

In the matter of: Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**) - Appeal against decision on proposed Auckland combined plan – s 156(1) of the LGATPA – Topics 062, 063 & 081/083 - Rule H6.6.6 Height in relation to boundary – Residential – Terrace Housing and Apartment Building Zone

And: **Lynne Butler, Paul Gregory, Gunn Family Trust, Lydia Hewitt, Trevor Lund & Angela Saunders – England & Spring Street Residents (an unincorporated body of persons)**

Appellants

And: **Auckland Council**

Local Authority

And: **Freemans Bay Residents Association Inc**

Section 274 Party

Notice of person's wish to be party to proceedings

Dated: 23 September 2016



Form 33

**NOTICE OF PERSON'S WISH TO BE PARTY TO
PROCEEDINGS**

Section 274, Resource Management Act 1991

To: The Registrar

Environment Court

Auckland

- 1 Freemans Bay Residents Association Inc (**FBRA**), wishes to be a party to the following proceedings:
 - 1.1 ENV-2016-AKL-000187;
 - 1.2 Lynne Butler, Paul Gregory, Gunn Family Trust, Lydia Hewitt, Trevor Lund & Angela Saunders (**England & Spring Street Residents**) appeal against a decision of Auckland Council (**Council**) on the Auckland combined plan (**proposed plan**).
- 2 FBRA is a person who made a submission about the subject matter of the proceedings.
- 3 FBRA is not a trade competitor for the purposes of s 308C or s 308CA of the Resource Management Act 1991.
- 4 FBRA is interested in all of the proceedings.
- 5 FBRA is interested in the following particular issues:
 - 5.1 Rule H6.6.6 Height in relation to boundary as recommended by the Hearings Panel included specific reference to lower intensity zones located across the road



from Terrace Housing and Apartment Building zoned sites (such as the properties owned or occupied by the England & Spring Street Residents). The purpose of the reference being to apply the height in relation to boundary control along the zone boundary.

5.2 The rule as recommended by the Hearings Panel ensured that adverse effects from redevelopment of sites in the Terrace Housing and Apartment Building Zone on the special character of the lower intensity zoned properties across the road in England Street and Spring Street would be mitigated.

5.3 However, the rule as amended by Council's decision will not avoid, remedy or mitigate any adverse effects from redevelopment of sites in the Terrace Housing and Apartment Building Zone on the special character of the lower intensity zoned properties across the road in England Street or Spring Street.

5.4 The lower intensity zoned properties in England Street and Spring Street have a special character that makes a significant contribution to amenity values and environmental quality in Freemans Bay, and justifies achieving some proportionality between housing intensification and protecting special character - Council's decision does not achieve this balance. Otherwise, this balance will be lost because of the extent to which the intentions of the special character overlay will be undermined in Freeman's Bay.

6 **FBRA support** the relief sought because:

6.1 The decision will not promote the sustainable management of natural and physical resources:



- (a) It will not protect historic heritage from inappropriate development.
 - (b) It will not maintain and enhance amenity values.
 - (c) It will not maintain and enhance the quality of the environment.
- 6.2 The decision is not the most effective or efficient way of achieving either sustainable management or the objectives included in the proposed plan.
- 6.3 The decision is not consistent with relevant objectives and policies (e.g. Objective H6.2 (3) and Policy H6.3 (5)) regarding the Terrace Housing and Apartment Building Zone.
- 6.4 The decision is not consistent with the application of height in relation to boundary rules in other zones (e.g. Mixed Use Zone and Business Zones) in terms of mitigating adverse effects on properties across the street in the Single House zone.
- 6.5 The decision is not supported by any evidence of probative value, or has no rational basis.
- 7 The following documents are **attached** to this notice:
- 7.1 A copy of the FBRA submission.
- 8 Copies of the submission and decision may be obtained, on request, from the FBRA.
- 9 FBRA agrees to participate in mediation or other alternative dispute resolution.



**Person authorised to sign on behalf of the Freemans Bay
Residents Association Inc**

23 September 2016

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Contact person:

Trevor Lund

Advice to recipients of copy notice

Advice

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



COPY OF SUBMISSION

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FREEMANS BAY RESIDENTS ASSOCIATION INC.

