

BEFORE A PANEL OF INDEPENDENT HEARINGS COMMISSIONERS

FTA-2502-1019

UNDER the Fast Track Approvals Act 2024 ("**FTAA**")

IN THE MATTER of an application by Kiwi Property Holdings No. 2 Limited
under section 32 FTAA for approvals relating to the Drury
Metropolitan Centre – Consolidated Stages 1 and 2 Project

**MEMORANDUM OF COUNSEL FOR THE APPLICANT IN RESPONSE TO MINUTE 12
OF THE PANEL**

29 OCTOBER 2025

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 This memorandum is filed on behalf of Kiwi Property Holdings No.2 Limited (“**Kiwi Property**”), the applicant for the Drury Metropolitan Centre – Consolidated Stages 1 and 2 Project (“**Project**”).
- 1.2 This memorandum:
- (a) Responds to the Panel’s requests in Minute 12 (“**the Minute**”) for Kiwi Property to provide clarification and comment in relation to specified matters.
 - (b) Suggests amendments to the cover page (intituling) of the draft decision.
 - (c) Records that a mildly amended set of proposed conditions is to be filed with the memorandum.
 - (d) Attaches Annexure A – Revised Plans and Annexure B – Landscape Design Report.
- 1.3 Kiwi Property intends to meet with Council representatives over the next week in an effort to resolve any outstanding differences that are apparent from the Council’s response to the Minute and its comments on the draft conditions.

2. PARA [13] - TRANSPORT THRESHOLDS – DELETION RE SUBDIVISION

- 2.1 Para [13] of the Minute regarding LUC Condition 85 discusses Kiwi Property’s proposal to delete the reference to transport thresholds in the SUB conditions (while retaining them in LUC Condition 85). The Panel seeks parties’ comments on the proposed deletion, noting that these thresholds are described in the Drury Centre Precinct as relating to both subdivision and development.
- 2.2 Kiwi Property’s explanation for its proposed deletion of these provisions is included in highlighted text in the suite of conditions. Kiwi Property remains of the views expressed there.

- 2.3 With regard to the Panel's observation that the thresholds are described in the Precinct as relating to both subdivision and development, Kiwi Property says:
- (a) The purpose of Condition 85 is to allow activities and the traffic effects that would be generated by them to occur only when the transport network is able to accommodate those effects.
 - (b) The wording proposed to be deleted currently precludes the release of section 224(c) certificates for the 292 vacant residential lots approved in the Stage 1 area unless and until the relevant transport infrastructure upgrades listed in Column 2 of the table in Condition 85 are constructed and operational.
 - (c) Subdivision of the lots (and in particular the release of section 224(c) certificates) will not itself create additional traffic or generate adverse traffic effects, however, as the construction and occupation of any building(s) on the lots will require further resource consent under Rule I450.4.1(A3) of the Drury Centre Precinct and Rule H13.4.1(A45) of the Mixed Use zone. Any such applications will need to demonstrate compliance with the transport upgrades standard I450.6.2 in the Precinct provisions.
 - (d) There is therefore no rationale for or benefit deriving from delaying the release of section 224(c) certificates for those lots and the condition imposes a more onerous constraint on development than is necessary to address the reason for which it is set, contrary to section 83 FTAA.
- 2.4 For completeness, it is noted that Kiwi Property's approach here is consistent with that taken in the Stage 1 consent granted under the COVID-19 Recovery (Fast-track Consenting) Act 2020. That consent enabled both the creation of residential super lots and the undertaking of specified commercial activities. The threshold condition imposed in that case only constrained the commercial activities however (i.e.: the consent envisaged section 224(c) certificates being granted prior the road improvements occurring).

3. PARA [14] - TRANSPORT THRESHOLDS – DWELLING NUMBERS

- 3.1 Para [14] of the Minute re LUC Condition 85 seeks clarification from Kiwi Property about the reasons for referring to only 400 dwellings in the Table, and *“what the dwelling numbers relate to, given they do not appear to align with the total future yields set out in Advice Note 1 to the condition.”*
- 3.2 Kiwi Property says that:
- (a) Mr Hughes’ analysis and the supporting information provided by him assessed the development anticipated over all three Drury East precincts (i.e.: Drury Centre, Drury East and Waihoehoe Precincts). That is because the transport triggers apply to and limit total development across all three precincts.
 - (b) The consent will apply only to the Kiwi Property land within the Drury Centre Precinct, however, so Condition 85 can only govern that portion of development that is proposed to be undertaken the Kiwi Property land.
 - (c) The primary landowners of the three precincts (Kiwi Property, Fulton Hogan and Oyster Capital) have worked collaboratively regarding strategic planning and implementation. In that context, Kiwi Property has committed to undertaking only commercial development during the early phases (Rows (a)–(c) of the Table) while residential development occurs in the other precincts. Once the development opportunities envisaged in Row (d) are available, Kiwi Property intends to undertake the limited amount of residential development envisaged in Row (d).
- 3.3 For completeness it is noted that the 400 dwellings referred to in Row (d) of the Table is a rounded figure equating to the 102 dwellings and 292 residential sites for which consent is sought.

