

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

**AND**

**IN THE MATTER** of **Private Plan Changes 48** (Kiwi Property No. 2), **49** (Fulton Hogan Land Development Limited) and **50** (Oyster Capital Limited) to the Auckland Unitary Plan – Operative in Part.

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

#### **SCHEDULING OF THE HEARINGS AND EVIDENCE EXCHANGE DATES FOR THE THREE PLAN CHANGES**

1. Pursuant to section 34 and 34A of the RMA, Auckland Council has appointed a Hearing Panel consisting of independent hearing commissioners - Greg Hill (Chairperson), Mark Farnsworth and Karyn Kurzeja<sup>1</sup>. The Hearing Panel has been delegated the authority to hear the plan change requests and submissions, and make decisions on those plan changes.
2. The Hearing Panel has received a Memorandum from the three Applicants' legal counsel<sup>2</sup> in relation to the scheduling and format of the hearings. The Applicants have requested that the Hearing Panel make Directions in relation to aspects of the evidence exchange timetable and the format of the hearings on the plan changes.
3. According to the Applicants the changes requested are required due to the traffic engineering analysis supporting the plan changes having assumed implementation of the Mill Road Extension (which had central government funding confirmed on 6 March 2020 by the Minister of Transport), with construction expected to commence in 2022. On 4 June 2021 the Government announced funding would not be available at this time for the full Mill Road corridor, including the southern section through Drury.
4. As a consequence of the Government's announcement, the Applicants have asked their traffic and transport experts and planners to review the plan change provisions governing road traffic, including a series of provisions that enable specified levels of development and traffic generation once identified mitigation measures are in place, including the Mill Road corridor. This will take some time.
5. The Applicants have sought the following Directions:
  - (a) *That the evidence exchange timetables and hearing commencement dates for the plan changes remain unchanged, subject to the amendments noted below.*
  - (b) *That the Applicants and other parties file in accordance with those timetables their evidence in respect of all aspects of the plan changes except:*
    - (i) *Expert traffic and transport evidence; and*

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<sup>1</sup> Ms Kurzeja in relation to Plan changes 48 and 50.

<sup>2</sup> Dated 14 June 2021.

(ii) *Expert planning evidence on the detailed plan change provisions concerning the development threshold and triggers related to road network improvements*

*(collectively “Traffic Evidence”).*

(c) *That the hearings for each of the plan changes commence and proceed as scheduled and address all aspects of the plan changes except the Traffic Evidence. It is anticipated that:*

(i) *Legal submissions and all evidence other than the Traffic Evidence would be presented at these hearings by all parties. This would include lay evidence that addresses traffic and transport matters.*

(ii) *These hearings would address high level planning matters such as the appropriateness of the development threshold / trigger mechanism but not the detail of those thresholds / triggers.*

(d) *That the hearings for each of the plan changes then be adjourned, pending resumption once the Traffic Evidence has been exchanged.*

(e) *That a separate evidence exchange timetable be developed for the Traffic Evidence with the hearings resuming to address that evidence. It is anticipated that:*

(i) *The resumed hearing would address the detailed traffic and transport matters.*

(ii) *All parties with an interest in these matters could submit further focused legal submissions in support of their Traffic Evidence.*

(iii) *The Applicants would make their legal submissions in reply on all matters at the end of the resumed hearing(s).*

6. We note the concerns raised by the section 42A report author. We also note the concerns raised by Auckland Council (as submitter), Auckland Transport and KiwiRail, and their views that it is likely to be more efficient to hear the plan changes later in the year. However, having considered the ‘pros and cons’ of the Applicants request vs those of the other parties, we are satisfied that the traffic matters can be appropriately separated from the balance of the issues for the purpose of the hearings, and agree with the Applicants’ “*Advantages of the proposal*” set out in their Memorandum. Furthermore, no decision on each of the plan changes will be issued until the hearings are completed, and all relevant information has been put before the Hearing Panel.

7. Given the circumstances set out in the Applicant’s Memorandum and our comments above, the Hearing Panel agrees to amend the evidence exchange timetable and the format of the hearings on the plan changes as requested, subject to our comments below.

8. We also note the following specific concerns raised by Auckland Council (as submitter) and Auckland Transport<sup>3</sup>. We agree with the following:

*“...it is essential that there is clarity as to what is in and out of scope for those hearings. As an example, the applicants’ proposed arrangements appear to contemplate some transport*

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<sup>3</sup> Email from the legal counsel dated 15 June 2021.

