

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

AND

IN THE MATTER of **Private Plan Change 61** – Lomai Properties Limited (Lomai) 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

CLARIFICATION SOUGHT BY LOMAI REGARDING THE HEARING PANEL’S MEMORANDUM - CLARIFICATION RELATING TO IXXX.6.8 DEVELOPMENT STAGING & TRANSPORT UPGRADES

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’s function is to hear the application and submissions and make a decision on the Plan Change proposal. It is also to deal with any procedural matters.
2. The Hearing Panel issued a Memorandum to Lomai (dated 28 November 2021) seeking clarification in relation to the proposed Development Staging & Transport Upgrade provisions and how they function. We posed the following questions:
 - i. In Standards 1 and 2 above an exception is made for 95 dwellings. However, 1(a) and 2(a) refer to “*the dwelling(s) or commercial building(s)*”. We are unclear what the reference to “*commercial building(s)*” means?
 - ii. In Standard 2 above reference is made to “*intersection being upgraded*”. All of the other Standards reference “*upgrade is operational*”. Should Standard 2 also reference “*upgrade is operational*”?
 - iii. The Hearing Panel understands that “*Activities that do not comply with Standard IXXX6.8 (3) – (8)*” are proposed to be a Restricted Discretionary Activity. However, it is unclear to us (including IXXX6.8 (5) – (8) which are linked to the operation of the Drury West rail station and new Secondary School which are not in the control of Lomai): what the mechanism is to ensure a Restricted Discretionary Activity resource consent(s) is sought; who would be required to seek any consent(s); and when would any consent(s) need to be sought, should those upgrades not occur as required?
 - iv. Standard 2 above is “*Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of*

building consent (for new buildings) within Waipupuke with vehicular access to Jesmond Road prior to the Jesmond Road/Karaka Road (SH22) intersection being upgraded..” Standards 3 and 4 require Jesmond Road and Waipupuke Collector Road/Jesmond Road intersection to be upgraded to their ultimate design layout by the time the Jesmond Road/SH22 intersection upgrade is operational. It appears to us that the upgrades required by Standards 2, 3 and 4 would need to occur at the same time. Is our understanding correct? If it is, why are the upgrades required by Standards 3 and 4 a Restricted Discretionary Activity and not a Non-Complying activity as is Standard 2 if those upgrades are not undertaken as required?

- v. What is intended or meant by the term “*interim*” shared pedestrian/cycle path (rule 5, 6 and 8) and the “*ultimate*” shared pedestrian/cycle path (rule 3, 4 and 7)?
- vi. Rules 7 and 8 refer to the “*.design for the shared pedestrian/cycle path*” to be provided where as rules 5 and 6 requires the provision of “*the interim shared pedestrian/cycle path*”. What does the word “*design*” mean?

3. Lomai has sought clarification in relation to iii above¹. They ask:

Point iii, which we would like some further guidance on.

Is the Panel concerned that the trigger for upgrades listed (such as the school, the Jesmond Rd/SH22 intersection and train station) in proposed standard 6.8 (3) – (8) are outside the control of Lomai and therefore should be removed from the plan change and should they be replaced with a consent related mechanism triggered by development of houses or commercial buildings within the plan change?

If so, we drafted an amendment that would address this concern.

4. To clarify – our concern is not that standards 6.8 (3) – (8) are outside the control of Lomai. We simply observed that Lomai does not have control over when the operation of the Drury West rail station and new Secondary School commence). Our clarification is:

- Standard 1 and 2 commence with – “*Subdivision or development within Waipupuke shall not progress beyond the issue of a 224(c) certificate (for subdivisions) or the issue of building consent (for new buildings) until ...*”. Activities that do not comply with Standard IXX6.8 (1) and (2) are a Non-Complying Activity. It is clear to us what is required in relation to these Standards and how they would operate.
- The remaining standards (3 - 8) do not commence with the wording of standards 1 and 2 (and activities that do not comply with Standard IXX6.8 (3) – (8) are a Restricted Discretionary Activity). Without the commencing words in Standards 1 and 2 we are not clear how Standards 3 – 8 are actually ‘triggered’. While we accept they are intended to be ‘Standards’ they appear more as Statements, and we are unsure how they are to operate (unlike Standards 1 and 2). Specifically:

¹ 2 November 2021

- Who is it that will be applying for any necessary resource consent(s) should the standard not be complied with;
- When will any consent(s) need to be applied for; and
- What is the mechanism that would alert the Council that a resource consent(s) was required if Standards 3 – 8 are not complied with.

5. Any enquiries regarding this Memorandum should be directed to the Council's Senior Hearings Advisor, Mr Sam Otter by email at sam.otter@aucklandcouncil.govt.nz.



Greg Hill Chairperson
2 November 2021