

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 Patteson Avenue and the northern side of Marau Crescent being 75-97 Tamaki Drive, 6-14 Patteson 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

**STATEMENT OF EVIDENCE OF DON STOCK 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 Don Stock. I am the Chair of the Mission Bay Kohimarama Residents Association Incorporated. In that role I am supported by a Treasurer, Secretary, Membership Director and 9 other committee members.
- 1.2 The Mission Bay Kohimarama Residents Association (“Residents’ Association”) is an incorporated society, set up approximately 50 years ago. Our purpose is to represent the interests of the Mission Bay and Kohimarama communities.
- 1.3 I am authorised by the Residents’ Association to give evidence on its behalf.
- 1.4 I will also be providing a separate brief of evidence as an affected homeowner as part of the case on behalf of Support Mission Bay Incorporated.

2. ROLE OF THE RESIDENTS’ ASSOCIATION

- 2.1 As a committee, we consider issues applicable to our community and decide which ones we should involve ourselves in. The Residents’ Association has been involved in a wide range of projects, from developing a rat trapping program for pest control, to submitting on various Council projects, to working with Auckland Transport to improve proposals for traffic safety in Mission Bay. Of direct relevance here, we were also very active in informing our community about the Draft Unitary Plan and making submissions.
- 2.2 We try to inform our members of projects, issues and opportunities in our area, and to get feedback from them to shape our responses. For major issues we hold public meetings so that issues can be explained in more detail and questions and feedback can be more effectively canvassed.
- 2.3 We have more than 650 members, representing more than 550 households. This equates to 11% of the households in the area, according to the latest census figures.

The proposed development – consultation

- 2.4 We organised a public meeting on 3 October 2018 to inform the public of the Applicant's proposal and to get feedback from the community. We distributed flyers to around 3,000 houses throughout Mission Bay and parts of Orakei, advertising the meeting to ensure that the community would have an opportunity to attend, understand the proposal and provide feedback on how they viewed it.
- 2.5 The meeting was very successful with a huge turnout of around 350 people, filling the Selwyn College Theatre to overflowing. This clearly demonstrated a very strong community interest in this proposal. The attendees were overwhelmingly opposed to the development in its current proposed form, most strongly in relation to the height and bulk of the development. The attendees were near-unanimous and strongly vocal in supporting us in opposing the development.
- 2.6 As an indication of the strength of feeling, more than 200 people signed up as new members to the Residents' Association as a result of the meeting. We have subsequently received donations from more than 100 people to help fund our opposition through the resource consent process.
- 2.7 The feedback we received from our community was that overall, they fail to see any significant community benefits beyond an upgrade to the quality of the buildings. Instead they see major negative impacts to the community as a whole and residents in particular. Their concerns focussed on a number of key points.
- (a) The height and bulk of the building was inappropriate in the Mission Bay environment, existing or future.
 - (b) The development would be visually dominant from viewpoints throughout the suburb. Residents and visitors entering Mission Bay from either east or west on Tamaki Drive, from Patteson Avenue, or from Selwyn Avenue would be confronted with a massive block towering above the iconic pohutukawa, above the heritage buildings and above all surrounding buildings. It would be of an entirely different scale of anything else or even anything else envisioned by the Unitary Plan. This would be particularly grating when approaching from the east, with the foreground

comprising single house zone with a heritage overlay, and then the proposed development with no transition between.

