

**In The Environment Court
At Auckland**

ENV-2016-AKL-

In The Matter

of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)

and

In The Matter

of an appeal under section 156(1) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

and

In The Matter

Of Proposed Plan Hearing Topic 050 – City Centre Zone

Between

Smith & Caughey Limited
Appellant

and

Auckland Council
Respondent

Notice Of Appeal

Dated 12 September 2016

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To: The Registrar
Environment Court
Auckland

Introduction

1. Smith & Caughey Limited appeal against a decision of the Auckland Council (**the Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. Smith & Caughey Limited have the right to appeal the Council's decision under section 156(1) of the LGATPA because the Council rejected a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) in relation to a provision or matter addressed in Smith & Caughey Limited's submission on the proposed plan (further submission #2108). The Council decided on an alternative solution, which resulted in a provision being included in the Proposed Plan.
3. Smith & Caughey Limited is not a trade competitor for the purposes of section 308D of the RMA.
4. Smith & Caughey Limited received notice of the decision on 19 August 2016.

Background

5. The Queen Street Valley precinct (QSV precinct) of the Proposed Plan is centred on Queen Street and includes the areas surrounding High, Lorne, O'Connell, and Fort streets. The QSV precinct included rules regulating the demolition of more than 30% by volume or any demolition of the front façade of any building constructed prior to 1 January 1940 as a restricted discretionary activity (**pre-1940 building demolition control**).
6. Smith & Caughey Limited own and occupies buildings in the QSV precinct that were constructed prior to 1 January 1940. Some of these buildings are scheduled as historic heritage and some are not.
7. Smith & Caughey limited made a further submission to the Proposed Plan including opposition to the pre-1940 building demolition controls and presented evidence and submissions in opposition to the pre-1940 building demolition control at the topic 050 hearings.

Appeal

8. The decision appealed is:
 - (a) The Hearings Panel recommended (at part 5 of its recommendations concerning Topics 050-054) to delete the pre-1940 building demolition control for the QSV and Karangahape Road Precincts (**Hearings Panel's Recommendation**);
 - (b) The Council decided to reject that recommendation (at 36.2(b) of the Council's Decisions Report). The Council's alternative solution was to retain the pre-1940 building demolition control for the QSV and Karangahape Road Precincts in terms of the drafting at attachment A to the Council's Decisions Report (**Council's Decision**).
 - (c) The appeal is limited to the Council's Decision as it relates to the QSV precinct.

9. The reasons for the appeal are that the pre-1940 building demolition control:
 - (a) Is not the most appropriate method to give effect to the Resource Management Act and relevant planning provisions;
 - (b) Is not necessary to give effect to the higher order planning provisions,
 - (c) Is not consistent with section 32 RMA, and in particular do not have proper or adequate regard to the costs and benefits of the controls or their necessity, efficiency, or appropriateness;
 - (d) Places unnecessary constraints and costs on landowners, in particular when seeking to re-develop;
 - (e) Inappropriately conflates amenity values under s 7(c) RMA with historic heritage under s 6(f) RMA;
 - (f) Is an inappropriate de-facto heritage protection;
 - (g) Lacks a sufficient evidential basis in fact or law;
 - (h) Contains unreasonable and unnecessarily onerous assessment criteria; and
 - (i) Needs greater flexibility in the design and assessment criteria.

Relief

10. The following relief is sought:
- (a) Delete the pre-1940 building demolition control for the QSV Precinct with all necessary changes to relevant issues objectives policies and methods so as to achieve the same or similar outcome as the Hearings Panel's recommendation;
 - (b) Provide for demolition of all buildings in the QSV Precinct as a permitted or controlled activity;
 - (c) Alternatively, exclude the appellant's buildings from the pre-1940 building demolition control;
 - (d) Amend assessment criteria for the pre-1940 building demolition control so as to exclude:
 - i. comparison between the cost of renovating and the cost of a new building;
 - ii. reference to "beyond rehabilitation" or similar language.
 - (e) Amend assessment criteria for the pre-1940 building demolition control so as to allow greater flexibility in the design and assessment criteria, including:
 - i. whether a new building is proposed and the contribution it would make to streetscape character;
 - ii. the need to achieve reasonable compliance with the current building code;
 - iii. the reasonableness, practicability and cost of upgrading or renovating.
 - (f) Such further or consequential relief as necessary to give effect to this appeal and as accords with the submissions supported or opposed by the appellant's further submission.
 - (g) Costs.
11. Smith & Caughey limited consents to mediation of this appeal.

Attachments

12. The following documents are attached to this notice:
- (a) a copy of the relevant part of the decision (**Attachment A**);

- (b) a copy of Smith & Caughey Limited's further submission (**Attachment B**);
 - (c) a copy of the submission of Mt Hobson Group (submission 6502) supported by Smith & Caughey Limited's further submission (**Attachment C**);
 - (d) a copy of the relevant part of the submission of Heritage New Zealand (submission 371) opposed by Smith & Caughey Limited's further submission (**Attachment D**); and
 - (e) a copy of the submission of the House Movers Section of the New Zealand Heavy Haulage Association (submission 5556) supported by Smith & Caughey Limited's further submission (**Attachment E**).
13. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

Smith & Caughey Ltd by its counsel and duly authorised agents



.....
Stuart Ryan / Rowan Ashton

Dated 12 September 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

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

ATTACHMENT A – Council Decision



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Decisions Report

19 August 2016

36. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 050-054 (City centre and business zones), July 2016”

Panel recommendations accepted:

36.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 050-054 (City centre and business zones), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 36.2.

Panel recommendations rejected:

36.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 050-054 (City centre and business zones) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

- (a) **Wynyard Precinct – the deletion of framework plans has resulted in a consequential amendment to the height and gross floor area controls in the Wynyard Precinct.**

Reasons	
	(i) The recommended deletion of the post-framework plan height and site intensity provisions significantly reduces the development potential of Wynyard Precinct expressly enabled in the notified PAUP and may potentially result in the inefficient use of this City Centre land and public infrastructure
	(ii) The recommended deletion of all assessment criteria previously relating to framework plans results in a disconnect between the objectives and policies, and the rules of the Precinct
	(iii) The recommendation will prevent the development of sites fronting Jellicoe Street for non-marine uses (i.e. apartments and retail) contrary to the Wynyard Quarter Urban Design Strategy and the objectives and policies for Wynyard Precinct.
	(iv) The recommended changes to provisions were not sought by any submitter to the Wynyard Precinct.
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **Queen Street Valley Precinct – the deletion of the pre – 1940 building demolition control from the Queen Street Valley Precinct.**

Reasons	
(i) The maintenance and enhancement of the pre-1940 buildings in the Queen Street Valley Precinct is integral to maintaining its special character	
(ii) The retention and protection of special character buildings constructed prior to 1940 maintains the integrity and coherence of the built form and architecture, and the streetscape within this area.	
(iii) The pre-1940 trigger and its application was determined as a result of survey work.	
Alternative solution	See Attachment A

- (c) **The deletion of the minimum dwelling size standard in the City Centre and business zones.**

Reasons	
(i) The Building Act does not address social or design quality effects associated with small dwellings. It is therefore necessary to manage these through the District Plan	
(ii) Intensive living environments require internal living spaces which are functional and which provide for amenity to meet the day- to-day needs of residents.	
(iii) This will assist to maintain the social wellbeing of the community, support social cohesion and thereby support further intensification within urban environments as these areas become desirable places to live.	
Alternative solution	See Attachment A



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
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Attachment A

The alternative solutions prepared by the Council for any rejected recommendations (which includes: text, diagram and map alternative solutions).

19 August 2016

Topic 050-054
Pre-1940 Queen St Valley

H8. Business – City Centre Zone

...

H8.3. Policies

...

Historic heritage and special character

...

- (28) Maintain and enhance the special character values of pre-1940 buildings in the Queen Street Valley precinct and buildings outside those precincts identified on Map H8.11.1 of the Business – City Centre Zone as making a strong or significant contribution to the special character of the surrounding area, in particular by:
- (a) awarding transferable development rights where an identified special character building is protected in perpetuity and restored in accordance with an approved character plan;
 - (b) requiring all development proposals for identified special character buildings to have considered adaptive re-use;
 - (c) avoiding the demolition of identified special character buildings where it would adversely affect the built character of the surrounding area; and
 - (d) requiring alterations and additions to existing buildings and new buildings to give consideration to, and be sympathetic to the existing and planned character of the area.

City form

- (29) ...

H8.4. Activity table

Table H8.4.1 specifies the activity status of land use and development activities in the Business – City Centre Zone pursuant to section 9(3) of the Resource Management Act 1991.

