

**BEFORE A PANEL OF INDEPENDENT HEARINGS COMMISSIONERS**

**FTA-2502-1019**

**UNDER** the Resource Management Act 1991 ("the Act")

**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

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT  
RESPONSE TO COMMENTS ON CONDITIONS**

4 NOVEMBER 2025

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**MAY IT PLEASE THE PANEL:**

***Introduction***

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**”).
2. This memorandum forms part of Kiwi Property’s response pursuant to section 70(4) of the Fast Track Approvals Act 2024 to the comments received from other parties regarding the draft conditions issued by the Panel.
3. An updated set of conditions is provided at **Annexure A**. This includes:
  - (a) The changes / comments which formed part of Kiwi Property’s initial comment on the conditions (dated 29 October 2025);
  - (b) Any changes recommended by other parties in their comments on the conditions that are supported by Kiwi Property; and
  - (c) Any further changes suggested by Kiwi Property in response to comments from other parties.
4. Where Kiwi Property does not agree with a suggested change or comment on a condition, this is addressed below.

***Response to Comments – Auckland Council / Auckland Transport***

5. As foreshadowed in our memorandum dated 29 October 2025, Kiwi Property has met with representatives of Auckland Council and Auckland Transport in an effort to narrow remaining differences. As such, the set of conditions at **Annexure A** incorporates those changes to conditions sought by Auckland Council and Auckland Transport which Kiwi Property accepts and/or where agreement has subsequently been reached between the parties. Where it is understood that Auckland Council and Auckland Transport agree with a proposed change to a condition, this is identified.
6. Given the level of agreement between Auckland Council, Auckland Transport and Kiwi Property, only disputed conditions are addressed below.

*Auckland Council Comments*

7. **LUC Condition 73 re Sediment Retention Ponds –**

- (a) Council proposed (based on advice from its compliance and monitoring team) amendments to refer to Sediment Retention Ponds (“**SRP**”) and to alter the specifications applying those ponds. In that regard:
- (b) Auckland Council has a Code of Practice (GD05.F1.1.1) which states the site parameters for selecting SRP sizing. The requirement for a blanket 3% proposed in Council’s comments does not reflect the ability within this standard to use 2% sizing where the site conditions allow. This condition would therefore place an obligation on the applicant that is not consistent with published and current NZ Standards.
- (c) We understand that Auckland Council is comfortable with the wording proposed by Kiwi Property, on the understanding that the edits proposed by the Council in its comments would have required a more stringent standard than that required by GD05.

8. **LUC Condition 85 / SUB Condition 120 re Transport Infrastructure Upgrades –**

- (a) Council’s primary request is to retain reference to s224(c) certificates in LUC condition 85 and retention of the equivalent condition in the subdivision conditions (SUB condition 120). Council’s “fall back” position is an amendment to the chapeau of LUC condition 85, deletion of SUB condition 120, and inclusion of a new condition requiring consent notices be registered on the residential titles (new SUB condition 135A).
- (b) Kiwi Property opposes Council’s primary relief but agrees to Council’s alternative position, subject to minor amendments discussed below.
- (c) To that end, **Attachment A** proposes:

- (i) A version of LUC condition 85 that incorporates the Council's alternative position.
- (ii) Deletion of SUB condition 120 as proposed in Council's alternative position.
- (iii) A new SUB condition 135A as proposed by Council subject to the following amendments (Kiwi Property edits shown in ~~striketrough~~ and underline):

*"No new residential dwelling(s) may be occupied ~~must be constructed~~ on this lot until such time the upgrade as required under condition 85 of the land use consent referenced by Council as LUC60447511 is constructed and operational ~~has been implemented~~."*

- (d) Kiwi Property considers the relevant activity addressed by the condition should be occupation rather than construction of dwellings. This reflects the approach taken for other land within Drury East.<sup>1</sup> Kiwi Property also considers amendments should be made to better reflect the phrasing used (and defined) in the precinct provisions ('constructed and operational' rather than 'implemented').
- (e) We understand that would largely address Auckland Council's concerns, acknowledging that their primary relief is not supported.

[Nb: Auckland Transport's comments on LUC Condition 85 are addressed below.]

#### 9. **LUC Condition 92 re Review –**

- (a) Auckland Council proposes an alternative review condition in the event the Panel does not accept the broadly framed review condition

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<sup>1</sup> See SUB condition 91 of the Waihoehoe Precinct Project (<https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/2-Waihoehoe-Precinct/Minor-corrections/Record-of-Decision-of-the-expert-consenting-panel.pdf>). NB: No consent notice was imposed on the residential superlots created through the Drury Centre Covid Fast Track consent, given (unlike residentially zoned land) subsequent consents were required for any new buildings.

initially proposed by Kiwi Property. That alternative wording is intended to narrow the scope to traffic and transportation effects.