*and transport-related planning matters ('high level planning matters' relating to thresholds and triggers) still being dealt with at the initial hearings"*

9. For the purpose of clarity we direct that any legal submissions or planning evidence only address at "a high level" the appropriateness or otherwise of the development threshold / trigger mechanisms as an appropriate planning mechanism, and not the detail of what the development threshold / trigger mechanisms might be.
10. We will address the details of any reconvened hearing dates, traffic related evidence exchange dates, and the matters to be addressed at the reconvened hearing (eg as indicated in 5 (d) and (e) above) in a later Direction. We considered it important to issue this Direction as soon as possible to provide certainty to all parties about what was and was not to be heard in the first tranche of the hearings; and that traffic related legal submissions and evidence was not prepared unnecessarily.
11. Any submitters not calling expert evidence (i.e. lay submitters) may present their entire case, including traffic related matters, at the first tranche of the hearings if they so wish. However, they may also present traffic related matters at the reconvened hearing. For hearing scheduling purposes the Hearing Panel requests that lay submitters advise Council's Senior Hearing Advisor if they propose to present their entire case at the first hearing, or also wish to appear at the reconvened hearing to present the traffic related matters.
12. Any enquiries regarding this Direction or related matters should be directed to the Council's Senior Hearing Advisor, Mr Sam Otter by email at [sam.otter@aucklandcouncil.govt.nz](mailto:sam.otter@aucklandcouncil.govt.nz)



Greg Hill - Chairperson  
18 June 2021



For completeness, the Hearings Manager at Auckland Council has attached the following documents to the Hearing Panel's direction.

- Joint Memorandum on behalf of the three applicants for PCs 48, 49 and 50 regarding scheduling of hearings – dated 14 June 2021
- Response from Auckland Council (the submitter) – dated 15 June 2021
- Response from Auckland Council (the regulator) – dated 17 June 2021
- Response from Kiwirail – dated 18 June 2021
- Response from applicants to other parties comments – dated 18 June 2021

Other responses received that did not directly relate to the applicants memorandum

- Response from Lomai Property Limited – dated 18 June 2021
- Response from Karaka and Drury Limited – dated 18 June 2021

**IN THE MATTER**

of the Resource Management Act 1991

**A N D**

**IN THE MATTER**

of requests to Auckland Council for  
Private Plan Changes 48, 49 and 50:  
Drury by Kiwi Property Holdings No. 2  
Limited, Fulton Hogan Land  
Development Limited and Oyster Capital  
Limited

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**JOINT MEMORANDUM ON BEHALF OF KIWI PROPERTY HOLDINGS NO.2 LIMITED,  
FULTON HOGAN LAND DEVELOPMENT LIMITED AND OYSTER CAPITAL LIMITED  
REGARDING SCHEDULING OF HEARINGS**

**14 June 2021**

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**ELLIS GOULD  
LAWYERS  
AUCKLAND**

**REF: Douglas Allan**

**Level 17 Vero Centre  
48 Shortland Street, Auckland  
Tel: 09 307 2172 / Fax: 09 358 5215  
PO Box 1509  
DX CP22003  
AUCKLAND**

**May it please the Panel:**

***Introduction***

1. This memorandum is lodged on behalf of Kiwi Property Holdings No. 2 Limited, Fulton Hogan Land Development Limited and Oyster Capital Limited, the applicants for Private Plan Changes 48, 49 and 50 (Drury) respectively (collectively, **“the Applicants”**).
2. As a result of recently announced changes to the New Zealand Upgrade Programme (**“NZUP”**) affecting the funding of road network improvements at Drury, the Applicants seek adjustments to:
  - (a) Aspects of the evidence exchange timetable for the plan changes; and
  - (b) The format of the hearings on the plan changes.
3. The Applicants would be available to attend a procedural conference with the commissioners (and interested submitters) on short notice, in person or remotely, to address the issues raised in this memorandum, if the commissioners considered that to be desirable.

***Implications of changes NZUP***

4. The traffic engineering analysis supporting the plan changes has, to date, assumed implementation of the Mill Road Extension to the Southern Motorway that has been promoted over a number of years by Auckland Council and Auckland Transport. Central government funding for that extension was confirmed on 6 March 2020 by the Minister of Transport, with construction expected to commence in 2022.
5. On 4 June 2021 it was announced that central government funding will not be available at this time for the full Mill Road Corridor, including the southern section through Drury. As a consequence of that announcement, the Applicants have asked their traffic and transport experts and planners to review the plan change provisions governing road traffic, including a series of provisions that enable specified levels of development and traffic generation once identified mitigation measures are in place, including the Mill Road Corridor.
6. That review will involve additional traffic modelling which is expected take a number of weeks to undertake. In addition, the Applicants understand that there may soon be greater certainty as to the details and timing of local road improvements in Drury for

which funding is available. If so, those improvements should be included in the revised modelling to ensure that the results are realistic.

7. Hearings on the plan changes are scheduled to commence on 28 July (PC48), 11 August (PC49) and 25 August (PC50). The section 42A RMA report on PC48 is due for release on 16 June and Kiwi's evidence in chief is due to be filed on 1 July.
8. The Applicants have concluded that, while they and their witnesses can comply with the evidence exchange timetables for all aspects of the plan changes other than traffic, any traffic evidence filed in accordance with the evidence exchange timetables would be incomplete because it is most unlikely to include the updated modelling or any analysis of those results. The Applicants have therefore considered how the plan changes might proceed to hearing in a timely fashion while ensuring that the commissioners have traffic engineering evidence that takes account of the withdrawal of funding for the full Mill Road Corridor.

