

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. 2 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 Hearing Panel – Janine Bell (Chair), Nigel Mark-Brown 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. 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. The hearing panel Direction #1 dated 25 May 2023 outlined the evidence exchange timetable for the hearing. On Friday 7 July 2023, the applicant’s legal counsel sent an email to the panel requesting expert conferencing, an amended evidence exchange timetable and for the hearing to be rescheduled. A copy of the email is attached.
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.
5. The purpose of the conferencing is for the parties’ experts to identify, discuss and potentially resolve (or not) issues in contention between them. This may enable all parties to reduce the scope and length of expert evidence; and to focus on those matters that remain in contention.
6. 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.
7. At this stage and without intending to constrain the expert conferencing the Hearing Panel directs there be expert conferencing on planning and transportation.

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 will appoint an independent facilitator. This person will be 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 and applicant, organize the topics (including agendas), attendees, sessions, times and venues for conferencing.
9. The expert conferencing shall take place during the weeks of 14 August and / or 21 August 2023. In accordance with this Direction, the detailed scheduling of sessions is delegated to the facilitator, in conjunction with the applicant.
10. 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. All joint witness statements are to be provided to the Hearings Manager no later than Friday 1 September 2023.
11. That, accordingly, all parties are to inform the Council's Hearings Manager, Julie McKee 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 Ms McKee no later than **4.00pm on Wednesday 19 July 2023**.
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 Monday, 3 July 2023
 - (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, 22 September 2023** 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, 6 October 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) and section 42A of the RMA, any rebuttal evidence to be provided by the Applicant and any addendum S42A report to be provided by the council reporting planner is to be provided to the Council's Hearings Advisor no later than **midday, Monday, 16 October 2023** 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 after 16 October 2023, but no later than 17 November 2023. All parties will be advised of the new hearing date as soon as possible.
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, Monday 16 October 2023** 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 two working days before the hearing commences. 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. 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 horizontal line underneath the name.

Janine Bell, Chairperson
12 July 2023

From: [Daniel Sadlier](#)
To: [Julie McKee](#)
Cc: [Todd Elder](#); [Warren MacLennan](#); [Eryn Shields](#)
Subject: RE: Private Plan Change 86 - 41-43 Brigham Creek Road: memorandum of counsel for Hearing Chair (once appointed)
Date: Friday, 7 July 2023 1:47:35 pm

Hi Julie,

Further to our discussion yesterday, we have received and reviewed Mr Elder's s42A report.

A key issue that arises is in relation to the proposed precinct provisions recommended in the report, and in particular the transportation network upgrades (if any) which need must be implemented as a precursor to development within the precinct.

The applicant considers that this issue in particular would benefit from referral to expert conferencing. Conferencing would involve expert transportation consultants and planners for the Applicant, Council and any submitters but in particular Auckland Transport and Waka Kotahi. The Hearing Commissioners would, in our opinion, benefit from these issues being resolved or narrowed in scope to the greatest extent practicable.

However, the Applicant is concerned to ensure that any further delay to the hearing process is not unreasonable. It is also cognisant of the fact that the reporting planner has annual leave planned to commence in mid-September, which any amended timetable would need to accommodate.

Accordingly, the Applicant respectfully requests that the Hearing Chair consider and make the following amended timetable directions, but only on the basis that a deferred hearing date can be allocated during the period 16 October to 17 November:

- Parties intending to call expert transportation and/or planning witnesses, to identify those witnesses by 17 July 2023.
- Expert conferencing to occur after that date, with JWS to be completed before 1 September 2023.
- Applicant's evidence due 22 September 2023.
- Submitters expert evidence due 6 October 2023.
- Rebuttal evidence, and any addendum s42A report from Council, due 13 October 2023.
- Hearing date set on or after 16 October 2023, but no later than 17 November 2023.

We trust that this email is sufficient for you to seek directions from the Hearing Chair. If the Hearing Chair prefers that I lodge a formal memorandum of counsel, I can attend to that on Monday morning.

Feel free to contact me if you have any questions or need to discuss.

Ngā mihi | Kind regards

Daniel Sadlier PARTNER

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