- (c) People relaxing in Selwyn Reserve currently see this as an escape from urban life. From the reserve, the views are of the sea and beach, the historic stone buildings of the Melanesian Mission, the historic fountain, and the row of mature pohutukawa. Filtered views of traffic and buildings can be seen through the pohutukawa, but the dominant visual context is of natural elements – sand, sea, trees, grass. Buildings constructed to the Unitary Plan height controls would not change this. They would largely remain shielded by the pohutukawa and would not be seen above them. This development would fundamentally change the experience. The proposed buildings would tower above the pohutukawa and visually dominate Selwyn Reserve to the detriment of the community and those who use the reserve.
- (d) In short, the proposed development would “stand out like a sore thumb”.
- (e) The community also expressed serious concern over the integrity of the Unitary Plan and the process we have all just been through to get it in place. A typical comment was “What was the point of spending all that effort and money on developing the Unitary Plan if the first developer that comes along is allowed to build whatever he wants”. They recognise that this is not a minor breach of the controls required due to the unique circumstances of the site, but is a massive 73% breach¹, proposed for no reason other than a desire to maximise profits from the development at the community’s expense.
- (f) They also asked “what is to stop a decision like this being applied to any development sites along the Mission Bay or Kohimarama waterfront?”. Because the zoning in the next block has the same height controls, the answer would appear to be “nothing”. This decision will establish a precedent that the

¹ The ceiling height of the 8 storey block is 27.66m above the ground level, compared to the 16m occupiable height control in the Unitary Plan. This equates to a breach of the control by 73%.

community will have to live with. This is of enormous concern to the community.

- (g) Residents disputed the Applicant's view that Mission Bay needed a tall building to be a focal point for the suburb. They believe that the defining feature of Mission Bay is the beach and Selwyn Reserve, with the commercial hospitality services there to support that. Adding a tall building as a focal point merely confuses the issue and attempts to change the key characteristic of Mission Bay from the beach and reserve to the built environment. Residents ask why a single developer should be allowed to make that change to the entire suburb..
- (h) Many residents disliked the design, feeling that it related poorly to Mission Bay, past and present. Mission Bay has a rich history; it was an important area for Maori, the Melanesian Mission was established there, it hosted the Kohimarama Conference to try to stop the Maori Wars spreading, the Walsh brothers based their flying school there. None of this is reflected at all in the design. Neither does it relate to current design cues. We are told that it has elements of art deco to reflect the art deco elements on the existing facades, but residents see the design as more reflective of 1980's architecture totally unrelated to anything in the area. We note that the Urban Design Panel had a similar view.
- (i) Residents are pleased that the existing restaurants and bars will be upgraded to a higher standard. They would welcome a development that achieves this without having serious negative impacts on the community. They note, however, that despite the size of the development, there will be less floor area for restaurants and bars than at present, and some of the area allocated is in an unattractive underground location. Given the intended intensification of the area this seems like an opportunity missed. What could have been a community benefit has been converted into a benefit for the developer to enable additional more profitable apartments to be built. The community notes that all of the hospitality areas are contained well within the Unitary Plan height control and in fact are contained within

the bottom two floors. The incremental height above the Unitary Plan controls is purely dedicated to apartments and offers no additional community benefits.

- (j) Residents are also pleased that a cinema will be retained in an upgraded form. They note, however, that the Applicant states that this is contingent on the cinema proving to be financially viable, and worry that this is simply a tactic to get approval before making a later change to convert this building to more apartments. If the development is granted we ask that the conditions of consent make it clear that the cinema is not optional, at the developer's discretion.
- (k) Many residents are concerned about the very large impacts on close neighbours. Most residents living in Marau Crescent will lose substantial visual amenity through visual domination. Those living on the cliff face behind will also lose substantial visual amenity, with their open views and outlooks being replaced by a massive block, totally out of keeping with the rest of the area, and looming over them. These residents' privacy will be lost as residents in the new apartments look down on them. This will inevitably have the effect of lowering property values; residents do not believe that it is the role of the Unitary Plan to facilitate the transfer of wealth from current residents to a developer where the plan's zoning has carefully set height limits.
- (l) Residents are very aware of the potential for flooding in this area. In fact the Residents' Association recently organised a public meeting to allow Auckland Council to present what they were doing to try to mitigate this in the future. We have seen the Mission Bay area flooded at least 3 times in the past 15 years, and worry about the wisdom of excavating 2 levels of underground parking. We note that the entrance to the underground levels is at 2.70m, significantly below the 3.45m design level in the Applicant's own report for floor levels that cannot be raised. We have not seen any realistic plan in the application for dealing with this scenario, just a one sentence reference to a "portal barrier". Our concern is that should this prove to be a problem later, the Council will be left to deal with

mitigation and the community will suffer the loss of amenity value that arises from flood damage.