Table H8.4.1 Activity table

Activity		Activity status
General		
(A1)	...	
Development		
(A32)	New buildings	RD
(A33)	Demolition of buildings	C

(A34)	Minor cosmetic alterations to a building (including special character buildings identified on Map H8.11.1 <u>and buildings constructed prior to 1940 within the Queen Street Valley precinct</u>) that do not change its external design and appearance	P
(A35)	Internal alterations to buildings	P
(A36)	External alterations and additions to a special character building identified on Map H8.11.1 <u>and buildings constructed prior to 1940 within the Queen Street Valley precinct</u> not otherwise provided for	RD
(A37)	...	

H8.6. Standards

All activities listed as permitted, controlled or restricted discretionary in Table H8.4.1 Activity table must comply with the following standards.

H8.6.1. Retail ...

H8.6.16 Bonus floor area - bonus floor space calculation for identified special character buildings

Purpose: calculate the transferable floor area available to identified special character buildings based on the lost development potential arising as a result of the building being retained as special character and the relative costs of protection.

(1) A floor space bonus ...

(2) For the purpose of this standard:

(a) 'identified special character buildings' are all pre-1940s buildings within the Karangahape Road precinct and those identified on Map H8.11.1;

(b) 'character building floor plate' ...

H8.8. Assessment – restricted discretionary activities

H8.8.1. Matters of discretion

The Council will reserve its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

(1) new buildings ...

(2) external alterations and additions to a special character building identified on Map H8.11.1 and buildings constructed prior to 1940 within the Queen Street Valley precinct:

(a) building design and external appearance;

(b) architectural style and retention of original building features; and

(c) consistency with an approved character plan;

- (3) conversion of ...

H8.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities:

- (1) new buildings ...

- (2) external alterations and additions to special character buildings identified on Map H8.11.1 and buildings constructed prior to 1940 within the Queen Street Valley precinct. ...

Chapter I Precincts

I210. Queen Street Valley Precinct

I210.1. Precinct description

The Queen Street Valley precinct is centred on Queen Street and includes the areas surrounding High, Lorne, O'Connell, and Fort streets.

Part of the special character ...

Buildings within the Queen Street Valley precinct... with identifiable and unique qualities.

Pre-1940s buildings largely define the precinct. A key purpose of the precinct is to maintain the integrity and coherence of the built form and architecture as this is important to retaining the precinct's streetscape character.

The land in the Queen Street Valley Precinct is zoned Business – City Centre Zone.

I210.2. Objective

- (1) The built and streetscape character and the amenity of the Queen Street Valley Precinct is maintained and enhanced.

The overlay, Auckland-wide and Business – City Centre Zone objectives apply in this precinct in addition to those specified above.

I210.3. Policies

- (1) Require building form and scale to maintain the character, sense of scale within the precinct and maintain sky views and sunlight access to streets.
- (2) Require building design to respect the form, scale and architecture of scheduled historic heritage places and pre-1940s buildings within the precinct.
- (3) Control demolition or removal of pre-1940s buildings, or parts of those buildings, to ensure it does not adversely affect the built form and streetscape character of the precinct.

- (3) (4) Require proposals for new buildings or additions to existing buildings adjoining or adjacent to scheduled historic heritage places or pre-1940s buildings to be sympathetic and provide contemporary and high-quality design which enhances the precinct's built form and streetscape character.

The overlay, Auckland-wide and Business – City Centre Zone policies apply in this precinct in addition to those specified above.

I210.4. Activity table

The provisions in any relevant overlays, zone and the Auckland-wide apply in this precinct unless otherwise specified below.

Table I210.4.1 specifies the activity status of development activities in the Queen Street Precinct pursuant to section 9(3) of the Resource Management Act 1991.

Table I210.4.1. Activity table

Activity		Activity status
Development		
(A1)	...	P
(A3)	<u>The total demolition or substantial demolition (more than 30% by volume), or any demolition of the front façade of a building constructed prior to 1 January 1940</u>	<u>RD</u>

I210.5. Notification

- (1) Any application...

I210.8. Assessment – restricted discretionary activities

I210.8.1 Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the overlay, Auckland-wide or zone provisions:

- (1) new buildings, and alterations and additions to buildings and structures not otherwise provided for:
 - (a) building design and external appearance.
- (2) buildings that do not comply with the frontage height and setback standards:
 - (a) building scale, dominance and visual effects; and
 - (b) effects on public open space and pedestrian access.

(3) The total demolition or substantial demolition (more than 30 per cent by volume), or any demolition of the front façade of a building constructed prior to 1 January 1940.

(a) The effects of building demolition on built form and streetscape character.

I210.8.2. Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities, in addition to the assessment criteria specified for the relevant restricted discretionary activities in the overlay, Auckland-wide or zone provisions:

(1) new buildings....

(3) the total demolition or substantial demolition (more than 30 per cent by volume), or any demolition of the front façade of a building constructed prior to 1 January 1940.

(a) Effects of building demolition on built form and streetscape character

(i) The demolition or removal of a pre-1940s building within the precinct should not significantly adversely affect the built form and streetscape character of the precinct. In particular, consideration will be given to:

- whether the existing building forms part of a cohesive group of buildings in terms of similarity of age, scale, proportion or design and the extent to which the building's demolition would detract from the shared contribution that group makes to streetscape, the unique character or the history and context of the precinct.
- whether the existing building is a remnant example of a building type that reflects the history of the area.
- the contribution the individual building makes to the context, character or cohesiveness of the streetscape or precinct.
- the contribution the building makes to adjoining or nearby scheduled historic heritage buildings, either through the context and the relationship of the building to the scheduled historic heritage building or through the building's mass, height or rhythm of facades, and whether its demolition would adversely impact on the historic heritage values of the building.
- whether reasonable use of the site can be achieved through adaptive re-use of the building rather than through its demolition and replacement.

- (i) Notwithstanding the above, whether the building is beyond rehabilitation in terms of poor structural or physical condition, and the costs of the repair work or upgrading necessary to extend the useful life of the building are prohibitive (in comparison to the costs of a new building of similar size).

I210.9. Special information requirements

There are no special information requirements ...

ATTACHMENT B - Smith and Caughey Limited's further submission

Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

Unitary Plan Submission Team
Auckland Council
Freepost Authority 237170
Private Bag 92300
Auckland 1142

Email: unitaryplan@aucklandcouncil.govt.nz

Submission on: Proposed Auckland Unitary Plan

Name: Smith & Caughey Ltd

Address: Smith & Caughey Ltd
C/- Stuart Ryan
P.O. Box 1296
Shortland Street
Auckland 1140

21 JUL 2014

1. This is a further submission on the Proposed Auckland Unitary Plan (PAUP)
2. Smith & Caughey Ltd ("the further submitter") has an interest in the PAUP that is greater than the interest the general public has. The PAUP directly affects the CBD interests of Smith & Caughey Ltd, who own and occupy sites bordering Queen Street, Wellesley Street, and Elliot Street.
3. The further submitter could not gain an advantage through trade competition by this submission.
4. **Schedule 1** to this further submission details those submissions **opposed**.
5. The further submitter opposes the submissions in schedule 1 for the reasons these submissions are:
 - a. contrary to purpose and principles of the Act;

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- b. will not enable social, economic and cultural wellbeing;
 - c. do not meet the requirements of s.32 of the Act;
 - d. otherwise do not give effect to the provisions of the RMA.
6. **Schedule 2** to this further submission details those submissions **supported**.
7. The further submitter supports the submissions in schedule 2 for the reasons given in those submissions and for the reasons the submissions are:
- a. consistent with the purpose and principles of the Act;
 - b. enable social, economic and cultural wellbeing;
 - c. meet the requirements of s.32 of the Act.
8. The submitter further says:
- a. It is important for social, cultural and economic well-being of the city for the unitary plan to provide active support through its rules, objectives and policies for main street retailing and the assets within the CBD.
 - b. A balanced approach is required between the protection of built character or heritage features while also ensuring the sustainable commercial use of buildings, and ensuring that building owners and occupiers are able to alter, modify, or demolish buildings to meet current expectations on internal amenity and structural integrity, including in relation to earthquake standards.
 - c. Aspects of the PAUP and submissions seek the imposition of restrictions on character or heritage buildings (including as to internal controls), but do not provide appropriate balance or flexibility to maintain and enhance main street retailing and the commercial assets within the CBD. This balance needs to be reflected in the appropriate rules, objectives, policies, methods, and assessment criteria. In particular, the PAUP:
 - i) confuses the distinction between genuine heritage and character, and

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- ii) provides insufficient flexibility including incentives or offsets to recognise built character and heritage while also meeting modern amenity requirements for buildings and their use, or adaptive modification or re-use.
- iii) Places an unfair and unreasonable burden on land pursuant to section 85 of the Act.

- 9. The further submitter wishes to be heard in support of this further submission.
- 10. If others make a similar submission, further submitter will consider presenting a joint case with them at a hearing.