- (b) Kiwi Property will abide the Panel's decision in this regard. That is, it would accept any of:
- (i) The broadly worded review condition originally suggested by it (as per **Annexure A**).
  - (ii) The condition set out in Council's proposed set of conditions.
  - (iii) A more targeted condition in the form discussed at paragraph 18 of the Council's memorandum.
- (c) We note that if the Council's proposed condition were to be targeted as suggested at paragraph 18 of its memorandum, it could be worded as follows (Kiwi Property edits shown in ~~strike through~~ and underline):

*"Under section 128 of the RMA the conditions of this consent relating to traffic, transport and infrastructure upgrades, including (without limitation) condition 85 may be reviewed by the Manager Resource Consents at the consent holder's cost between 10 January and 15 April in any year following commencement of consent in order:*

- *To deal with any adverse traffic and transportation effects on the environment which may arise or potentially arise from the exercise of this consent and which it is appropriate to deal with at a later stage, ~~in particular adverse traffic and transport effects~~"*

[Nb: To avoid doubt, Kiwi Property does not support Auckland Transport's requests to delete the advice notes. This is addressed below.]

#### 10. **Parks Planning –**

- (a) Council's Parks Department proposes extensive changes to the conditions. The changes suggested by the Parks Department that are included in Council's consolidated condition set are accepted by Kiwi Property (and are shown in **Annexure A**). Otherwise, the changes sought by the Parks Department are opposed for the reasons set out in Kiwi Property's response to comments.

- (b) The Park's Department appears to be attempting to re-litigate issues that are addressed in the Panel's draft decision. The conditions included in their response are the same conditions that were put forward in their comments on the application, notwithstanding the Panel's findings in support of the Applicant's responses on open space matters<sup>2</sup>. We further note that many of the changes appear to be put forward on the (incorrect) assumption that land is being vested. As previously advised, only the esplanade reserves are being vested.

*Auckland Transport Comments*

11. **LUC Condition 85 re Transport Infrastructure Upgrades** – Auckland Transport suggests a number of changes to LUC Condition 85:

- (a) *An alternative SH1 offramp trigger* – While Kiwi Property acknowledges Auckland Transport's suggestion may enable additional capacity to be released ahead of the full upgrade of Norrie Road bridge being completed, its consultants have not carried out sufficient modelling to establish what an "interim" development trigger should be. This condition has therefore not been amended in **Annexure A**.
- (b) *New Advice Note 5* – As outlined in the condition set in **Annexure A**, Kiwi Property supports inclusion of this advice note, subject to an amendment to make clear that it relates to future dwellings on the 292 residential lots, rather than the dwellings approved as part of this consent. Kiwi Property's edits to Auckland Transport's wording are shown below in ~~striketrough~~ and underline:

*"Advice Note 5*

*This consent will provide capacity for ~~those~~ dwellings to be established on the 292 residential lots created by this consent site (when the relevant infrastructure upgrades are in place), but does not negate the requirement for the future residential dwellings on those lots activities to obtain the necessary consents for a new building or*

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<sup>2</sup> Draft decision at para 212.

*to comply with the transport upgrades standard in the absence of those upgrades being in place.”*

(c) *New Advice Note 6* – As outlined in the condition set in **Annexure A**, Kiwi Property supports the inclusion of an advice note which sets out the (modelling) basis upon which the consent has been granted. However:

(i) It does not support Auckland Transport’s proposed wording. An alternative chapeau is suggested by Kiwi Property which is intended to provide greater clarity.

(ii) The numbers added by Auckland Transport to Mr Hughes’ Figure 3 table do not reflect the land use mix determined by Mr Hughes as being achievable across the three Drury East Precincts, and to include them in the condition would give an erroneous representation about the modelling that underpins this consent. It is instead proposed to include a clean version of Mr Hughes’ Figure 3 table.

(d) Auckland Transport also queries the land use make up shown in Table 3. Kiwi Property refers Auckland Transport to Mr Hughes’ Post Conference Modelling Update.<sup>3</sup>

12. **LUC Condition 92 re Review** – Auckland Transport had made a range of comments on the review condition regarding monitoring and the advice notes. Kiwi Property disagrees with Auckland Transport’s comments and considers that each of the review condition options discussed above are lawful, appropriate and sufficient.

