

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

**AND**

**IN THE MATTER** of Private Plan Change 67 – Hingaia 1 Precinct to the Auckland Unitary Plan

**HEARING DIRECTION #3 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 – Bill Smith (Chairperson), Rebecca Skidmore and Mark Farnsworth. 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.
2. The Plan Change aims to rezone properties at 144, 152, 158, 180 and 252 Park Estate Road, Hingaia and make changes to the Hingaia 1 Precinct provisions. The rezoning relates to changing the zone of land from Residential Mixed Housing Suburban to Residential Mixed Housing Urban zone and a relocation of Business Neighbourhood Centre zone in the Auckland Unitary Plan (Operative in Part) 2016.
3. This Direction outlines two issues dealing with Expert Conferencing and Revised Schedule for the hearing dates, circulation of evidence and submissions.
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 directs expert conferencing to take place the week of 31 January 2022.
5. In a letter dated 23 December 2021 from Asher Davidson (Counsel for the Applicant) the applicant agreed that a number of issues could benefit from expert conferencing (for full details see copy of letter attached).
6. The purpose of the conferencing is for the parties’ experts to identify, discuss and potentially resolve (or not) the issues in contention between them. This may enable all parties to reduce the scope and length of the expert evidence and to focus on those matters that remain in contention.
7. At this stage and without intending to constrain the expert conferencing the Hearing Panel directs there be expert conferencing on:
  - Planning;
  - Transportation; and
  - Any other topics that could benefit from expert conferencing.

These sessions may be attended by experts from a mix of disciplines as considered appropriate. For example, planning experts may be invited to attend Transportation sessions and vice versa.

8. The Hearing Panel directs that conferencing is undertaken in accordance with the Environment Court Practice Note 2014 and in particular – Appendix 3 – Protocol for Expert Witness Conferences. This includes section 3 of that Appendix – The Role of Counsel in expert conferencing. Also, those experts participating in the conferencing are to make themselves available to appear at the hearing in person if required to do so by the Hearing Panel.
9. The Hearing Panel has appointed Ms Marlene Oliver as the independent facilitator. She is authorized to:
  - Act as independent facilitator;
  - In conjunction with the Council's Hearing Manager, invite the applicant, all submitters and the Council as regulator (in its s42A reporting function) to advise whether their expert witnesses in the relevant fields will attend the conferencing sessions;
  - Liaise with the applicant, submitters, Council as regulator and experts who register an interest in attending the conferencing;
  - In conjunction with the Council's Hearing Manager, organize the topics (including agendas), attendees, sessions, times and venues for conferencing (noting that online conferencing is preferred).
10. As the hearing was scheduled to be heard on 1<sup>st</sup> to 4<sup>th</sup> February 2022 it is expected that all experts should be available for expert conferencing during that week. In accordance with this Direction, the detailed scheduling of sessions is delegated to Ms Oliver, in conjunction with the Council's Hearings Manager.
  - (a) For each session, a joint witness statement should be prepared identifying areas of agreement and disagreement, with the reasons for each witness's position recorded succinctly. The statement from the planning conference should be provided to the transportation witnesses at least one full working day before their conference, and both statements will be provided to the Council's Hearing Advisor no later than Wednesday, 9 February 2022.
11. That, accordingly, all parties are to inform the Council's Hearing Advisor, Nick Somerville, by email (address below) of the expert witnesses (name, expertise and contact details) who will attend the conferencing sessions. This is to be provided to Mr Somerville no later than **4.00pm on Monday 17 January 2022**.

12. While these directions cannot compel all of the parties to agree to take part in the conferencing sessions or compel expert witnesses to attend and participate, we strongly recommend that they do so. The sessions will provide a degree of formality for those parties and witnesses who attend in an effort to clarify and narrow the issues in contention. This should ensure that the hearing is more efficient than if conferencing sessions were not held.
13. The hearing panel amends the hearing timetable from its previous direction and accordingly directs the following:
  - (a) Pursuant to section 42A of the RMA, the S42A hearing report was released to all parties on Thursday, 23 December 2021  
  
The hearing panel is not able to direct the section 42A hearing report to include an assessment of the revised provisions as that would be contrary to Part 2 of Schedule 1 of the RMA.
  - (b) 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 Hearings Advisor no later than **midday, Friday, 18 February 2022** and will be made available to the parties and on the Council's website no later than 5.00 pm the same day.
  - (c) Should changes to the Plan Change be proposed by the applicant the evidence provided in (b) must include a S32AA report and reasons why any proposed changes are in scope.
  - (d) Pursuant to sections 41B(3) and (4) of the RMA, any submitter 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 Hearings Advisor no later than **midday, Friday, 25 February 2022** and will be made available to the parties and on the Council's website no later than 5.00 pm the same day.
  - (e) Pursuant to sections 41B(1) and (2) of the RMA, any rebuttal evidence to be provided by the Applicant is to be provided to the Council's Hearings Advisor no later than **4pm, Wednesday, 2 March 2022** and will be made available to the parties and on the Council's website no later than 5.00 pm the same day
  - (f) The hearing shall commence on **Monday, 7 March 2022** and has been set down for 2 days, with 1 overflow day.
14. 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 Hearings Advisor no later than **midday, Thursday, 3 March 2022** and will be made available to the parties and on the Council's website no later than 5.00 pm the same day