Smith & Caughey Ltd by its counsel and duly authorised agent



.....
Stuart Ryan

Date 21 July 2014

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Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

SCHEDULE 1 – SUBMISSIONS OPPOSED

The Further Submitter opposes the submission of:	The particular parts opposed are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be disallowed:
Civic Trust Auckland	6444-162	Overlay E2/J2 Historic Heritage - Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Add the Smith & Caughey Department Store, Queen Street half of Queen to Elliott Streets, 253-261 Queen Street / Elliott Street, Central City to the schedule.
Civic Trust Auckland	6444-163	Overlay E2/J2 Historic Heritage - Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Add the Civic Tavern (Queen & Wellesley St associated retail use 1996), 263-267 Queen Street, Central City to the schedule.
Civic Trust Auckland	6444-40	Overlay E3.2/J3.6 Pre -1944 Building demolition control E3.2 Description, objectives and policies	... extend to cover the whole of the Auckland region, including the City Centre
Civic Trust Auckland	6444-108	Overlay E2/J2 Historic Heritage Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Include all current NZHPT (New Zealand Historic Places Trust) registrations including all places, areas and interiors identified on the NZHPT Register in the schedule of Significant Historic Heritage Places. Categorise the NZHPT Category 1 as Category A and include the NZHPT registration number and type. Refer to the submission for details [page 44/49]

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Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

The Further Submitter opposes the submission of:	The particular parts opposed are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be disallowed:
New Zealand Historic Places Trust (Heritage New Zealand) Pouhere Taonga	371-264	Overlay E2/J2 Historic Heritage Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Amend the schedule ID 01952 'Smith and Caughey (Mahoney Building)', Wellesley Street West and Elliott Street, [Auckland Central], from Category B to Category A
New Zealand Historic Places Trust (Heritage New Zealand) Pouhere Taonga	371-205	Precincts - City Centre Queen Street Valley	Retain the objectives and policies that relate to the demolition of pre-1940 buildings, and new buildings alongside pre-1940 and scheduled buildings in F3.10.
New Zealand Historic Places Trust (Heritage New Zealand) Pouhere Taonga	371-207	Precincts - City Centre Queen Street Valley	Retain the provisions [K3.9] that regulate the demolition of pre-1940 buildings.
The Character Coalition	6370-29	Overlay E2/J2 Historic Heritage Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Amend the schedule to; add any item identified and / or registered by the Historic Places Trust (NZHPT); include all NZHPT registration numbers and types; and translate the NZHPT Category 1 to Category A.
The Character Coalition	6370 – (para 8.3 – not identified in council summary	Overlay E3.2/J3.6 Pre -1944 Building demolition control E3.2 Description,	Extend pre-1944 overlay to cover the whole Auckland Region.

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Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

SCHEDULE 2 – SUBMISSIONS SUPPORTED

The Further Submitter supports the submission of:	The particular parts supported are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be allowed:
Property Council New Zealand	6212-53	Historic Heritage (Overlay) Overlay E2/J2 Historic Heritage Overlay E2 description, objectives and policies	Ensure that heritage restrictions are only placed buildings and areas the community truly values and are balanced against Auckland's intensification and development needs.
Property Council New Zealand	6212-54	Historic Heritage (Overlay) Overlay E2/J2 Historic Heritage Overlay E2 description, objectives and policies	Ensure that special character restrictions are only placed buildings and areas the community truly values and are balanced against Auckland's intensification and development needs
Property Council New Zealand	6212-55	Historic Heritage (Overlay) Overlay E2/J2 Historic Heritage Overlay E2 description, objectives and policies	Retain policy 4 [Use, maintenance and repair of scheduled historic heritage places] which provides incentives to assist in the cost of maintaining scheduled historic heritage places.
IAG New Zealand Limited	5893-7	Historic Heritage (Overlay) C3 Historic	Amend historic heritage place provisions to ensure the protection of historic heritage places is balanced with the need to ensure such buildings will not create an increased risk to the public should a natural hazard event occur

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Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

The Further Submitter supports the submission of:	The particular parts supported are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be allowed:
		heritage - Background, objectives and policies	
IAG New Zealand Limited	5893-20	Historic Heritage (Overlay) Overlay E2/J2 Historic Heritage Overlay E2 description, objectives and policies	Amend overlay to provide that buildings in areas vulnerable to natural hazards are not covered by the blanket historic heritage provisions and to allow for the possibility of demolition of historic heritage places where the retention of these places create a risk to public safety.
William W Rayner	6174-5	Historic heritage, special character and natural heritage B4.1 Historic heritage	Add text to read: The council will develop a rates relief programme to assist and encourage commercial property owners to carry out earthquake strengthening of historic listed buildings
Mt Hobson Group	6502-2	Precincts - City Centre Queen Street Valley	Amend provisions so that demolition in the Queen Street Valley Precinct is a permitted or controlled activity, except where buildings have been specifically identified for protection under the Plan.
Mt Hobson Group	6502-17	Precincts - City Centre Queen Street Valley	Add standards/matters of control for demolition in the Queen Street Valley Precinct as a permitted or controlled activity
Conrad Properties Limited	6491-2	Precincts - City Centre Queen Street Valley	Amend provisions so that demolition in the Queen Street Valley Precinct is a permitted or controlled activity, except where buildings have been specifically identified for protection under the Plan

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Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

The Further Submitter supports the submission of:	The particular parts supported are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be allowed:
Conrad Properties Limited	6491-16	Precincts - City Centre Queen Street Valley	Add standards/matters of control for demolition in the City Centre zone as a permitted or controlled activity.
Conrad Properties Limited	6491-17	Precincts - City Centre Queen Street Valley	Add standards/matters of control for demolition in the Queen Street Valley Precinct as a permitted or controlled activity
Salmond Reed Architects Limited	4413-6	Overlay E2/J2 Historic Heritage J2.2 Development controls	Provide rules for permitted works to sites surrounds, interiors, plant and free standing non-permanent structures similar to those contained in the Auckland Council Operative District Plan - Central Area.
William W Rayner	6174-45	Overlay E2/J2 Historic Heritage J2.2 Development controls	Provide rules for permitted works to site surrounds, interiors, plant and free standing on-permanent structures similar to those contained in Section 10 of the operative Central area district plan.
House Movers Section of New Zealand Heavy Haulage Association (Incorporated)	5556-6	Overlay - Business and residential Overlay E3.1 Bus. & Res. special character areas	Delete the special character overlays.
House Movers Section of New Zealand Heavy Haulage Association (Incorporated)	5556-7	Historic heritage, special character and natural heritage B4.2 Special character	Clarify and/or limit the spatial extent of the special character overlays so that they are not for the purpose of protecting historic heritage, they only apply where there is a high level of aesthetic coherence and a high level or architectural merit, they only apply to areas that are genuinely special in the Auckland context and they do not affect or limit achieving the key policy objective for a quality compact city with affordable housing opportunities.
House Movers Section of New Zealand Heavy Haulage Association	5556-8	Overlay - Business and residential Overlay E3.1 Bus.	Amend the assessment criteria (all Special Character areas) to take into consideration whether a new building is proposed and the contribution it would make to the streetscape character, the need to achieve reasonable compliance with the current building code, the need to achieve modern living amenity,

FS#2108

7/14

Further submission of Smith & Caughey Ltd on the Proposed Auckland Unitary Plan (CBD)

The Further Submitter supports the submission of:	The particular parts supported are:	Provision No. of the Proposed Auckland Unitary Plan	The Further Submitter seeks that the part of the original submission be allowed:
(Incorporated)		& Res. special character areas	whether the building will be removed for reuse elsewhere and the reasonable and practicability of upgrading or renovating.
House Movers Section of New Zealand Heavy Haulage Association (Incorporated)	5556-9	Overlay - Business and residential Overlay E3.1 Bus. & Res. special character areas	Amend the assessment criteria to delete any comparison between the cost of renovating and the cost of a new building and any reference to "beyond rehabilitation" or similar test (for all Special Character areas).
Unitec Institute of Technology	2742-194	Overlay E2/J2 Historic Heritage J2.1 Activity table 3 - Historic heritage areas	Amend Activity Table 3 to include a separate category for the modification or partial demolition of a building, feature or landscape feature within a Category A or B scheduled historic area as a restricted discretionary activity, if undertaken in conjunction with conservation plan or adaptive reuse proposal. Refer to details in submission at page 10/16 of volume 5.
Minister for Courts	4279-44	Overlay E2/J2 Historic Heritage J2.1 Activity table 3 - Historic heritage areas	Amend Prohibited activities to be classified as Non-complying activities. Refer to page 24/26 of the submission for details.
Proarch Architects Limited	854-34	Definitions - Existing	Delete the definition of "total or substantial demolition".
Unitec Institute of Technology	2742-91	Definitions - Existing	Delete definition of "Total and substantial demolition" to provide clarity for applicants, and replace with the following definition of "Substantial demolition": "The demolition of the significant majority of a scheduled place and, in the case of a scheduled building, comprises the demolition of more than 60% of the scheduled aspects of the building and excludes any permitted demolition."