### ***Directions Sought***

9. The Applicants accordingly seek amended directions in the following or similar form:
  - (a) That the evidence exchange timetables and hearing commencement dates for the plan changes remain unchanged, subject to the amendments noted below.
  - (b) That the Applicants and other parties file in accordance with those timetables their evidence in respect of all aspects of the plan changes except:
    - (i) Expert traffic and transport evidence; and
    - (ii) Expert planning evidence on the detailed plan change provisions concerning the development threshold and triggers related to road network improvements(collectively, "**Traffic Evidence**").
  - (c) That the hearings for each of the plan changes commence and proceed as scheduled and address all aspects of the plan changes except the Traffic Evidence. It is anticipated that:
    - (i) Legal submissions and all evidence other than the Traffic Evidence would be presented at these hearings by all parties. This would include lay evidence that addresses traffic and transport matters.

- (ii) These hearings would address high level planning matters such as the appropriateness of the development threshold / trigger mechanism but not the detail of those thresholds / triggers.
  - (d) That the hearings for each of the plan changes then be adjourned, pending resumption once the Traffic Evidence has been exchanged.
  - (e) That a separate evidence exchange timetable be developed for the Traffic Evidence with the hearings resuming to address that evidence. It is anticipated that:
    - (i) The resumed hearing would address the detailed traffic and transport matters.
    - (ii) All parties with an interest in these matters could submit further focused legal submissions in support of their Traffic Evidence.
    - (iii) The Applicants would make their legal submissions in reply on all matters at the end of the resumed hearing(s).
10. The Applicants suggest the following evidence timetable for the Traffic Evidence:
- (a) That the Applicants file their Traffic Evidence three weeks prior to the resumed hearing date(s);
  - (b) That the interested submitters file their Traffic Evidence two weeks prior to the resumed hearing date(s); and
  - (c) That a supplementary section 42A Report addressing the Traffic Evidence be circulated one week prior to the resumed hearing date(s).

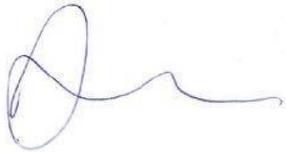
***Possible dates for resumed hearing and time required***

11. Given that the Applicants are using the same traffic and transport experts and planners, and that the issues are interrelated, the resumed hearings could take the form of a single sitting with the Applicants collectively presenting their cases. The Applicants' expectation is that the hearing on the Traffic Evidence might require in the order of three hearing days.
12. The Applicants appreciate that the commissioners will be involved in hearings on Plan Changes 51, 58 and 61 in September and early October. They enquire if it would be possible to schedule, say, three additional hearing days from or shortly after 11 October.

**Advantages of proposal**

13. The Applicants consider that this approach has a number of advantages:
- (a) It avoids the loss of the hearing dates that have already been allocated.
  - (b) It enables the parties and commissioners to address during the initial hearings the large number of non-traffic issues raised in submissions.
  - (c) It provides time for the additional traffic modelling to be undertaken and, potentially, further witness conferencing on traffic and transport matters before the resumption of the hearings.
  - (d) It requires the commissioners and parties to schedule only a small number of additional hearing days.

**DATED** this 14<sup>th</sup> day of June 2021



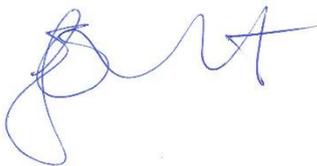
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**D A Allan**  
Counsel for Kiwi Property Holdings No.2 Limited



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**S J Simons**  
Counsel for Fulton Hogan Land Development Limited



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**J C Brabant**  
Counsel for Oyster Capital Limited

**From:** [Matthew Allan](#)  
**To:** [Julie McKee](#)  
**Cc:** [Douglas Allan](#); [Alex Devine](#); [Jeremy Brabant](#); "[Sue Simons](#)"; [Kate Storer](#); [Rowan Ashton](#); [Lisa Wansbrough](#)  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants  
**Date:** Tuesday, 15 June 2021 10:03:01 AM  
**Attachments:** [210614 Oyster et al Traffic memo signed JB SS.pdf](#)

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Dear Julie,

We would be grateful if you would forward this email to the Commissioners for PPCs 48-50.

We have sought initial feedback from our clients (Auckland Council, as submitter, and Auckland Transport) on the applicants' proposals, as outlined in the **attached** memo.

While our clients understand the reasons why the applicants seek more time to undertake additional modelling and fresh analysis in view of the NZUP changes (including the announcement concerning Mill Road), they are concerned that the process now being proposed will be inefficient and unwieldy, and may prejudice submitters. Our clients are still considering the implications for their evidence / cases.

Needless to say, transport issues, including related planning and funding / financing issues, are key issues for these plan changes. If the applicants need to do more work on transport issues as a consequence of the NZUP announcement – which again is understandable – then the appropriate course, even though it may occasion some delay for the applicants, is for the hearings to occur later in the year when the plan changes are ready for hearing. All issues can then be addressed at the same time through comprehensive legal submissions and evidence from the parties.

In summary, our clients consider that it would be more appropriate for hearings on PPCs 48-50 to be deferred until later in 2021 when the plan changes are ready for hearing.

In the event that the Panel decides to maintain the existing hearing dates on non-transport matters, then it is essential that there is clarity as to what is in and out of scope for those hearings. As an example, the applicants' proposed arrangements appear to contemplate some transport and transport-related planning matters ('high level planning matters' relating to thresholds and triggers) still being dealt with at the initial hearings. That proposal is not supported by our clients; all matters relating to transport and infrastructure funding and financing would need to be deferred.

