

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

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

A N D

IN THE MATTER of a submission lodged on the
Proposed Auckland Unitary Plan

SUBMITTER Ross Newman

**MEMORANDUM OF COUNSEL ON BEHALF OF ROSS NEWMAN SEEKING
LEAVE TO FILE LATE SUBMISSION AND EVIDENCE
Topic 079 – Special Character and Pre-1944 Mapping
Topic 080 – Rezoning and Precincts (Geographical Areas)**

**ELLIS GOULD
SOLICITORS
AUCKLAND**

REF: D J Sadlier

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: (09) 307 2172 Fax: (09) 358 5215
PO Box 1509
DX: CP22003
AUCKLAND**

MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. This memorandum of counsel is filed on behalf of Ross Newman.
2. Mr Newman is the owner of the property at 226 Remuera Road, Remuera, legally described as Lot 1 DP 59096 ("**Property**").
3. Mr Newman purchased the Property in March 2015, and, after 24 years spent living in New York and Zürich, moved into the Property in November 2015.

PAUP provisions applying to the Property

4. When he purchased the Property, it and the surrounding block bounded by Remuera Road, Westbourne Road, Westbury Crescent and Portland Road ("**Westbury Block**") were consistently zoned Single House zone and were subject of the Special Character - Residential Isthmus B overlay ("**Character Overlay**").
5. The Property is in a state of relative disrepair, is of limited character value (special, historic or otherwise) given unsympathetic renovations that have been undertaken to it, and requires significant reinvestment to bring it up to standard. It is also extremely expensive to maintain, even in its current state. Notwithstanding that, the Property remains attractive for restoration and renovation as a large family home on a large elevated Remuera site, with panoramic views of the harbour and Rangitoto, provided the notified planning regime is retained for the Westbury Block.
6. While Mr Newman was aware that the PAUP process was underway, and there was a risk that the extent of certain zones and overlays may change, he expected that that the amenity values of the Westbury Block would be treated consistently. In particular, Mr Newman considered that either the views from the Property would be retained, or if any additional height was proposed then the Property would also receive the benefit of that upzoning.
7. Mr Newman has recently become aware of the Council's "preliminary position" on rezoning, which proposes to retain Single House zoning and the Character Overlay for the Property and certain other properties along Remuera Road, but to otherwise remove the Character Overlay from the

Westbury Block and upzone those properties to the Mixed Housing Urban zone (“**Preliminary Position**”).

8. The Preliminary Position, as outlined in the submission attached, will have significant and perverse outcomes in terms of removing amenity values for those houses proposed to remain within the Single House Zone Overlay on Remuera Road, which will lead to underinvestment, and potentially “demolition by neglect”, thereby undermining the purpose of the Character Overlay. In those circumstances, the only justifiable approach would be to zone the entirety of the Westbury Block consistently. That would include either retaining the Single House zone and Character Overlay, or applying the Mixed Housing Urban zone and deleting the Character Overlay, over the whole block.
9. Counsel has been unable to locate a submission on the PAUP which squarely raises the issue of potentially rezoning the Westbury Block or removing the Character Overlay from it. In those circumstances, it is questionable whether the proposed rezoning of that part of the Westbury Block which forms part of the Council’s Preliminary Position should be identified as within or outside the scope of submissions. The maps recently released by the Council imply that this change is within scope.
10. Counsel currently considers the Council’s Preliminary Position to be outside scope of submissions, or at least not clearly foreshadowed in those submissions. It also seems clearly inappropriate for the reasons outlined above and in the submission attached to this memorandum. Mr Newman has had no reasonable opportunity to comment on the Preliminary Position, notwithstanding that it would have significant adverse effects on the amenity values enjoyed by the Property, as well as its value. Mr Newman would value the opportunity of being heard in respect of the submission attached, including calling evidence in respect of the values associated with the Property and what the best and most appropriate planning outcome would be for the Westbury Block.

Waiver and directions sought from the Panel

11. Mr Newman proposes to give legal submissions, and call evidence from himself and his architect at the hearings of both Topics 079 and 081, relating to the extent of the Character Overlay and what appears to be the consequential rezoning of most but not all of the Westbury Block.

