

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2016-AKL-**

**IN THE MATTER**

of the Local Government  
(Auckland Transitional  
Provisions) Act 2010  
("LGATPA") and the Resource  
Management Act 1991  
("RMA")

**AND**

**IN THE MATTER**

of an appeal under section  
156(3) of the LGATPA

**AND**

**IN THE MATTER**

of Proposed Auckland Unitary  
Plan ("PAUP") Hearing Topic  
081 Rezoning and Precincts

**BETWEEN**

**DAVID ALISON and  
GERARD MURPHY**  
43 Wood St, Freemans Bay

**BRENDAN DRURY and LIZ  
ADAMS**  
32 Wood St, Freemans Bay

**WILL TIPPING and  
KIRIANA TIPPING**  
30 Wood St, Freemans Bay

**PETER WITHEL and  
SARAH WITHEL**  
3 Ryle St, Freemans Bay

**ALISON LEVERSHA and  
NEIL MACLENNAN**  
40 Wood St, Freemans Bay

**DARRYL GREGORY**  
23 Arthur St, Freemans Bay

**Appellants**

**AND**

**AUCKLAND COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

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To: The Registrar of the Environment Court  
PO Box 7147  
Wellesley Street  
Auckland 1010

1. David Alison, Gerard Murphy, Brendan Drury, Liz Adams, Will Tipping, Kiriana Tipping, Peter Withel, Sarah Withel, Alison Leversha, Neil Maclennan, and Darryl Gregory ("Appellants") through their solicitors Berry Simons at the address for service given below, appeal against part of the decision of Auckland Council ("the Council") on the proposed Auckland Unitary Plan ("PAUP").
2. The Appellants are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 ("RMA").
3. The Appellants received notice of the Council's decision on 19 August 2016.

#### **Part of the decision appealed**

4. The Appellants appeal the Council's decision to rezone 32 and 34 Wood Street, Freemans Bay ("the Sites") as Mixed Housing Urban, rather than the Single House zoning included in the PAUP as notified.
5. The Appellants have the right to appeal the Council's decision under section 156(3) of the LGATPA because the Council accepted a recommendation of the Independent Hearings Panel ("IHP") that was beyond the scope of any submission on the PAUP. While the submission by Housing New Zealand (attached as **Appendix A**) sought rezoning of an adjacent property, no submissions sought rezoning of the Site.
6. The Council's decision resulted in zoning provisions being included in the PAUP which are substantially different from those in the notified version. The Appellants are unduly prejudiced by the re-zoning decision.
7. The Character Coalition and Auckland 2040 have challenged the scope of the extensive residential rezoning recommended by the IHP and accepted in the Council's decision through a High Court appeal (CIV-2016-404-2326) and judicial review proceedings (CIV-2016-404-2327). It is submitted that if either of those proceedings results in a determination that the IHP's recommendations were out of scope, then an appeal to this Court regarding the Sites is available. It is further submitted that this appeal should be placed on hold pending the outcome of those proceedings.

#### **Reasons for the Appeal**

8. The reasons for the appeal are as follows:
  - (a) The rezoning decision is contrary to the purpose and principles contained in Part 2 of the Resource Management Act 1991 ("the RMA"), and in particular does not:
    - (i) Promote the sustainable management of natural and physical resources in accordance with section 5.

- (ii) Enable the community to provide for its social and cultural well-being in accordance with section 5(2).
  - (iii) Provide for the protection of historic heritage from inappropriate subdivision, use, and development in accordance with section 6(f).
  - (iv) Appropriately have regard to the maintenance and enhancement of amenity values in accordance with section 7(c).
  - (v) Appropriately have regard to the actual and potential effects of the proposed development on the environment.
  - (vi) Appropriately have regard to the Isthmus A Special Character overlay applicable to the Sites.
- (b) No reasons were provided by the IHP for its recommendation that the Sites be rezoned.
- (c) The minutes of the Governing Body Meeting at which this issue was considered demonstrate that the Council did not have sufficient information to accept the IHP's recommendation. The Governing Body made the following decision early in its debate regarding the IHP's recommendation:<sup>1</sup>