15. The Hearing Panel also encourages parties to pre-circulate any opening legal submissions in advance of the hearing, preferably no later than **midday, Friday, 4 March 2022**. The Hearing Panel and other parties will be assisted if the legal submissions can be pre-read.
16. 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.
17. At the date of this Direction Auckland is in the orange setting of the COVID-19 Protection Framework. Face-to-face hearings are able to be held at this level. Should a change in alert levels or other factors determine at any time that it is not safe to hold the hearing face-to-face, the Hearings Advisor will contact you about how we will proceed with a virtual hearing.

Any enquiries regarding these Directions or related matters should be directed to the Council's Hearings Advisor, Nick Somerville, by email at [nick.somerville@aucklandcouncil.govt.nz](mailto:nick.somerville@aucklandcouncil.govt.nz).



Bill Smith, Chairperson  
11 January 2022

## **Before Auckland Council**

In the matter of                    the Resource Management Act 1991

And

In the matter of                    Private Plan Change 67 – Hingaia Precinct to the Auckland Unitary  
Plan

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### **Memorandum of counsel for applicant requesting variation of Hearing Direction #2**

Dated 23 December 2021

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#### **May it please the Chair**

1. Hearing Direction #2, dated 14 December 2021, set out timetabling directions in preparation for a hearing commencing on 1 February 2022. Separately, Council's hearings advisors have advised that the Chair has indicated that facilitated expert conferencing prior to the hearing may assist in narrowing and refining the issues between the parties.
2. Having this morning seen the Hearing Report, the Applicant agrees that there are a number of issues which could benefit from expert conferencing and which should mean the evidence and the hearing can be more focussed and efficient. Provided such conferencing can be arranged in a timely manner, the Applicant therefore respectfully requests that the hearing be deferred and that the Panel make directions in relation to expert conferencing on the topics of planning and traffic and transportation.
3. The Applicant has considered whether conferencing on water and wastewater servicing, stormwater and ecology could be the subject of conferencing. However these issues appear able to be resolved through the hearing process and/or as part of the planners' conferencing, and separate sessions on these topics are not sought.

4. In terms of ensuring conferencing is efficient and appropriately targeted, it will be important for the experts to have a good understanding of the differences, if any, in residential density / yield between the existing plan provisions and the changes proposed. This will provide an appropriate basis for the transportation witnesses to assess the effects of the change. As such, we respectfully request that a planners' conference be convened first, with their joint statement available to inform subsequent sessions.
5. Directions are respectfully suggested as follows:
  - (a) Expert witness conferencing for planning witnesses to be held in the week of 17 January 2022. It is anticipated that one day should be allowed for this;
  - (b) Expert witness conferencing for transportation witnesses to be held in the week of 24 January 2022. It is anticipated that a half day should be sufficient for this session;
  - (c) For each session, a joint witness statement should be prepared identifying areas of agreement and disagreement, with the reasons for each witness's position recorded succinctly. The statement from the planning conference should be provided to the transportation witnesses at least 3 working days before their conference, and both statements will be provided to the Council's Hearing Advisor no later than 28 January 2022;
  - (d) The dates in the Hearing Panel's Direction #2 would then be amended as follows:
    - (i) Paragraph 3(b) regarding the Applicant's expert evidence would be amended to require filing by 8 February 2022;
    - (ii) Paragraph 3(d) regarding the submitter's expert evidence would be amended to require filing by 15 February 2022;
    - (iii) Submitter's written statements encouraged to be filed by 16 February 2022;
    - (iv) Paragraph 3(e) regarding the Applicant's rebuttal evidence would be amended to require filing by 17 February 2022;

- (v) Paragraph 3(f) would be amended such that the hearing would commence on 21 February 2022, or as soon thereafter as the Panel can accommodate;
  - (vi) Parties encouraged to provide legal submissions 2 working days prior to the commencement of the hearing. I note the Applicant does intend to precirculate legal submissions, as it supports steps to streamline the hearings process.
6. As noted above, the Applicant's expectation is that the conferencing will mean the time required for hearing will be reduced, and it is not anticipated that the overflow day will be required.
  7. As recorded above, the Applicant is supportive of expert conferencing provided that it does not result in significant delays to the current timetable. We understand from Ms McKee that hearing time in late February / early March is available. In the event that is not the case, and the hearing would need to be pushed out much further, then the Applicant's preference is to retain the current hearing date. We appreciate the difficulty with the time of the year, but would nevertheless appreciate if the Panel could give at least an indication of whether the suggestions above are considered appropriate and achievable this week.
  8. If it assists, I am happy to provide further information or participate in a brief telephone conference.



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**Asher Davidson**  
**Counsel for Hugh Green Ltd**  
**23 December 2021**