We are available to participate in a case management conference on this matter, if required.

Ngā mihi | Kind regards

Matt

**Matthew Allan**

Partner

DDI: +64 9 979 2128  
Fax: +64 9 379 3224  
Email: [allan@brookfields.co.nz](mailto:allan@brookfields.co.nz)  
Web: [www.brookfields.nz](http://www.brookfields.nz)  
Level 9, Tower One  
205 Queen Street  
AUCKLAND, NEW ZEALAND

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**From:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Sent:** Monday, 14 June 2021 2:39 pm  
**Subject:** FW: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Good afternoon PC48-50 applicants and submitters

Please find attached a memorandum from the applicant's counsel for PCs 48-50. This has been sent to the hearing panel this afternoon and is for your information. I will circulate the panel's response once it is available.

Many thanks

Julie

Julie McKee | Hearings Manager  
Democracy and Engagement Department  
Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902  
Auckland Council, Level 25, Te Wharau o Tāmaki - Auckland House, 135 Albert Street, Auckland  
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**From:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>  
**Sent:** Monday, 14 June 2021 2:29 PM  
**To:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** Jeremy Brabant <[jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)>; 'Sue Simons' <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; 'Kate Storer' <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>  
**Subject:** PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Dear Julie,

We **attach** a joint memorandum on behalf of the applicants for Plan Changes 48, 49 and 50.

As a result of recently announced changes to the New Zealand Upgrade Programme affecting the funding of road network improvements at Drury, the applicants seek adjustments to aspects of the evidence exchange timetable and to the format of the hearings. As noted in the memorandum, the applicants would be pleased to attend a procedural conference with the commissioners and interested submitters on short notice to address the issues raised in the memorandum.

Please forward the memorandum to the commissioners and to the submitters on all three plan changes.

Regards,  
Douglas Allan

**Douglas Allan** PARTNER

phone. +64 9 307 2172 Cell +64 021 680 562 email. [dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)

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**From:** [David Mead](#)  
**To:** [Celia Davison](#); [Craig Cairncross](#); [Corina Faesenkloet](#)  
**Subject:** PPCs 48 to 50 sec 42A response.  
**Date:** Thursday, 17 June 2021 3:44:37 PM

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In response to the 14 June memo from the plan change requestors seeking amended timing to take account of the revised NZUP programme announced on 4 June 2021, I note the following from the perspective of section 42A reporting:

1. The sec42A report dated 17 June 2021 on PPC 48 is based on the analysis and reporting on the plan changes pre the 4 June NZUP announcement
2. Sec 42A reports on PPC 49 and 50 are currently being finalised in accordance with the Panel's directions (i.e. PPC 49 to be circulated 24 June and PPC 50 1 July).
3. The revised NZUP programme makes some of that reporting redundant, the extent of which is unclear at this stage, until revised transport assessments are provided by the plan change requestors and these assessments have been analysed. I note that all assessments to date have identified the importance of the Mill Road extension being in place.
4. I note that there are important links between transport infrastructure serving the proposed developments and urban form outcomes (zoning, density, linkages etc). This makes it complex to split the hearings as proposed. Until the revised transport assessments are provided, then the recommendations on matters such as zoning, urban design etc made in the current sec 42A reports can only be provisional (particularly given the extent to which the AUP RPS refers to land use and transport integration).
5. Once revised transport planning assessments are available from the requestors, I will need to reassess the recommendations made in the June sec 42A reports, not just in relation to transport, but also in terms of urban form, height/density, zoning, linkages etc.
6. This reassessment will take more than a week, and the requestors and submitters should have the opportunity to review the amended recommendations and call evidence, if need be.

I therefore see substantial problems with the suggestion process from the requestors in para 10, namely that:

- (a) The Applicants file their Traffic Evidence three weeks prior to the resumed hearing date(s);*
- (b) That the interested submitters file their Traffic Evidence two weeks prior to the resumed hearing date(s); and*
- (c) That a supplementary section 42A Report addressing the Traffic Evidence be circulated one week prior to the resumed hearing date(s).*

In particular:

1. Council experts (traffic, urban design, urban planning) will need time to analyse the revised transport assessments for all 3 plan change areas, as well as take into account the views of submitters This is likely to take more than 5 days.
2. The timetable does not appear to offer any time for expert conferencing over the new transport assessments, which will likely result in some miss understandings and repetitive evidence, given the tight timeframes

3. To provide an appropriate re assessment of the modified plan change request against the AUP and other relevant documents, I will need to prepare comprehensive addendums to the current 42A reports. Three reports will need to be prepared, each of which may take at least a week to ensure robust reporting to the Panel.
4. The new reports will need to address more than traffic evidence, as the implications for zoning, density, linkages and other aspects of the proposed Precincts arising from the amended transport assessments will also have to be addressed.
5. As mentioned, it is likely that the requestor and submitters will wish to have the opportunity to provide comment/evidence on the revised sec 42A reports.