SUBMISSION TO THE PROPOSED AUCKLAND UNITARY PLAN



**This is one of two submissions the
Freemans Bay Residents Association is submitting to the
Proposed Auckland Unitary Plan**

SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN
Clause 6, Schedule 1, Resource Management Act 1991

To: Auckland Council
Name of submitter: Freemans Bay Residents Association

- 1** This is a submission on the following proposed plan (plan):
 - 1.1** Proposed Auckland Unitary Plan (September 2013).
- 2** The submitter is a residents association, representing residents of Freemans Bay. 16 Spring Street is located in Freemans Bay.

The Freemans Bay Residents Association ('FBRA'), incorporated 16 December 2013, is a newly formed organisation which supports the interests and welfare of residents living in Freemans Bay. This recognised character area has an eclectic mix of housing options including social housing, townhouses, character cottages, villas and more substantive properties. At the borders of the suburb are apartment buildings and mixed use (low rise commercial/retail).

FBRA was formed after an inaugural meeting 03 Dec 2013, attended by 97 residents, following a pamphlet drop of all streets in Freemans Bay. Currently there are 102 formal members and a further 90 persons with registered interest on our database.

At the 03 December 2013 meeting, members were canvassed on their main local concerns and from this two major working groups were formed around the following issues: (i) Parking; (ii) the Proposed Zoning of 16 Spring Street Social Housing Complex in the Proposed Auckland Unitary Plan ('PAUP').

A second meeting was held 04 February to highlight changes related to minimum parking requirements in the PAUP and specifically to discuss the proposed zoning (Terrace Town Housing and Apartment Building 'THAB') for 16 Spring Street in the PAUP; and the proposed zoning of 16 Spring Street as a Special Housing Area. This meeting was attended by 109 residents, including tenants of the Spring Street complex. All who attended overwhelmingly supported the Association to address several concerns regarding the Spring Street property with particular emphasis on the concern for the elderly and long-term residents of 16 Spring Street who no longer had surety of tenure. FBRA has major concerns with several aspects of the proposed plans for 16 Spring Street:

- a) The welfare and tenure of the current residents of the Spring Street Social Housing Complex**
- b) The proposed designation of the Spring Street complex as a Special Housing Area ('SHA') which would allow development of the site based on the 'THAB' proposed in the Unitary Plan. FBRA believes the zoning of Spring Street should be addressed through the Unitary Plan consultation process and not be circumvented by the SHA process, particularly as there are issues related to the proposed zoning [refer point c) below]. Based on information from the Expressions of Interest released from Housing New Zealand and criteria for defining and determining SHA's, 16 Spring Street does not meet many of criteria for definition as an SHA, particularly in the areas of affordability, social housing**

and infrastructure. Significantly, the re-development will not increase the stock of affordable or social housing.

- c) The proposed 'THAB' zoning for the 16 Spring Street complex changed from 'Mixed Housing Residential' under the consultation draft Unitary Plan to 'THAB' under the PAUP. This zoning changed to an increased density despite all submissions from residents being concerned about and opposed to the original density proposed. Under requests through the Official Information Act, it has been noted that the property was presented internally within Council as a Middle Street address (with a close orientation to College Hill), whereas the official address is 16 Spring Street. No reference was made to the two Residential 1 streets which border this property. This was misleading and the Waitemata Local Board has now noted that while the PAUP proposed 'THAB' zoning for Spring St, they had not intended to support this zoning for 16 Spring Street.

The FBRA also does not support 'THAB' zoning for 16 Spring Street and believes the zoning should be 'Mixed Housing Suburban' as a zoning of 'Mixed Housing Urban' will not provide an appropriate transition from the protected heritage housing surrounding the site. In particular the FBRA is concerned that whilst the 'Mixed Housing Urban' permits a baseline of 11 metres and 3 storeys, additional height and storeys are anticipated and will be available via the resource consent process on a restricted discretionary basis and potentially without notification.

These concerns are illustrated by the additional height and reduced parking (16 carparks short of current minimum requirements) which was approved by Council for the apartment building on the corner of College Hill and England Street without the need for any notification. That building is commonly accepted in the local neighborhood and the property market as a disastrous urban design outcome. Whilst it has yet to be finished, the substantial adverse effects on the amenity of the surrounding properties and the character of the wider neighborhood are already apparent.

- d) The impact of the proposed 16 Spring Street redevelopment on an area under severe parking stress, particularly with the other proposed change to Freemans Bay in the Unitary Plan, which is to eliminate minimum parking requirements. The proposal to eliminate minimum parking for Freemans Bay is not supported by FBRA and this position is outlined in a separate submission. This proposal has had no consultation and no submissions were received from Freemans Bay residents to support such a change. FBRA strongly believes any change to parking ratios needs to be considered after the Auckland Transport parking strategy is agreed, implemented and successfully embedded in Freemans Bay and has been proven to accommodate resident's needs.