11/14

FS#2108

ATTACHMENT C - Submission of Mt Hobson Group

#6502

Astrid Caldwell

From: donotreply@aucklandcouncil.govt.nz
Sent: Friday, 28 February 2014 4:38 p.m.
To: Unitary Plan
Cc: deanne@mhg.co.nz
Subject: Proposed Auckland Unitary Plan Submission - Hamish Firth
Attachments: 2MHG UP Submission Final .pdf

Thank you for your submission to the proposed Auckland Unitary plan.

You should receive an acknowledgement within 10 working days. Please retain this as your copy. If you do not receive this, could you email unitaryplan@aucklandcouncil.govt.nz or phone 09 301 0101.



Submitter details

Full name: Hamish Firth
Organisation: Mt Hobson Group
Postal address: PO Box 37964, Parnell , Auckland
Email address: deanne@mhg.co.nz
Post code: 1151
Local board: none
Contact Person: Deanne D'Souza
Date of submission: 28-Feb-2014

Scope of submission

The specific provisions that my submission relates to are:

Provision(s):

Please refer to attached document

Property address:

Please refer to attached document

Map:

Please refer to attached document

Other:

Please refer to attached document

Submission

Please indicate whether you support or oppose the specific provisions or wish to have them amended and the reasons for your views.

I oppose the specific provisions identified above

I wish to have the provisions identified above amended:

Yes

The reasons for my views are:

Please refer to attached document

I seek the following decision by Council:

Accept the Proposed Plan with amendments as outlined below

If the Proposed Plan is not declined, then amend it as outlined below:

Please refer to attached document

I wish to be heard in support of my submission:

Yes

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

Telephone: 09 950 5104

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6 (4) of part 1 of Schedule 1 of the Resource Management Act 1991

I could not gain an advantage in trade competition through this submission



SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN

To: Auckland Council ("**Council**")

Submitters Name: Mt Hobson Group

INTRODUCTION

This submission relates to several matters in the PAUP. The main components of note to the submitter are:

- The lack of reasonable opportunities for appropriate intensification across the Auckland Region.
- Development controls which restrict rather than facilitate residential development.
- The burdensome requirements for the provision of sustainable development and affordable housing.
- The additional rights afforded to iwi groups where works are proposed on private land.

SCOPE OF SUBMISSION

This submission relates to the specific provisions of the proposed Auckland combined plan ("**proposed Unitary Plan**") as identified in this submission.

NATURE OF SUBMISSION

Mt Hobson Group opposes the specific provisions of the proposed Unitary Plan identified in this submission (unless otherwise stated).

REASONS FOR SUBMISSION

Except as otherwise set out in this submission, Mt Hobson Group does not support the specific provisions of the proposed Unitary Plan identified in this submission. Those provisions require amendment, as sought by Mt Hobson Group below. This is because, without the amendments proposed by Mt Hobson Group those provisions:

- will not promote sustainable management of resources, will not achieve the purpose of the Resource Management Act 1991 ("**RMA**") and are contrary to Part 2 and other provisions of the RMA;
- will not enable the social and economic wellbeing of the community in the Auckland region; and
- do not represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

In particular, and without limiting the generality of the above:



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Demolition activity classification in the City Centre

Demolition of buildings in the City Centre zone is a Restricted Discretionary Activity. Demolition is a permitted activity under the PAUP within all business zones, with the exception of the Metropolitan Centre zone where it is also Restricted Discretionary Activity.

The matters for discretion within Rule 1.4.6 Matters for Discretion (5) are: pedestrian amenity and safety; re-use of building materials; site condition post demolition and traffic generation.

Rule 1.4.6 Assessment Criteria (5) states that applications will be assessed against:

Demolition of buildings

- a. *Pedestrian amenity and safety*
 - i. *Sites containing buildings that are proposed to be demolished should not have significant adverse effects on the quality and amenity of the public realm and the safety and efficiency of the surrounding transport network. In particular:*
 - *a high-quality and safe temporary hard or landscaped edge should be provided along the site boundaries so that a defined boundary to streets and public open spaces is maintained. This should include the provision and maintenance of continuous pedestrian cover within areas subject to the verandah control.*
 - *an edge treatment designed to reduce its vulnerability to graffiti and vandalism should be maintained.*
- b. *Re-use of building materials*
 - i. *Demolished materials should be re-used and recycled as much as possible.*
- c. *Site condition post-demolition*
 - i. *If the site is not developed following demolition, the site should be landscaped to provide a good standard of visual amenity and the site should not be used for temporary or permanent parking.*
- d. *Traffic generation*
 - i. *With regard to the effects of building demolition on the transport network, consideration should be given to the proposed hours of operation, the frequency and timing of truck movements to and from the site and the location of vehicle access.*

The classification of demolition as a restricted discretionary activity in the City Centre zone is considered overly onerous and burdensome when all business zones, with the exception of the Metropolitan Centre zone allow demolition to occur as a permitted activity.



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Demolition should be either a Permitted or a Controlled Activity with the following general standards / matters for control:

1. *A safe temporary hard or landscaped edge should be provided along the site boundaries so that a defined boundary to streets and public open spaces is maintained.*
2. *An edge treatment should be maintained that is designed to reduce its vulnerability to graffiti and vandalism.*
3. *A construction traffic management plan shall be submitted to Council for approval detailing the proposed hours of operation, the frequency and timing of truck movements to and from the site and the location of vehicle access.*

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The changes proposed will provide an acceptable level of certainty to property owners whilst also ensuring that traffic generated by the demolition process is controlled and that cleared sites do not become eyesores, affected by graffiti or unsafe.

Demolition activity classification for the Queen Street Valley Precinct

'The total demolition or substantial demolition (more than 30% by volume), or any demolition of the front façade of a building constructed prior to 1 January 1940' is a Restricted Discretionary activity in the Queen Street Valley Precinct. This rule is considered to be onerous in requiring all buildings which fall within this precinct to obtain resource consent for demolition, regardless of the state or year in which the building was erected. Rather, it is seen as a 'blanket' provision intended on capturing all buildings which are worthy of retaining due to their heritage characteristics and historic values.

A building, such as the building at 9 Gore Street, can be assessed as one that would not withstand any damages following an earthquake, due to its very low earthquake rating. This may be the case for several buildings within the Queen Street Valley Precinct, and hence the activity classification results in unnecessary expenses, and is burdensome for owners of such properties, to seek consent for demolition of such buildings which are hazardous to the public.

Mt Hobson Group thus requests that the demolition activity classification for the Queen Street Valley be a Permitted or Controlled activity with general standards/ matters for control as stated above. In addition to this, rather than applying a 'blanket provision' as such in order to protect buildings within the precinct which may hold heritage value, it is requested that Council carry out an assessment of individual buildings within the precinct, which qualify for scheduling, and explicitly identify these within the PAUP. In this way, Council may exercise its discretion over matters associated with applications for demolition, over these buildings specifically.

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Maximum Height

The PAUP defined 'Height' as "outside the CMA, it is the vertical distance between ground level at any point and the highest part of the building



immediately above that point." Mt Hobson Group requests that the definition of 'Height' include "the vertical distance between the highest part of the building and the average level of the ground at the external foundations of the buildings", as defined in Part 13 of the Auckland Council District Plan (Isthmus Section).

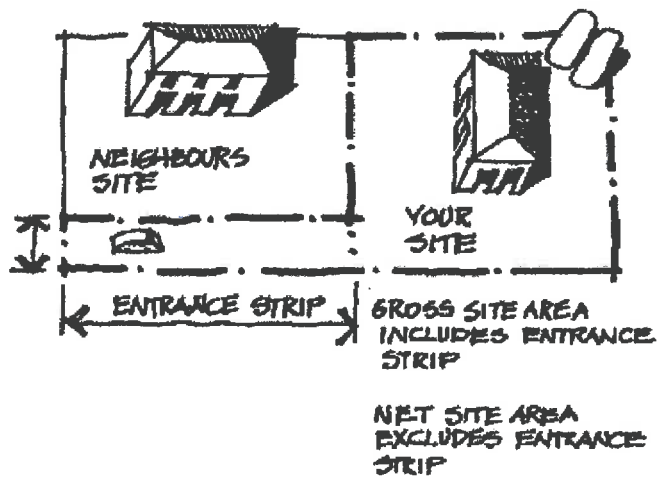
Mt Hobson Group objects to the maximum storey control and requests that maximum heights be the sole development control used to determine height, as high quality built form is not necessarily subject to a storey control.

