

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

**AND**

**IN THE MATTER** of **Private Plan Change 90** – 8 Sparky Road, Otara to the Auckland Unitary Plan

**HEARING DIRECTION #4 FROM THE HEARING PANEL**

1. Pursuant to section 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of three independent hearing commissioners – Peter Reaburn (Chairperson), Dr Lee Beattie and James Whetu. 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. On Wednesday 11 October 2023 the hearing panel received a memorandum from the Applicant requesting that the hearing be adjourned from the current dates of 24 and 25 October 2023. The requested adjournment is to enable the Applicant to carry out further discussions with Submitters. The memorandum is attached to this Direction.
3. The Hearing Panel has considered the Applicant’s memorandum and accordingly directs the following:
  - (a) The hearing date of 24 and 25 October 2023 be vacated and that the hearing be vacated pending advice from the Applicant as to:
    - Evidence incorporating any changes to the proposed plan change request
    - Further information as a result of discussions with Submitters
    - possible hearing dates

This information is to be provided no later than **Wednesday 15 November 2023**.

  - (b) Upon receipt of the Applicants memorandum and further evidence, further Directions will be issued to set hearing dates, due dates for submitter evidence and the s42A Addendum report.
  - (c) The panel will schedule its site visit after receipt of the Applicants memorandum due on 15 November 2023.
4. Any enquiries regarding these Directions or related matters should be directed to the Council’s Hearings Advisor, Sidra Khan, by email at [sidra.khan@aucklandcouncil.govt.nz](mailto:sidra.khan@aucklandcouncil.govt.nz).



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Peter Reaburn, Chairperson  
Friday 13 October 2023

**UNDER**

the Resource Management Act 1991  
("RMA" or "the Act")

**AND**

**IN THE MATTER**

of Plan Change 90 to **AUCKLAND  
COUNCIL** by **HIGHBROOK LIVING  
LIMITED** pursuant to Clause 21 of  
Schedule 1 of the Act to change the  
Auckland Unitary Plan to rezone land at  
8 Sparky Road, Ōtara

**MEMORANDUM OF COUNSEL FOR Highbrook Living Limited Seeking  
Adjournment and Further Directions**

1. This memorandum is filed on behalf of Highbrook Living Limited ("HLL"), the proponent of Plan Change 90 ("PC 90") to the Auckland Unitary Plan.

**Purpose of memorandum**

2. The purpose of this memorandum is:
  - (a) To seek that the hearing scheduled for Tuesday 24 October and Wednesday 25 October 2023 be vacated; and
  - (b) To request further directions in relation to hearing management and reporting.

**Grounds for vacating the hearing**

3. HLL has reviewed the expert evidence filed by Goodman (NZ) Limited and Auckland Transport ("the Submitters") on Monday 9 October 2023.
4. HLL has carefully considered the issues raised, and in particular the concern that PC 90 provides insufficient detail regarding the future level of development and associated mitigation measures to appropriately manage effects on the transport network and in particular the Highbrook Business Park.
5. HLL considers that there is merit in further discussions with the Submitters and refinements to the plan change request to provide greater clarity regarding these matters, in order to address the Submitters' concerns.
6. Further time will be necessary to allow this to take place. HLL therefore respectfully requests that the hearing date be vacated and the matter adjourned. HLL anticipates that a delay of approximately one to two months will be necessary.

7. Following completion of the above, we anticipate that a process along the following lines would be appropriate to ensure fairness to all parties:
  - (a) Circulation of an addendum to the section 42A report at least 15 working days before the hearing (currently scheduled to be circulated on Monday 16 October 2023).<sup>1</sup>
  - (b) Circulation of supplementary evidence for the Applicant addressing any refinements made at least 10 working days before the hearing.
  - (c) Circulation of any expert evidence for submitters in response to the Applicants' supplementary evidence, and any lay submitter evidence, at least 5 working days before the hearing.

### **Sections 37A and 39**

8. The Council may be required to extend the time period for the hearing in terms of section 37A of the Resource Management Act 1991. Counsel advises that the Applicant agrees to the extension of time required to facilitate this adjournment pursuant to section 37A(5) of the RMA.
9. As regards the issues that the Hearing Panel is required to consider in terms of section 37A of the RMA, it is submitted that vacating the hearing is appropriate for the following reasons:
  - (a) The interests of any person affected by the extension will be positive (or not adverse) in terms of section 37A(1)(a) of the RMA. In particular, vacating the hearing will benefit submitters insofar as it will enable refinements to be made to the plan change request that will allow for greater certainty regarding development enabled by the plan change, associated effects and mitigation.
  - (b) The interests of the community in achieving an adequate assessment of the effects of the plan change will also be enhanced by having greater certainty in this regard in terms of section 37A(1)(b) of the RMA.
  - (c) Vacating the hearing is not contrary to the Council's duty to avoid unreasonable delay in terms of section 37A(1)(c) of the RMA.
  - (d) The Applicant has requested the extension in terms of section 37A(2)(b) of the RMA.

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1 In accordance with Direction 2.

10. For the foregoing reasons, it is submitted that vacating the hearing is "appropriate and fair in the circumstances" in terms of section 39(1) of the RMA.

**Site visit**

11. HLL understands from the Council Hearing Administrator, Ms Khan, that the Panel was intending to undertake its site visit at 11.30am on Thursday 26 October 2023. If the Panel still wishes to proceed with that date following receipt of this memorandum, HLL can provide further details to Ms Khan regarding access to the site.

**Directions sought**

12. In light of the above, the Applicant seeks the following directions:
- (a) That the hearing date of 24 and 25 October 2023 be vacated and that the hearing of the request be adjourned until further notice, pending advice from the Applicant as to progress on refining the plan change request and any discussions with the Submitters;
  - (b) That Counsel for the Applicant report in writing to the Panel by no later than 15 November 2023 as to:
    - (i) The results of any discussions with the Submitters; and
    - (ii) Possible hearing dates.

13. Counsel is grateful to the Hearing Panel for its consideration of this memorandum.

**DATED** at Auckland this 11<sup>th</sup> day of October 2023



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**K A Storer**

**Counsel for Highbrook Living Limited**