4. PARA [14] – USE OF EXCESS DWELLING CAPACITY FOR RETAIL

- 4.1 In para [14] of the Minute the Panel has also recorded that it, *“wishes to ensure that an indication in the consent conditions of excess dwelling capacity (i.e.*

capacity that is not provided for) is not utilised at a future stage to support an increase in retail development that may not be in accordance with the associated requirements in Column 2.”

- 4.2 Kiwi Property confirms that it has no intention to use the remaining dwelling component for retail. Further:
- (a) Kiwi Property submits that the conditions do not indicate excess dwelling capacity for the reasons outlined above. As such, it would not be open for Kiwi Property to subsequently seek to increase the amount of retail GFA on the basis that the residential component beyond 400 dwellings had not been utilised and could be reallocated to retail GFA.
 - (b) In the (unlikely) event this changed, any proposal would need to be assessed on its merits e.g.: subject to a new consent application and new modelling to demonstrate that this was appropriate.

5. PARA [15] – REVIEW CONDITION

- 5.1 Para [15] of the Minute invites comments regarding the scope and content of the review condition (LUC Condition 92).
- 5.2 The current version of this condition was proposed by Kiwi Property and the company confirms its willingness to comply with it, whilst acknowledging that its scope is broad. Kiwi Property understands that this matter will be of particular concern to the consent authority and proposes to leave it to Council to identify any amendments it considers could be made to the condition.

6. PARA [16] – WETLAND 2-2 - LOT 604

- 6.1 Para [16] of Minute 12 queries whether the delineation of the Lot 604 on Woods Drawing P24-447-01-3003-DR is accurate, noting its delineation as such appears to be inconsistent with other scheme plans and the subdivision conditions.
- 6.2 The reference to Lot 604 on drawing P24-447-01-3003-DR is consistent with the lot configuration presented in the scheme plan P24-447-02-0016-SC. In order to provide further clarity, P24-447-01-3003-DR has been amended with a

clearer boundary definition to support this. A copy of this updated plan¹ is attached to this memorandum and forms part of **Annexure A**.

7. PARA [17] – PUBLIC / PRIVATE NETWORK

7.1 Para [17] of Minute 12 queries whether Woods Drawing P24-447-01-3003-DR (7/10/25) requires updating to reflect agreements reached at caucusing regarding the private/public network.

7.2 Kiwi Property confirms that two drawings do require amendment to correctly delineate between the private and public elements of the network. Accordingly, Woods Drawing P24-447-01-3000-DR and Woods Drawing P24-447-01-3003-DR have been updated to show that the Wetland 2-1 outlet, Raingarden Outlet and Wetland 2-2 Outlet are private drainage (now shown in green). Copies of these updated plans² are attached to this memorandum and form part of **Annexure A**.

7.3 As the plans have been updated, newly proposed DIS Condition 11 is not considered necessary and has been deleted from the conditions.

8. PARA [19] – BUS ROUTES

8.1 Para [19] of the Minute seeks confirmation as to whether the following comment from Kiwi Property on the 13 October 2025 condition set is addressed by proposed Condition 3A:

“Add demonstration of ultimate and interim bus routes with alternative staging. Future/interim connections to Drury Centre train station, until such time that the ultimate bus route is provided”

8.2 Kiwi Property confirms that proposed Condition 3A addresses the above comment.

¹ P-24-447-01-3003-DR Rev 13 dated 23/10/2025.

² P-24-447-01-3000-DR Rev 13 dated 23/10/2025, P-24-447-01-3003-DR Rev 13 dated 23/10/2025.

9. PARA [20] – INFRASTRUCTURE SERVICING

9.1 In Para [20] of the Minute, the Panel seeks confirmation as to whether:³

- (a) SUB Condition 91 should incorporate the raingarden proposed for Lot 605; and
- (b) A corresponding condition in respect of Wetland 2-2 in easement Area 1 (or “*Lot 604*” as noted above) should be included as part of the Stage 2.3 condition.

9.2 Kiwi Property confirms SUB Condition 91 has been amended to incorporate the raingarden proposed for Lot 605, and a new condition SUB Condition 59A has been added as part of the Stage 2.3 condition.

