

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

AND

IN THE MATTER of Private Plan Change 55

HEARING DIRECTIONS 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, Dr Lee Beattie (Chairperson), Basil Morrison and Hugh Leersnyder. The Hearing Panel's function is to hear the application and submissions and decide on the Plan Change proposal.
2. We (the Panel) received a request from Mr Julian Dawson (applicant's Counsel) dated 15 July 2021 seeking to amend the agreed evidence timetable for the hearing of this Plan Change in light of the significant level of information contained within the Council's officer's (Ms Chloe Trenouth, Consultant Planner) s.42A report. Ms Trenouth has also recommended that the Plan Change be refused.
3. In essence, the applicant would like more time to respond to the issues raised by Ms Trenouth's s.42A report. As a result, Mr Dawson has proposed the following timetable:
 - a. Applicant to provide an outline of proposed amendments to Plan Change together with a brief explanation of the reasons for those amendments and why they are within scope by: 6 August 2021.
 - b. Applicant to provide its expert evidence by 3 September 2021
 - c. Any expert evidence from submitters be provided no later than: 17 September 2021
 - d. The Council to provide an addendum to its s42A Report addressing the Applicant's proposed amendments no later than: 15 October 2021
 - e. The Applicant to provide any expert evidence in rebuttal by: 29 October 2021
 - f. Submitter's non-expert evidence requested no later than 29 October 2021
 - g. The hearing be scheduled for the earliest suitable date following 8 November 2021.
4. We have considered this request and believe it is fair and appropriate that the applicant be provided sufficient time to prepare their Plan Change application as they see fit. Moreover, as set out in our Minute dated 24 June 2021, we were concerned about amendments to the application and whether they would be within scope of the original application as notified.
5. As a result, we agree with Mr Dawson's request, and direct that hearing dates of 2, 3, 4 and 5 August 2021 are vacated and replaced with the dates of 8, 9 10 and 11 November 2021, at a place to be determined by Mr Bevan Donovan (Council's Hearing

Advisor). It's our understanding that Mr Donovan will advise of this location very shortly.

6. We direct an amended evidence timetable as follows.
 - a. Applicant shall provide an outline of proposed amendments to the Plan Change together with a brief explanation of the reasons for those amendments and why they are within scope by 1.00pm 6 August 2021.
 - b. Mr Donovan shall circulate this to all the parties by the close of business on 10 August 2021.
 - c. We will accept submissions from all the parties on the issues of scope by 17 August 2021.
 - d. We shall make a determination on issues of scope by 24 August 2021.

If we find that the amendments are within scope:

- e. Applicant shall provide its expert evidence, with a s.32AA report by 1.00pm on 3 September 2021.
 - f. Any expert evidence from submitters be provided no later than 1.00pm on 17 September 2021
 - g. The Council to provide an addendum to its s42A Report addressing the Applicant's proposed amendments no later than 1.00pm on 15 October 2021
 - h. The Applicant to provide any expert evidence in rebuttal by 1.00pm 29 October 2021
7. Should we find or potentially find that the application is not within scope further directions will be issued, which may include a brief hearing with the parties over the issue of scope only or issuing a direction requiring that a new notice of the application be given.
8. Finally, we do not direct that the lay submitters be required to provide their lay submissions before the hearing but require that they provide at least 10 copies to circulate to all the parties present.

Any enquiries regarding these Directions or related matters should be directed by email to the Council's Hearing Advisor bevan.donovan@aucklandcouncil.govt.nz.



Dr Lee Beattie
Chair on behalf of Commissioner Basil Morrison and Hugh Leersnyder
22 July 2021

BEFORE THE HEARINGS COMMISSIONERS FOR
AUCKLAND COUNCIL

IN THE MATTER OF

The Resource Management Act 1991 ("the Act")

AND

IN THE MATTER OF

Proposed Private Plan Change 55 - Patumahoe

Askew Consultants Limited
Applicant

**Memorandum of the Applicant Requesting Adjournment
and Timetable Directions**

DATED 15th July 2021

**Julian
Dawson**
BARRISTER

e julian@rmalawyer.co.nz **Auckland Office:** 28 Customs
Street East, Britomart,
Auckland
m 0274 200 223 **Northland Office:** 21 Norfolk
Street, Regent,
Whangarei 0112
post PO Box 531,
Whangarei 0140

MAY IT PLEASE THE COMMISSIONERS:

1. This memorandum is filed by the Applicant. The proposal is set down for hearing commencing on Monday 2 August. For the reasons set out following, the Applicant is now requesting an adjournment of the hearing and that amended timetable directions be made.

