

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** Of the Auckland Unitary Plan (Operative in Part)

**AND**

**IN THE MATTER** Of an application for resource consents by Drive Holdings Limited to demolish and construct buildings on land bounded by the southern side of Tamaki Drive, the eastern side of Patterson Avenue and the northern side of Marau Crescent being 75-97 Tamaki Drive, 6-14 Patterson Avenue and 26-30 Marau Crescent Mission Bay (“the Proposed Development”).

**AND**

**IN THE MATTER** Of submissions by the Mission Bay Kohimarama Residents Association Inc.

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**STATEMENT OF EVIDENCE OF DAVID WREN (PLANNING) ON BEHALF OF  
THE MISSION BAY KOHIMARAMA RESIDENTS ASSOCIATION INC**

**DATE 23 JULY 2019**

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## **1. INTRODUCTION**

- 1.1 My name is David Wren. I work as an independent planning and resource management advisor. I have a Bachelor of Town Planning degree from the University of Auckland and a Diploma in Development Studies from Massey University. I am a full member of the New Zealand Planning Institute.
- 1.2 I have been engaged by The Mission Bay Kohimarama Residents Association Inc. (**the submitter**) to provide evidence in this matter.
- 1.3 I have approximately 36 years' experience in planning in New Zealand and overseas. I have worked as a planning consultant in a variety of roles since 1997. These roles have included both the preparation and processing of resource consent applications and the development of plans and a number of plan variations and other policy. I am also a current Auckland Council hearing and duty commissioner. Details of my experience are attached in Attachment 1 to my evidence.
- 1.4 I am generally familiar with the area of this application and have visited the site on two occasions in assessing this application.
- 1.5 I have read the Code of Conduct for Expert Witnesses outlined in the Environment Court's Consolidated Practice Note and have complied with it in preparing this evidence. I also agree to follow the Code when presenting evidence to the Commissioners. I confirm that the issues addressed in this brief of evidence are within my area of expertise and that I have not omitted to consider material facts known to me that might alter or detract from my opinions.

## **2. SCOPE OF EVIDENCE**

- 2.1 In my evidence I will address the following;
  - (a) Purpose of evidence;
  - (b) A description of the site and the proposal;
  - (c) Environmental effects assessment;
  - (d) Unitary Plan assessment;

The Mission Bay Kohimarama Residents Association Inc

- (e) Comments on s42A Report
- (f) Comments on application
- (g) Section 104 assessment;
- (h) Part II assessment; and
- (i) Conclusions.

### **3. PURPOSE OF EVIDENCE**

3.1 The purpose of my evidence is to provide an assessment of the proposal by Drive Holdings Limited to construct new buildings on the site which includes:

- (a) 75-79, 81-87 and 89-97 Tamaki Drive
- (b) 6-12 and 14 Patterson Avenue and
- (c) 26, 28 and 30 Marau Crescent.

3.2 Prior to preparing this evidence I have read the application documentation and the evidence prepared on behalf of the applicant and the Council. I have also read advance drafts of the evidence to be given by Brian Putt, Don Stock and Stephen Brown.

### **4. THE SITE AND PROPOSAL**

4.1 The site, its surrounds and the details of the application have been described in evidence from the applicant and the Council and I will not repeat these details.

4.2 The site occupies approximately one half of the block defined by Tamaki Drive, Paterson Avenue and Marau Crescent in Mission Bay. The site is currently occupied by an eclectic group of buildings that arguably make up the heart of the Mission Bay neighbourhood centre. The entire site is zoned Business- Local Centre in the Auckland Unitary Plan: Operative in Part (AUP:OP).

4.3 The height of part of the proposed development extends to 28m which is 10m higher than the 18m maximum height provided in the zone and 11.657m above the occupiable height allowed.

4.4 I consider that the proposal stands to be considered as a discretionary activity. The consents required are all restricted discretionary activities with the exception of the cinema activity which is centrally located on the podium of the proposed development. The cinema is a discretionary activity (unrestricted). Given the central location of the proposed cinema, the design of the cinema building, the space and bulk it takes up and the effect it has on the attractiveness or otherwise of the podium area, it is my view that the effects of the cinema, the building it is proposed to occupy and the wider development overlap and according the consents should be bundled as a discretionary activity.

## **5. THE SUBMISSION**

5.1 The submitter represents a wide range of residents in the Mission Bay and Kohimarama area. The submitter is an incorporated society whose purposes include:

- (a) providing a collective voice for the residents of Mission Bay and Kohimarama when engaging with agencies responsible for providing local infrastructure, amenities and service; and
- (b) promoting the advancement, enhancement and protection of the district and its environment and amenities.

5.2 The submitter is concerned that the proposed development will result in reduced amenity / adverse visual effects for the residents of Mission Bay and visitors to the area, attributable to:

- (a) The height and bulk of the Proposed Development;
- (b) A lack of quality public open space with appropriate pedestrian access.

## **6. THE EFFECTS OF THE PROPOSAL**

6.1 In the following discussion I will address the environmental effects of the proposal as it relates to the issues raised by the submitter.