Subdivision Controls and the Definition of 'gross site area'

The Auckland-wide rules for Subdivision Development Controls for Residential zones under Part 3 of the PAUP, refer to 'net site area' for minimum site areas for each type of residential zone, for which proposed site sizes must comply with as per each zone. It is considered that a more appropriate term for this specific development control would be 'gross site area' instead, in order to provide greater flexibility, and enable more sites with potential to subdivide to meet the minimum size requirements. This would provide greater development opportunities across Auckland to accommodate for the anticipated population growth. Mt Hobson Group requests that 'net site area' for this development control for subdivision in Residential zones be deleted and replaced with 'gross site area'.

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As the definition for 'gross site area' is not provided in the PAUP at present, Mt Hobson Group requests that this definition is added to PART 4 Definitions of the PAUP, as it is currently stated in the Part 3 of the Auckland Council District Plan (Rodney Section), to read "Gross site area: Means the total area of a site including any entrance strip." It is also requested that the accompanying diagram for this definition, as below, is included in the PAUP, as in the Rodney District Plan. As the definition for 'gross site area' is not provided in the PAUP at present, it is requested that this definition is added to PART 4 Definitions of the PAUP, as it is currently stated in the Part 3 of the Auckland Council District Plan (Rodney Section), to read "Gross site area: Means the total area of a site including any entrance strip." It is also requested that the accompanying diagram for this definition, as below, is included in the PAUP, as in the Rodney District Plan.





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Wording at introduction G.1.4

The wording contained within the third paragraph under the heading 'Assessment Criteria' at I.1.4 Applying for Resource Consent is opposed in its entirety.

This wording effectively gives Council carte blanche to use any other policy or criteria within the PAUP at their whim.

It is not appropriate for processing planners to be encouraged to consider policies or criteria outside of the listed assessment criteria. This is because it may result in considerable uncertainty in respect of applications for controlled and restricted discretionary activities, as it provides the Council with scope to argue that a wide range of policies and criteria which would not otherwise be immediately relevant should be considered. This will make it very difficult for applicants to understand exactly which policies and criteria it must satisfy in order to obtain consent, or to understand the conditions that may be imposed.

Increased Intensity

The draft version of the Unitary Plan did not split the Mixed Housing zone in to an Urban and Suburban Category. The submitter seeks a review (as part of a detailed s32 analysis) of where greater intensity can be appropriately accommodated across the Auckland Region.

Mixed Housing Zone Unlimited Density Minimum Site Size

Rule I.1.3.3.1 of the PAUP sets the site characteristics required to allow unlimited density on sites within the Mixed Housing Zone. The minimum site size is 1,200m².

This minimum site size is considered to be too high and will not enable the significant intensification sought under the Unitary Plan to meet Auckland's housing shortage.

The historical development pattern in Auckland and traditional '1/4 acre dream' has resulted in a land tenure pattern with a large number of sites in the region of around 1,000m².

A minimum site size for unlimited density of 1,200m², means that two sites would need to be amalgamated to allow a development to meet the relevant criteria for unlimited density. This land amalgamation process is likely to be complex and difficult to achieve.

The amendment of the minimum site size for unlimited density in the Mixed Housing Zone to 1,000m² will allow the traditional ¼ acre sites to be developed for more intensive residential use in line with the intensification goals of the Auckland Plan and PAUP and making more sustainable and efficient use of the land resource in line with the purpose of the Resource Management Act.

Cultural Impact Assessments

The submitter opposes the requirements for the preparation of Cultural Impact Assessments contained within Rule G.2.2.7.4 Cultural Impact Assessments. These requirements are overly onerous requiring that cultural impact assessments be prepared as part of a wide variety of resource consent

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applications. Many such applications would not normally involve iwi concerns and would be non-notified. Effectively all are being opened up for iwi input. The process requirements for these are burdensome and expensive, particularly given the very significant number of activities and applications to which they relate.

Design Statements

The Unitary Plan requires applicants to provide a design statement with their resource consent application for specified activities. This requirement is onerous for the following reasons:

- i. Applicants are already required to provide a complete package of supporting documentation with any AEE. In respect to proposals which relate to built form, applicants more often than not provide a significant amount of material, including contextual analysis, concept design, site plans and elevations. It would be unnecessarily onerous to require design statements as an additional discrete package of information within an AEE.
- ii. The level of control proposed in the Unitary Plan which the Council is seeking to impose on the design of virtually any new built form is concerning. This is especially so as the design statements encourage compliance with the Auckland Design Manual which has undergone no consultation to date and is intended to change from time to time. The Design Manual is also not a resource management document and is not being developed in accordance with Schedule 1 of the RMA, nor is it proposed to be subject to any Environment Court or other independent oversight. It is therefore inappropriate to rely heavily on such a document in the proposed Unitary Plan.
- ii. The new Design Statement process is also out of step with recent RMA reforms which seek to simplify and streamline the consenting process. The Design Statement process is not the only method by which quality design can be achieved throughout Auckland and Council should not seek to rely on this at the expense of other methods.

Sustainable Development

Mt Hobson Group opposes the requirement to incorporate sustainable development in the prescriptive format set out in Rule H.6.4.2.

The control stipulates the minimum levels from the NZ Green Building Council Green Star Tool or certification under the Living Building Challenge. Both of these are prescriptive in nature and do not enable alternative ideas which may be more sustainable i.e. a building may be more sustainable than a 6 star rated building however is unable to achieve the standard as it did not receive enough of the points.

The submitter considers that sustainable development should be incorporated in to most designs however the requirement is considered unworkable in its current format as it will place substantial costs upon the developers of multiple household units.

Mt Hobson Group opposes the requirement to incorporate sustainable development in the prescriptive format set out in Rule H.6.4.2.2 where new

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buildings with a GFA of 5000m2 or greater and where 80 per cent or more of the GFA is to be used as an office are proposed.

The submitter considers that sustainable development is not a matter for local government to decide. If these features are required to be legislated it should be by the NZ Building Code.

Affordable Housing

Mt Hobson Group opposes the requirement to incorporate affordable housing (as per Rule H.6.6.1) for those housing developments which provide for 15 or more dwellings. It is considered that this provision will make housing more unaffordable as it will result in subdivisions or developments not exceeding the 15 house/lot threshold and thereby drip feeding properties on to the market.

Affordable housing ratios were attempted to be bought in via Council initiated plan change (Queenstown Lakes Council) which was declined by the Environment Court. The findings of this case are applicable to the PAUP and its requirement to provide for affordable housing.

RELIEF SOUGHT

Mt Hobson Group therefore seeks the following decision from Auckland Council on the proposed Unitary Plan:

- (a) Demolition in the City Centre zone be reclassified as a Permitted or Controlled Activity. 11
- (b) Demolition in the Queen Street Valley Precinct be reclassified as a Permitted or Controlled Activity, where Council is to identify specific buildings within the Queen Street Valley Precinct to be scheduled for protection under the PAUP. 12
- (c) Deletion of the third paragraph under the heading 'Assessment Criteria' of I.1.4 Applying for Resource Consent and/or clarification within G.1.4 of the PAUP that the matters for discretion and assessment criteria listed in the PAUP for Controlled and Restricted Discretionary Activities are the sole matter for assessment of these type of consent. 13
- (d) include average ground level as a means to calculate height. 14
- (e) Remove the maximum storey control in all zones and floor to floor/ ceiling height minimums. 15
- (f) Amend the rules and controls as identified above. 16
- (g) Include the term and definition for 'gross site area' in the PAUP Definitions under Part 4. 17
- (h) A review of zonings and associated controls to provide for greater density of development across the Auckland Region as envisaged under the Draft version of the Unitary Plan. 18



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- (i) That the requirements for Cultural Impact Assessments be removed from the PAUP.
- (j) That the requirements for separate Design Statements be removed from the PAUP] and references to the Auckland Design Manual include confirmation that this is a non-statutory guideline.]
- (k) That the sustainable development] and affordable housing provisions are removed from the PAUP.]

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Such further or other consequential relief as may be necessary to fully give effect to the relief sought in Mt Hobson Group's submission.

OTHER MATTERS

Mt Hobson Group could not gain an advantage in trade competition through its submission.

Mt Hobson Group wishes to be heard in support of its submission.

MT HOBSON GROUP

Date: 28 February 2014

Contact person: Deanne D'Souza

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ATTACHMENT D - Submission of Heritage New Zealand

Submission of the New Zealand Historic Places Trust Pouhere Taonga to the Proposed Auckland Unitary Plan

Part Seven: Miscellaneous Topics

The submission of the New Zealand Historic Places Trust Pouhere Taonga (NZHPT) relates primarily to provisions for managing effects on historic heritage places (and areas), archaeology, and on sites and places of value to Mana Whenua. The purpose of the following is to provide context for the detailed submissions that follow in the table.

Topics covered in this part of the submission

- Precincts objectives and policies
- Public open space- conservation zone objectives and policies
- The zoning of a small area of land that is part of the Symonds Street Cemetery
- Designation conditions.

