

BEFORE THE ENVIRONMENT COURT

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

AND of appeals under section 156(1) of the LGATPA

BETWEEN HOUSING NEW ZEALAND CORPORATION

ENV-2016-AKL-000236

RYMAN HEALTHCARE LIMITED AND THE RETIREMENT VILLAGE ASSOCIATION OF NEW ZEALAND

ENV-2016-AKL-000230

Appellants

AND AUCKLAND COUNCIL

Respondent

Environment Judge J A Smith sitting alone under section 279 of the RMA
In CHAMBERS at Auckland

CONSENT ORDER

- [A] Under s 279(1)(b) of the RMA, the Environment Court, by consent, orders that:
- (a) the appeals are allowed in part subject to the agreed amendments to the Auckland Unitary Plan (Operative in Part) set out in **Attachment A** to this order.
- [B] Under s 285 of the RMA, there is no order as to costs.



REASONS

Introduction

- [1] These appeals relate to aspects of the decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan, now the Auckland Unitary Plan (Operative in Part).
- [2] Ryman Healthcare Limited and the Retirement Village Association of New Zealand (**Ryman/RVA**) and Housing New Zealand Corporation (**HNZ**) filed appeals under s 156(1) of the LGATPA.
- [3] The appeals challenge the Council's decisions on the 'front, side, rear fences and walls' standards in the Auckland Unitary Plan (H3.6.12, H4.6.14, H5.6.15 and H6.6.16). Specifically, the Council's decision to reject the recommendation made by the Auckland Unitary Plan Independent Hearing Panel (**Hearing Panel**) to delete front fence standards in the Residential – Single House (**SHZ**), Residential – Mixed House Suburban (**MHS**), Residential Mixed House Urban (**MHU**) and Residential – Terrance Housing and Apartment Building (**THAB**) zones of the Auckland Unitary Plan. The Council's decision proposed to reinstate the front fence rule in accordance with the position it pursued during hearings before the Auckland Unitary Plan Independent Hearings Panel (which differed from the front fence rule contained in the notified version of the Auckland Unitary Plan).
- [4] Knox Home Trust Board joined the appeal filed by Ryman/RVA as an interested party under s 274 of the RMA. Keith Vernon joined both appeals under s 274 of the RMA. Mr Vernon has withdrawn his interest in this appeal topic.¹
- [5] The parties have reached an agreement (**Agreement**) that will resolve the appeals in part, specifically:
- (a) HNZ appeal's point recorded at paragraph 7(c) of its Notice of Appeal; and



¹ By way of email to the Court registrar, 10 May 2017.

(b) Ryman/RVA's appeal points recorded at the following paragraphs of its Notice of Appeal:

- (i) 6.1(e)(ii) (in relation to H3.5(1)(b))
- (ii) 6.1(f)(ii) (in relation to H4.5(1)(e))
- (iii) 6.1(g)(ii) (in relation to H5.5(1)(e))
- (iv) 6.1(h)(ii) (in relation to H6.5(1)(e))
- (v) 6.1(i)(i);
- (vi) 6.1(j)(ii);
- (vii) 6.1(k)(ii); and
- (viii) 6.1(l)(i).

[6] The Agreement involves amending the front fence standard in the SHZ, MHS, MHU and THAB zones from that established by the Council's decision version of the Auckland Unitary Plan. The amended provisions are set out in **Annexure A**.

[7] In making this order, the Court has read and considered the appeals and the memorandum of the parties dated 16 November 2017.

[8] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

[9] The Court understands for present purposes that:

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

Order

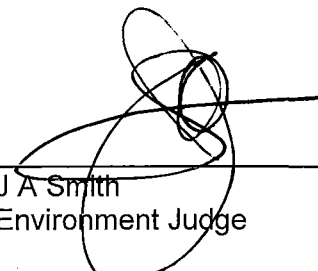
[10] The Court orders, by consent, that:



- (a) The appeals are allowed to the extent that the Council is directed to amend the provisions in the SHZ, MHS, MHU and THAB zone chapters contained in the Auckland Unitary Plan (Operative in Part) (H3.6.12, H4.6.14, H5.6.15 and H6.6.16), respectively), as shown in **Annexure "A"** (additions are underlined and deletions are ~~struckthrough~~);
- (b) The appeals are allowed in part and appeal points relating to rules H3.6.12, H4.6.14, H5.6.15 and H6.6.16 are allowed entirely; and
- (c) There is no order in relation to costs.

SIGNED at AUCKLAND this 11th day of December . 2017





J A Smith
Environment Judge

"A"

1. Amend Chapter H3 Residential – Single House Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H3. Residential – Single House Zone

H3.6.12. Front, side and rear fences and walls

...

- (1) Fences or walls or a combination of these structures (whether separate or joined together) must not exceed the height specified below, measured from the ground level at the boundary:
 - (a) Within the front yard, either:
 - i. ~~1.2~~ 1.4m in height, or
 - ii. 1.8m in height for no more than 50 per cent of the site frontage and ~~1.2~~ 1.4m for the remainder, or
 - iii. 1.8m in height if the fence is at least 50 per cent visually open as viewed perpendicular to the front boundary.

...

2. Amend Chapter H4 Residential – Mixed Housing Suburban Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H4. Residential – Mixed Housing Suburban Zone

H4.6.14. Front, side and rear fences and walls

...

- (1) Fences or walls or a combination of these structures (whether separate or joined together) must not exceed the height specified below, measured from the ground level at the boundary:
 - (a) Within the front yard, either:
 - i. ~~1.2~~ 1.4m in height, or
 - ii. 1.8m in height for no more than 50 per cent of the site frontage and ~~1.2~~ 1.4m for the remainder, or
 - iii. 1.8m in height if the fence is at least 50 per cent visually open as viewed perpendicular to the front boundary.

...

3. Amend Chapter H5 Residential – Mixed Housing Urban Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H5. Residential – Mixed Housing Urban Zone

H5.6.15. Front, side and rear fences and walls

...



- (1) Fences or walls or a combination of these structures (whether separate or joined together) must not exceed the height specified below, measured from the ground level at the boundary:

(a) Within the front yard, either:

- i. ~~1.2~~ 1.4m in height, or
- ii. 1.8m in height for no more than 50 per cent of the site frontage and ~~1.2~~ 1.4m for the remainder, or
- iii. 1.8m in height if the fence is at least 50 per cent visually open as viewed perpendicular to the front boundary.

...

2. Amend Chapter H6 Residential – Terrace Housing and Apartment Building Zone of the Auckland Unitary Plan (Operative in Part) as follows:

H6. Residential – Terrace Housing and Apartment Building Zone

H6.6.16. Front, side and rear fences and walls

...

- (1) Fences or walls or a combination of these structures (whether separate or joined together) must not exceed the height specified below, measured from the ground level at the boundary:

(a) Within the front yard, either:

- i. ~~1.2~~ 1.4m in height, or
- ii. 1.8m in height for no more than 50 per cent of the site frontage and ~~1.2~~ 1.4m for the remainder, or
- iii. 1.8m in height if the fence is at least 50 per cent visually open as viewed perpendicular to the front boundary.

...