*Effects on Amenity Values*

- 6.2 In order to understand the effects of the development (and in particular the height) it is necessary to understand the context of the area in which the site is located.
- 6.3 My assessment of the area is as follows. The suburb of Mission Bay is a natural amphitheatre that provides a high level of amenity for residents. Many residents have views that look out over the suburb and the local centre towards the sea. The local centre, being more intensely developed is somewhat of a focus for many of those views.
- 6.4 The foreshore and reserve also provides destination and activity focus for many local residents and visitors. The Bay itself can be experienced by visitors and residents from many different vantage points including from the beach, reserve area, Bastion Point and the residences that look down or across the slopes to the Bay. In my view the manner in which development on Tamaki Drive is developed is fundamental to the maintenance of the wider suburb's and community's, amenity values and relationship with the Bay and the coastal environment.
- 6.5 As the Proposed Development sits close to front and centre of the Bay, height in this location is integral to the overall appreciation and enjoyment of the Bay as a whole. The height of parts of the Proposed Development over and above that anticipated by the Plan, will in my view significantly affect the amenity values of, and create adverse visual effects for all those people, including residents and the public, who experience Mission Bay from its various vantage points. It does this by providing a built form that dominates the area, rather than being compatible with development in the area<sup>1</sup>. Many views will be adversely changed and the proposed buildings will appear much more bulky than a complying building and other existing buildings. They will also dominate the beach and the associated reserve area<sup>2</sup>. The Proposed Development also has the potential to adversely affect the values of the coastal environment. The proposal will dominate the views from the harbour looking back to the land as it rises above the horizon of the ridge running behind the suburb<sup>3</sup>. The applicant has not assessed the view from further back on the ridge

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<sup>1</sup> See Viewpoint 17 of photomontages

<sup>2</sup> See Viewpoint 15 of photomontages

<sup>3</sup> See Viewpoint 19 of photomontages

behind Mission Bay but it is also likely to dominate those views as it does the views from the reserve area to the west.

- 6.6 Local centres are required to provide a physical focal point for an area and create a sense of place while maintaining the amenity values of the area having specific regard to dominance<sup>4</sup>. Amenity values include those natural and physical qualities that contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes.
- 6.7 For Mission Bay that means that any development must carefully complement, not dominate, the natural beachfront environment that includes the sea, the beach, the reserve and the large trees that line the reserve. For the residents of Mission Bay, the AUP:OP anticipates development that does not create a visual block and / or "gateway" between the waterfront and the suburb as is proposed by the applicant. The photomontages also show that the building will draw attention away from and dominate the natural coastal environment (the beach area) as it will be significantly taller than the pohutukawa trees that line the reserve and from the harbour will also obscure the horizon to the south.
- 6.8 For residents located on Marau Crescent and Ronaki Road the development creates significant visual effects particularly due to the over height components of the building. The upper level penthouse is not visually well integrated with the overall design and will tend to stick out from many viewpoints.
- 6.9 The design does not have any real variation in roof top design to mitigate the overall bulk of the proposed buildings and thus they will appear bulky and dominating. The building proposed to be located on the corner of Patteson Avenue and Marau Crescent (Building 6) presents somewhat of a blank facade to people approaching from the south, adding to the barrier effect between the proposal and the suburb.

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<sup>4</sup> Objectives and Policies Local Centre Zone - Particularly H11.2 Objectives 2 and 5.

- 6.10 Beyond the site, the existing environment achieves, and the planned future environment anticipates, a relatively low level of development (with maximum heights of 18m or four to five storeys) in a manner that provides a uniformity to development. This will be overpowered by buildings much higher than 18 metres. In my view it is not necessary to exceed the maximum height provided for in the AUP:OP to create a focal point in the sense anticipated by the Plan. A focal point is created by what happens at the ground and first storey levels of any development. This existing de Fontein and Movenpick tenancies and the anchorage that they provide to the existing Mission Bay retail area currently provide such a focal point, and new activities of a similar nature could also provide a focal point without providing additional height. I also note that it is not the commercial activity aspects of the proposal that create the additional bulk. It is the residential activities that create the bulk.
- 6.11 The Applicant appears to have attempted to address adverse visual effects by stepping building heights from 28m to 18m along and to the rear of Tamaki Drive. This fails to appropriately mitigate the dominance effects, particularly those that will remain from the higher visual vantage points throughout the suburb and from the coast and harbour and to create an improved interface with the residential development on Marau Street. I consider that if stepping is considered appropriate to “break up” mass and bulk, the Applicant can achieve this within the current height controls.
- 6.12 Where the building does comply with the height rule (e.g. building 3 North Elevation) the additional 2m roof height has not been used to provide variation and interest in the building form when viewed from the street. Instead all the building roof forms are flat or level with significant areas of plant also extending higher. This failure to provide interest also contributes to the perceived bulkiness of the building, in my view.
- 6.13 The significant infringements of occupiable building height, roof form height and addition of plant in excess of the 15% control, individually and collectively, contribute to significant adverse effects on the environment.
- 6.14 Overall, the proposed development results in a transformational built form that is of a scale and intensity that will be dominant and inappropriate within the context of the anticipated planned urban built character of Mission Bay.



*Public Open Space*

- 6.15 The Applicant claims that the public open spaces offered in the proposed development will offer significant benefits to the area. In my view the public spaces provided by the development are poorly located, will be difficult to access, potentially dangerous and actually quite small.
- 6.16 The plans submitted with the application show limited public space on the podium level of the development. Public access to this space is provided by stairs and an escalator from Tamaki Drive and by stairs from Patteson Avenue. There is one public elevator to this space and another to the lobby of the cinema from the basement car park. The access points are all off the street. The open space on the podium will be largely obscured from the street being at an upper level and there are no significant views from the podium over the street. There are a number of deficiencies with the open space as follows:
- (a) There is only a small amount of public area provided relative to the size of the podium with little reason to be there other than as an entry to the cinema. The majority of the space on the podium level (and the only area with significant landscaping) is allocated to private residential development;
  - (b) Location of the podium area above street level, generally accessible by stairs that result in reduced access opportunities for the disabled (compared to the ground floor level);
  - (c) The podium is poorly connected to the street and does not provide a particularly safe and legible movement network as sight lines are poor and the podium is not well engaged with the street. This is likely to be inconsistent with the Auckland Urban Design Manual in regard to the provision of public open space.
  - (d) There is no public access to the podium from Marau Crescent and the opportunity to provide a through site link has been lost;
  - (e) The podium area will be significantly shaded by the height of the buildings that surround it.
- 6.17 These factors are unlikely to achieve an aesthetically coherent environment that will be actively used by the public, with the possible

exception of those patrons attending the cinema (to the extent that the cinema forms part of the development, which I understand is not guaranteed).

