

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

Hearing topic: 081 – Rezoning and Precincts – Okahu Marine Precinct

Submitter: 5861 – Orakei Marina Management Trust

Event: Hearing – 31 March 2016

Outcomes Sought: Amend provisions to require assessment of effects of car parking demand generated by new activities within sub-Precinct B

**SUBMISSIONS FOR ORAKEI MARINA MANAGEMENT TRUST
("ORAKEI MARINA")
(OKAHU MARINE PRECINCT)**

May it please the Panel:

1. SUMMARY

- 1.1. Council's de facto policy intention not to require new activities in sub-Precinct B (the Landing) to provide car-parking or assess the effects of generating additional parking demand on other users or the wider transport network, is inconsistent with the objectives and policies for the Okahu Marine Precinct, without evidential foundation as to effects or appropriateness, and contrary to s 5(2)(c) of the Act.
- 1.2. Land use control 3.4 should be deleted and the default Auckland Wide Parking requirements applied to activities on the Landing.

2. EVIDENCE

- 2.1 Orakei Marina has exchanged primary evidence for Topic 081 from Max Dunn, planner. The evidence focusses on the provisions to apply to the Okahu Marine Precinct (**OMP**), within which the marina is located (sub-Precinct A).

2.2 Apart from the Council's primary and rebuttal evidence on the OMP by Matt Spiro, no other submitter appears to have provided evidence on the precinct provisions.

3. BACKGROUND

3.1 Mr Dunn sets out relevant planning background to the development of Orakei Marina and its proposed zoning etc within the PAUP.¹

3.2 By way of summary:

- (a) Orakei Marina was developed in 2004/2005 and comprises 172 marina berths and associated facilities for berth holders, including car parking. The marina comprises two rock breakwaters and five floating piers from which the berths are accessible.
- (b) The marina was required to provide a minimum of 141 car parking spaces for berth holders, staff and visitors. These are located adjacent to the marina basin partly on a piled concrete deck attached to the edge of the Okahu Landing reclamation, and on the reclamation itself.
- (c) The seaward most row of carparks and the manoeuvring area adjacent to them are in the CMA and authorised by coastal permit. The landward row is above MHWS and was created by land use consent with the agreement of the Council (as landowner).
- (d) Orakei Marina is not entitled to exclude the public from the CMA car parks, but is entitled to impose a reasonable charge for public use of them for non-marina related car parking, done by way of 'Pay and Display' ticketing.
- (e) The landward row of carparks is on Council owned land (i.e., the Landing) and Orakei Marina has the benefit of an easement allowing berth holders to use the car parks. Under the terms of the easement, unless agreed by Council, all of the car parks are to be available for short stay public car parking. The easement also provides the marina rights to pass and repass over the Landing from Tamaki Drive for access purposes.
- (f) Under the PAUP the marina is zoned Marina and is identified as sub-Precinct A in the OMP. The Landing itself is zoned Public Open Space (Sport and Active Recreation) Zone (POS-SAR), and is identified as sub-Precinct B. The provisions of these zones have been heard by the Panel.

¹ M Dunn, Primary 081 Evidence, para's 10 – 17.

3.3 The extent of the zones are no longer in dispute,² and nor is the identification of the sub-Precinct boundaries.

4. UNRESOLVED MATTERS

4.1 Mr Dunn's evidence suggested a number of changes to the OMP provisions in line with Orakei Marina's submission, some of which have been adopted by Mr Spiro in his rebuttal evidence. However, there are two unresolved matters which Orakei Marina still pursues:

- (a) Sub-Precinct descriptions;
- (b) The approach to car-parking for activities at the Landing.

Precinct Description Issues

4.2 Based on the factual position applying at the Landing and the marina, Mr Dunn suggested revising the wording of the sub-Precinct A and B descriptions as follows:³

"Sub-precinct A - the Marina sub-precinct applies to the consented marina activity and adjacent coastal structures within the CMA".

"Sub-precinct B - the Okahu landing sub-precinct in the Public Open Space – Sport and Active Recreation zone provides for the marine-related clubs based on the land, the use of the hardstand for boat storage, maintenance, and car and trailer parking, and for access to the marina and its associated public car parks."

4.3 Mr Spiro does not consider that the amendments "add anything", or, in the case of the addition to the sub-Precinct B description relating to access, that "this is a function of the agreements between Council and OMMT" and not a matter that requires specific reference.⁴

4.4 Why Mr Spiro would want to ignore the factual position and promote descriptions that are inaccurate is unclear. Moreover, reference to "access" is already included in the description to sub-Precinct A, albeit erroneously as that precinct only applies to the CMA and there is no land based access provided to the marina car-parking within.

