

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

**AND**

**IN THE MATTER** of a **Notice of Requirement** and **resource consents** for Eastern Busway Stage 2 (EB2 NoR), (EB2) and (EB3R)

**HEARING DIRECTION #2 FROM THE HEARING PANEL**

1. Pursuant to sections 34 and 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of three independent hearing commissioners - Sarah Shaw (chair), Ian Munro, and Nigel Mark-Brown. The Hearing Panel's function is to hear the resource consent applications and submissions and make a recommendation on the Notice of Requirement. It is also to deal with any procedural matters.
2. The applications are:
  - (a) EB2 is a combined Notice of Requirement and Resource Consent associated with Stage 2 of the Eastern Busway Project, with the following key elements:
    - Pakuranga Station - the key station for Pakuranga/Howick users of the busway leading to the Panmure Station and Botany
    - The Reeves Road Flyover - provides for local traffic to bypass the heavily congested Pakuranga Road and Ti Rakau Drive route to the Pakuranga Highway/South-Eastern Highway (SEART) via an overpass between SEART and Pakuranga Road (north)
  - (b) EB3R consists of the construction and operation of a dedicated busway and associated works from SEART to Pakuranga Creek. EB3R includes the following key elements:
    - Widening of Ti Rakau Drive and the provision of a dedicated bus facility within the centre of Ti Rakau Drive that will link with EB2 (design and consenting phase) and EB3C (design and consenting phase)
    - Provision of two intermediate bus stations (Edgewater Station and Gossamer Station)
    - Construction of the western abutment for a future bridge across Pakuranga Creek, adjacent to the existing Ti Rakau Drive Bridge
    - Provision of facilities for buses, general traffic, pedestrians and cyclists along Ti Rakau Drive
    - Improvements to the safety of the existing transport environment for all users
    - New landscaping, and stormwater infrastructure.

3. The hearing has been set down for up to eight days commencing on Monday 8 May 2023. This is to enable the Applicant to present its case and for the submitters to present their submissions to the Hearing Panel.
4. In terms of procedural matters, section 42A of the RMA provides that the Council may prepare a report on the matters to be considered. Section 103B of the RMA provides that for notified resource consents pre-circulation of the section 42A report by the Council and expert evidence from the applicant and submitters is mandatory. Sections 39 and 41B of the RMA provide that for a Notice of Requirement the Council may direct pre-circulation of expert evidence.
5. On 17 February 2023 the Hearing Panel directed pursuant to sections 41B and 42A of the RMA that the following timetable apply for the Notice of Requirement EB2 to bring it into line with that of the resource consents:

Council section 42A report available	5.00pm Thursday 13 April 2023
Applicant's evidence due	12.00 midday, Thursday 20 April 2023
Submitters expert evidence due	12.00 midday, Friday 28 April 2023
Applicant's supplementary evidence and legal submissions requested	5.00 pm, Wednesday 3 May 2023
Submitter's non-expert evidence requested	5.00 pm, Wednesday 3 May 2023
6. On Tuesday 14 March 2023, the panel received a letter from Russell Bartlett KC (see attached) on behalf of The Warehouse Limited seeking 10 working days separation between the due date for the applicant's and the submitters' expert evidence.
7. The Chairperson has considered this request.
8. The s42A report is not able to be provided any earlier and the evidence timetable therefore cannot be adjusted back to provide additional time for expert evidence.
9. However, it is now apparent that the hearing will not require the full eight days initially scheduled. The first hearing week can therefore be vacated and the hearing can commence on **Monday, 15 May 2023**. This will allow additional time for submitter's expert evidence to be provided. To ensure a fair process, the applicant will also be provided the same additional time to provide their evidence. In allocating that time statutory holidays have been taken into account.
10. Mr Bartlett also requested that provision be made for circulation of reply evidence by the applicant.
11. The Chairperson notes that this step had already been included in the timetable referenced above. Sections 103B and 41B of the RMA do not provide for directions that the applicant pre-circulate reply evidence. The reply evidence is therefore requested, rather than directed.
12. In response to the submitter's request for additional time to provide their expert evidence, the Chairperson has made the following directions under sections 103B, 41B and 42A of the RMA. These directions apply to both the resource consents and the Notice of Requirement. *Dates that have **not** changed are indicated in italics.*

13. The Hearing Panel directs as follows:
  - (a) Pursuant to section 42A of the RMA, the section 42A hearing reports shall be provided to the Council's Senior Hearing Advisor no later than 9.00am, **Tuesday, 11 April 2023.**
  - (b) The section 42A hearing report will be on the Council's website no later than 5.00pm **Thursday 13 April 2023.**
  - (c) Pursuant to sections 103B(3) and 41B(1) and (2) of the RMA, the Applicant's evidence for all applications is to be provided to the Council's Senior Hearings Advisor no later than 12.00 midday, **Monday 24 April 2023** and will be on the Council's website no later than 5.00pm the same day.
  - (d) Pursuant to sections 103B(4) and 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 Senior Hearing Advisor no later than no later than 12.00 midday, **Thursday 4 May 2023** and will be on the Council's website no later than 5.00pm the same day.
14. While these Directions do not apply to reply / rebuttal evidence from the Applicant, the Hearing Panel would appreciate any reply / rebuttal evidence from the Applicant to be provided to the Council's Senior Hearings Advisor no later than 12.00 midday, **Wednesday 10 May 2023** and to be made available to the parties and on the Council's website no later than 5.00 pm the same day.
15. While these Directions do not apply to lay or non-expert statements/evidence from submitters, the Hearing Panel would appreciate any written statements to be presented at the hearing by submitters to be provided to the Council's Senior Hearings Advisor no later than 5.00 pm, **Wednesday 10 May 2023.**
16. The Hearing Panel also encourages parties to pre-circulate any opening legal submissions in advance of the hearing, preferably no later than 5.00 pm, **Wednesday 10 May 2023.** The Hearing Panel and other parties will be assisted if the legal submissions can be pre-read.
17. 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 may be read out or the key points highlighted.
18. The hearing panel are still likely to carry out a site visit after hearing the opening legal submissions from the applicant on day one of the hearing.

Any enquiries regarding these Directions or related matters should be directed to the Council's Senior Hearings Advisor, Patrice Baillargeon by email at [patrice.baillargeon@aucklandcouncil.govt.nz](mailto:patrice.baillargeon@aucklandcouncil.govt.nz).

Insert signature

A handwritten signature in black ink, appearing to be 'J.S.', written in a cursive style.

Sarah Shaw  
Chairperson  
16 March 2023