*Effects on the Coast*

- 6.18 As shown in viewpoint 15 and referenced above in paragraph 6.5 the buildings will dominate the coast. This is largely due to the height of the building which will exceed that of the waterfront pohutukawa trees and will be viewed above the horizon of the ridge beyond Mission Bay when viewed from the harbour.
- 6.19 I consider that introducing the proposed scale of building into the Mission Bay waterfront will change the relationship between the development on the south side of Tamaki Drive and beach area. As noted in paragraph 8.2 below there are other high buildings in this part of the coast, but all of the existing high buildings are located against the cliff lines that make up the points between bays on Tamaki Drive. The proposed building will not have such a backdrop and accordingly will have a more imposing relationship on the beach and beach front reserve.

*Conclusion on Effects*

- 6.20 Based on the above assessment I have concluded that the proposal will have unacceptable adverse effects on the amenity of residents and visitors to Mission Bay due to excessive height and bulk of the proposed buildings. I also consider that the open spaces proposed to be provided are inadequate. The buildings will also dominate the Mission Bay beach and beachfront reserve area.

**7. THE AUCKLAND UNITARY PLAN**

- 7.1 While the bundling of the application as I have discussed in paragraph 4.4 above allows a full assessment of the objectives and policies of the AUP:OP a proper assessment of the Restricted Discretionary aspects also requires an assessment of the objectives and policies. Rule C1.8(1) "Assessment of restricted discretionary, discretionary and non-complying activities" states that when considering "a restricted discretionary, discretionary or non-complying activity, the Council will consider all relevant overlay, zone, Auckland-wide and precinct objectives and

policies that apply to the activity or to the site where that activity will occur". Specifically where an activity is a restricted discretionary activity by virtue of infringing standards (i.e. the height rule), Rule C1.9 "Infringement of standards" provides that the Council will restrict its discretion to the following:

- (a) Any objective or policy which is relevant to the standard;
- (b) The purpose (if stated) of the standard and whether that purpose will still be achieved if consent is granted;
- (c) Any specific matter identified in the relevant rule or any relevant matter of discretion or assessment criterion associated with that rule;
- (d) Any special or unusual characteristic of the site which is relevant to the standard;
- (e) The effects of the infringement of the standard; and
- (f) Where more than one standard will be infringed, the effects of all the infringements together.

7.2 Therefore it is appropriate to make a full assessment of the objectives and policies of the AUP:OP regardless of any approach to bundling.

7.3 In Appendix 2 to this evidence I have set out a table that makes a comprehensive review of the relevant objectives and policies of the AUP:OP. Based on this assessment I have concluded as follows.

7.4 The scale and nature of the development exceeds the intention of the zone. The objectives intend that the local centres be a local focal point. (Objective H11.2(5)). A prime focus of the objectives of the local Zone is that these enable commercial activity which primarily serves the local convenience needs and provides residential opportunities (Objective H11.2(6)). It is clear from the application material and the scale of the proposal that this development is aimed at serving more than just the local community. What is proposed is in my view more likely to serve a sub-regional function and is aimed at attracting patrons from well beyond the Mission Bay area.

- 7.5 The objectives are also clear that development is intended to be in keeping with the planned outcomes for the surrounding environment (objective H11.2(7) and policy H11.3(3)). The immediate area is planned to have a reasonably intense form of development in the range of 16 to 18m in height (Business Mixed Use Zone). Development further from the Local Centre zone drops away to 11 m and 8-9m further from the centre. This proposal substantially exceeds the scale and intensity outcomes for the surrounding area. As such I consider that the proposal is contrary to these objectives and policies. The enabling of residential accommodation in the objectives must in my view be read in conjunction with the other objectives that seek to limit the bulk of development so that it is in keeping with that planned for the surrounding environment. I consider that notwithstanding my views that this proposal is aimed at more than serving the local community, it is the extent of residential development that is driving the bulk of the building. This bulk is not necessary to achieve the commercial activities proposed.
- 7.6 In respect of the other objectives and policies of the Local Centre zone as noted in my assessment the proposal;
- (a) By proposing a scale of activity more suited for other centres, does not reinforce the function of the other centres in the hierarchy (Policy H11.3(1)).
  - (b) The relationship between the cinema and adjoining residential apartments has the potential to have reverse sensitivity issues. In addition, public access to much of the podium has had to be curtailed so as to manage such effects (Policy H11.3(2)).
  - (c) The podium design and accessibility including the lack of a through site link does not contribute to pedestrian amenity, movement, safety and convenience for people of all ages and abilities (Policies H11.3(3) and (4)).
  - (d) The building is particularly dominant. However the design quality is not commensurate with the dominance and visual effects of the development.

- (e) The residential units that front onto Marau Crescent are of an inflexible design that cannot be readily converted to commercial use in the future (Policies H11.3(6) and (10).
- (f) Despite the large scale of the proposal it does not provide for significantly more business space.

*Coastal*

- 7.7 I have also assessed the NZCPS and AUP:OP objectives and policies relating to coast in the table in Appendix 2. By way of summary I have concluded firstly that the reserve and beach area sit within the coastal environment. The reserve area has not been identified as of outstanding natural character or high natural character. The objectives and policies of the RPS and the coastal chapter nevertheless seek to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on this area. I consider that the impact of the buildings will detract from the natural character of the reserve area and the beach through the dominance of the built form in this location. This is not consistent and potentially contrary to the objectives and policies identified.

