

Before the Auckland Unitary Plan Independent Hearing Panel

<b>In the Matter</b>	of the Proposed Auckland Unitary Plan
<b>Submitter</b>	Orakei Marina Management Trust
<b>Submission No.</b>	5861
<b>Topic</b>	081e – Rezoning and Precincts (Geographic – Central)
<b>Subject</b>	Okahu Marine Precinct
<b>Evidence</b>	Primary

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**Statement of Planning Evidence  
by Maxwell Joseph Dunn**

**11 February 2016**

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## Summary

- A. This evidence relates to those aspects of the Orakei Marina Management Trust's submission concerning the specific provisions for the Okahu Marine Precinct, in which Orakei Marina is included. The Trust owns and operates Orakei Marina for the benefit of its berth holders.
- B. Under the PAUP the marina is zoned 'Marina' and the hardstand area is zoned 'Public Open Space (Sport and Active Recreation)' (**POS-SAR**). I consider that both of these zonings are appropriate.
- C. I have also identified a few amendments to the revised zone provisions attached to Mr Spiro's evidence to ensure clarity and consistency.
- D. The key issue for the marina is proposed Land Use Control - 3.4 Parking and the proposal for new activities within Sub-precinct B not to have to provide parking, and for the Marina apparently to have to maintain its car parking supply for all additional demand.
- E. In my opinion, Land Use Control - 3.4 Parking ought to be deleted and the 'default position' as per the 'Auckland-wide rules' apply. If new activities within Sub-precinct B cannot provide car parking then they ought to at least have the effects of that 'shortfall' formally assessed by the applicant and Council and found to be acceptable before proceeding. In the associated assessment process I would expect the Trust as a potentially affected party to be advised of any such application.

## **Introduction**

1. My full name is Maxwell Joseph Dunn. I am a Planning Consultant with 4Sight Consulting (previously Andrew Stewart Ltd) and manage the Auckland office planning team. I hold a Bachelor of Science, a Bachelor of Arts and a Diploma of Town Planning. I am a full member of the NZ Planning Institute, and an MfE Certified Hearings Commissioner.
2. I have over thirty years planning experience, initially in local government and then in private practice. Over the last twenty years I have coordinated environmental investigations into, and the seeking of resource consents for, a number of private development projects, mainly in the Auckland, Northland and Waikato regions. I have also assisted city, district and regional councils with the preparation, and processing, of plan changes and resource consent applications.
3. I have also assisted a number of clients with submissions and appeals on district and regional plans, and attended related hearings and mediations. This includes submissions for several parties on the Unitary Plan.
4. Much of my recent planning work has been in central city and urban fringe areas. I assisted Orakei Marina Development Ltd with the resource consent applications for the marina and have subsequently assisted the Trust with planning matters. I am familiar with the marina and surrounding landing and visit it on an occasional basis.
5. I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Consolidated Practice Note 2011. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witnesses as presented to this hearing. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

## **Scope of Evidence**

6. This evidence relates to those aspects of the Orakei Marina Management Trust's submission concerning the specific provisions for the Okahu Marine Precinct, in which Orakei Marina is included. The Trust owns and operates Orakei Marina for the benefit of its berth holders.

7. As noted above I was the planning consultant for the original developer of the Orakei Marina, and therefore know the consenting background to it well.
8. The focus of this evidence is on the Okahu Marine Precinct provisions now proposed by Matt Spiro, who has prepared the evidence for the Council on this precinct.
9. Specifically, this evidence covers the following matters:
  - (a) The background to Orakei marina and the 'underlying' zoning provisions applying to the three sub-precinct areas;
  - (b) The Trust's submission on the proposed Okahu Marine Precinct provisions in the PAUP;
  - (c) The proposed changes to the Okahu Marine precinct provisions in response to submissions in Mr Spiro's evidence; and
  - (d) The Trust's concerns with the provisions (and changes) and its requested relief.

#### **Orakei Marina**

10. Orakei Marina comprises 172 marina berths and associated facilities for berth holders, including car parking. The Marina was developed in 2004/2005 after it obtained various land use, coastal and discharge permits authorising its construction and operation. The marina comprises two rock breakwaters and five floating piers from which the berths are accessible. Figure 1 contains a recent photograph of the marina.
11. In accordance with convention at the time the marina was developed, berth holder car parking was required at a rate of 0.7 car parks per berth. With additional staff and drop off car parking, the total car parking requirement for the marina was assessed as a minimum of 141 car parking spaces. The marina developer provided for these car parks immediately adjacent to the marina basin by building a supported concrete deck from the edge of the existing Okahu Landing reclamation. The deck is visible in the Figure 1 photograph. The deck required coastal permits for construction and occupation, an easement from the owner of the Landing (Auckland Council) to allow it to attach to this land, and a land use consent (also from Auckland Council) as the territorial consent authority.