*"Note: Recommendation 6.14.1 CENTRAL c), below, relating to the zoning of 32-34 Wood Street, Freemans Bay, raised by Cr ME Lee, was deferred pending further information, to be provided on Monday 15 August 2016.*

*That the Governing Body:*

*c) consider rejecting the recommendation relating to the:*

- *zoning of 32-34 Wood Street, Freemans Bay*

*if further advice from staff, before the end of the meeting, provides appropriate reasons for rejection and a possible alternative.*

*Cr C Darby, and Cr CE Fletcher declared an interest in Item 6.14.1 CENTRAL recommendation d) and left the table at 2.30pm.*

*Resolution number GB/2016/162*

*MOVED by Mayor LCM Brown, seconded by Cr LA Cooper:*

***That the Governing Body:***

***d) accept all the other recommendations from the Independent Hearings Panel as contained in the Panel report entitled "Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in CENTRAL)" as they relate to the content of the Proposed Auckland Unitary Plan and also the associated recommendations as they appear in the plan and the maps for the Central area, except for the decisions above.***

**CARRIED**

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<sup>1</sup> Minutes for 10 August 2016 Auckland Council Governing Body Meeting, at page 65.

*Note: Pursuant to Standing Order 1.8.6 Cr C Brewer, Cr DA Krum and Cr ME Lee requested that their dissenting votes be recorded."*

- (d) However, it appears that the further information sought was not provided in time. The Governing Body passed the following resolution near the close of its discussions on the PAUP:<sup>2</sup>

*"Note: Staff advised that anomalies such as Bayswater Marina Precinct (6.14.1 NORTH) and the zoning of 32-34 Wood Street, Freemans Bay (6.14.1 CENTRAL), which were site specific, would best be dealt with by way of a plan change. It was anticipated that this would come before the incoming Council early in 2017.*

**MOTION**

Resolution number GB/2016/201

MOVED by Deputy Mayor PA Hulse, seconded by Cr ME Lee:

**That the Governing Body:**

- a) direct the Chief Executive to initiate a process for relevant plan changes to address any further technical matters and property anomalies relating to the Auckland Unitary Plan and report back to the incoming Council, no later than March 2017.**

**CARRIED**"

**Relief Sought**

9. The Appellants seek the following relief:
- (a) That the Single House zoning of the Sites be reinstated.
  - (b) Such further or other consequential relief as the Court deems appropriate to address the Appellants' concerns as raised above.
  - (c) Costs.

**Attachments**

10. The following documents are attached to this notice:
- (a) A copy of the zoning map of the Sites in Council's decision (Appendix A).
  - (b) A copy of the relevant part of the Minutes for the 10 August 2016 Auckland Council Governing Body Meeting (Appendix B).
  - (c) A copy of the relevant parts of the IHP's recommendation report (Appendix C).
  - (d) A copy of the relevant parts of Housing New Zealand's submission (Appendix D).
  - (e) A copy of the Appellants' further submissions (Appendix E).

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<sup>2</sup> Ibid, at page 90.

- (f) A list of names and addresses of the persons served with a copy of this notice (Appendix F).

**DATED** at **AUCKLAND** this 3rd day of October 2016



**S J Simons / R M Steller**

**Counsel for David Alison, Gerard Murphy, Brendan Drury, Liz Adams, Will Tipping, Kiriana Tipping, Peter Withel, Sarah Withel, Alison Leversha, Neil Maclennan and Darryl Gregory**

**ADDRESS FOR SERVICE OF APPELLANTS**

Berry Simons  
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**Contact person:** Sue Simons, Partner

## **Advice to recipients of copy of notice**

### *How to become party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in Form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)) and serve copies of your notice by email on the Auckland Council (to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach copies of the relevant parts of the Council's decision or the appellant's submission. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.