Over the last 8 weeks, the Association has updated their public web site advising of the process and time frame for submissions to the PAUP; held a public meeting which was attended by over 100 residents; sent personalised emails to residents and interested persons outlining the basis of the proposed submissions; emailed residents with full details of the submissions opposing the removal of minimum parking requirements for Freemans Bay and the proposed zoning of Spring Street; and door knocked residents to remind them of the PAUP plan process and issues.

In addition, the Association has talked with local MPs, Local Board and the Ward Councillor for Waitemata and the Gulf on all of these issues. Many residents have also emailed their local MPs, Councillors and Local Board members.

The FBRA understands that Freemans Bay was the last suburb to have a formal association formed to represent residents' interests. The impact of the proposed changes to 16 Spring Street and minimum parking requirements will have significant impact the character of the area, the streetscape, the amenity of the area for all residents and have a high social cost. There has been limited or no consultation on these proposed changes and no submissions from residents are known to have supported the removal of minimum parking requirements or the proposed zoning of 'THAB' for 16 Spring Street.

The Proposed Auckland Unitary Plan also proposes a new 'City Fringe' zone. It is difficult for residents to determine what new proposed rules will apply to this area, which includes Freemans Bay. Lack of transparency of the proposed changes is not acceptable. The FBRA does not consider the city fringe overlay as an acceptable basis for decisions pertaining to intensity because it is only geographic in nature and not based on residents' needs.

- 3 The property of 16 Spring Street is located in Freemans Bay and comprises 5,857m² more or less of land owned by Housing New Zealand Limited (HNZ) and upon which social housing is located (HNZ land).
- 4 The properties surrounding the HNZ land to the west, south-west and south (including the western side of England Street, the southern side of Spring Street and the northern side of Ireland Street) (heritage properties) are all:
 - 4.1 currently zoned Residential 1 under the Auckland City District Plan – Isthmus section; and
 - 4.2 zoned Single House Residential and subject to:
 - (a) the Special Character – Isthmus Residential A Built Environment Overlay (Special Character overlay); and
 - (b) the City Centre Fringe Area Parking Infrastructure Overlay (City Fringe Parking overlay),under the plan.
- 5 Notably the heritage properties are the beginning of the heritage character area of the wider Ponsonby, Freemans Bay area which is recognised regionally, nationally and internationally as a uniquely preserved collection of period housing dating as far back as the 1800s.

- 6** The HNZ land is:
- 6.1** Currently zoned residential 6a under the Auckland City District Plan – Isthmus section; and
 - 6.2** zoned Terraced Housing and Apartment Buildings (THAB) and subject to:
 - (a)** the City Fringe Parking overlay; and
 - (b)** the pre 1944 Building Demolition Control Historic Heritage Overlay,under the plan.
- 7** The highly restrictive nature of the current Residential 1 zoning and in particular the restrictions on making external alterations to a dwelling subject to that zoning are well known. It is commonly accepted that this will continue to be the position where a property is subject to the Special Character overlay. The submitter accepts and supports the underlying policy objective of seeking to retain the heritage character of inner city suburbs which are protected by this overlay.
- 8** Where the Special Character overlay is applied to an area however, it is critical that the zone of the land immediately adjoining or across the street from that area provides a suitable transition to more intensive zones beyond that (in this case the Mixed Use land on the other side of Runnell and Middle Streets). The submitter does not consider the zoning of the HNZ land as THAB under the plan to provide an appropriate transition. Furthermore the submitter considers there will be an unacceptable level of adverse effects on the amenity of surrounding properties, streets and infrastructure if the HNZ land is zoned THAB.
- 9** The failure to provide any minimum parking standards in the plan (and in particular the effect of the City Fringe Parking overlay) will also put pressure on streets that are already heavily parked, narrow, and difficult to negotiate; and traffic generation from any development of the HNZ land under the proposed zoning will thus give rise to additional and unusual adverse effects on the surrounding environment.