- (m) The community notes the zoning for this area is “Local Centre” and reasonably expects that developments, particularly those that breach height controls, should provide benefits to the local community first and foremost. In this case, there is no local community benefit from the incremental portion of the development above the height controls. The incremental height is purely to allow for more apartments to be built, and for some of these to have higher value sea views above the pohutukawa across Tamaki Drive.

2.8 The depth of community feeling is demonstrated by analysis of the submissions made. Overall, the Council has recorded exactly 700 submissions, of which they classify 70 in support or part support, 627 opposing or partially opposing and 3 neutral. Many of the submissions in partial support, however, requested that the height of the development be reduced and so cannot be construed to be supporting the height of this development. Further, two of the three neutral submissions appear to have been miscategorised as neutral when they are actually strongly opposed to the development. In addition, a large number of supporting submissions were from staff of Drive Holdings’ parent, Urban Partners. Adjusting for these, the submissions indicate that 93% of submissions were opposed. More than 96% of submissions received from residents of Mission Bay and surrounding suburbs were opposed to the application. There can be little doubt of the community attitude to the appropriateness of this proposal.

3. ENGAGEMENT WITH THE UNITARY PLAN

3.1 The Residents’ Association played a similar role in engaging the community during the Unitary Plan process. Recognising that the rules and principles established in that plan would guide the development of Auckland and, in particular, our suburbs for decades to come, we felt it was critical that people have a good understanding of the proposals and their implications, and have the opportunity to shape the development rules to best suit our community.

- 3.2 We held a public meeting with over 700 people attending, the largest meeting of its type in Auckland's history. We listened to the feedback and made strong representations to try to have that feedback incorporated into the Unitary Plan.
- 3.3 One of the key submission points we made was that we felt that in order to retain the character of Mission Bay in the face of inevitable intensification, buildings in the commercial area now zoned Business Local Centre Zone should be subject to a height variation control overlay to restrict heights to 10m. Notably, Drive Holdings's legal submissions to the IHP supported the proposed height limit of 16m occupied space with 2 m for roof form.² A copy of those submissions is attached as Appendix One. The submissions state that the master planning underway for the redevelopment of the land had been put on hold "until there is a clearer understanding of the final provisions especially in relation to the implications of this in relation to floor levels and in relation to height for Local Centres."³
- 3.4 It is worth noting that height variation controls in the Local Centre Zone are limited to discrete values; occupiable heights of 11 m, 16 m, 19 m and 25 m. The current proposal exceeds all of these. This further emphasises that the height of this proposal is well beyond anything that was envisaged for the zone in the Unitary Plan.
- 3.5 It is also worth noting that at the time of Drive Holdings' submission in support of the 16 m height limit, the height limit was expressed as 16 m and four storeys. While the reference to four storeys was ultimately removed as being too inflexible, it does provide a clear indication of the expectations for the zone.
- 3.6 While the Residents' Association was disappointed with the outcome of the recommendations and decisions of the IHP on this point, we accepted that the IHP had specifically considered the Mission Bay zoning and height controls when it concluded that a 16m occupiable height was appropriate in the context of enabling greater intensification for Auckland..

² Para 14 – Legal Submissions on behalf of Drive Holdings Ltd and UP Management Ltd dated 9 September 2015

³ Para 9

3.7 In view of these recent decisions we are disappointed that the Applicant appears to have paid scant regard to the outcome of the Unitary Plan determinations on height.

3.8 We also note that arguments raised by the Applicant, for example about the need for further intensification, in support of the excess height are not specific to this site, but are generic and could be applied to virtually any site in Auckland, regardless of the zone.

4. PREVIOUS DISPUTES ABOUT HEIGHT IN MISSION BAY

4.1 This is not the first time that the Residents' Association has been involved in defending height limits in Mission Bay on this site by the same developer. Several years earlier we had assisted local residents in opposing an application from Drive Holdings (1991) Ltd to build a 4 storey car park, exceeding height rules in the operative plan of the time. This was a major battle that went all the way to the Environment Court where it was largely decided in the community's favour.⁴ It is acknowledged that the Unitary Plan decisions subsequently allowed a greater height on this site, but the comments of the Court about the amenity effects on residents in my view still accurately reflect residents' concerns and remain relevant..