12. Accordingly, Counsel respectfully requests that the Panel:
 - (a) Accept the attached submission under s165(c) of the Local Government (Auckland Transitional Provisions) Act 2010.
 - (b) In the event that the Auckland Council is able to identify the specific submission(s) that it relies on to support the Preliminary Position, treat the attached submission also as a further submission in opposition to those original submissions.
 - (c) Grant a waiver of time to file evidence in respect of Topic 079, and direct Mr Newman to file any evidence by 21 January 2016 (the date for filing rebuttal evidence in respect of this topic).

13. Counsel submits that these directions are appropriate for the following reasons:
 - (a) The Council's shift in policy direction with respect to the treatment of the Westbury Block only became evident recently by way of evidence filed in the Council in early December 2015, and in more recent media coverage of the Preliminary Position.
 - (b) The Preliminary Position does not appear to be squarely supported by any particular submission, and is therefore arguably outside scope. Even if there is broad relief to support an argument as to jurisdiction, it is clear that the Preliminary Position was not clearly foreshadowed in submissions.
 - (c) Accordingly no person, including Mr Newman or any former owner of the Property, had an appropriate opportunity to consider and make submissions or further submissions in respect of the appropriate planning outcome.
 - (d) Only one minor timetabling amendment is sought for Mr Newman's benefit, to enable filing of evidence for the hearing of Topic 079. That amendment does not jeopardise the current scheduling of the hearing of Topic 079.
 - (e) The issues raised in Mr Newman's submissions are relatively narrow, and the general subject matter will need to be covered in evidence in support of the Preliminary Position in any event. Accordingly neither

the Council nor any submitter will be unduly prejudiced by receiving Mr Newmans submission or late evidence.

- (f) For the reasons set out in paras 4-10 above, Mr Newman will be unduly prejudiced by any decision to exclude him from discussion of the issues relevant to the Panel's recommendation, and the Council's decision, in respect of the appropriate zoning of the Westbury Block.
14. If it would assist the Panel, counsel can be available at short notice for a conference in respect of this procedural matter.

DATED this 22nd day of December 2015

A handwritten signature in blue ink, appearing to read 'dsad', is enclosed in a light gray rectangular box.

Daniel Sadlier
Counsel for Ross Newman

Submission on Proposed Auckland Combined Plan

Section 123 of the Local Government (Auckland Transitional Provisions) Act 2010 and Clause 6 of Schedule 1 to the Resource Management Act 1991

To: Auckland Council
Freepost Authority 237170
Private Bag 92300
AUCKLAND 1142

Name of submitter: **ROSS NEWMAN**

Topic 079 – Special Character and Pre-1944 Mapping
Topic 081 – Rezoning and Precincts (Geographical Areas)

Introduction

1. This is a submission on the Proposed Auckland Unitary Plan (“**PAUP**”).
2. I could not gain an advantage in trade competition through this submission. In any event, I am directly affected by an effect of the subject matter of the submission that:
 - (a) adversely affects the environment; and
 - (b) does not relate to trade competition or the effects of trade competition.
3. The specific provisions of the Unitary Plan that this submission relates to are:
 - (a) The extent of the Special Character – Residential Isthmus B Overlay (“**Character Overlay**”), particularly as it relates to the block bounded by Remuera Road, Westbourne Road, Westbury Crescent and Portland Road in Remuera (“**Westbury Block**”).
 - (b) The zoning proposed for the Westbury Block.

Unitary Plan Provisions

4. My submission is as follows:
 - (a) Provided the relief sought in this submission is granted, the Unitary Plan:
 - (i) Will be consistent with the purpose and principles of the RMA and will otherwise be consistent with Part 2 of the RMA;
 - (ii) Will be appropriate in terms of section 32 of the RMA; and
 - (iii) Will warrant being implemented in terms of both the RMA and sound resource management principles and practice.

- (b) In the absence of such amendments, the Unitary Plan will fail to meet the purpose and principles of the RMA and will allow the generation of significant adverse effects on the environment.