*Conclusion on Auckland Unitary Plan*

- 7.8 Overall, I have concluded that the proposal is contrary to the relevant objectives and policies relating to the form and nature of development in this location and potentially contrary to those relating to impact of development on the coastal environment.

**8. THE S42A REPORT**

- 8.1 I have read the S42 A report prepared for this hearing. I have a number of concerns with this report as follows.
- 8.2 On page 40 of the agenda, the report comments that there are already a number of buildings in the Mission Bay and Kohimarama area that range from 4 to 12 storeys. The report makes no substantial comment about these but it is implied that because there are tall buildings in the area, the current proposal is more palatable than it would be otherwise. The report however fails to discuss the context in which these buildings sit. I note for example that 137 Tamaki Drive is located right at the eastern end of Mission Bay and is bedded into the cliff face near the point. The other

properties identified are in Kohimarama and also sit under the cliff line of the point between the two beaches.

- 8.3 The effects of these buildings in terms of dominance and views are quite different from stand-alone tall buildings sitting in an amphitheatre. While I agree the proposal will not reach the intensity of development of the Gold Coast, the creation of a wall of buildings higher than that allowed in the zone will have the undesirable effect of separating the rear of the suburb from the beach front. In addition, the raised nature of the inland part of Mission Bay means that any over height buildings will be visible and will interrupt overall views.
- 8.4 On page 60 of the agenda the report correctly notes that the AUP:OP places particular emphasis on height when defining the planned urban character of the business zones. I consider that the report then ignores this by justifying the additional height, concentrating on the capacity of the area to accommodate the additional height. This approach confuses policy interpretation with an effects assessment. I consider that the policy approach is quite clear and the wording is directive. Objective H11.2(7) says that the scale and intensity of development within local centres is in keeping with the planning outcomes identified for the surrounding environment. As I have noted above, the planning outcomes identified for this are buildings of no more than 18m high. This proposal is not in keeping with this intention and is contrary to this objective.
- 8.5 The height rule is therefore closely aligned to the overall policy direction of the AUP:OP and in my view the public are entitled to a degree of certainty about building height as this impacts on overall amenity values. The purpose of the height rule (H11.6.1) is clear that the Council in developing the AUP:OP gave careful thought to where it considered additional height (and reduced height) should be provided through the use the Height Variation Control on the planning maps. I have attached a table in Appendix 3 to my evidence showing how the Height Variation Control has been used on other local centres on the Isthmus. I can take it from this table that the Council did not consider that this local centre was suitable for intensification (over and above that provided for in the zone). This position is reinforced in the evidence of Mr Stock who outlines the matters put to the Independent Hearings Panel in relation to this site by the Society and the Applicant. To conclude now under a

resource consent application that the site is suitable for much greater height is clearly contrary to the objective above.

- 8.6 The s42A report also dismisses effects on views from properties to the south as private views are not protected under the AUP:OP or the RMA. While particular views may not be protected, views are a component of amenity values. I understand that the High Court in *Ennor v Auckland Council*<sup>5</sup> 2018 recently stated;

“[40]...Impairment of views are usually a relevant consideration when assessing the effects of the bulk of a proposed development on neighbours. “Views”, among other things, inform amenity values. Furthermore, it is reasonable for neighbours to assume that effects on their views will be considered if the proposed development infringes bulk and location standards.”<sup>6</sup>

## 9. THE APPLICATION AND EVIDENCE

- 9.1 John Lovett on behalf of the applicant has provided a statement of evidence that is concerned mainly with the height of the proposed development. I wish to make some comments on this evidence as follows.

### *Restricted Discretionary Activity for Exceeding Maximum Height*

- 9.2 In paragraph 4.25 Mr Lovett draws a distinction between exceedances of a development standard that are treated as a non-complying activity and those that are treated as a restricted discretionary activity. He concludes that exceeding the general height control can be seen as lesser form of breach. I take some issue with this conclusion.
- 9.3 While a non-complying activity is required to pass one of the ‘gateway tests’ in section 104D of the RMA, the assessment in terms of objectives and policies and effects are the same. With a restricted discretionary activity the issues that need to be looked at are more defined, but section 104 of the RMA still applies. Rather than being a lesser form of breach, the restricted discretionary activity route allows a more tightly defined range of matters to be considered, but the actual assessment of any proposal should be undertaken with the same rigour regardless of the

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<sup>5</sup> [2018] NZHC 2598 at [40]

<sup>6</sup> Noting that in this case there was no infringement of the height standards.

activity status. Mr Lovett also fails to give consideration in this approach to the scale of any infringements, which in this application are significant.

#### *Assessment*

- 9.4 In paragraph 4.29 Mr Lovett references his Attachment 4 which sets out his list of the relevant assessments that are required for exceeding the maximum height rule. This list is incomplete as it fails to include the matters set out in Rule C1.9 which I have set out in paragraph 7.1 above.

#### *Redistribution of height*

- 9.5 Mr Lovett's analysis relies on the concept put forward by the Applicant's architects that the over height portion of the proposed development is a redistribution of development from parts of the site where the Applicant has voluntarily reduced bulk to provide better amenity to neighbours and the street. This approach, in my view, ignores the fact that there is no permitted baseline as all new buildings require a resource consent. This means that the benefits claimed by reducing bulk in some parts of the site area may have had to be provided anyway in order to gain consent. In other words the assessment required for any new building may have concluded that a lower height is appropriate, regardless of the maximum height rule. The initial bulk studies provided by the applicant do not constitute something that could gain consent (as they have not been tested in an application) and are essentially a starting point for developing a scheme that may be consent-able. There is no policy support for the notion that an unders and overs approach to the distribution of bulk and height should be applied to a site.