Background

2. By directions of 28 April 2021, Mr Barry Kaye, the previous Hearings Chairman, required that the Council's section 42A hearing report ("**the Council's Report**") be provided no later than 5.00 pm on Friday 9 July 2021. Further timetable directions were made as follows:
 - (a) Applicant's evidence due: **Friday 16 July 2021 at 12 noon;**
 - (b) Submitters expert evidence due: **Friday 23 July 2021 at 12 noon;**
 - (c) Applicant's supplementary evidence
and legal submissions requested: **Wednesday 28 July 2021 by 9am;**
 - (d) Submitter's non-expert evidence requested: **Wednesday 28 July 2021 by 9am**

The Council's Report

3. The Council's Report was received late on Friday afternoon, leaving little over 4 working days for the Applicant to complete their evidence. The Council's Report is some 800 pages, and it is accompanied by nine technical reports from:
 - (a) Urban Economic Effects Assessment – Susan Fairgray;
 - (b) Urban Design Assessment – Nicole Bitossi
 - (c) Strategic Assessment – Alyssa Jones et al;
 - (d) Productivity Assessment – Stuart Ford
 - (e) Productive Soils Assessment – Dr Reece Hill;
 - (f) Landscape Effects – Ainsley Verstraeten

- (g) Open Space Assessment – Ezra Barwell
- (h) Geotechnical Assessment – James Beaumont
- (i) Transport Assessment – Wes Edwards
4. None of these technical reports had been provided to the Applicant previously, despite multiple requests for their circulation and technical engagement at the earliest possible date.
5. The Council’s Report recommends overall that PC55 should be declined. In reaching that conclusion, and based on the technical reviews and analysis of submissions received, the Council’s Report summarises the key issues to be:
- Loss of productive soils
 - Land use and transport integration
 - Adequate provision of water and wastewater infrastructure
 - Compact urban form¹
6. Alternatively, the Council’s Report concludes that a number of issues could be addressed through the Precinct Provisions and amendments to the Precinct Plan. Amendments of particular note include the deletion of the proposed Future Urban Zone from the Eastern Section and a reconfiguration of the Western Section with regard to the proposed Link Road to Mauku Road, landscape buffering and connectivity to the Patumahoe Domain.
7. The issues of concern and the proposed amendments reflect several of the submissions as well as the technical reports presented by the Council, and the Applicant. Undoubtedly, any proposed amendments to PC55 will be of interest to all of the hearing participants and will need to be considered.
8. The Applicant is concerned that the issues raised in the Council’s Report, and the suggested amendments are given proper consideration prior to the hearing commencing. That will require further evaluation by the Applicant’s technical experts and discussion with some submitters.
9. It is acknowledged also that the submitters will require sufficient time to consider the Council’s Report.

¹ S42A Report at paragraph 566

10. Regarding the provision of water and wastewater infrastructure. The Applicant had previously understood that these issues had been resolved to the satisfaction of Watercare. However, their submission adopts a more nuanced view that now requires further technical assessment and discussion. Whilst the Applicant has had some further discussion with Watercare recently, it is apparent that more work, and time, will be needed to satisfactorily address the provision of water and wastewater infrastructure. Because this has been identified as a key issue in the Council Report, it would ideally be resolved prior to the exchange of evidence, and certainly prior to the hearing commencing.
11. It is thought that a couple of months will be required to address Watercare's concerns.
12. Regarding the amendments proposed by Council to the Precinct Plan. These are fairly broad ranging in that they put at issue the extent of PC55, and the design elements. Traffic, urban design, landscape character, economics and the provision of infrastructure need to be considered. The Applicant's experts need sufficient opportunity to evaluate these suggestions, having only become aware of them on Friday.
13. It is simply not possible for the Applicant, and their technical experts to evaluate the implications and suggested amendments set out in the Council's Report under the current timetable. In making this observation, I note that the Council's protocol in assessing PC55 has excluded any ability for engagement between Council's experts and the Applicant's experts prior to publication of the Council's Report. With respect, this is a paradigm shift in the long-standing approach previously adopted by the Council (and indeed elsewhere), that came about recently without any forewarning whatsoever. When the timetable was originally set, the Applicant did not expect to find themselves in the position it is now in.
14. The Applicant is mindful too of the Panel's previous observation that if amendments to PC55 are put forward, then all parties need to be given sufficient opportunity to consider those, if the potential for adjournment and procedural difficulty is to be avoided later.

Revised Timetable

15. The Applicant therefore requests that the hearing starting on 2 August now be adjourned. It is important that sufficient opportunity be given for consideration and preparation in light of the Council's Report, but the Applicant is also concerned to ensure that momentum is maintained.

16. The Applicant is considering proposed amendments to PC55 in light of the Council's Report and submissions received. It is proposed that having done so, the Applicant will circulate an outline of any proposed amendments, together with a brief statement of the reasons for those amendments and why they are within scope. This would usefully occur prior to the exchange of evidence. The Applicant's expert evidence would then follow, with submitter's expert evidence, and an addendum to the Council's Report being provided. An opportunity for any rebuttal evidence from the Applicant would then be afforded.
17. Considering these circumstances, the Applicant proposes the following timetable now be directed:
- (a) Applicant to provide an outline of proposed amendments to PC55 together with a brief explanation of the reasons for those amendments and why they are within scope by: **6 August 2021**;
 - (b) Applicant to provide its expert evidence by **3 September 2021**;
 - (c) Any expert evidence from submitters be provided no later than: **17 September 2021**;
 - (d) The Council to provide an addendum to its s42A Report addressing the Applicant's proposed amendments no later than: **15 October 2021**;
 - (e) The Applicant to provide any expert evidence in rebuttal by: **29 October 2021**;
 - (f) Submitter's non-expert evidence requested no later than **29 October 2021**;
 - (g) The hearing be scheduled for the earliest suitable date following **8 November 2021**.
18. The above time will allow an opportunity for constructive preparation prior to the hearing, and hopefully reduce the risk of procedural difficulties later.

A handwritten signature in blue ink, appearing to read 'J.C. Dawson', is written over a light blue circular stamp.

J.C Dawson – Counsel for Askew Consultants Limited