Precinct objectives and policies

1. This part of the submission expresses concern that some precincts contain possible historic heritage places and areas that have not yet been identified and assessed. This is of particular concern where precincts are aimed at enabling more intensive development.
2. In the particular instances of the Queen Street Valley and Karangahape Road precincts, this concern is to some extent addressed by a pre-1940 building demolition control, as well as controls on developments that are adjacent to pre-1940 buildings and scheduled historic heritage places and areas. These provisions are supported.

Public Open Space – Conservation Zone

3. The submission in respect of the Public Open Space – Conservation zone notes that this zone is applied to a number of areas that contain scheduled (and in some cases registered) historic heritage places and areas. These areas include the Symonds Street Cemetery and the Chelsea Estate Heritage Park, both of which contain Category 1 registered places. Zone provisions are considered to have insufficient regard to the existence or setting of such heritage, and changes are sought.
4. There is a site at 72 Karangahape Road which, despite having historically been a part of the Symonds Street Cemetery, has a City centre zoning. Its re-zoning to Public Open Space – Conservation is sought.

Designation conditions

5. Because a designation can override other Plan provisions, and development within a designated site is controlled by the terms and conditions of that designation, the provisions of any historic heritage overlay do not automatically apply. That is, without specific designation conditions to the contrary, scheduled historic heritage places and areas do not receive the same degree of protection on a designated site as they would outside the designation.
6. A large number of designations do incorporate scheduled heritage. In some cases the designated activity would appear to be quite compatible with the retention of that heritage, and here the submission seeks conditions that would provide for the protection of that heritage.

7. In other cases (particularly in the case of road widening) implementation of the designation would mean the loss of the scheduled item. In those cases, the submission seeks removal of the designation.
8. Designating a site does not exempt it from the provisions of the Historic Places Act 1993 and an advice note to that effect is requested in the designation section.

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PART 2 – REGIONAL AND DISTRICT OBJECTIVES AND POLICIES
Chapter F Precinct objectives and policies
 (In the following table amendments are either inclusions by underline, or deletions by strikethrough.)

Provision Ref	Support/ oppose	Our submission is:	Relief sought (or similar wording)
General	Neutral	A number of the precincts, particularly in the City centre, have historic heritage (and special character) values that have not yet been properly assessed. Those where such values are likely to be encountered should be prioritised for assessment.	Prioritisation of historic heritage and character assessments in these areas.
[3.6 Karangahape Road] and [3.10 Queen Street Valley]	Support	In the Karangahape Road and Queen Street Valley precincts, the objectives and policies that govern the demolition of pre-1940 buildings, and new buildings alongside pre-1940 and scheduled buildings should go some way to helping preserve the character and historic heritage values of these areas.	Retain the objectives and policies that govern the demolition of pre-1940 buildings, and new buildings alongside pre-1940 and scheduled buildings

PART 3 – REGIONAL AND DISTRICT RULES
Chapter K Precinct rules
 (In the following table amendments are either inclusions by underline, or deletions by strikethrough.)

Provision Ref	Support / oppose	Our submission is:	Relief sought (or similar wording)
[3.5 Karangahape Road] & [3.10 Queen Street Valley]	Support	Plan controls that seek to regulate the demolition of pre-1940 buildings are useful in protecting the historic heritage values and character of these precincts	Retain the provisions

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ATTACHMENT E - Submission of House Movers Section of the New Zealand Heavy Haulage Association (Inc)

#5556
VOL 1



Submission on Proposed Unitary Plan

Unitary Plan Submission Team

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Submission on

Proposed Unitary Plan

Name

House Movers Section of New Zealand Heavy Haulage Association (Inc)

Address

House Movers Section of New Zealand Heavy Haulage Association (Inc)
C/- Stuart Ryan, PO Box 1296, Shortland Street, Auckland 1140
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1/5

28 FEB 2014

Executive Summary

1. The House Movers Section of the New Zealand Heavy Haulage Association (Inc) (House Movers) represents firms and individuals engaged in building removal and relocation throughout New Zealand. The Association has an active program of making submissions to district plan reviews since 1998, and in that time has made submissions to more than 50 different Councils including to some Auckland legacy Councils. The House Movers represent 38 companies nationwide, who move around 75% of all buildings moved nationally.
2. The House Movers wish to ensure that the distinction is maintained between historic heritage and amenity values, and that regulatory controls reflect this distinction. At present this distinction is blurred or unclear in the Proposed Auckland Unitary Plan (PAUP).
3. **Part 1** of this submission addresses the demolition and removal of dwellings in the 'pre-1944' overlay. The House Movers oppose the pre-1944 overlay.
4. **Part 2** of this submission addresses the special character overlays, their spatial extent, notification rules and the assessment criteria for demolition and removal.
5. **Part 3** of this submission addresses residential intensification in the PAUP and seeks that additional land be zoned for intensification in appropriate areas.

The specific provisions which this submission relates to are:

6. All provisions concerning the pre-1944 building demolition control overlay (pre-1944 overlay), including objectives, policies, rules, assessment criteria, methods, reasons and maps, in particular (without limitation):
 - a. Chapter B - Issue 1.3 Protecting our Historic Heritage, Historic Character and Natural Heritage (B9-B11)
 - b. Chapter B - 4.1 Protecting our Historic Heritage, Historic Character and Natural Heritage (B58-B64)
 - c. Chapter C - 3 Historic Heritage (C15-C16)
 - d. Chapter E - 3 Special Character (E13-E19)
 - e. Chapter J - Special Character (J37-J125)
 - f. Any rules on notification/service of applications
 - g. Mapping
7. All provisions concerning the special character overlays including in particular (without limitation):
 - a. Chapter J - 3 Special Character
 - b. Any rules on notification/service of applications
 - c. Mapping
8. All residential and commercially zoned land not zoned for Terraced Housing and Apartment Buildings or Mixed Housing Urban.

Part 1: Pre-1944 overlay

Reasons for submissions

9. The submitter is opposed to pre-1944 overlay in its entirety.
10. The PAUP has an unbalanced approach by the blanket protection of all pre-1944 buildings regardless of merit.
11. The pre-1944 overlay:
 - a. Is contrary to Part II and other provisions of the Act;
 - b. Will not meet the reasonably foreseeable needs of future generations;
 - c. Will not enable social, economic and cultural wellbeing;
 - d. Is otherwise contrary to the purposes and provisions of the Act and other relevant planning documents;
 - e. restricts opportunities for more intensive housing options on appropriate sites and the adaptive re-use of existing buildings.

- 12. Without limiting the generality of the above, the pre-1944 overlay:
 - a. Does not meet section 32 criteria of the RMA. It is denied that Council has carried out a proper section 32 assessment on the pre-1944 overlay. Council's s32 is not sufficient in that Council has failed to have regard to the extent to which the objectives, rules and policies and other methods are necessary; to consider other means that may be used to achieved the same objectives and policies (including the "do nothing" option); to carry out a proper evaluation of the benefits and costs (both monetary and non-monetary) of the pre 1944 overlay; or be satisfied that the regulation in the proposed plan is the most appropriate, efficient and effective means of exercising Council's functions;
 - b. Uses arbitrary age based criteria i.e. pre-1944;
 - c. Adopts a precautionary approach when such an approach is not necessary;
 - d. Has assessment criteria that are unnecessarily subjective;
 - e. Has assessment criteria that fail to properly provide for:
 - i. whether a new building is proposed and the contribution it would make to streetscape character;
 - ii. the need to achieve reasonable compliance with the current building code;
 - iii. the need to achieve modern living amenity;
 - iv. whether the building will be removed for reuse elsewhere; and
 - v. the reasonableness and practicability of renovating.
 - f. Allows for notified applications and does not recognise the transaction costs associated with obtaining neighbors' approvals and any hearing process;
 - g. Is not necessary to assist Council to carry out its functions;
 - h. Is inconsistent with the criteria in Sections 75 and 76 of the RMA;
 - i. Fails to recognise that an appropriately designed new building can make an appropriate contribution to amenity.

Relief Part 1: the following decisions are sought on the pre-1944 overlay

- 13. Delete all pre-1944 overlay provisions (including objectives, policies, rules, assessment criteria and other methods, mapping and reasons) 11
- 14. Rewrite the proposed plan, and its policies and objectives, rules, methods and reasons to reflect the reasons for this submission.
- 15. Remove the pre-1944 overlay from any property subject to the overlay.
- 16. Alternatively, when consent has been granted for a contextually designed new building, provide for demolition and removal of pre-1944 dwellings as a permitted activity. 12
- 17. Delete the interim effect of any rule not directed at genuine historic heritage.
- 18. In the event that resource consent is required for demolition and removal of a pre-1944 building then amend the assessment criteria to take into account more practicable considerations, including: 13
 - a. whether a new building is proposed or consented and the contribution it would make;
 - b. the need to achieve reasonable compliance with the current building code;
 - c. the need to achieve modern living amenity;
 - d. whether the building will be removed for reuse elsewhere; and
 - e. the reasonableness and practicability of renovating.