² I note Orakei Marina no longer seeks a shift to the landward boundary of the Marina zone (see M Dunn, Primary 081 Evidence, para 17).

³ M Dunn, Primary 081 Evidence, para

⁴ M Spiro, Primary 081 Evidence, para 4.8

- 4.5 The suggested revisions are appropriate in my submission, and will ensure that the words in the plan properly reflect reality.

Council's de facto car-parking policy

- 4.6 Mr Spiro's rebuttal evidence now makes it clear that Council's de facto policy intention is that activities establishing on the Landing do not have to mitigate their potential adverse traffic effects by providing adequate car-parking for their needs on the Landing. As long as the marina maintains the car-parking it was required to provide for its berth-holders, new activities can establish at the Landing with no assessment of their traffic impacts at all and make free use of the marina's car parks.
- 4.7 This de facto policy intention, most notably expressed in the statement in the Precinct description,⁵ is not carried through into the proposed objectives and policies, thus making the subsequent rule framework (where it is apparent) without any policy support whatsoever. Policies 2, 4 and 5 in particular provide a planning framework that seems to demand the opposite of the Precinct description statement. It is as if the provisions were drafted by different people, with different objectives.⁶
- 4.8 Orakei Marina opposes the de facto policy intention in the Precinct description (and subsequent provisions). It submits that a policy intention that implicitly acknowledges, but proposes to ignore, an adverse effect on the environment of certain activities does not achieve the purpose of the Act. The claimed public benefits of the activities at this location cannot occur without infringing the environmental bottom-line in s5(2)(c) of the Act. It is particularly concerning in this case where it is Council who is the owner of the land in question and has publicly expressed development aspirations⁷ that would potentially be frustrated if the required mitigation (i.e., on-site car-parking) was required.
- 4.9 In this case as well, there has been no s32 assessment of the proposed change in policy position from the legacy plan provisions.⁸ Nor has any traffic engineering evidence been provided to establish that there would be no car-parking demand (and therefore no adverse effects); or even that car parking can be comprehensively managed to ensure existing

⁵ Mr Spiro now proposes variations on the wording of this statement in his rebuttal at paras 4.5, 4.6.

⁶ This inconsistency was raised in Orakei Marina's submission (point #6) and Mr Dunn's evidence, but has been ignored.

⁷ Okahu Landing Concept Plan "*Pathways to the Sea - Concept plan for The Landing at Pokanoa Point, Okahu Bay*" - refer page 9 of Primary Evidence of M Spiro.

⁸ Concept Plan B12-03 (Operative Isthmus Plan).

and future users rights and expectations are accommodated.⁹ The omission of such evidence reinforces Orakei Marina's concerns with this aspect of the OMP.

- 4.10 For this reason, Orakei Marina supports the objective and policy framework (including revisions) proposed. It submits that the inconsistent Precinct description paragraph and Land Use Control 3.4 should be deleted from the OMP. These deletions would restore the default position and provide an appropriate framework for the assessment of this issue in the context of future use and development at the Landing.

The default position should be restored

- 4.11 But for Land Use Control 3.4 in the OMP, the default position under the PAUP would apply to all activities within sub-Precinct B. That position starts with the Auckland Wide Transport Rules - Parking and Loading Spaces (H3.2), which is expressed to apply for all activities "unless otherwise stated in the Unitary Plan".¹⁰ Relevantly here, Table 4 specifically provides rates at which car parking must be provided, including for Clubrooms and "Land used for organised sport and recreation".
- 4.12 A modification of these requirements would be assessed as an RD activity, for which one of the matters of discretion is "Effects on adjacent activities and on the adjoining transport network".¹¹
- 4.13 The provisions of the applicable underlying zoning (POS-SAR) do not exclude these Auckland Wide requirements for car parking.¹² The Council's final version of the POS zones rules excluded cross references to car parking matters to preserve the default position.
- 4.14 It is only Land use control 3.4 in the OMP therefore which varies this default position.

⁹ This omission was raised by Mr Dunn in his Primary Evidence (para 38). No rebuttal evidence by the Council was exchanged. Mr Spiro attempts to give traffic engineering advice, asserting that car parking demands would be limited (para 4.16(c) of his rebuttal evidence).

¹⁰ Topic 043 & 044, Attachment C to EIC of H Tong-Woi

¹¹ Ibid, page 51

¹² Topic 058, Attachment C2 to Closing Statement for Auckland Council.

