

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

**AND**

**IN THE MATTER** **Private Plan Change 61** (PC 61) – Lomai Properties Limited for land in the area generally bounded by Jesmond Road and Future Urban Zoned land to the east, Oira Road to the west, Future Urban Zoned land to the north and Karaka Road/State Highway 22 to the south (Drury West) to the Auckland Unitary Plan – Operative in Part.

## **MEMORANDUM FROM THE HEARING PANEL**

### **HEARING DATES**

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. The Hearing Panel has received the letter from the Applicant - Lomai Properties Limited (Mr Khan)<sup>1</sup> in relation to the hearing of PC 61. The Hearing Panel acknowledges the concerns raised by Mr Khan in his letter.
3. Mr Khan asks, in summary: - that the hearing of PC 61 not be delayed from its current scheduled dates (and held on-line if necessary) due to the current Auckland covid lock down restrictions; or if it is determined that a delay is required (to hold a face-to-face hearing), any delay be no more than one or two weeks.
4. The Hearing Panel's current position is that a face-to-face hearing will be held in the week commencing 4 October 2021. We will all be in better position to know if this is possible once the Government makes its announcement on the 20 September 2021 about whether Auckland will move down an alert level, and if it is level 3 – for how long, and any hearing policy adopted by the Auckland Council. At that time the Hearing Panel will make a decision on the hearing dates, location and format. Parties will be advised at that time.
5. The Hearing Panel is not prepared to make a decision on whether an on-line format hearing will be held at this time. The reasons for this are the same as those set out in our Direction for PC 51<sup>2</sup>. Furthermore, it is our view that we need to better understand the nature of the evidence to be presented at any hearing before making any decision on the hearing format.
6. Any enquiries regarding this Memorandum or any 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)

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<sup>1</sup> Dated 14 September 2021

<sup>2</sup> Dated 2 September 2021

*Greg Hill*

Greg Hill - Chairperson

15 September 2021

# L O M A I

14 September 2021

Greg Hill, Karyn Kurzeja and Mark Farnsworth  
Independent Commissioners appointed by Auckland Council  
to hear PC61

Sent by Email

Dear Mr Hill, Ms Kurzeja and Mr Farnsworth

## **PC61 Hearing, 4-6 October 2021**

1. I am the owner and director of Lomai Properties Limited (**Lomai**), the applicant of Plan Change 61 (private) Waipupuke to the Auckland Unitary Plan. As you know, PC61 is scheduled to be heard on 4-6 October 2021.
2. In light of recent government announcements, it is possible (or even likely) that Auckland will be in COVID Alert Level 3 or 4 on 4 October which is when the hearing for Plan Change 61 is due to commence. My lawyers have previously written to you expressing Lomai's strong preference for the hearing to proceed as scheduled and be moved online. Since this, however, I am aware that the Panel has directed that private plan change 51 (**PC51**) be postponed until 4-9 November 2021. The Panel have said it would not be appropriate or fair to hold the PC51 hearing 'virtually' because of the number of witnesses to be heard, the complexity of issues involved, and because of childcare and other family responsibilities.
3. Lomai requests that the Panel takes a different approach to hearing PC61 and proceeds with the hearing on 4 October (online if necessary) or moves the hearing a week or two weeks later than scheduled as opposed to resequencing timing to a much later date. The reasons for this are:
  - (a) Lomai is in a completely different position to the applicant of PC51 (and the applicants of plan changes 48, 49 and 50). Lomai is ready to proceed with earthworks this coming season, which will enable development to begin onsite as early as November 2021. Auckland Council has agreed to process Lomai's bulk earthworks and subdivision consent applicants concurrently with PC61 (being granted shortly after the plan change has been approved). These applications have been lodged. Lomai is ready to go.
  - (b) In addition to resource consent applications for bulk earthworks and subdivision, Lomai has also lodged EPA applications for Culvert Works on Oira Rd, Wastewater and Potable Water bulk infrastructure extensions from the vicinity of Bremner Road to the site. These are significant infrastructure investments.
  - (d) Lomai has proposed and is fully funding major works to address traffic effects including building a new 2 lane roundabout at SH22/Oira Rd, upgrading Oira Rd, building a network of walkways and cycle ways. The list of traffic projects has been agreed with Waka Kotahi and Auckland Transport.

- (e) Delaying the PC61 hearing will have significant implications on the timing of Lomai's development, in a way that does not affect the other plan change applicants. For Lomai, a delay beyond one or two weeks corresponds to delaying the development by an entire year as the earthworks season window will have missed. This has significant implications on holding costs and the ultimately the feasibility of Waipupuke.
- (f) Specifically, Lomai's funding is approved and is one of the biggest development transactions in the country. However, it is contingent on approval of the plan change and resource consent. If the plan change is not approved by the settlement date, the development is at risk of not proceeding.
- (g) Lomai has been very consistent in its requests to the Panel and has advised of its unique position in terms of timing several times, including making submissions seeking early hearing dates. This position should not come as a surprise to the Panel.
- (h) Waipupuke is in Stage 1 of the Drury-Opāheke Structure Plan, which states it is to be 'development ready' by 2022. The only way Waipupuke will be development ready by 2022 is if the hearing proceeds on 4 October or within days of this date.

4. As can be seen, a decision by the Panel to delay the hearing will have significant implications on Waipupuke and on the provision of more housing which is urgently needed. Lomai proposes the following options (should Auckland remain in Alert Level 3 or 4 on 4 October):

- (a) The hearing is moved to 6-8 October if Auckland moves to Level 2 on mid-night 5<sup>th</sup> October; or
- (b) The hearing proceeds online, as scheduled. I understand that this is now common practice for Council-level hearings as well as Environment Court and other higher Courts; or
- (c) The hearing proceeds online, but across more days to allow the Panel to take breaks to convene and discuss the evidence they have heard. For example, evidence could be grouped into topics with two-hour breaks following each topic to allow the Panel to discuss what they have heard; or
- (d) The hearing could even be heard across several half days. This may alleviate the Panel's concerns regarding childcare obligations and provide even more time for deliberations; or
- (e) If none of these options are acceptable to the Panel, then I request that PC61 hearing dates be moved back a week (rather than deferred until after the delayed hearings on other Drury plan changes). I consider this is justified given Waipupuke is ready to proceed with earthworks this season, while no other developments are (and therefore don't suffer the same far-reaching consequences of a prolonged delay).

5. I strongly urge the Panel to attempt to accommodate PC61 when it is scheduled, or at the very least with only a minor delay. I suggest there are several options available if the problem is looked at creatively. Waipupuke and its consultants have worked very hard to ensure it will be ready for development in 2022 (in accordance with the Drury-Opāheke Structure Plan). It would be extremely disappointing, and risk putting the entire development in jeopardy if this could not occur due to technological issues.

Yours sincerely



**Ballu Khan**  
**Director**

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