19. In the event resource consent is required for demolition and removal of a pre-1944 building, amend the assessment criteria to exclude or delete:
 - a. Any comparison between the cost of renovating and the cost of a new building;
 - b. Any reference to "beyond rehabilitation" or similar test.
20. Provide for all applications for consent to demolish or remove pre-1944 buildings on a non-notified and non-service basis.
21. Any other or consequential relief that reflects the reasons for the submission including to the objectives, policies, rules, assessment criteria, methods, reasons, other provisions and maps.

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Part 2: Special character overlay extent, notification and assessment criteria for demolition and removal

Reasons for submissions

22. The PAUP has an unbalanced approach to built special character. The purpose and extent of special character overlays should be clarified and limited in extent so that any special character overlays:
 - a. Are not directly or indirectly for the purpose of protecting historic heritage;
 - b. Only apply to areas with a high level of aesthetic coherence and a high level of architectural merit;
 - c. Only apply to areas that are genuinely special in the regional context.
 - d. Not affect or limit achieving the key policy objective for a quality compact city with affordable housing opportunities.
23. The PAUP adopts inconsistent assessment criteria for the demolition and removal of buildings in the special character overlays. Any assessment criteria should acknowledge the decision in *New Zealand Heavy Haulage Association v Auckland Council* [2013] NZEnvC 145. In that decision the Court expressed concern about Council's processing of applications for demolition and removal. Requirements for cost comparisons between renovation and new buildings and the need to show that a building was "beyond rehabilitation" were rejected by the Court. In addition the Court was concerned by a lack of regard for the need to achieve compliance with the current building code and modern living amenity.

Relief Part 2: the following decisions are sought on assessment criteria for the demolition or removal of buildings in special character areas

24. Delete the special character overlays.
25. Clarify and/or limit the spatial extent of special character overlays, including so that any special character overlays:
 - a. Are not for the purpose of protecting historic heritage;
 - b. Only apply where there is a high level of aesthetic coherence and a high level of architectural merit;
 - c. Only apply to areas that are genuinely special in the Auckland context.
 - d. Do not affect or limit achieving the key policy objective for a quality compact city with affordable housing opportunities.
26. Amend the assessment criteria for all special character areas to take into account more practicable considerations, including:
 - a. whether a new building is proposed and the contribution it would make to streetscape character;
 - b. the need to achieve reasonable compliance with the current building code;
 - c. the need to achieve modern living amenity;
 - d. whether the building will be removed for reuse elsewhere; and
 - e. the reasonableness and practicability of upgrading or renovating .

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27. Amend assessment criteria for all special character areas so as to exclude:
- Any comparison between the cost of renovating and the cost of a new building;
 - Any reference to "beyond rehabilitation" or similar language.
28. Delete the interim effect of any rule not directed at genuine historic heritage.
29. Establish a proper work program and time limit for investigation of areas.
30. Provide for applications for consent to demolish or remove special character buildings on a non-notified and non-service basis.
31. Any other or consequential relief that reflects the reasons for the submission including to the objectives, policies, rules, assessment criteria, methods, reasons, other provisions and maps.

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Part 3: Provisions relating to intensification

Reasons for submissions

32. The submitter supports the regional objectives and policies for intensified development in Auckland for a "quality compact city". However the PAUP does not provide sufficient opportunities for intensified development to actually achieve the regional objectives and policies for a quality compact city, and for affordable housing.
33. The submitter seeks that additional areas be zoned Terrace Housing and Apartment Buildings and Mixed Housing Urban.
34. The failure to zone sufficient areas for intensified development:
- Is contrary to Part II and other provisions of the Act;
 - Will not meet the reasonably foreseeable needs of future generations;
 - Will not enable social, economic and cultural wellbeing;
 - Is not consistent with the Auckland Plan;
 - Will not achieve the goal of housing affordability;
 - Will not provide sufficient flexibility for development to occur;
 - Will result in further urban sprawl in current and future planning periods.

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Relief Part 3: the following decisions are sought on intensified zoning

35. Identify additional areas for intensified residential zoning.
36. Any other or consequential relief that reflects the reasons for the submission including to the objectives, policies, rules, assessment criteria, methods, reasons, other provisions and maps.

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Additional matters

37. The submitter could not gain an advantage in trade competition through this submission.
38. The submitter **does** wish to be heard in support of these submissions.
39. If others are making a similar submission, the submitter would be prepared to consider presenting a joint case with them at any hearing.

Dated: 28 February 2014



Stuart Ryan, as counsel for the House Movers Section of New Zealand Heavy Haulage Association (Inc)
(being authorised to sign on behalf of submitter)

S/S

#5556
VOL 2



Submission on Proposed Unitary Plan

Unitary Plan Submission Team

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Submission on

Proposed Unitary Plan

Name

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28 FEB 2014

Executive Summary

1. The House Movers Section of the New Zealand Heavy Haulage Association (Inc) (House Movers) represents firms and individuals engaged in building removal and relocation throughout New Zealand. The Association has an active program of making submissions to District Plan Reviews since 1998, and in that time has made submissions to more than 50 different Councils including some of the legacy Auckland Councils. The House Movers section represents 38 companies nationwide, who move around 75% of all buildings moved nationally.
2. There are several aspects to the shifting of buildings, including removal (off a site), relocation (onto a site), and re-siting (within a site).
3. The House Movers wish to ensure that regulatory controls relating to these activities properly reflect the purpose and intentions of the resource management legislation as expressed in the decision of the Environment Court in *New Zealand Heavy Haulage Association Inc v The Central Otago District Council* (Environment Court, C45/2004, Thompson EJ presiding). In this decision the Environment Court held that there was no real difference in effect and amenity value terms between the in situ construction of a new dwelling and relocation of a second-hand dwelling, subject to appropriate permitted activity performance standards.
4. This submission addresses the relocation, re-siting and removal in zones **not** subject to historic heritage or special character overlays. These activities have not been specially provided for and are therefore non-complying due to the operation of a default rule in the proposed plan. The House Movers seek permitted activity classification subject to appropriate performance standards as upheld by the Environment Court in *New Zealand Heavy Haulage Association Inc v The Central Otago District Council*.

The specific provisions to which this submissions relates are:

5. All provisions concerning the removal of buildings (off a site), re-siting of buildings (within a site) and relocation of building (onto a site) outside of character and heritage areas, including objectives, policies, rules, assessment criteria, methods and reasons, in particular (without limitation):
 - a. Chapter G – General rule 2.2 activities not provided for (G9)
 - b. Part 4 – Definitions
 - c. Any notification provisions

Reasons for submissions

– Provisions removal, re-siting and relocation generally

6. Under the proposed Unitary Plan relocation of buildings re-siting and removal are activities not generally provided for (the exception being in character zones where relocation and removal are restricted discretionary activities). As an activity not provided for relocation is caught by general rule 2.2 (G9):

Any activity that is not specifically listed in the Unitary Plan as a permitted, controlled, restricted discretionary, discretionary or prohibited activity is a non-complying activity
7. This appears to be an oversight.
8. The submitter seeks that relocation and re-siting of buildings is a permitted activity, subject to performance standards, in zones where a new building can be constructed as a permitted activity (presuming that the relocation and new building both comply with all performance standards). 113
9. The submitter seeks that removal of building is a permitted activity where demolition of buildings is a permitted activity, subject to appropriate performance standards. 114
10. Relocation of buildings in the Auckland area is a well-established practice that enables a building to be recycled for use in a new location. There is demand from first-home buyers as well as other house purchasers for homes that are re-used due to their cost-efficiency, the short lead time to enable them to be lived in, and for the building characteristics that older homes may have.

11. Under the district plans of the legacy Councils, removal, re-siting and relocation were all activities that were carried out with regularity. In the case of Rodney relocation of buildings generally has permitted status. The Unitary Plan must allow these activities to continue so that this sector can continue providing for people's housing choices.
12. It is submitted that regulation of relocation, re-siting and removal of buildings in the proposed Unitary Plan does not meet the aims of the Resource Management Act, in particular:
 - a. The classification of relocation of buildings, re-siting and removal in the proposed plan as a non-complying activity is inconsistent and contrary to sustaining the potential of natural and physical resources of the district in accordance with Section 5 RMA, and Part 2 of the Act generally.
 - b. Providing for notifiable resource consent applications as a non-complying activity does not recognise the transaction costs associated with obtaining neighbors' approvals and any hearing process.
 - c. Controls on relocation, re-siting and removal of buildings in the proposed plan do not meet section 32 criteria of the RMA. It is denied that Council has carried out a proper section 32 assessment on removal, re-siting, and relocation of dwellings and buildings.
 - d. Controls in the plan on relocation, re-siting and removal of buildings are inconsistent with the criteria in Sections 75 and 76 of the RMA.
 - e. Any performance bond or restrictive covenant would be unnecessary and not the most appropriate means of Council exercising its functions. The proposed regime of Permitted with performance conditions is a more appropriate way of achieving compliance. Permitted activity performance standards are equally enforceable as conditions imposed on a resource consent.
 - f. The proposed plan fails to apply the decision of the Environment Court in *New Zealand Heavy Haulage Association Inc v The Central Otago District Council* (Environment Court, C45/2004, Thompson EJ presiding). The submitter pleads the reasons given by the Court in *New Zealand Heavy Haulage Association Inc v The Central Otago District Council* as if set out herein.

