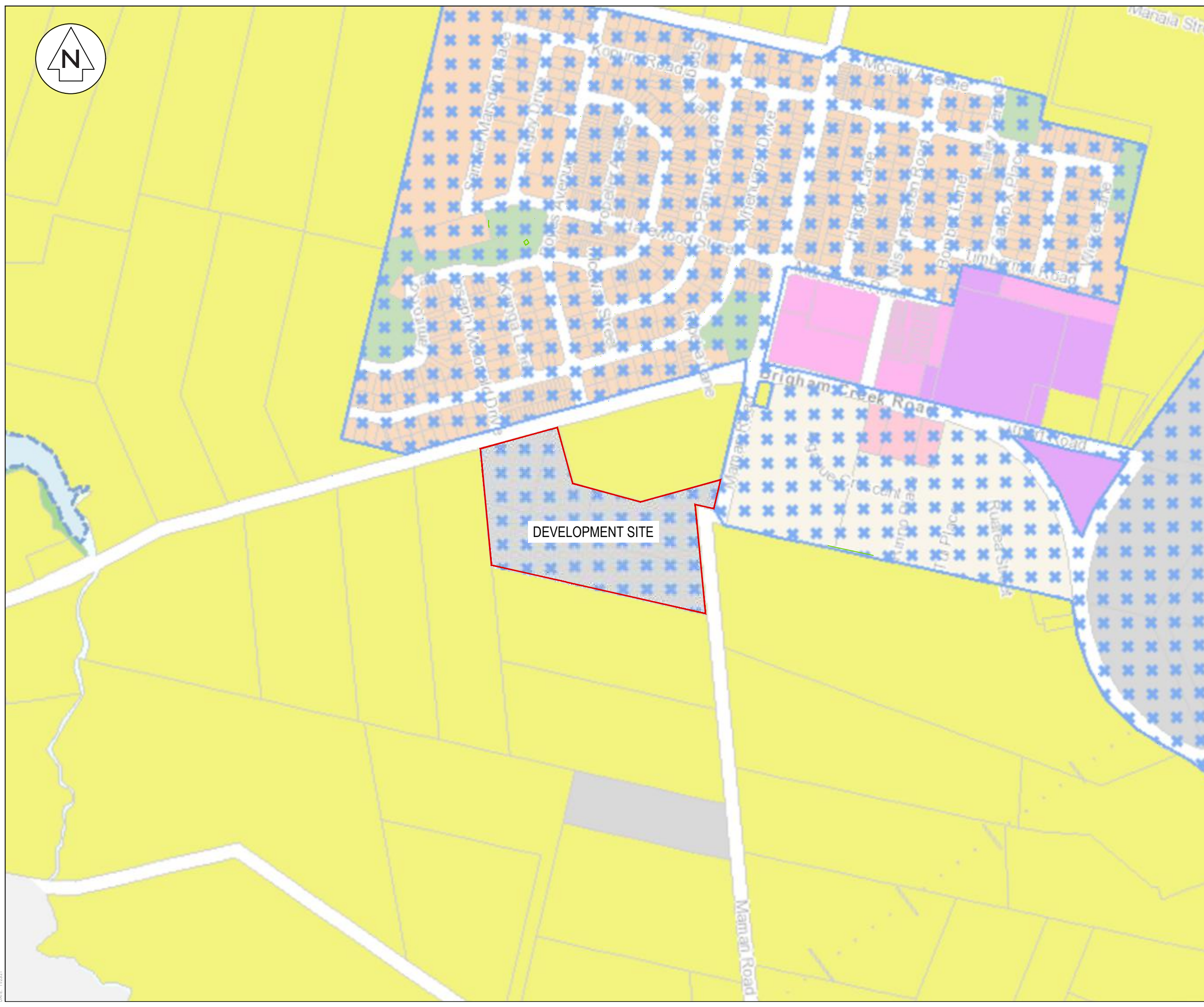
M
M A E N

Maven Associates
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12-14 Walls Road, Penrose

Project
**41-43 BRIGHAM CREEK
WHENUAPAI
DEVELOPMENT
FOR
AI LING**

Title
**PROPOSED
PRECINCT
PLAN**

Project no.	210001
Scale	1:1500 @ A3
Cad file	PRECINCT PLAN.DWG
Drawing no.	C110
Rev	C



Legend

 PROP DEVELOPMENT BDY

 SMAF 1 ZONE

Rev	Description	By	Date
A	PLAN CHANGE	AP	11/21
Survey	-	-	-
Design	AP	11/21	
Drawn	-	-	
Checked	WM	11/21	

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Project
**41-43 BRIGHAM CREEK
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 DEVELOPMENT
 FOR
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Title
**UNITARY PLAN
 SMAF ZONES
 PLAN**

Project no.	210001
Scale	1:5000 @ A3
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Drawing no.	C111
Rev	A