**David Mead**

P: 09 353 1286 | M: 021 440 961 | E: [d.mead@hyc.co.nz](mailto:d.mead@hyc.co.nz)

Director, Hill Young Cooper Ltd

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Level 1, 27 Chancery Street, Auckland Central

PO Box 106 828, Auckland City 1143

[www.hyc.co.nz](http://www.hyc.co.nz)

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**From:** [Marija Batistich](#)  
**To:** [Julie McKee](#)  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants - response from Auckland Council (the submitter)  
**Date:** Friday, 18 June 2021 9:09:29 AM

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Hi Julie,

Thank you for the emails as below. I confirm that KiwiRail agree with the position of Matthew Allan on behalf of Council entities, that the most efficient and effective approach would be to delay the hearing until the additional work has been undertaken and to ensure that the transport components and the transport-related planning components can be addressed all together.

Kind regards  
Marija

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**From:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Sent:** Thursday, 17 June 2021 12:59 pm  
**Subject:** FW: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants - response from Auckland Council (the submitter)

**CAUTION EXTERNAL EMAIL: Do not click links or open attachments unless you know the content is safe.**

Please accept my sincere apologies for not forwarding this to you earlier in the week.

I forwarded to you all on Monday a joint memorandum from the three applicant's for PC's 48-50 seeking directions from the hearing panel to split the hearings into two parts. Counsel for Auckland Council (the submitter) provided a response on Tuesday this week which I overlooked to forward to all the parties. This is attached along with the covering email below.

I have let the hearing panel know I am only forwarding this memorandum to the parties today. The hearing panel received it on Tuesday. The panel wish to respond to the memorandums as soon as possible so if any other party wishes to provide a response to either the applicants memorandum or to the submitter memorandum, please let me know your intention to do so asap. And it would be appreciated if any response could be received by midday, Friday 18 June.

Many thanks

Julie

**Julie McKee | Hearings Manager**  
**Democracy and Engagement Department**  
Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902  
Auckland Council, Level 25, Te Wharau o Tāmaki - Auckland House, 135 Albert Street, Auckland  
Visit our website: [aucklandcouncil.govt.nz](http://aucklandcouncil.govt.nz)

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**From:** Matthew Allan <[allan@brookfields.co.nz](mailto:allan@brookfields.co.nz)>  
**Sent:** Tuesday, 15 June 2021 10:03 AM  
**To:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>; Jeremy Brabant <[jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)>; 'Sue Simons' <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; Kate Storer <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Rowan Ashton <[ashton@brookfields.co.nz](mailto:ashton@brookfields.co.nz)>; Lisa Wansbrough <[wansbrough@brookfields.co.nz](mailto:wansbrough@brookfields.co.nz)>  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Dear Julie,

We would be grateful if you would forward this email to the Commissioners for PPCs 48-50.

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While our clients understand the reasons why the applicants seek more time to undertake additional modelling and fresh analysis in view of the NZUP changes (including the announcement concerning Mill Road), they are concerned that the process now being proposed will be inefficient and unwieldy, and may prejudice submitters. Our clients are still considering the implications for their evidence / cases.

Needless to say, transport issues, including related planning and funding / financing issues, are key issues for these plan changes. If the applicants need to do more work on transport issues as a consequence of the NZUP announcement – which again is understandable – then the appropriate course, even though it may occasion some delay for the applicants, is for the hearings to occur later in the year when the plan changes are ready for hearing. All issues can then be addressed at the same time through comprehensive legal submissions and evidence from the parties.

In summary, our clients consider that it would be more appropriate for hearings on PPCs 48-50 to be deferred until later in 2021 when the plan changes are ready for hearing.

In the event that the Panel decides to maintain the existing hearing dates on non-transport matters, then it is essential that there is clarity as to what is in and out of scope for those hearings. As an example, the applicants' proposed arrangements appear to contemplate some transport and transport-related planning matters ('high level planning matters' relating to thresholds and triggers) still being dealt with at the initial hearings. That proposal is not supported by our clients; all matters relating to transport and infrastructure funding and financing would need to be deferred.

We are available to participate in a case management conference on this matter, if required.

Ngā mihi | Kind regards

Matt

**Matthew Allan**

Partner

DDI: +64 9 979 2128  
Fax: +64 9 379 3224  
Email: [allan@brookfields.co.nz](mailto:allan@brookfields.co.nz)  
Web: [www.brookfields.nz](http://www.brookfields.nz)  
Level 9, Tower One  
205 Queen Street  
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---

**From:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>

**Sent:** Monday, 14 June 2021 2:39 pm

**Subject:** FW: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Good afternoon PC48-50 applicants and submitters

Please find attached a memorandum from the applicant's counsel for PCs 48-50. This has been sent to the hearing panel this afternoon and is for your information. I will circulate the panel's response once it is available.

Many thanks

Julie

**Julie McKee | Hearings Manager**  
**Democracy and Engagement Department**

Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902  
Auckland Council, Level 25, Te Wharau o Tāmaki - Auckland House, 135 Albert Street, Auckland  
Visit our website: [aucklandcouncil.govt.nz](http://aucklandcouncil.govt.nz)

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---

**From:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>  
**Sent:** Monday, 14 June 2021 2:29 PM  
**To:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** Jeremy Brabant <[jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)>; 'Sue Simons' <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; 'Kate Storer' <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>  
**Subject:** PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Dear Julie,

We **attach** a joint memorandum on behalf of the applicants for Plan Changes 48, 49 and 50.