#### *Roof top calculations.*

- 9.6 The evidence at paragraph 4.6 onwards discusses the roof top projections. The evidence seems to suggest that the 15% cap on roof top projections can be distributed over the entire development or alternatively over the podium areas of each building. In my view the definition of height is clear that the 15% exemption relates to "...the area of the roof to the storey immediately below such structures". It is not possible or appropriate to attempt to calculate this on any other basis.



*Roof form*

9.7 In paragraphs 4.13 onwards the evidence examines the difference between the 16m and 18m height rules. The evidence suggests in paragraph 4.22 that the 2m roof form rule is irrelevant as the Applicant has taken a flat roof approach. This approach to the 2m roof form ignores the purpose of the height rule which states:

- allow an occupiable height component to the height limit, and an additional height for roof forms that enables design flexibility, to provide variation and interest in building form when viewed from the street;

9.8 The actual rule (H11.6.1.1 (3)) is clear that the additional 2m is not to be used for occupiable space.<sup>7</sup>

9.9 In this application the Applicant has largely chosen to provide a flat roof that does not provide variation and interest but is still claiming that the additional 2m applies. In my view it does not for most of the development. The evidence states that in terms of effects, it makes no difference. I disagree with this approach. The effects of the Applicant's use of the additional 2m in height relate to the overall bulk of the building and the lack of variety or interest in the roof form. Rather than providing variety or interest in the roof form the Applicant has chosen to apply different heights to the collective buildings. This does not meet the intent of the rule, in my view.

*Zone description*

9.10 In paragraph 4.42 the evidence suggests that the sentence in the zone description concerning enabling of buildings up to four storeys is a description rather than an identified planning outcome for the zone. I consider that this approach ignores the consistent approach taken in the zone descriptions throughout the business zones where a range of building heights (set out in storeys) are specified and are used to distinguish one zone from another. This is also an approach taken in the residential zones.

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<sup>7</sup> "(3) Any part of a building greater than the occupiable building height is to be used only for roof form, roof terraces, plant and other mechanical and electrical equipment."

- 9.11 These descriptions of building heights (together with other aspects of the zones) inform the objectives and policies.

*The restriction of objective 7 by policy 8 is wrong – it does not distinguish between immediate effects and wider issues.*

- 9.12 Objective 7 states:

“The scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment.”

- 9.13 The evidence attempts to constrain this objective by recourse to policy 8 which deals specifically with developments adjacent to residential zones.<sup>8</sup> However objective 7 is not constrained by policy 8<sup>9</sup>. Mr Putt has made comments on this and I agree with his assessment. In addition I note that policy 8 provides some additional direction for developments close to residential zones, but objective 7 relates specifically to the Local Centre Zone and stands alone. As I have set out above I consider that on a suburb wide basis the proposal is not in keeping with the planning outcomes identified for the surrounding environment. It is not necessary for this surrounding environment to be adjacent to the site or to be a residential zone in order to apply this objective. In any event, I understand that the term “adjacent” includes places that are nearby and that this is contextual. In this instance, objective 7 clearly provides the additional context.

*Height control - reassessment of UP provisions is inappropriate*

- 9.14 In paragraph 4.90 onwards the evidence discusses the height variation control and implies that it should have been applied. I have outlined my views on this above (para 8.5) and consider that if the height variation control was appropriate for this site it would have been applied in the AUP:OP. Additionally, I do not support the reasons given by Mr Munro that the evidence relies on for the following reasons.

- (a) While additional height is an efficient use of the site, this will almost always be the case and is not a valid reason in itself for allowing additional height.

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<sup>8</sup> Refer page 5

<sup>9</sup> Policy (8) Require development adjacent to residential zones ...to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing.

- (b) It will not support public transport and vibrancy any more than a complying building (if the height is a result of distribution as is claimed by the applicant).
- (c) It will result in dominance and amenity effects on the wider suburb.
- (d) The additional height is purely for residential activities and will have no impact on the commercial functions in the centre.
- (e) It is not necessary to reinforce the focal point through additional height. This can be achieved through design and activity as does the current situation on this corner.
- (f) There is no need in planning terms to differentiate the Local Centre zone from the Mixed Use zone by height. If this was necessary the AUP:OP would have provided different heights for these zones.
- (g) The gaps and voids between the buildings are not significant in the current design and can be achieved without additional height.
- (h) A sensitive development along Marau Crescent could have been achieved without providing additional height.

9.15 Mr Neeve also addresses planning matters in his evidence. In paragraph 11.20 the evidence stresses the significant increase in the number of residential dwellings in the centre. Similar statements are found in paragraphs 11.33 and 11.44. While I agree that increasing the number of residential dwellings in the centre is a good thing, the AUP:OP has provided for extensive residential intensification throughout Auckland and there is no necessity to build higher than the standards allow to provide sufficient residential accommodation.

9.16 Ms Absolum in section 6 of her evidence takes a similar approach to Mr Lovett in respect of the differences between non-complying activities and restricted discretionary activities. My comments in paragraphs 9.2 and 9.3 apply to Ms Absolum's evidence as well.

