

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

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

**AND**

**IN THE MATTER** of a hearing on the Topics 016 and 017 – Rural  
Urban Boundary Location

**REGARDING** Long Bay Okura Great Park Society Incorporated  
Submission No.4462

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**SYNOPSIS OF LEGAL SUBMISSIONS ON BEHALF OF THE LONG BAY OKURA  
GREAT PARK SOCIETY INCORPORATED IN RELATION TO TOPICS 016 AND  
017 RURAL URBAN BOUNDARY LOCATION**

**Hearing Date: 27 January 2016**

**DATED: 26 January 2016**

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MAY IT PLEASE THE PANEL:

## INTRODUCTION

1. These submissions are filed on behalf of the Long Bay Okura Great Park Society Incorporated and the Oakura Environmental Group (together the **Society**) in support of their submissions on the Proposed Auckland Unitary Plan (**PAUP**).

## PRELIMINARY ISSUE

2. The Society through its submission originally sought to exclude certain areas from being included within the rural urban boundary (**RUB**) including "The Long Bay Regional Park, Piripiri Reserve and the Heritage Protection Area"<sup>1</sup>. This area is shown in figure 6 of Mr Fox's evidence<sup>2</sup>.
3. However, the Society now confirms that the RUB as proposed by the Council is acceptable. Therefore the Society's submission is reduced in scope to that extent.

## INTRODUCTION

4. With that preliminary point in mind, the Society is therefore in full support of the Council's position as to the location of the RUB for Okura, and importantly, for the same reasons as proposed by the Council i.e. that:
  - a) Extending the RUB would cause adverse effects on the Long-Bay Okura Marine Reserve and so would not give effect to the policies of the New Zealand Coastal Policy Statement (**NZCPS**);
  - b) Similarly, such adverse effects would not give effect to the RPS provisions in the PAUP ( that seek to protect areas of identified environmental values); and
  - c) There is otherwise sufficient land elsewhere to meet demand housing demand through to 2040
5. The Society agrees that the RUB should be retained in the RPS section of the PAUP.

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<sup>1</sup> Paragraph 2(ee) of the Submission

<sup>2</sup> See paragraph 11.1 and figure 6 on page 26 of Fox primary evidence.

6. There have been suggestions in other hearings, that if the RUB is to be “fixed’ in this PAUP process, that it is better to include more land now, and to then determine its developmental potential via structure planning over that land.
7. Such a solution might be acceptable where the area of land outside the RUB comprises a patch work of (for example) developmental potential, heritage, coastal or environmental features e.g. Puhinui Peninsula, and Karaka.
8. However, that is not the case with Okura.
9. The land the Society and the Council seek to have excluded from the RUB is unique. It is not subject to just one feature worthy or protection. Rather it is within a coastal environment which includes the Okura Estuary (OE) which is recognised in the PAUP as of high natural character, an outstanding natural landscape, and as having significant ecological value, as well as being recognised for 20 years as a marine reserve<sup>3</sup>.
10. Secondly, this land has had more assessments as to its worth than most land in New Zealand. There is a long litigation history for this land. The status quo (before the PAUP) was the result of at least 3 Environment Court hearings (including litigation in respect of Long Bay), but the point is that in Okura, the environment has not changed. The essence of the quality of the environment remains the same.
11. It is submitted therefore, that in this situation, to include the land within the RUB for future structure planning serves absolutely no purpose. If the land is worthy or protection now (or if the policy criteria from Ms Trenouth’s evidence that the development of such land is to be “avoided” are applied) then it is strongly submitted that a decision to that effect is warranted now, and the land should be excluded from the RUB, and that the current zoning for that land should be retained.
12. The Society does not accept a planning approach where land such as Okura should be included in the RUB, so that adverse effects can be caused, and then remedied or mitigated. The Society strongly submits that such effects are to be avoided.

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<sup>3</sup> Paragraph 12 of Di Lucas rebuttal

## LANDSCAPE EVIDENCE

13. The starting point for the Society was to consider the quality of the Okura landscape and then to determine the transformation if development were allowed to occur i.e. what effects will occur, particularly on the OE, but also within the coastal environment if the RUB is extended as requested by Okura Holdings Limited (OHL) or other developers.