As a result of recently announced changes to the New Zealand Upgrade Programme affecting the funding of road network improvements at Drury, the applicants seek adjustments to aspects of the evidence exchange timetable and to the format of the hearings. As noted in the memorandum, the applicants would be pleased to attend a procedural conference with the commissioners and interested submitters on short notice to address the issues raised in the memorandum.

Please forward the memorandum to the commissioners and to the submitters on all three plan changes.

Regards,  
Douglas Allan

**Douglas Allan** PARTNER

phone. +64 9 307 2172 Cell +64 021 680 562 email. [dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)

---

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**From:** [Sue Simons](#)  
**To:** [Jeremy Brabant](#); [Douglas Allan](#); [Julie McKee](#)  
**Cc:** [Kate Storer](#); [Alex Devine](#)  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants [BS-SAGA.FID6063]  
**Date:** Friday, 18 June 2021 3:21:47 PM

---

Hello Julie,  
This confirms that Fulton Hogan agrees with Jeremy and Douglas below that a split hearing approach is preferred. Thanks.

**Sue Simons**  
Partner



**Berry Simons Environmental Law**  
Level 1, Old South British Building, 3-13 Shortland Street, Auckland  
PO Box 3144, Shortland Street, Auckland 1140  
**T** 09 969 2300 **D** 09 909 7311 **M** 021 545 554 **F** 09 969 2304  
**W** [berrysimons.co.nz](http://berrysimons.co.nz)

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**From:** Jeremy Brabant <[Jeremy@brabant.co.nz](mailto:Jeremy@brabant.co.nz)>  
**Sent:** Friday, 18 June 2021 12:57 PM  
**To:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>; Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** Kate Storer <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Sue Simons <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>  
**Subject:** Re: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Julie,

Further to the below, I advise that Oyster Capital agrees with the position as put forward by Douglas Allan on behalf of Kiwi.

Regards

Jeremy

Jeremy Brabant | Barrister

P. 09 300 1256  
M. 021 494 506  
E. [jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)

Level 4, Vulcan Building Chambers  
Cnr Queen Street and Vulcan Lane, Auckland  
PO Box 1502  
Shortland St  
Auckland, New Zealand

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**From:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>  
**Sent:** Friday, 18 June 2021 2:54 PM  
**To:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** 'Kate Storer' <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Jeremy Brabant <[Jeremy@brabant.co.nz](mailto:Jeremy@brabant.co.nz)>; 'Sue Simons' <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>  
**Subject:** FW: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Dear Julie,

Thank you for your email and attachments.

Kiwi's preference remains to proceed with the split hearing as suggested in the joint memorandum. It considers that the traffic matters can appropriately be separated from the balance of the issues and that the distinction between the topics should be apparent once Kiwi's evidence on the initial hearing is exchanged.

Kiwi notes Mr Mead's concerns regarding the suggested evidence and report exchange timetable leading up to the resumed hearing, however, and suggests that the timetable be refined once a date has been allocated for the resumed hearing.

Please let us know if you require any further information from us. Our expectation is that Sue Simons and Jeremy Brabant will reply separately on behalf of their respective clients.

Regards,  
Douglas

**Douglas Allan** PARTNER

phone. +64 9 307 2172 Cell +64 021 680 562 email. [dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)

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**From:** Julie McKee <Julie.McKee@aucklandcouncil.govt.nz>  
**Sent:** Friday, 18 June 2021 11:17 AM  
**To:** Douglas Allan <dallan@ellisgould.co.nz>; Jeremy Brabant <jeremy@brabant.co.nz>; 'Sue Simons' <Sue@berrysimons.co.nz>  
**Cc:** 'Kate Storer' <Kate@berrysimons.co.nz>; Alex Devine <ADevine@ellisgould.co.nz>  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Good morning Douglas, Jeremy and Sue

Auckland Council (the regulator) and Kiwirail have both responded today to your memorandum and Matthew Allen's. I have attached these for you. The hearing panel have asked if the three applicants wish to respond to these, particularly to David Mead's.

Lomai Properties also responded but their concerns were around ensuring PC61 is not delayed should PC's 48-50 be delayed.

Can you please let me know if you wish to respond, and if so, when you may be able to do so. The hearing panel chair is keen to respond to your memorandum as soon as possible, noting he is in a hearing in the south island on Mon-Wed next week.