Consultation on Draft Unitary Plan

- 10** Under the Draft Auckland Unitary Plan (draft plan) the HNZ land was zoned Mixed Housing Residential which provided for a permitted height of 8 metres with the ability to go to 10 metres (ie, 3 storeys) as a non-notified restricted discretionary activity.
- 11** In accordance with the consultation procedure for the draft plan a large number of submissions were made by local residents in opposition to that proposed level of density for the HNZ land. Those submissions however have been entirely ignored by Council with the HNZ land having been substantially further up zoned to THAB in the plan. Requests in those submission for engagement with Council were ignored, despite Council clearly having engaged with HNZ. The submitter questions how that can be procedurally reasonable or legal, particularly where the submitters expressly requested the opportunity to discuss the matter further. The submitter considers it is untenable that the large number of stakeholders in the area who made submissions

were ignored with no attempt at engagement made, whilst engagement took place with HNZ and its request for up zoning accommodated.

- 12** Accordingly, the submitter considers that Council procedurally failed to properly consider the local stakeholder's submissions. This is undemocratic and contrary to principles of natural justice.

The submission

- 13** The specific provisions of the plan that this submission relates to are:

13.1 The whole plan as it affects this area of the City and the issues raised in this submission.

- 14** The submission **supports** the plan in relevant part and **opposes** the plan in relevant part. In particular, but without limitation, the submission **opposes** the proposed THAB zoning for the HNZ land.

Reasons for the submission

- 15** The HNZ land currently has social housing located on it to a maximum of two levels. HNZ issued a Request for Expressions of Interest ("EOI") in late 2013 seeking a developer to acquire the HNZ land and redevelop it with a minimum of 80 dwellings comprising terraced houses and/or apartments. The EOI process closed on 13 January 2014 and it is understood that HNZ will identify preferred developers and issue a Request for Proposal to those developers in upcoming months. The current residents of the site have been put on notice by HNZ that once a development partner has been identified they will be issued with a 90 day notice to vacate. Accordingly redevelopment can reasonably be expected to be imminent.
- 16** Under the operative zoning of Residential 6a such redevelopment would be permitted to a height of 8 metres. The submitter considers that to be a reasonable position which is consistent with the current 8 metre height restriction on Residential 1 and the proposed 8 metre height restriction on Single House Residential. That is, whilst permitting an increased level of density, the operative zoning provides for an appropriate transition on the HNZ land from the heritage housing (to the south and west) to the mixed use zoning to the north and east.
- 17** Under the THAB zone proposed for the HNZ land under the plan, a height of 14.5 metres (with 1 metre semi-basement parking) and 4 storeys is permitted and there are no density limits. Additional height and storeys would be available subject to a resource consent application which would be subject to the usual RMA section 95 notification assessment. The submitter does not consider that to be a reasonable method of transition from the surrounding heritage housing nor a sustainable and efficient use of natural and physical resources.
- 18** A critical aspect of the Special Character overlay is preserving the special character of the streetscape and the neighbourhood as a whole. Zoning the HNZ land THAB is entirely at odds with that objective. The THAB zone is incompatible with the neighbouring sites subject to the Special Character overlay and the overall character of the neighbourhood.

- 19** The heritage housing located in the wider Freemans Bay and Ponsonby area is recognised as significant and extensive to Auckland's character as a city and a reflection of its history, the protection of which has rightfully been entrenched in the operative plan for many years. The submitter acknowledges that one of the key directives of the Auckland Plan is to identify opportunities for urban intensification. However the Auckland Plan also has as a key directive to "Protect and conserve Auckland's historic heritage for the benefit and enjoyment of present and future generations" (Strategic Direction 4). In addition to this, Council has set itself the goal of Auckland becoming the world's most liveable city. Maintaining the integrity of heritage areas must comprise one of the important ingredients to achieve that end. Accordingly, the opportunity to intensify the HNZ land must be balanced against the competing requirement to preserve and respect character areas. The submitter does not consider that zoning the HNZ land THAB achieves that balance and in that regard does not consider that adequate RMA section 32 analysis has been undertaken in making this proposal. For example, there are other city fringe suburbs such as Grafton, Newton Gully, Eden Terrace and Newmarket which can accommodate additional intensity without undermining special character areas which are required to be protected. It is notable that those alternative areas will have the benefit of better public transport access from the planned City Rail Link which Freemans Bay will not. This is another example of a reason why such areas are better suited to a higher level of intensification.
- 20** In addition to the transition issue, the submitter considers that zoning the HNZ site THAB would have an unacceptable level of adverse effects on the amenity of the surrounding properties, streets and infrastructure. These adverse effects include (without limitation):
- 20.1 Existing infrastructure is already overloaded with considerable local and downstream development. By way of example, there are ongoing stormwater issues with old brick pipes located under England and Runnell Streets.
 - 20.2 Loss of privacy to the surrounding single lot heritage housing.
 - 20.3 Dominance to the street and surrounding heritage housing.
 - 20.4 Adverse shading impacts to surrounding housing.
 - 20.5 Reduction in outlook for surrounding housing.
 - 20.6 Substantial traffic impacts on England Street, Runnell Street and the surrounding neighbourhood.
 - 20.7 Increased demand for parking on street to the detriment of the neighbourhood, noting there are no minimum parking requirements under the plan for the HNZ land. There is already a significant parking problem in the neighbourhood due to office workers using the streets as an unregulated commuter carpark.
 - 20.8 Glare from additional glazing which can reasonably be expected from the anticipated style of development.