5. SUMMARY

5.1 The Residents' Association has had a clear and consistent position on appropriate building heights in Mission Bay for many years and has participated fully in trying to achieve these through the Unitary Plan process. In contrast, Drive Holdings has at no time prior to this current application indicated that they felt that 28m was an appropriate height for the commercial area in Mission Bay, nor even that 20m for a 5 storey development was appropriate, despite clearly having plans underway at the time of the Unitary Plan hearings. In fact, they actively supported the 16m + 2m height controls on this site during the Unitary Plan process.

5.2 The view of the Residents' Association is that the Proposal displays a flagrant contempt for the Unitary Plan and the process that Auckland engaged in to achieve it. It is not an efficient use of the community's

⁴ *Drive Holdings (1991) Ltd v Auckland City Council* A009/00

resources to direct community funding to defence of the Unitary Plan provisions on a piece meal basis.

5.3 If this Proposal is approved in its current form:

- (a) we anticipate that Drive Holdings will be back to use the same arguments to justify an 8 storey development on their existing site on the opposite corner of Patteson Ave as the other gatepost to their 'gateway';.
- (b) it will send a message that the height controls of the Unitary Plan are of little importance and simply a starting point for negotiations to achieve a non-conforming but more profitable development;
- (c) the community's confidence in the plan will be undermined, particularly so soon after the Plan has been developed;
- (d) there will be significant adverse effects on the amenity of some proximate residents, and an overall impact on the suburb of Mission Bay that is difficult to quantify but which once granted, will be irreverisible. It will set the scene for similar inappropriate, over-height development.

5.4 The Residents' Association asks that the Application be declined.

Don stock

On behalf of the Residents' Association

**BEFORE THE AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management Act 1991 as amended by
the Local Government (Auckland Transitional Provisions)
Amendment Act 2010

A N D

IN THE MATTER of submissions lodged on the proposed Auckland Unitary
Plan

REGARDING Topic 051-054 - Centre zones, Business Park and
Industry zones, Business activities and Business controls

**LEGAL SUBMISSIONS ON BEHALF OF DRIVE HOLDINGS LTD AND
UP MANAGEMENT LIMITED
SUBMITTER 1686; FURTHER SUBMITTER 929 ON TOPIC 051-054
9 SEPTEMBER 2015**

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**LEGAL SUBMISSIONS ON BEHALF OF DRIVE HOLDINGS LTD AND UP
MANAGEMENT LIMITED ON TOPICS 051-054**

Introduction

1. These submissions are made on behalf of Drive Holdings Limited and UP Management Limited (“**the Submitters**”).
2. The Submitters are the registered proprietor and manager respectively of land in the Mission Bay Business Centre which is zoned Local Centre under the proposed Auckland Unitary Plan (“**PAUP**”).
3. The local Centre zoning for Mission Bay is generally supported in so far as it enables the current activities to continue and enables the future redevelopment of the Mission Bay business Centre as planned for by the Submitters for continued use as a retail, restaurant, and entertainment destination and for residential activity.
4. The Submitters consider that Mission Bay differs from most local centres in that it is a significant dining and entertainment destination. It has an important role as a tourist destination and in this regard performs as a sub-regional destination for Auckland residents.

Amendments to Local Centre zone description, objectives and policies

5. As a result of these characteristics, the Submitters consider that Mission Bay does not fit comfortably within the zone description of Local Centres in D.3.5. The Submitters therefore seek an amendment to the zone description to acknowledge that the Local Centre zone also includes some Local Centres such as Mission Bay that because of their particular locational characteristics, their scale and the nature of their development also perform a sub-regional function as a dining and entertainment destination serving both greater Auckland residents and tourists. The relief sought by the Submitters is set out **Annexure A** to these submissions highlighted in yellow.
6. Similarly, while the Submitters generally support the Local Centre zone objectives and policies as notified they also consider that the Objectives for the Local Centre zone do not adequately acknowledge the dual role of Local Centres such as Mission Bay. They make a similar submission in respect of the Local Centre zone Policies.