- 9.17 In paragraph 7.3 Ms Absolum's evidence addresses the purpose of the height rule H11.6.1. I disagree with a number of her conclusions in this regard.
- 9.18 The purpose of the standard is set out in the AUP:OP as a bulleted list. The second to last bullet point is followed by the word 'and'. This means that the entire list applies equally (unless the context excludes applicability). Therefore the first bullet point applies as much as any other point and should not be dismissed as an introduction or general statement. It is clear from the way in which the various business zones are set out in a hierarchy that building height is an important policy matter that is part of the differences between the zones. Therefore the management of height is important from a policy viewpoint as well as an effects viewpoint.
- 9.19 In paragraph 7.4 Ms Absolum correctly acknowledges that the last bullet point does not apply as the site has not been identified as a character area. However I also note that the second to last bullet point does not apply as this site has not been specifically identified for intensification. This has been discussed further in my paragraph 8.5 above.
- 9.20 In paragraph 8.12 Ms Absolum states that the height limits invite much taller buildings than currently exist in Mission Bay. This is not correct as there are some buildings in Mission Bay that are 4 storeys high or greater. As I have discussed in section 7 of my evidence above I consider that the relevant objectives and policies do not 'invite' buildings to be higher than height rules as building height is an important component of the policy framework distinguishing one business zone from another.

## **10. SECTION 104 ASSESSMENT**

- 10.1 Following the assessment above I summarise how I consider that the proposal fits with the relevant subsections of section 104 of the Act.

### *Section 104(1)(a) Actual and Potential Effects on the Environment*

- 10.2 As noted above I consider that the proposal will result in adverse effects on the overall residential amenity of Mission Bay and the adjacent coastal area.

*Section 104(1)(b)(iv) - Relevant District Plan and Regional Plans*

- 10.3 The proposal is contrary to the objectives and policies including those relating to the Business - Local Centre Zone and the Coastal Environment.

*Part II*

- 10.4 I consider that as the AUP:OP is relatively new and has sufficiently addressed the issues a consideration under Part 2 of the Act is not required.

**11. CONCLUSION**

- 11.1 In conclusion, I have assessed the application, and other material and have considered the relevant provisions of the Act and the AUP:OP.
- 11.2 Overall I have concluded that the proposal, will cause adverse effects on neighbours' amenity, and is contrary to the relevant objectives and policies of the AUP:OP.
- 11.3 My overall view is that having regards to these matters the proposal is not acceptable in this location and consent should be refused.

David Wren

23 July 2019

## Attachment 1- Profile



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### Profile - David Wren

I am a fully qualified planner and hearing commissioner and am a full member of the New Zealand Planning Institute. I have over 30 years of planning experience in New Zealand and overseas.

I operate Planning Policy Research, a small boutique planning consultancy, and I work in all areas of planning.

I have had previous experience working as a VSA volunteer in Zimbabwe and served for several years on the VSA board. I also assisted in the establishment and was responsible for the operation of SustAin - a not for profit Resource Management aid service in the Grey Lynn Community Law Office.

### Experience

The following is a brief summary of my relevant experience.

#### Planning, policy and research consultant (1997 to the present)

Areas of work include:

I am a member of the pool of hearing commissioners appointed by Auckland Council

I have prepared numerous resource consent applications/ submissions on resource consents for various commercial and residential proposals.

I regularly prepare Outline Plans of Work applications for schools.

I prepared multiple submissions for a wide range of clients (approximately 25) on Proposed Auckland Unitary Plan including preparation of hearing evidence and attendance at hearings.

I assisted the AUPHP in hearing submissions on designations in the then Proposed Auckland Unitary Plan. As part of this process I sat on hearings with the Panel and I ran mediation sessions with submitters.

I regularly run professional training seminars for real estate agents on changes in planning including the Auckland Unitary Plan.

I was the court appointed Friend of the Submitter – Plan Change 163 – Auckland Council and am court appointed process advisor for the America's Cup base work.

**Appendix 2 - Objectives and Policies Assessment**

H11	Business – Local Centre Zone	Comments
H11.2	Objectives: General objectives for all centres, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone	
1	A strong network of centres that are attractive environments and attract ongoing investment, promote commercial activity, and provide employment, housing and goods and services, all at a variety of scales	The centre has its place in the network - part of that place is the scale of development.
2	Development is of a form, scale and design quality so that centres are reinforced as focal points for the community.	It does not require additional height to achieve this.
3	Development positively contributes towards planned future form and quality, creating a sense of place.	It does not require additional height to achieve this: an 8 storey building does not create a sense of place for a reasonably low scale suburb.
4	Business activity is distributed in locations, and is of a scale and form, that: (a) provides for the community's social and economic needs; (b) improves community access to goods, services, community facilities and opportunities for social interaction; and (c) manages adverse effects on the environment, including effects on infrastructure and residential amenity.	The area focuses on tourism/eating more than the local community although there are some conveniences for local residents. There is possibly marginal improvement in (b), although this is not clear. The over height aspects do not manage effects on residential amenity generally.
5	A network of centres that provides: (a) a framework and context to the functioning of the urban area and its transport network, recognising: (i) the regional role and function of the city centre, metropolitan centres and town centres as commercial, cultural and social focal points for the region, sub-regions and local areas; and (ii) local centres and neighbourhood centres in their role to provide for a range of convenience activities to support and serve as focal points for their local communities. -(b) a clear framework within which public and private investment can be prioritised and made; and (c) a basis for regeneration and intensification initiatives.	The Proposed Development is not focussed on local - development and is more like a higher level centre that is trying to attract people from outside the local area.