Mr Spiro's response

4.15 At paragraph 4.16 of his rebuttal evidence, Mr Spiro sets out a number of reasons why he thinks Land use control 3.4 should be retained.

(a) The land comprised within the precinct is a valuable resource insofar as it provides opportunities for marine-related and recreational activities adjacent to the Coastal Marine Area which would be reduced by requiring additional parking;

4.16 The value of this land for its identified activities is not disputed. But not requiring new activities to have to address their adverse effects diminishes that value for both existing users and, potentially, the wider public. The assumption that additional parking would be required in every case and the land area available for recreation reduced accordingly also overlooks the fact that activities can seek an RD development control modification and have their shortfall assessed on a merits basis, as envisaged under the Act.

(b) Not including minimum parking standards does not preclude the provision of additional parking by an applicant or landowner and provides the flexibility which is sought by many

4.17 This may be true, but it is of little comfort. Without an obligation at least to consider the effects of not providing car parks, there is little incentive to provide car parks.

(c) The activities that are anticipated within the precinct (marine retail, offices, food and beverage and marine-related clubrooms) as permitted activities are required to be accessory to the marina and marine-related sport and recreation activities based in the precinct and must be limited in scale, such that the maximum 300m² permissible for each (excluding clubrooms, see below) would only require (approximately) an additional 30 parking spaces

4.18 This reason supports the very concern expressed above about the effect of a rule precluding a requirement to provide car-parking – an additional demand on the existing resource that will go unmitigated or even considered. It makes no difference that the parking may be required for marine related sport and recreation, activities that are facilitated in the OMP. Placing additional demand on a finite resource is simply not sustainable management.

(d) Parking associated with the redevelopment of the Akarana Yacht Club (by far the largest development anticipated by the Concept Plan has already been addressed as set out in Mr Dunn's evidence, and similar negotiations would appear to be appropriate in the context of any physical redevelopment that enabled the permitted activities

discussed above, particularly given the policy support available to use of the parking spaces (Policies 2, 4c, 5b)

- 4.19 Under Mr Spiro's proposed provisions none of the activities that would place additional demand on car parking would even require consent, and even if they did, there is no guarantee of notification to Orakei Marina. Car parking is not a matter for discretion even if an RD consent were required, and such an application would not even have to consider the objectives and policies (s104C of the Act). This seems to be precisely the intent of the provisions - to prevent Orakei Marina from being able to protect its position in the face of other consent applications (as it did in the context of the Akarana Yacht Club's proposal) - and it is troubling that Mr Spiro considers otherwise.

(e) Overflow parking is available on both Tamaki Drive and Watene Reserve

- 4.20 This is irrelevant to the issue. However, it does assist Council to provide a solution – but only if there is a consenting process requiring alternative locations for parking to be considered and conditioned.

(f) There is likely to be an overlap between users of the marina and users of any marine retail or food and beverage premises (given that they must be accessory to such uses), thus reducing the actual competition for parking spaces

- 4.21 Mr Spiro is not a traffic engineer. Council has provided no evidence to support this proposition.

(g) The requirement of the Marina's operational consent to provide parking spaces does not amount to a right to marina users to have parking space provided, as reflected in the 'pay and display' regime currently operating in the Precinct

- 4.22 Mr Spiro misunderstands the basis upon which the original development consents for the marina were granted. Car parking was required to mitigate the effect of marina users coming to the marina in circumstances where there was insufficient car parking in the vicinity. The car park is there for them. The marina was not required to develop a public car-park to mitigate some loss of public car parking in the area.

- 4.23 The public have rights to the CMA car parks because of the reservation in s122(5) of the Act, not for any effects based reason. This is why berth holders are excluded from the 'Pay and display' requirement.

- 4.24 In my submission, none of Mr Spiro's reasons provide a basis for retaining Land use control 3.4 – in fact, a number of them support its deletion.

5. CONCLUSION

- 5.1 The fact that car-parking is at (or close to) a developed (or landowner desired) maximum on the Landing and that new activities may struggle to establish if they are required to do so is not a reason to exclude them from the requirement to even assess the effect of that shortfall on other users and the wider environment. Rather, it should be the key justification for retaining the default position.
- 5.2 The effect of Council's current preferred drafting is that an assessment of traffic effects on existing users of car parking at the Landing, and an opportunity for them to be heard, is completely precluded.
- 5.3 In the absence of any evidence to this Panel that such a preclusion is appropriate and acceptable on effects grounds (and there is none), the default Auckland Wide rule ought to apply, thereby requiring new activities wishing to establish on the Landing to provide a specific assessment of their parking effects and proposed management initiatives to mitigate them.



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