7. This matter was raised at mediation on behalf of the Submitters by Mr Douglas Allan, and as a result of discussions, the word “primarily” was agreed to be inserted into the Local Centre zone description which does go some small way to acknowledging the Submitters’ site specific concerns at Mission Bay but it is submitted this does not go far enough.
8. Mission Bay stands out as being a unique Local Centre with its extensive range of dining and entertainment facilities including Cinema complex and beachfront location opposite Selwyn Reserve. The Submitters have master-planning underway for the redevelopment of the land owned by it in Mission Bay.
9. Due to the uncertain state of the PAUP planning regime applying to the land and particularly the bulk and location provisions that will apply in the future this master-planning has recently been put on hold until there is a clearer understanding of the final provisions especially in relation to Topic 22 Natural Hazards and Flooding and the implications of this in relation to floor levels and in relation to height for Local Centres.
10. To this end, the Submitters still generally support the additions sought in their submission to the zone description, and the additional objective and policy as set out in Annexure A to these submissions.

Evidence of Council witnesses

Zone Description

11. The Submitters have reviewed the relevant parts of the evidence lodged for the Auckland Council. Mr MW Bonis¹ addresses the Submitters’ submission and considers that the zone description for Local Centres is appropriate. He supports² the insertion of the word ‘primarily’ to identify that Local Centres are not limited to solely serving local needs. He also supports amendments recognising that not all local centres are well served by good public transport and recognition that built form heights typically enable up to four stories.

¹ EIC MW Bonis, 27 July 2015, para 12.1, page 58

² Ibid in para 12.8

12. Mr Bonis also addresses the specific new objective and policy sought by the Submitters³ and does not support this.
13. Mr J Wyatt⁴ also addresses the Council's proposed Business Objectives, Policies and Rules. For part 3.5 Local Centre zone⁵ Mr Wyatt sets out his final recommended wording for the Local Centre zone Description, Objectives and Policies. The relief sought by the Submitters is not included however there are some significant changes between the notified and final provisions as shown in Mr. Wyatt's Rebuttal Annexure A version.
14. The Submitters have reviewed the changes to the Local Centre zone description and as stated above they support the inclusion of the word 'primarily' and the consequential amendment regarding height which states that 'Provisions typically enable ~~allow for~~ buildings up to 4 stories high, enabling residential use at upper floors.' The Submitters understand that for Local Centres the height limit is now proposed to be 18 m allowing 16 m occupied space and 2 m for the roof form. The Submitters also have no objection to the references inserted regarding supermarkets.

Local Centre zone Objectives and Policies

15. The Submitters have no objection to the changes proposed to Objective 2 or the addition of new Objective 3. The new Objective sought by the Submitters addressing Mission Bay would therefore become new Objective 4.
16. There have also been significant changes to the Policies for Local Centres since the Submitters' submission was lodged including deletion of Policy 4 to which the Submitters had sought to add wording recognising the function of Mission Bay.

³ Ibid in para 12.16

⁴ Rebuttal, J Wyatt, 30 August 2015, Attachment A

⁵ Ibid in Attachment A page 13 at page 15 of 27 of the Annexure

17. The changes that were sought to Policy 4 by the Submitters in part sought to acknowledge that there were some large-scale commercial activities such as cinemas in Mission Bay and the Submitters consider that this issue is now addressed with the proposed new policy for enabling large-scale commercial activity.
18. Other matters that the Submitters sought to address in their proposed addition to Policy 4 were that Local Centres such as Mission Bay which perform a dual function as both a Local Centre and a sub-regional destination may contain businesses that open for longer hours and provide an entertainment and dining function. They may also contain franchise chains of national and international restaurant brands. The Submitters still seek the addition of these parts of the proposed new Policy sought by it and consider they are now better addressed in a standalone policy rather than as an addition to an existing policy. The recommended relief is also shown in **Annexure A**.