13. **Condition 85B re Road Upgrade** - Auckland Transport proposes deletion of the Advice Note to Condition 85B because “*it refers to a timeframe that cannot be specified due to its reliance on a third party*”. It is unclear what is meant by this, as the advice note is intended to clarify that the ‘baseline’ condition for Kiwi Property’s upgrade would be the reinstated surface of Flanagan Road and Kiwi Property will not be left to address damage caused by KiwiRail/NZTA

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<sup>3</sup> Dated 13 October 2025.

construction. In any event, the Flanagan Road surface has already been severely damaged by the ongoing KiwiRail/NZTA works and it is expected that reinstatement will have been carried out by those parties well before Kiwi Property undertakes its works in that area.

14. **SUB Condition 3A re Public Transport Access and Circulation –**

- (a) Auckland Transport proposes to reword this condition, ostensibly to address a concern that a “direct” route will not be provided. Its proposed wording does not achieve that. Instead, it introduces a subjective consideration (“efficiency”) while also seeking to introduce a certification requirement (with no accompanying objective, meaning it is not a valid condition).
- (b) This is not considered to be a condition which requires (or is appropriate for) certification.
- (c) However, to address Auckland Transport’s concerns that the mechanism and recipient should be specified, Kiwi Property has proposed a new advice note which states that submitting a plan to Auckland Council is an acceptable way of demonstrating the matters addressed in the condition. This means there is clarity on the recipient and an acceptable mechanism for demonstrating how the condition is achieved, but without unnecessarily limiting the ways in which that might occur.

***Response to Comments – NZTA***

15. **“Scope of the ‘Transport Infrastructure Upgrades’ conditions”** – NZTA considers that Condition 85 refers to development which is not within the scope of the consent and should be amended to refer to the consented activities. That is incorrect. As addressed at paragraph 13 of our earlier memorandum<sup>4</sup>, Condition 85 identifies the thresholds at which development

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<sup>4</sup> Memorandum of Counsel for Kiwi Property Responding to Minute 12 (draft decision) dated 29 October 2025.



enabled in consents held by Kiwi Property for Stages 1 and 2 can occur. It does not purport to identify the overall GFA of activities enabled by the consent.

16. As there have been a number of comments about the operation of the threshold table in LUC condition 85, Kiwi Property considers it would be helpful to add further clarity about how it is intended to operate. As such, Kiwi Property proposes to amend the heading of column 1 as follows (Kiwi Property additions shown in underline):

Column 1	Column 2
Activities, development or subdivision approved in this consent <u>together with that approved in BUN60414877 and LUC60419150 (see Advice Note 1)</u>	Transport infrastructure required to enable activities, development or subdivision in Column 1
(a) Up to a maximum of:  (i) 5,000m <sup>2</sup> retail GFA	No upgrades required
(b) Greater than 5,000m <sup>2</sup> and up to a maximum of 32,000m <sup>2</sup> retail GFA	(a) Ultimate Waihoehoe Road upgrade between Fitzgerald Road and Great South Road in accordance with Appendix 1 of I450.11 of the I450 Drury Centre Precinct, including:  ...
(c) ...	

This makes clear that the trigger table requires consideration of the total GFA approved (following the grant of the current application) for Kiwi Property's landholdings throughout the Drury Centre Precinct (i.e.: the previously approved Stage 1, plus Stage 2 subject to this consent). While only the consent references are specified, the detail regarding those consents (i.e.: the level of development they enable) is included in Advice Note 1.

17. **“References to the Waihoehoe Road / Great South Road intersection upgrade”** – NZTA requests that the plan at Appendix 3 be replaced by the version attached to their comments, and that the design be referred to as the “AT/NZTA design”. These changes are supported by Kiwi Property and are shown on **Annexure A**.

18. **“Signage Type G – LED Digital Screens”** – NZTA proposes a number of changes to the signage conditions. Those changes are not supported by Kiwi Property. The signage conditions proposed by Kiwi Property are appropriate and supported by expert analysis. They were amended following caucusing to reflect Auckland Transport’s standard conditions and are understood supported by Auckland Council.<sup>5</sup> In that regard it is considered relevant that the LED digital signage is generally located within the development and not alongside the state highway.

***Response to Comments – Director General of Conservation***

19. The Department of Conservation sought one change to Advice Note 14 to the Subdivision Conditions. This change is supported by Kiwi Property and is shown on **Annexure A**.

***Response to Comments – Papakura Local Board***

20. The Papakura Local Board did not offer any substantive comments on the conditions.

**DATED** this 4<sup>th</sup> day of November 2025



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**Douglas Allan / Alex Devine**

Counsel for Kiwi Property Holdings No. 2 Limited

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<sup>5</sup> No changes were sought by Auckland Council.