

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Local Government (Auckland Transitional Provisions) Act 2010 (“LGATPA”) and the Resource Management Act 1991 (“RMA”)

AND of an appeal under section 156(1) of the LGATPA

BETWEEN LYNNE BUTLER, PAUL GREGORY, THE TRUSTEES OF THE GUNN FAMILY TRUST, LYDIA HEWITT, TREVOR LUND AND ANGELA SAUNDERS (THE ENGLAND AND SPRING STREET RESIDENTS)

ENV-2016-AKL-000187

Appellants

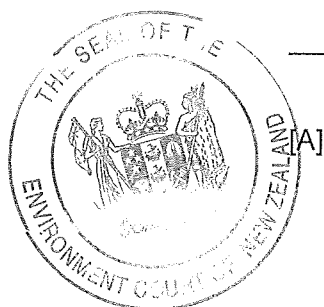
AND AUCKLAND COUNCIL  
Respondent

Principal Environment Judge L J Newhook sitting alone under section 279 of the RMA  
In CHAMBERS at Auckland

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**CONSENT ORDER**

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[A] Under s 279(1)(b) of the RMA, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the agreed amendments to the Auckland Unitary Plan Operative in Part set out in this order;
- (2) the appeal is otherwise dismissed.

[B] Under s 292(1)(a) of the RMA, the Environment Court orders that the Auckland Council amend the AUP Operative in Part to avoid uncertainty in the plan as set out in this order.

[C] Under s 285 of the RMA, there is no order as to costs.

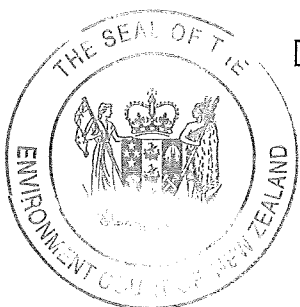
## REASONS

### Introduction

[1] This appeal relates to the decisions of the Auckland Council on the proposed Auckland Unitary Plan. Lynne Butler, Paul Gregory, the Gunn Family Trust, Trevor Lund, Lydia Hewitt and Angela Saunders, together the England and Spring Street Residents (an unincorporated body of persons) appealed the Council's decision to reject part of the recommendation by the AUP Independent Hearings Panel relating to Hearing Topics 059-063 (Residential zones). The AUP is now operative in part and is named AUP Operative in Part. It is therefore that document which requires amendment.

[2] The Appeal relates to the Council's decision to reject the Hearing Panel's recommendation on the 'Height in relation to boundary' control that applies to sites in the Residential – Terrace Housing and Apartment Building (**THAB**) zone. The Residents represent neighbours of a site at 16 Spring Street, Freemans Bay, that is owned by Housing New Zealand Corporation and is zoned THAB in the AUP.

[3] The parties have reached an agreement that will resolve the appeal entirely.



- [4] The Agreement involves the Court making two orders. The first order (set out in **Attachment "A"**) involves amending the AUP Operative in Part under s 279(1)(b) of the RMA as follows:
- (a) Addition of wording in the building height control in the THAB zone (H6.6.5(3));
  - (b) Addition of a site-specific map following Rule H6.6.5(3) showing height and setback controls at 16 Spring Street, Freemans Bay; and
  - (c) Addition of a subparagraph in the THAB zone controls relating to height in relation to boundary adjoining lower intensity zones (H6.6.8(1)(c)).
- [5] The second order (set out in **Attachment "B"**) involves amending the AUP Operative in part under section 292(1)(a) of the RMA as follows:
- (a) Deleting the site-specific map at Rule H6.6.5(3) showing height and setback controls at 16 Spring Street; and
  - (b) Amending the AUP planning maps shown through the GIS viewer to show specific height and setback controls that apply to the site at 16 Spring Street, Freemans Bay.
- [6] In making these orders the Court has read and considered the appeal and the memorandum of the parties dated 8 May 2017.
- [7] Housing New Zealand Corporation, Freemans Bay Residents Association Incorporated and Keith Vernon gave notices of intention to become parties to the Appeal under s 274 of the RMA. Keith Vernon has since withdrawn his interest in the appeal. The other interested parties agree with the orders sought, and have signed the memorandum of the parties dated 8 May 2017.
- [8] The Court is making the first order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.
- [9] The Court is making the second order under s 292(1)(a) of the RMA, such order being to amend the AUP to avoid potential uncertainty.



[10] The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting these orders.
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the RMA, including in particular Part 2.

### Orders

[11] The Court orders, by consent, that:


- (a) The Appeal is allowed to the extent that the Council is directed to amend the provisions in the THAB zone chapter contained in the AUP Operative in Part, as shown in **Annexure "A"** (additions are underlined and deletions are ~~struckthrough~~);
- (b) The Council is directed to amend the provisions in the THAB zone chapter and to amend the controls relating to 16 Spring Street, Freemans Bay, shown on the GIS viewer as shown in **Annexure "B"** (additions are underlined and deletions are ~~struckthrough~~); and

[12] These orders resolve the appeal entirely. The orders also resolve the section 274 interests of Housing New Zealand Corporation and the Freemans Bay Residents Association Incorporated in the appeal in their entirety.