Many thanks

Julie

**Julie McKee | Hearings Manager**

**Democracy and Engagement Department**

Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902

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Regards,

Douglas Allan

**Douglas Allan PARTNER**

phone. +64 9 307 2172 Cell +64 021 680 562 email. [dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)

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**BEFORE AN INDEPENDENT HEARING PANEL  
APPOINTED BY THE AUCKLAND COUNCIL**

**IN THE MATTER**

of the Resource Management  
Act 1991 (Act)

**AND**

**IN THE MATTER**

of an application to Auckland  
Council for private plan change  
61 to the Auckland Unitary Plan  
(Operative in Part) by Lomai  
Properties Limited

---

**MEMORANDUM OF COUNSEL ON BEHALF OF LOMAI PROPERTIES LTD  
IN RELATION TO TIMETABLING AND OTHER PROCEDURAL MATTERS**

**Dated: 18 June 2021**

---

---

 **Simpson Grierson**  
Barristers & Solicitors

W S Loutit / R S Abraham  
Telephone: +64-9-977-5092  
Mobile: +64 21-839-422  
Email: [bill.loutit@simpsongrierson.com](mailto:bill.loutit@simpsongrierson.com)  
DX CX10092  
Private Bag 92518  
Auckland

## MAY IT PLEASE THE HEARING PANEL

1. This memorandum is filed on behalf of Lomai Properties Ltd (**Lomai**) as applicant of Private Plan Change 61 to the Auckland Unitary Plan (Operative in Part) and a submitter on Private Plan Changes 48 to 51.
2. Lomai seeks directions from the Panel regarding two procedural issues following various correspondence between the Panel and other applicants and submitters on the Drury plan changes.<sup>1</sup>

### Timing of hearing on PC61

3. For the avoidance of doubt, Lomai respectfully seeks directions confirming that the hearing on PC61 will not be delayed, regardless of any delays that may arise in the timetables for any or all of the 'Drury East' plan changes (PC48, PC49 and PC50).
4. As part of 'Drury West', PC61 is unrelated to the Drury East plan changes in terms of transport infrastructure. PC61 operates independently, is not reliant on the (now deferred) Mill Road upgrade, and can manage its traffic effects through local upgrades that it has offered to undertake.
5. The government's NZUP announcement (4 June 2021) provides support for development in Drury West to proceed with haste.<sup>2</sup> This reinforces the staging in the Drury-Opāheke Structure Plan and the Future Urban Land Supply Strategy under which Drury West is to be developed first (development ready from 2022) and Drury East is to be developed second.
6. As such, any delays in hearing the Drury East plan changes do not provide reason or justification for delaying PC61.
7. Furthermore, should earlier hearing time become available (because of delays to Drury East hearing timetables or otherwise) Lomai would be open to having PC61 heard earlier. Lomai acknowledges that any change in the timetable would need to be acceptable to the s42A author.

1 Memorandum from Berry Simons for Karaka and Drury Ltd dated 10 June; Direction from the Panel on Plan Change 51 dated 11 June; Joint Memorandum on behalf of Kiwi Property Holdings No. 2 Ltd, Fulton Hogan Land Development Ltd and Oyster Capital Ltd dated 14 June; email from Matthew Allan on behalf of Auckland Council (submitter) and Auckland Transport dated 17 June.

2 The NZUP Fact Sheet: South Auckland states (**emphasis added**):  
*...Savings from these changes to Mill Road will allow investment in transport upgrades to release housing and local centres in Drury in a way that supports the Government's decarbonisation goals. The projects to be considered will include regional cycleways, arterial corridors that provide direct walking, cycling and/or bus access to stations and projects within or crossing state highway corridors to help release additional housing in Drury West.*

## Scope of section 42A reports

8. Lomai was surprised and concerned to read the legal opinion provided to Auckland Council by DLA Piper (4 March 2021) regarding the scope of s42A reports and discussions between the s42A author and plan change applicants. The Panel's minute of 11 June regarding PC51 acknowledged the benefit to be had from discussions between applicants, submitters and Council (regulatory) and encourages the s42A author to address proposed modifications to plan changes.
9. Lomai considers that there is no legal basis for the proposition in the DLA opinion. In fact, this approach would likely be inconsistent with the Council's obligations under s18A to use timely, efficient, consistent and cost-effective processes when exercising powers and performing functions under the RMA. It would result in a s42A report based on an out-of-date plan change which we expect would be of little assistance to the Panel. It may also be a disincentive to applicants engaging with submitters and narrowing issues ahead of a hearing.
10. We add that it is appropriate (and usual practice) for any proposed modifications to plan changes to be distributed to all submitters.

## Directions

11. Lomai respectfully seeks the following directions from the Panel:
  - (a) that the hearing of PC61 not be delayed;
  - (b) that, should earlier hearing time become available, the Panel will make enquires (including seeking the opinion of the s42A author) to determine whether PC61 can be heard earlier;
  - (c) that the s42A report for PC61 be required to address proposed modifications to PC61 since notification.

**Date:** 18 June 2021

**Signature:**



---

W S Loutit / R S Abraham  
Counsel for Lomai Properties Ltd

**From:** [Helen Andrews](#)  
**To:** [Julie McKee](#)  
**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants - response from Auckland Council (the submitter) [BS-SAGA.FID1874]  
**Date:** Friday, 18 June 2021 11:53:37 AM

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Hi Julie,

Further to your email below, KDL's position is that provided there is no change to the PC51 hearing timetable, KDL is neutral as to whether the Drury East plan change hearings are split as the applicants have requested, or deferred completely. We are of course also happy to attend a case management conference on timetabling issues, should the Panel consider that is required.