20.9 Increased wind effects can also reasonably be expected from the anticipated style of development.

20.10 Substantial reduction in surrounding property values.

21 To illustrate the issues identified above, the submitter refers to the apartment building which is presently being constructed on the corner of England Street and College Hill. It is for note that the developers of this building obtained resource consent to build to 19 metres where the site is zoned Mixed Use under the operative plan zoning which has a permitted height level of 15m (ie, half a metre less than that proposed for the HNZ land). The submitter considers this building to be a disastrous urban design outcome and an example of what should not be permitted to occur on the HNZ land.

22 The submitter considers the absence of minimum carparking requirements for sites such as the HNZ site (ie, larger sites and/or sites with more intensive zonings than Single House) to be entirely inappropriate. It is entirely unrealistic to expect that residents of such developments will not own and use a car just because public transport is available in the area. Even if the current service levels of public transport are improved, not all residents will rely solely upon it. Existing Freeman's Bay residents are already suffering extreme adverse effects due to city workers parking in the local streets which Council does not regulate or control parking in. Accordingly the failure to provide parking minimums is neither reasonable nor sustainable.

23 In conclusion, and without limitation, zoning the HNZ land THAB and the failure to provide minimum parking requirements for such sites:

23.1 Will not promote the sustainable management of natural and physical resources, contrary to RMA Part 2 and section 5 in particular.

23.2 Is not the most efficient or effective way of promoting sustainable management, contrary to RMA section 32.

23.3 Will have an adverse effect on surrounding property values contrary to RMA section 85.

Decisions sought

24 The submitter seeks the following decisions:

24.1 The HNZ land should be rezoned to Mixed Housing Suburban. This would provide the most appropriate transition from Single House Residential which is subject to the Special Character overlay, and is more aligned with Council's originally proposed zoning under the Draft Unitary Plan. This is also consistent with the approach taken to sites such as this which sit within the wider Ponsonby special character area.

24.2 To ensure an appropriate transition is achieved where the zone changes, the addition of development controls and carparking requirements for sites zoned with a higher density than Single House Residential which are adjacent or across the street from Single House Residential subject to the Special Character overlay. In particular but without limitation:

- (a) A requirement that any application to build in excess of 8 metres in height be notified to all surrounding properties (whether or not across the street) zoned Single House subject to the Special Character overlay.
- (b) Include additional specified assessment criteria to require that sympathy and recognition be given to the streetscape character, height, scale and form of the dwellings subject to a Special Character overlay in the surrounding neighbourhood. Without limiting the generality of this requirement, examples may include:
 - (i) The scale, form, mass, proportion and materials of the building must be compatible with the original architectural style predominant in the street, and must not ignore, compete with, or dominate that character.
 - (ii) New buildings must not detract from the consistency and harmony of building forms in the street or detract from the coherence of the streetscape.
 - (iii) The design of a proposed new building will complement the existing patterns of bulk and location, and the relationship to the street in the vicinity of the site.
 - (iv) The building must not detract from the architectural character of period housing or landscape qualities predominant in the street.
 - (v) Any new building on the HNZ land should be subject to appropriate development controls and carparking requirements to address the matters raised in paragraph 20 of this submission.

24.3 Imposition of minimum carparking requirements for sites zoned with a higher density than Single House Residential which are subject to the City Fringe Parking overlay.

24.4 Such alternative, consequential or further relief as may be required to give effect to this submission.

25 The submitter wishes to be heard in support of this submission. The submitter agrees to participate in mediation or other alternative dispute resolution of this submission.

26 The submitter could not gain an advantage in trade competition through this submission.

Name of submitter Lynne Butler
Position Chair
Name of Organisation Freemans Bay Residents Association

Date 26 February 2014

Signature 

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