[13] There is no order as to costs in relation to these orders.

SIGNED at AUCKLAND this 28<sup>th</sup> day of May 2017



  
L J Newhook  
Principal Environment Judge

"A"

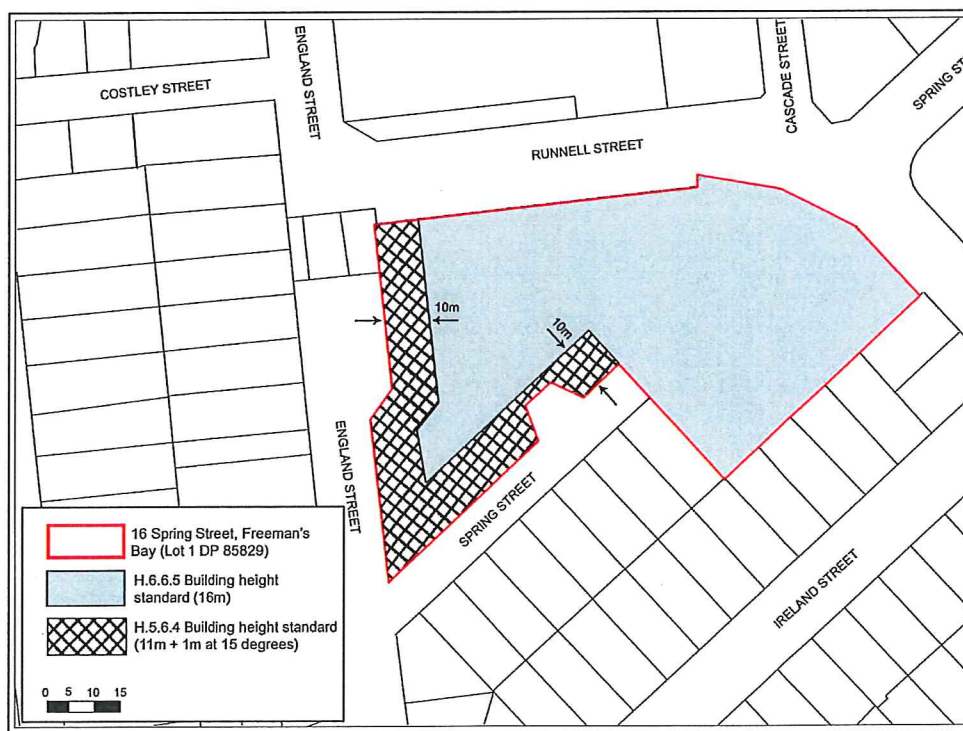
1. Amend Rule H6.6.5 in Chapter H6 Residential – Terrace Housing and Apartment Building zone, and include a site-specific diagram for the property at 16 Spring Street as follows:

**H6.6.5 Building height**

Purpose: to manage the height of buildings to provide for terrace housing and apartments and achieve an urban built character of predominantly five storeys or six or seven storeys in identified locations adjacent to centres.

- (1) Buildings must not exceed 16m in height.
- (2) If the site is subject to the Height Variation Control, buildings must not exceed the height in metres shown for the site on the planning maps.;
- (3) Standard H5.6.4 Building height applies to the site at 16 Spring Street, Freemans Bay (Lot 1 DP 85829) within a 10m setback area along Spring Street, England Street and adjoining the reserve at 10 England Street (Lot 1 DP 85953) as indicated on the planning maps. Outside of the setback area Buildings must not exceed 16m in height.

**Figure H6.6.5.1 Building height at 16 Spring Street, Freemans Bay**



2. Amend Rule H6.6.8 Height in relation to boundary adjoining lower intensity zones in Chapter H6 Residential – Terrace Housing and Apartment Building zone as follows:

**H6.6.8 Height in relation to boundary adjoining lower intensity zones**

Purpose: to manage the height and bulk of buildings at boundaries to maintain a reasonable level of sunlight access and minimise visual dominance effects to immediate neighbours within lower intensity zones and small public open spaces.

- (1) Where sites in the Residential – Terrace Housing and Apartment Buildings Zone adjoin:
- ...
- (c) sites less than 2000m<sup>2</sup> in the Open Space – Conservation Zone; Open Space – Informal Recreation Zone; Open Space – Sports and Active Recreation Zone; Open Space – Civic Spaces Zone; or the Open Space – Community Zone except Standard H6.6.8(1)(c) does not apply to the site at 16 Spring Street, Freemans Bay (Lot 1 DP 85829);

then buildings must not project beyond a 45 degree recession plane measured from a point 2.5m vertically above ground level along the boundary of the site in the Residential – Terrace Housing and Apartment Buildings Zone with the zone listed in Standard H.6.8(1)(a) – (c) above.

...



“B”

1. Delete Figure H6.6.5.1 Building height at 16 Spring Street, Freemans Bay in Chapter H6 Residential – Terrace Housing and Apartment Building zone.
2. Include a Height Variation Control on the GIS viewer at 16 Spring Street, Freemans Bay, as shown on the following diagram:



16 Spring St  
Height Variation Control