14. This assessment has been conducted by Di Lucas. It echoes previous assessments of the land. In respect of east Okura Ms Lucas states<sup>4</sup>:

Considering the 26 – 30 lots as the baseline for existing residential development on the OHL land, the experience of the Okura estuary ONL would be transformed by urbanisation adding up to a thousand households. The transformation would affect the ONL in terms of its natural science, its experiential and its associative attributes. As is recognised by the Boffa Miskell assessment, the urbanising of the East Okura lands would adversely affect the wider Okura landscape. That is, the urbanising would undoubtedly affect the ONL.

15. In respect of west Okura, and after assessing the density of development proposed, Ms Lucas states:

... As well as physically reducing the naturalness, the experiential and associative landscape attributes of the ONL would be significantly adversely affected by introducing a residential zone across these western lands. The degree of naturalness and ruralness would be significantly reduced. This would impact on the perceived naturalness of the ONL and of the natural character of this coast.

16. It is submitted that Ms de Lambert's evidence (for OHL) significantly understates the effects of the various viewpoints she refers to by claiming they will be "low".<sup>5</sup> Indeed, in an earlier 2002 brief of evidence<sup>6</sup>, addressing what is now on the OHL land, Ms de Lambert stated:

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<sup>4</sup> Paragraph 15 of Luca rebuttal

<sup>5</sup> See paragraphs 8.5 – 8.8 de Lambert primary evidence

<sup>6</sup> Dated 25 February 2002 for NSCC in Environment Court hearing A095/03 paragraphs 6.2 and 6.3

In the more sensitive open landscape of the lower catchment where the land has a more immediate and extensive visual connection to the Okura River a rural residential zone with a minimum and average lot size of 2ha was recommended in the report.

A lesser minimum lot size in this particular portion of the Okura River catchment was considered inappropriate as the potential for more strongly urbanising effects and an associated degradation of the natural character would inevitably result...

17. It is submitted that if the Okura land is included in the RUB, that adverse effects will inevitably occur on a sensitive environment.
18. The Society's position (that they are to be avoided) is consistent with the Council's proposed criteria, the policies of the NZCPS – policies 11, 13 and 15 in particular, and the PAUP RPS provisions.
19. It is further submitted that the so-called “enabling” policy 6 of the NZCPS (referred to by Mr Cook)<sup>7</sup> is limited in its application and needs to be considered in the context of what that policy actually says. For example, development is not to *compromise* the coastal environment<sup>8</sup>, and a threshold consideration is the functional need for a particular activity to be located in the coastal environment<sup>9</sup>. If there is no such need, such activities should *generally not be located there*.

#### OTHER EFFECTS

20. I want to pause here to acknowledge that throughout the evidence exchange process including the special expert conferences organised by the Panel, the Society had enlisted the support of an expert ecologist (Mark Poynter) and an expert storm water engineer (Andres Roa).
21. Their brief was to monitor discussions about effects from isolated developments (such as that proposed by OHL), as well as potential effects from other development within the Okura catchment.

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<sup>7</sup> Paragraph 19(f) of Cook primary evidence

<sup>8</sup> Policy 6 1(b)

<sup>9</sup> Policies 6 1(e) and 2(d)

22. The Society's concern was that including some or part of the OHL land in the RUB for development, and assessing the effects of just that development, will not be a complete assessment of effects on the OE. The Council's witnesses are of the same view, and the Society adopts that evidence.
23. Starting with storm water, the Society agrees with the Council evidence that the NIWA modelling produced by OHL, excludes land, outside the OHL land, but which may be urbanised in the future. In other words, if the RUB was enlarged to include the OHL land the OHL modelling only tells part of the story and does not take into account potential flow on effects<sup>10</sup>.
24. Based on the concept designs presented by OHL to date, the nature of the existing discharges to the stream and coastal environments will change from a diffuse, naturalised form to a concentrated, punctual discharge which will inevitably result in changes to the flow dynamics in these receiving environments and increased risk of erosion, contamination hotspots and associated adverse.
25. Moving on to ecological effects, they are dependant in part on the storm water effects. Therefore, while the ecological evidence for just the OHL development have been considered by the OHL experts, wider catchment issues have not been addressed.
26. Further, the OHL assessment shows that at least minor effects will occur on the OE – just from the OHL development.
27. The Society agrees with the experts from the Council, that the wider catchment issues are not sufficiently addressed, to justify the inclusion of the OHL land in the RUB.
28. I also draw the Panel's attention to the effects on birdlife as set out in the evidence of Mr Michaux filed on behalf of the Society.