Kind regards,

**Helen Andrews**  
Partner



**Berry Simons Environmental Law**  
Level 1, Old South British Building, 3-13 Shortland Street, Auckland  
PO Box 3144, Shortland Street, Auckland 1140  
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---

**From:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Sent:** Thursday, 17 June 2021 12:59 pm  
**Subject:** FW: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants - response from Auckland Council (the submitter)

Good afternoon applicants, submitters and council reporting team

Please accept my sincere apologies for not forwarding this to you earlier in the week.

I forwarded to you all on Monday a joint memorandum from the three applicant's for PC's 48-50 seeking directions from the hearing panel to split the hearings into two parts. Counsel for Auckland Council (the submitter) provided a response on Tuesday this week which I overlooked to forward to all the parties. This is attached along with the covering email below.

I have let the hearing panel know I am only forwarding this memorandum to the parties today. The hearing panel received it on Tuesday. The panel wish to respond to the memorandums as soon as possible so if any other party wishes to provide a response to either the applicants memorandum or to the submitter memorandum, please let me know your intention to do so asap. And it would be appreciated if any response could be received by midday, Friday 18 June.

Many thanks

Julie

**Julie McKee | Hearings Manager**  
**Democracy and Engagement Department**  
Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902  
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**From:** Matthew Allan <[allan@brookfields.co.nz](mailto:allan@brookfields.co.nz)>  
**Sent:** Tuesday, 15 June 2021 10:03 AM  
**To:** Julie McKee <[Julie.McKee@aucklandcouncil.govt.nz](mailto:Julie.McKee@aucklandcouncil.govt.nz)>  
**Cc:** Douglas Allan <[dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)>; Alex Devine <[ADevine@ellisgould.co.nz](mailto:ADevine@ellisgould.co.nz)>; Jeremy Brabant <[jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)>; 'Sue Simons' <[Sue@berrysimons.co.nz](mailto:Sue@berrysimons.co.nz)>; Kate Storer <[Kate@berrysimons.co.nz](mailto:Kate@berrysimons.co.nz)>; Rowan Ashton

<[ashton@brookfields.co.nz](mailto:ashton@brookfields.co.nz)>; Lisa Wansbrough <[wansbrough@brookfields.co.nz](mailto:wansbrough@brookfields.co.nz)>

**Subject:** RE: PC48, 49 and 50 - Drury - Joint Memorandum by Applicants

Dear Julie,

We would be grateful if you would forward this email to the Commissioners for PPCs 48-50.

We have sought initial feedback from our clients (Auckland Council, as submitter, and Auckland Transport) on the applicants' proposals, as outlined in the **attached** memo.

While our clients understand the reasons why the applicants seek more time to undertake additional modelling and fresh analysis in view of the NZUP changes (including the announcement concerning Mill Road), they are concerned that the process now being proposed will be inefficient and unwieldy, and may prejudice submitters. Our clients are still considering the implications for their evidence / cases.

Needless to say, transport issues, including related planning and funding / financing issues, are key issues for these plan changes. If the applicants need to do more work on transport issues as a consequence of the NZUP announcement – which again is understandable – then the appropriate course, even though it may occasion some delay for the applicants, is for the hearings to occur later in the year when the plan changes are ready for hearing. All issues can then be addressed at the same time through comprehensive legal submissions and evidence from the parties.

In summary, our clients consider that it would be more appropriate for hearings on PPCs 48-50 to be deferred until later in 2021 when the plan changes are ready for hearing.

In the event that the Panel decides to maintain the existing hearing dates on non-transport matters, then it is essential that there is clarity as to what is in and out of scope for those hearings. As an example, the applicants' proposed arrangements appear to contemplate some transport and transport-related planning matters ('high level planning matters' relating to thresholds and triggers) still being dealt with at the initial hearings. That proposal is not supported by our clients; all matters relating to transport and infrastructure funding and financing would need to be deferred.

We are available to participate in a case management conference on this matter, if required.

Ngā mihi | Kind regards

Matt

**Matthew Allan**

Partner

**DDI:** +64 9 979 2128  
**Fax:** +64 9 379 3224  
**Email:** [allan@brookfields.co.nz](mailto:allan@brookfields.co.nz)  
**Web:** [www.brookfields.nz](http://www.brookfields.nz)  
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Many thanks

Julie

**Julie McKee | Hearings Manager**

**Democracy and Engagement Department**

Ph 09 977 6993 | Extn (46) 6993 | Mobile 0274 909 902

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Dear Julie,

We **attach** a joint memorandum on behalf of the applicants for Plan Changes 48, 49 and 50.

As a result of recently announced changes to the New Zealand Upgrade Programme affecting the funding of road network improvements at Drury, the applicants seek adjustments to aspects of the evidence exchange timetable and to the format of the hearings. As noted in the memorandum, the applicants would be pleased to attend a procedural conference with the commissioners and interested submitters on short notice to address the issues raised in the memorandum.

Please forward the memorandum to the commissioners and to the submitters on all three plan changes.

Regards,

Douglas Allan

**Douglas Allan** PARTNER

phone. +64 9 307 2172 Cell +64 021 680 562 email. [dallan@ellisgould.co.nz](mailto:dallan@ellisgould.co.nz)

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Level 17, Vero Centre, 48 Shortland Street, Auckland 1140

PO Box 1509, Auckland, New Zealand

DX CP 22003

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