In particular, without limiting the generality of the above:

- (c) I am the owner of the property at 226 Remuera Road, Remuera, legally described as Lot 1 DP 59096 (“**Property**”).
- (d) I purchased the Property in March 2015, and after living in New York and Zurich for 24 years, in November 2015 I moved in to the Property with my wife and young family.
- (e) The Property:
- (i) Is large, run down, and requires significant reinvestment to bring up to standard as a family home on top of being very costly to maintain even in its current standard;
 - (ii) Contains a house that was built in or about 1916 on a site of 6,000m², which has subsequently been subdivided and the house altered several times in styles unsympathetic to the original design, significantly altering the original character of the home; and
 - (iii) Is located at the Market Road intersection and within the High Land Transport Route Noise overlay, and is significantly affected by traffic noise, particularly given its early 20th century construction.
- (f) The key amenity enjoyed by the Property, and the reason we decided to purchase and invest in restoring the property, is its panoramic view towards the harbour and Rangitoto Island.
- (g) We have obtained resource consent to restore the house. A quantity surveyor has estimated the total cost of the work at at least \$2.2 million.
- (h) Recently, I became aware that the Council is proposing, as part of the PAUP process, to remove the Character Overlay from most of the Westbury Block and to “upzone” those properties to the Mixed Housing Urban zone.
- (i) Removal of the Character Overlay, and upzoning of properties adjacent to the Property on the Westbury Block, and in particular 228 Remuera Road, will significantly undermine the amenity values associated with the Property by allowing for construction of high density housing up to (as I understand the Council’s more recent “preliminary position”) 12m directly to the north of the Property, as a permitted activity.
- (j) If the harbour view is eliminated, the Property will lose its attraction to us. It is also very unlikely to be of interest to other families who can afford to restore and maintain it at great annual cost as a single family home. Accordingly, the Property, along with other affected properties on Remuera Road within the Westbury Block, will likely see no investment at all, and will deteriorate further
- (k) As with numerous other properties on Remuera Road between Newmarket and the Remuera shops, there is a high risk that it will see no investment at all and will deteriorate further. This, almost inevitable, result of the Council’s

“preliminary position”, will wholly undermine the purpose of the Character Overlay remaining on a few houses along Remuera Road.

- (l) The Council’s preliminary position would have significant adverse environmental effects, in particular on the amenity values associated with Remuera Ridge, including the Property. In those circumstances, the retention of the Single House zone and Character Overlay on parts of the Westbury Block, including the property, is inappropriate in terms of section 32 of the RMA. Whatever approach (upzoning or retention of notified zoning and overlays) is considered most appropriate, it should be applied consistently to the entirety of the Westbury Block to ensure that the PAUP either does not result in significant adverse environmental effects, or reaches an appropriate balance in terms of the benefits and costs associated with the environmental, economic, social and cultural effects of the approach.

Relief Sought

5. I seek the following decision from Auckland Council:

- (a) That the Unitary Plan be amended as follows:

Either:

- (i) Uphold the Character Overlay, and do not delete it from the Westbury Block; and
- (ii) Retain single house zoning of the Westbury Block;

Or:

- (iii) Delete the Character Overlay from the entirety of the Westbury Block; and
- (iv) Rezone the entirety of the Westbury Block to Mixed Housing Urban.

- (b) In the alternative, if the Council is not minded to grant relief consistent with either of the two options set out in (a) above, apply a height restriction to the Westbury Block, and in particular the property at 228 Remuera Road, to ensure that no buildings can be constructed which exceed the maximum height limit for the Mixed Housing Suburban zone (8 metres, with an additional roof structure allowance of 1m).
- (c) Such other alternative or additional relief or other consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.

6. This submission identifies indicative examples of relief that would address appropriately certain of the matters raised in this submission. Other forms of wording and relief may also be appropriate and within the scope of the matters raised in this submission. The indicative relief is way of example but not to the exclusion of other appropriate and effective methods of upholding this submission.

7. I wish to be heard in support of its submission.

8. If others make a similar submission, I will consider presenting a joint case with them at a hearing.

DATED 22 December 2015



Ross Newman

ADDRESS FOR SERVICE: C/- the offices of Ellis Gould, Solicitors, Level 17, Vero Centre, 48 Shortland Street, PO Box 1509, Auckland 1140, DX CP22003, Auckland, Telephone: 09 307 2172, Fax: 09 358 5215. Contact: Daniel Sadlier Email: dsadlier@ellisgould.co.nz