## The Mission Bay Kohimarama Residents Association Inc

Business – Local Centre Zone objectives		
6	Local centres enable commercial activity which primarily services local convenience needs and provides residential living opportunities.	As for Objective 3 and 5. It fails to primarily service local convenience needs. It does not need to be 8 levels high to provide residential opportunities.
7	The scale and intensity of development within local centres is in keeping with the planning outcomes identified in this Plan for the surrounding environment.	The overall scale is significantly higher than surrounding existing and future environment. There is no THAB in the Bay so lower level residential is the planned outcome for the residential areas in the surrounding area. This is combined with some single house zone and special character overlay, some of which is adjacent.
8	Local centres are an attractive place to live, work and visit.	The design aspect is at issue, particularly in view of the dominance caused by the height.
H11.3	Policies: General policies for all centres, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone	
1	Reinforce the function of the city centre, metropolitan centres and town centres as the primary location for commercial activity, according to their role in the hierarchy of centres.	The Proposed Development does not achieve this and has the potential to undermine the centres strategy of the plan.
2	Enable an increase in the density, diversity and quality of housing in the centre zones and Business – Mixed Use Zone while managing any reverse sensitivity effects including from the higher levels of ambient noise and reduced privacy that may result from non-residential activities	Managing reverse sensitivity has led to poor public access on the first level plaza area with much of this privatised.
3	Require development to be of a quality and design that positively contributes to: (a) planning and design outcomes identified in this Plan for the relevant zone; (b) the visual quality and interest of streets and other public open spaces; and (c) pedestrian amenity, movement, safety and convenience for people of all ages and abilities	There are issues with through site movement requiring use of stairs (or lifts), safety of upper area with respect to crime, and effects on the visual quality of reserve and Bay



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4	Encourage universal access for all development, particularly medium to large scale development	This is achieved although it could be improved.
5	Require large-scale development to be of a design quality that is commensurate with the prominence and visual effects of the development	The design aspect is at issue, particularly in view of the dominance caused by the height.
6	Encourage buildings at the ground floor to be adaptable to a range of uses to allow activities to change over time.	The ground floor residential units on Marau Cres are not readily capable of being adaptable as they are bedrooms and part of the residential units on the next level which only contain living rooms / kitchens. The ceiling heights at ground floor level are also too low for future retail.
7	Require at grade parking to be located and designed in such a manner as to avoid or mitigate adverse effects on pedestrian amenity and the streetscape.	Improved design could result in lowering the podium area to ground level
8	Require development adjacent to residential zones and the Special Purpose – School Zone and Special Purpose – Maori Purpose Zone to maintain the amenity values of those areas, having specific regard to dominance, overlooking and shadowing.	The over height aspects of the Proposed Development result in dominance.
9	Discourage activities, which have noxious, offensive, or undesirable qualities from locating within the centres and mixed use zones, while recognising the need to retain employment opportunities	No issues
10	Discourage dwellings at ground floor in centre zones and enable dwellings above ground floor in centre zones	See Policy 6 comments
11	Require development to avoid, remedy or mitigate adverse wind and glare effects on public open spaces, including streets, and shading effects on open space zoned land.	The wind report is unfavourable – it identifies an increase in wind conditions to cat C in some places. Given the nature of the centre and zone objectives and policies and the use of Mission Bay this is a concern.
12	Recognise the functional and operational requirements of activities and development	There is no functional need to have over height buildings

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13	In identified locations within the centres zones, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone enable greater building height than the standard zone height, having regard to whether the greater height: (a) is an efficient use of land; (b) supports public transport, community infrastructure and contributes to centre vitality and vibrancy; (c) considering the size and depth of the area, can be accommodated without significant adverse effects on adjacent residential zones; and (d) is supported by the status of the centre in the centres hierarchy, or is adjacent to such a centre.	This is not an identified location where additional height has been recognised. Adjacent residential zones are low scale (11m max).
14	In identified locations within the centre zones, Business – Mixed Use Zone, Business – General Business Zone and Business – Business Park Zone, reduce building height below the standard zone height, where the standard zone height would have significant adverse effects on identified special character, identified landscape features, or amenity	This is not an identified location where height has been reduced.
15	In areas surrounding the city centre, recognising their proximity and accessibility to the Business – City Centre Zone and Business – Metropolitan Centre Zone at Newmarket, provide opportunities for substantial office activities in the Business – Local Centre Zone and Business – Mixed Use Zone.	No offices are provided.
Business – Local Centre Zone Policies		
16	Enable activities for the local convenience needs of the surrounding residential area, including retail, commercial services, office, food and beverage and small scale supermarkets	This proposal does not provide for much additional retail etc, if any.
17	Enable large scale commercial activity where this: (a) supports: (i) a diversity of activities within the local centre; and (ii) the centre's on-going ability to provide for the local convenience needs of its surrounding community; (b) does not significantly adversely affect the function, role and amenity of the Business - City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone beyond those effects ordinarily associated with trade effects on trade competitors; and (c) manages adverse effects on the safe and efficient operation of the transport network including effects on pedestrian safety and amenity	As the Proposed Development does not provide for large scale commercial activities, this is not an issue.
18	Provide for the expansion of local centres to better provide for community social and economic well-being, where expansion is suitable for growth in terms of strategic and local environmental effects	The expansion is generally limited to the new residents.

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19	Recognise: (a) the positive contribution supermarkets make to centre vitality and function; (b) the functional and operational requirements of these activities; and (c) where preferred built form outcomes are not achieved, the supermarket needs to achieve a quality built environment by positively contributing to public open space, including the activation of streets	N/A
20	Require activities adjacent to residential zones to avoid, remedy or mitigate adverse effects on amenity values of those areas.	The overall height creates adverse amenity effects.
21	Restrict maximum impervious area within a riparian yard in order to ensure that adverse effects on water quality, water quantity and amenity values are avoided or mitigated.	N/A