10. PARAS [21] AND [22] - POINTS OF CLARIFICATION

10.1 At Para [21] of the Minute, the Panel seeks confirmation of the extent to which the proposal does not meet the requirements of AUP Rules I450.4.1(A5) and (A6). In that regard:

- (a) The proposal does not comply with Rules I450.4.1 (A5) because:
 - (i) The “*interim upgrades*” specified in row (a) of Table I450.6.2.1 will not be constructed due to the ultimate upgrade of Waihoehoe Road being brought forward as the first transport upgrade in Condition 85.
 - (ii) As a consequence, row (b) will not be complied with because it also requires completion of the upgrades in row (a).
 - (iii) The State Highway 1 widening (approved, funded and currently under construction) may not be completed when these activities commence. Kiwi Property therefore proposed that these works be shifted to row (c) of the Table.

³ Minute 12, at para [20].

- (b) The proposal does not comply with Rule I450.4.1(A6) because:
 - (i) The wording of the upgrades in row (c) of Table I450.6.2.1 requires the upgrades in the rows (a) and (b) above which will not be complied with as explained above.
 - (ii) While the Drury Central train station is approved, funded and under construction, with the designation and related consents currently being given effect, the facility may not be completed when the approved activities commence.
- (c) The proposal does not comply with the subdivision and development thresholds in Column 1 of Table I450.6.2.1 as Kiwi Property proposes alternative land use mixes and thresholds as specified in Condition 85 of this consent.

10.2 At Para [22] of the Minute, the Panel “*seeks clarity on the extent of infringements of the rules in Plan Change 79 (see Rule E27.6.3.2(A)).*” In that regard Mr Hughes’ advice is as follows:

- (a) In the ITA, accessible parking requirements were calculated using the actual parking provision for each development block, establishing that requirements are met.
- (b) The decisions version of PC79 requires the amount of accessible parking to be calculated with reference to the higher of the actual parking provision or a calculated theoretical demand for the development.
- (c) Using the methodology outlined in PC79, four development blocks (A, C, D and E) comply with the accessible parking standard while the remaining six (B, F, G, H, J and K) are non-compliant. Across the entire Stage 2 proposal, the PC79 theoretical demand calculation results in a requirement of 97 accessible spaces against a 68-space proposed provision, a shortfall of 29 spaces.

10.3 In that context, Mr Hughes advises that:

- (a) He considers the PC79 approach to be excessive within a metropolitan centre PC79 because it assumes that each retail or commercial activity is a stand-alone entity, with no sharing of parking resource whereas, in practice, customers park once but visit several stores or commercial activities, thus reducing overall parking demand.
- (b) He considers that using the actual parking provision to calculate accessible carpark numbers is a more accurate method of calculating demand, and that the non-compliance of the Project against PC79 is acceptable.

11. INTITULING

- 11.1 The memorandum suggests that the cover page (intituling) be amended to read as follows, to correct the company name and description of the Project for which consent is sought:

“... in relation to the application by Kiwi Property Holdings No. 2 Limited⁴ to:

- a) Carry out bulk earthworks of approximately 212,225m³ of cut and 195,873m³ of fill over approximately 20.85 ha;*
- b) Construct new buildings for Stage 2 of the Drury Metropolitan Centre;*
- c) Implement 33,048m² GFA of commercial activities, 63,547m² GFA of retail, 102 dwellings, 282 visitor accommodation rooms and 10,216m² GFA of community facilities⁵; and*
- d) Construct associated public and private roading, carparking, stormwater, water supply and wastewater infrastructure; and*

⁴ The draft intituling page records the applicant’s name as “*Kiwi Properties No.2 Limited*”. The correct name is Kiwi Property Holdings No. 2 Limited (as set out in paragraph 1 of Part A of the draft decision).

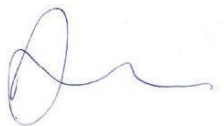
⁵ The draft intituling page records GFA figures from Schedule 2 FTAA whereas the application seeks revised GFA figures. The revised figures are listed in paragraph 9 of the draft decision.

- e) *Subdivide 13 vacant superlots into 292 vacant residential lots along with associated jointly owned access lots.”*

12. REVISED CONDITIONS & ATTACHMENT B

- 12.1 A mildly amended suite of proposed conditions is lodged with this memorandum, incorporating changes required by the Panel and a small number of additional amendments proposed by Kiwi Property. The conditions also include brief comments explaining the rationale for or provenance of changes.
- 12.2 **Annexure B** is the updated Landscape Design Report prepared by Boffa Miskell which provides a consolidated set of revised landscaping plans for the Project which take into account revised and additional plans provided to the Panel as part of the response to comments and RFI response. For completeness, the date and revision reference for this consolidated Landscape Design Report has also been updated for the purposes of appropriate referencing in Attachment 1: Table of Reports in the draft consent conditions.

DATED this 29th day of October 2025



Douglas Allan / Alex Devine - Counsel for Kiwi Property Holdings No. 2 Ltd

ANNEXURE A – REVISED PLANS

ANNEXURE B – LANDSCAPE DESIGN REPORT