#### **PLANNING EVIDENCE**

29. Mr Reaburn has a number of fundamental concerns about including the OHL land within the RUB.
30. Mr Reaburn starts his analysis by looking closely at the relevant policies controlling the development of the coastal environment.

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<sup>10</sup> Refer to Council summary in legal submissions at paragraph 18.26

31. Like Ms Lucas, he also relies on the policies of the NZCPS as interpreted by the *King Salmon* case. I endorse his approach whereby King Salmon is interpreted that:
- d) It is a consideration of effects “on” scheduled areas, and it is not limited to effects “within” scheduled areas; and
  - e) In relation to such effects, they are to be avoided, and avoid means avoid c.f. create and then mitigate.
32. The Society also adopts the Council’s legal submissions on this issue<sup>11</sup>.
33. Mr Reaburn also identifies the provisions in Part 2 of the RMA and the RPS which complement the provisions of the NZCPS and which also need to be given effect to. These include the overlays on in the PAUP creating the ONL, High Natural Character Area, the Marine SEA and the Sites and Places of value to Mana Whenua.
34. Mr Reaburn’s opinion is that these matters have been glossed over or “underemphasised” in the planning evidence of Mr Cook and Ms McNichol. That may be because development is not proposed to occur in scheduled areas. However, if my submission above in relation to *King Salmon* is accepted, that is not a relevant consideration.
35. In a similar fashion Mr Reaburn considers that it is incorrect for landscape witnesses pointing to change that has occurred within the environment since assessments by the Environment Court when the MUL was set. The point, accurately made by Mr Reaburn is that at the time of consideration by the Court, it knew such development would occur, and considered that as part of the environment when making its determinations.
36. The assessment is the levels on effects “on” those scheduled areas, which everyone agrees will be adverse.
37. Mr Reaburn then challenges the evidence about the necessity of opening Okura up for development. He simply does not accept that it is necessary to do so, for two core reasons.
38. The first is the amount of land proposed to be included within the RUB already by the Council. You will have heard ample evidence

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<sup>11</sup> Paragraph 18.31 of the Council legal submissions.

about housing demands, supply and the appropriate areas for development which I don't propose to traverse now, but submit that evidence is credible.

39. In relation to Okura specifically, Mr Reaburn shows the surrounding areas have long been the target of intensive development requests, most of which have been successful. He states in paragraph 6.4

One example of this is an expansion of the observation by the Environment Court in 1997, that the Okura Estuary was the last area of the east coast of North Shore City unaffected by urban development. As shown in figure 1, the Okura Estuary and the Whitford Embayments are the only sizeable breaks in the urban interface between Maraetai and Orewa.

40. There were obviously good reasons why this has occurred, and for the reasons set out above, it is submitted that such reasons still exist right now.
41. The second core reason therefore put forward by Mr Reaburn, is that sensibly, areas with less sensitivity should be considered first, before more sensitive areas or urbanisation<sup>12</sup> – such as for example Dairy Flat.

## CONCLUSION

42. The Society's strongly supports the location of the RUB in Okura as proposed by the Council, for the reasons set out by the Council.
43. The Society considers controls on the RUB should still be contained in the PRS provisions of the PAUP.
44. Any policy that is to be considered in changing the RUB, should make paramount, the avoidance of adverse effects on sensitive or outstanding environments.
45. A regional wide approach should be taken in assessing matters relating to the RUB.
46. A catchment wide approach should be taken in the assessment of potential effects on the environment exposed to changes to the RUB.

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<sup>12</sup> Paragraph 6.5 of Reaburn rebuttal



47. In this case there are no sound environmental or resource management reasons to include the Okura land within the RUB.

**DATED** 26 January 2016.



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**Alan G W Webb**

**Counsel for Long Bay Okura Great Park  
Society Incorporated**