Relief – The following provisions are sought on removal, re-siting and relocation of buildings

13. Delete all provisions (including objectives, policies, rules, assessment criteria and other methods and reasons) on removal, re-siting, and relocation of buildings in the proposed plan, the definitions section, and elsewhere. 115
14. Rewrite the proposed plan, and its policies and objectives, rules, methods and reasons to reflect the reasons for this submission.
15. Amend the definitions section of the plan to accord with trade practice and usage to distinguish between the activities of removal, re-siting, and relocation of dwellings and buildings. 116
16. Recognise in the objectives, policies and rules and methods of the plan the need to provide for the coordination between Building Act and Resource Management Act, to avoid regulatory duplication. 117
17. Expressly provide in the proposed plan (whether in the definitions or in the activity rules) for the relocation and removal and re-siting of buildings as a permitted activity in all areas, zones and overlays (except in relation to any special character areas, scheduled identified heritage buildings, or any properly established conservation heritage precinct).
18. In the event that relocation is not a permitted activity due to non-compliance with permitted activity standards then as a default rule, provide for relocation of dwellings and buildings no more restrictively than a restricted discretionary activity, provided that such application be expressly provided for on a non-notified, non-service basis.
19. Provide for the relocation of dwellings and buildings subject to the following performance standards/conditions (or to same or similar effect):

Relocation of buildings

Relocated buildings are permitted where the following matters can be satisfied:

- a) Any relocated building can comply with the relevant standards for Permitted Activities in the Unitary Plan;
 - b) Any relocated dwelling must have been previously designed built and used as a dwelling;
 - c) A building inspection report shall accompany the building consent for the building/dwelling. The report is to identify all reinstatement work required to the exterior of the building/dwelling; and
 - d) The building shall be located on permanent foundations approved by building consent, no later than 2 months of the building being moved to the site.
 - e) All work required to reinstate the exterior of any relocated building/dwelling, including the siting of the building dwelling on permanent foundations, shall be completed within 12 months of the building being delivered to the site.
20. As a default rule, in the event that relocation of a buildings/dwelling is not a permitted activity (due to non compliance with performance standards) provide for relocation of dwellings and buildings no more restrictively than a restricted discretionary activity (provided that such application be expressly provided for on a non-notified, non-service basis) subject to the following assessment criteria (or to the same or similar effect):

Restricted Discretionary Activity

(on a non-notified, non-service basis)

Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for resource consent:

- i) Proposed landscaping;
 - ii) the proposed timetable for completion of the work required to reinstate the exterior of the building and connections to services;
 - iii) the design and appearance of the building following reinstatement
21. Delete any provision in the plan for a performance bond or any restrictive covenants for the removal, re-siting, and relocation of dwellings and buildings.
22. Restrict (as a discretionary activity rule) the use of restrictive covenants for the removal, re-siting, and relocation of dwellings and buildings.
23. Make any consequential amendments to give effect to this submission, including such amendments as required to the provisions, definitions, other matters, rules, objectives, policies and reasons of the proposed plan to give appropriate recognition to the positive effects of removal, re-siting, and relocation of dwellings and buildings and dwellings, in accordance with the reasons for this submission, and the relief sought as a whole.
24. Any other relief that reflects the reasons for the submission.
25. Suggested drafting to give effect to this submission is attached as **Schedule 1**, rules are sought to this effect (or the same or similar effect). A suggested pre-inspection report (as a non-statutory form) is attached as **Schedule 2**.

Conclusion

26. The submitter does wish to be heard in support of these submissions.
27. If others are making a similar submission, the submitter would be prepared to consider presenting a joint case with them at any hearing.

Dated: 28 February 2014



Stuart Ryan, as counsel for the House Movers Section of New Zealand Heavy Haulage Association (Inc)
(being authorised to sign on behalf of submitter)

Schedule 1 - Draft Rules

- **Add** relocation, re-siting and removal as permitted activities in the activity tables for all zones and overlays

- **Add** the following Conditions for relocated buildings

- Any relocated building intended for use as a dwelling (excluding previously used garages and accessory buildings) must have previously been designed, built and used as a dwelling.*
- A building pre-inspection report shall accompany the application for a building consent for the destination site. That report is to identify all reinstatement works that are to be completed to the exterior of the building.*
- The building shall be located on permanent foundations approved by building consent, no later than 2 months of the building being moved to the site.*
- All other reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed within 12 months of the building being delivered to the site. Without limiting (c) (above) reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.*
- The proposed owner of the relocated building must certify to the Council that the reinstatement work will be completed within the 12 month period.*

- **Add** a definitions of relocation, re-siting and removal to the definitions section:

Relocation means the transportation of any previously used building in whole or in parts from its original site to its destination site; but excludes any pre-fabricated building which is delivered dismantled to a site for erection on that site.

Removal means the transportation of any building from its site of origin

Re-siting means moving a building within the same site

- **Add** a default rule as a Restricted Discretionary Activity on a non-notified, non-service basis

Where a relocation is not permitted, Council will have regard to the following matters when considering an application for resource consent:

- Proposed landscaping;*
- the proposed timetable for completion of the work required to reinstate the exterior of the building and connections to services;*
- the design and appearance of the building following reinstatement*
(or to same or similar effect)

Schedule 2 – Suggested relocated dwelling – Pre-inspection report (non-statutory form)

Note: Any relocated building intended for use as a dwelling must make application for building consent under the Building Act 2004 prior to relocation within the district. In addition the Auckland Unitary Plan requires this building pre-inspection report prepared by a Licensed Builder Practitioner or Building Surveyor to accompany the application for a building consent with a certificate by the intended owners.

Applicant: _____

Address: _____

Telephone: _____

Email: _____

Report Prepared By: _____

(Name of Inspector) _____

Address: _____

Date: _____

Qualifications Of Inspector:¹ _____

Present Location Of Building: _____

Valuation Reference No: N/A _____

Type Of Building: _____

Approx. Age Of Building: _____

Proposed Site Of Building: _____

Proposed Valuation No: _____

Proposed Use Of Building: _____

¹ Inspector must be a Licensed Building Practitioner or Building Surveyor.

1. External Condition

	Type	Condition	Comments (Please specify any reinstatement work necessary)
Exterior Cladding	Eg. Fibroplank Weatherboard	Good	
Wall Frame (exterior)		Good	
Roofing		Good	
Spouting		Good	
Downpipes		Good	
Joinery		Good	
Decoration (exterior)			

1. Subfloor Framing

	Comments (Please specify any rotten or borer-affected framing requiring replacement)
Bearers	
Floor Joists	
Flooring	

2. Previous Use

	Previous Use	Comments
<p>Note: Any relocated building intended for use as a dwelling (excluding previously used garages and accessory buildings) must have previously been designed, built and used as a dwelling</p>		

3. General comments and/or additional information by inspector

This building is of solid construction, and complies with the description above.

This building is not dangerous or insanitary.

[add any further description]

I, certify that the information provided is true and correct and that the building described above appears to have complied with the relevant Building Regulations at the time of its construction.

Dated

Signed

Name (Print)

Licensed Building Practitioner / Building Surveyor (specify)

Owner Certificate (rule xxx Auckland Unitary Plan)

Name of [intended] owner/s: [.....] CERTIFY that I/we will ensure:

1. The building will be connected it to all infrastructure services within [x] months of the building being delivered to the site.
2. The building will be located permanent foundations approved by building consent, no later than 2 months of the building being moved to the site.
3. All work for any required reinstatement of the exterior of the building in accordance with the building pre-inspection report (above) will be completed within 12 months of the building being delivered to the site.

ACKNOWLEDGMENT

Rule [xx] requires reinstatement of relocated dwellings as a standard in the Auckland Unitary Plan. I/ we acknowledge that failure to complete any work for reinstatement of the building may lead to the Council taking enforcement action under the Building Act 2004, or Resource Management Act 1991, including by way of an notice to fix, infringement notice, abatement notice, enforcement order, or prosecution.

Date:

Signed: _____ Name (Print)

Owner

Signed: _____ Name (Print)

Owner

Signed: _____ Name (Print)

Owner