Conclusion

19. The Submitters are generally supportive of the direction that the amended provisions have taken but still seek recognition of the unique dual role that Mission Bay performs as both a Local Centre and sub-regional destination. The relief sought by the Submitters is shown highlighted in yellow in **Annexure A** using the final Rebuttal version of the Council supported provisions.



JG Goodyer
Counsel for Drive Holdings Ltd and UP Management Ltd
9 September 2015

Annexure A

Local Centre Description, Objectives and Policies as set out in Rebuttal Evidence of Jeremy Wyatt dated 30 August 2015 - in Attachment A with changes sought by Drive Holdings Ltd and UP Management Ltd **highlighted in yellow**

3.5 Local Centre zone

Zone description

This zone applies to a large number of small centres throughout Auckland. The centres are generally located in areas of good public transport.

The zone primarily provides for the local convenience needs of surrounding residential areas, including local retail, commercial services, offices, food and beverage, and appropriately scaled ~~smaller-scale~~ supermarkets. The zone includes some local centres such as Mission Bay that, while serving a local centre function, also perform a sub-regional function as dining and entertainment precincts destinations serving both greater Auckland residents and tourists. The zone discourages single largescale commercial activity that would prevent a mix of activities within the local centre. The expansion of local centres may be appropriate if it provides greater social and economic wellbeing benefits for the community. Provisions typically enable allow for buildings up to four storeys high, enabling residential use at upper floors.

New development within the zone requires resource consent so that it is designed to a high standard which enhances the quality of the centre's streets and public open spaces.

Objectives

1. A network of local centres that enable commercial activity which primarily services local convenience needs and provides residential living opportunities.
2. The scale and intensity of development within local centres respects the ~~future planned character of the surrounding environment~~ planning outcomes identified in the Unitary Plan for the surrounding environment.
3. Local centres are an attractive place to live, work and visit.
4. ~~Enable~~ The continued development of local centres such as Mission Bay which function as both a local centre and a sub-regional entertainment and dining destination for Aucklanders and tourists.

Policies

1. Enable activities for the local convenience needs of the surrounding residential area, including local retail, commercial services, office, food and beverage and small scale supermarkets.

~~2. Require development to achieve a high standard of design.~~

~~3. Enable residential activity above street level.~~

~~4. Discourage largescale commercial activity that would adversely affect the:~~

~~a. retention and establishment of a mix of activities within the local centre~~

~~b. function, role and vitality or amenity of the City Centre, Metropolitan and Town Centre zones beyond those effects ordinarily associated with trade effects on trade competitors.~~

~~c. safe and efficient operation of the transport network.~~

3. ~~while a~~Acknowledging that some local centres, such as Mission Bay, perform a dual function as both a local centre and a sub-regional destination and accordingly may contain:

(i) Businesses that open for longer hours and provide an entertainment and dining function; and

(ii) Some large-scale commercial activity such as cinemas; and

(iii) Franchise chains of national and international restaurant brands.

4. Enable large scale commercial activity where this:

a. supports:

i. a diversity of activities within the local centre

ii. the centre's on-going ability to provide for the local convenience needs of its surrounding community.

b. does not adversely affect:

~~i. the safe and efficient operation of the transport network; and~~

the function, role and amenity of the City Centre, Metropolitan and Town Centre zones beyond those effects ordinarily associated with trade effects on trade competitors.

~~c. manages adverse effects on the safe and efficient operation of the transport network including effects on pedestrian safety and amenity.~~

5. Provide for the outward expansion of local centres to better provide for community social and economic wellbeing, where expansion is suitable for growth in terms of strategic and local environmental effects.

6. Recognise:

a. the positive contribution supermarkets make to centre viability and function

b. the functional requirements of these activities

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.

~~Recognise the positive contribution small scale supermarkets make to local centre viability and function and the functional requirements of these activities, so that where preferred built form outcomes are not achieved the development positively contributes to the streetscape and character of its surroundings.~~