	NZCPS	Comment
	<p><b>Policy 1</b>  <b>Extent and characteristics of the coastal environment</b></p> <p>(1) Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.</p> <p>(2) Recognise that the coastal environment includes:</p> <ul style="list-style-type: none"> <li>(a) the coastal marine area;</li> <li>(b) islands within the coastal marine area;</li> <li>(c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;</li> <li>(d) areas at risk from coastal hazards;</li> <li>(e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;</li> <li>(f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;</li> <li>(g) items of cultural and historic heritage in the coastal marine area or on the coast;</li> <li>(h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and</li> <li>(i) physical resources and built facilities, including infrastructure, that have modified the coastal</li> </ul>	<p>Location of site sits within (2) (f) as an area that contributes to the visual qualities and amenity values of the coast. The reserve area also fits within coastal environment.</p>

	environment.	
	<p><b>B8.2. Natural character B8.2.1. Objectives</b></p> <p>(1) Areas of the coastal environment with outstanding and high natural character are preserved and protected from inappropriate subdivision, use and development.</p> <p>(2) Subdivision, use and development in the coastal environment are designed, located and managed to preserve the characteristics and qualities that contribute to the natural character of the coastal environment.</p> <p>(3) Where practicable, in the coastal environment areas with degraded natural character are restored or rehabilitated and areas of high and outstanding natural character are enhanced.</p>	Potential effects on natural character of reserve area

	<p><b>B8.2.2. Policies</b>  (4) Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on natural character of the coastal environment not identified as outstanding natural character and high natural character from inappropriate subdivision, use and development.</p> <p><b>B8.3. Subdivision, use and development</b>  <b>B8.3.1. Objectives</b></p> <p>(1) Subdivision, use and development in the coastal environment are located in appropriate places and are of an appropriate form and within appropriate limits, taking into account the range of uses and values of the coastal environment.  (2) The adverse effects of subdivision, use and development on the values of the coastal environment are avoided, remedied or mitigated.</p> <p><i>B8.3.2. Policies Use and development</i></p> <p>(1) Recognise the contribution that use and development of the coastal environment make to the social, economic and cultural well-being of people and communities.  (2) Avoid or mitigate sprawling or sporadic patterns of subdivision, use and development in the coastal environment by all of the following:  (a) concentrating subdivision, use and development within areas already characterised by development and where natural character values are already compromised;  (b) avoiding urban activities in areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character; and  (c) ensuring that subdivision, use or development involving land above and below the mean high water springs can provide for any associated facilities or infrastructure in an integrated manner.  (4) Require subdivision, use and development in the coastal environment to avoid, remedy or mitigate the adverse effects of activities above and below the mean high water springs, including the effects on existing uses and on the coastal receiving environment.  (7) Set back development from the coastal marine area, where practicable, to protect the natural character and amenity values of the coastal environment.</p>	<p>Potential adverse effects on character of reserve area</p> <p>See above</p>
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E18	<p><b>E18.2. Objectives [rcp/dp]</b></p> <p>(1) The natural characteristics and qualities that contribute to the natural character of the coastal environment are maintained while providing for subdivision, use and development.</p> <p>(2) Where practical the natural character values of the coastal environment are restored or rehabilitated.</p>	<p>Potential adverse effect on CE due to scale and dominance of buildings</p>
	<p><b>E18.3. Policies [rcp/dp]</b></p> <p>(1) Manage subdivision, use and development of land adjoining scheduled outstanding natural character or high natural character areas that have a biophysical or visual linkage with the scheduled area to:</p> <p>(a) avoid adverse effects on the natural characteristics and qualities that contribute to the natural character values of outstanding natural character areas; and</p> <p>(b) avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects, on the characteristics and qualities that contribute to the natural character values of high natural character areas.</p> <p>(2) Maintain significant landforms and indigenous vegetation and habitats that are connected to outstanding natural character and high natural character areas.</p> <p>(3) Manage the effects of subdivision, use and development in the coastal environment to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects, on the characteristics and qualities that contribute to natural character values, taking into account:</p> <p>(a) the location, scale and design of the proposed subdivision, use or development;</p> <p>(b) the extent of anthropogenic changes to landform, vegetation, coastal processes and water movement;</p> <p>(c) the presence or absence of structures, buildings or infrastructure;</p> <p>(d) the temporary or permanent nature of any adverse effects;</p> <p>(e) the physical and visual integrity of the area, and the natural processes of the location;</p> <p>(f) the intactness of any areas of significant vegetation, and vegetative patterns;</p> <p>(g) the physical, visual and experiential values that contribute significantly to the wilderness and scenic values of the area;</p> <p>(h) the integrity of landforms, geological features and associated natural processes, including sensitive landforms such as ridgelines, headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs, streams, rivers and surf breaks;</p> <p>(i) the natural characteristics and qualities that exist or operate across mean high water spring and land in the coastal environment, including processes of sediment transport, patterns of erosion and</p>	<p>Natural character of reserve area adversely effected by building scale.</p>

## The Mission Bay Kohimarama Residents Association Inc

	<p>deposition, substrate composition and movement of biota, including between marine and freshwater environments; and</p> <p>(j) the functional or operational need for infrastructure to be located in a particular area.</p> <p>(4) Promote land use practices and restoration activities that will restore or rehabilitate natural character values.</p>	
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**Appendix 3 - Assessment of Height Variation Controls**

Other local centres - Isthmus - height controls.

Centre	Height Rule
St Heliers	12.5m (through precinct rule)
Eastgate	Standard
Meadowbank	Standard
Mt Wellington H'way/ Penrose Rd	21m over part south of Penrose Road.
Manukau Road	Standard
Greenwoods Corner	Standard
Balmoral	Standard
Dominion Road	13m
Sandringham	13m
Morningside	Standard
Kingsland	13m
Mt Roskill	Standard
Blockhouse Bay	Standard
Lynfield	Standard
Greenbay	Standard
Kelston	Standard
West Lynn	13m
Grey Lynn	13m
Jervois Rd	Standard
Mt Eden	13m
Remuera	Standard
Grafton	Standard