Figure 1: Photograph of the Orakei Marina

12. 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 exists by virtue of a land use consent held by the Trust.
13. Under the terms of the coastal permit, the Trust does not have exclusive occupation of the seaward row of car parks for berth holders, but it is entitled to impose a reasonable charge to members of the public using them for non-marina related car parking. The Trust does this by way of 'Pay and Display' ticketing.
14. The landward row of carparks is on Council owned land (i.e., the Landing) and the Trust 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 Trust's easement also provides it with rights to pass and repass over the Landing from Tamaki Drive, to allow legal road access to and from the marina.
15. By way of further background I note that recently the Akarana Yacht Club sought resource consent for a significant redevelopment of its existing premises at Okahu Landing, but with no proposal to provide additional car parking. The Trust was

identified as an 'affected' party, given the potential for additional demands to be placed on the car parking at the Landing (including the marina's car parking) by the new development. A negotiated position, allowing the Trust's submission to be withdrawn, was eventually reached with the assistance of traffic engineers. This included the Council agreeing to put in place demand management measures (i.e., Pay and Display metering), for a portion of the landward row of carparks (those adjacent to the Yacht Club). The intention of this measure, put in place under the terms of the car park easement held by the marina, was to ensure preferential access for marina berth holders to these carparks at times of peak demand. Detailed traffic and event management plan conditions were also agreed between the marina and the Club.

16. Under the PAUP the marina is zoned 'Marina' and the hardstand area is zoned 'Public Open Space (Sport and Active Recreation)' (**POS-SAR**). I consider that both of these zonings are appropriate.
17. In its submission the Trust sought that the Marina zone be extended landward to include the entire easement row of carparks and related landscaping features, given that these car parks were developed as part of, and are used in conjunction with, the marina activity (5861/1 & 2) and read as part of the marina to those entering onto the Landing. However I understand that in relation to the Council evidence on Topic 080, where these submission points are discussed (primarily the evidence of Cath Coombs), the Trust has decided against arguing to shift the Marina zone to include the hardstand car parks used by the marina, given that it has land use consent and legal easement rights to them that restricts what this area may be used for (i.e., car parking only). This indication was given on the basis that the precinct specific provisions would be amended to provide clarity.
18. Where I consider the precinct specific provisions below, I do so bearing in mind the underlying zoning provisions as finally recommended by Council staff to the Hearing Panel in Topics 033 & 034 (Coastal) and 058 (Public Open Space). I discuss these provisions where relevant later in my evidence.

#### **OMMT's Submission Points on the Okahu Marine Precinct**

19. I set out below the specific OMMT submission points on the Okahu Marine Precinct. Although I did not prepare the submission I agree that the issues it raises, particularly

around car parking management in the future, are relevant and require an appropriate planning response in the Okahu Marine Precinct provisions.

## **5861/8 & 9 - F.2.14 Okahu Marine Precinct – Description, Objectives and Policies**

### Reason for Submission

Due to the inter-relationship between the Marina and Okahu Landing (incorporating the Watene Crescent trailer parking area), it is appropriate that a comprehensive and integrated Precinct plan apply to them both to provide guidance for the future use and development of the Precinct.

However, the proposed Precinct description is inconsistent with the objectives and policies for the Okahu Marine Precinct (which OMMT supports).

The statement in the description “*to prioritise the use of land within the precinct for marine-related and recreation activities no parking is required*” is completely at odds with Policy 2 which requires recognition of “*the need to manage parking associated with the marine recreation occurring within the precinct in a comprehensive manner*”. The Policy cannot be achieved if no car parking is required for future activities at Okahu Landing.

The descriptive statement confirms that the Council’s future aspirations for the use and development of Okahu Landing cannot be achieved if car parking to cater for those activities has to be developed in conjunction with them at Okahu Landing. Those aspirations are public knowledge, the Council having adopted a new Concept Plan for Okahu Landing in August 2013 and continuing to assist the Royal Akarana Yacht Club in its proposal to develop a new marine sports centre to replace its existing facilities at Okahu Landing. As owner of Okahu Landing, the Council stands to gain financially from the development proposed. Requiring new activities to provide for additional car-parking at Okahu Landing in order to avoid or mitigate their adverse effects, will frustrate those aspirations, as the area of land in question is finite.

The statement in the description is carried though into the Precinct rules (K.2.14), which are the subject of specific submission below.

As a broad submission on this proposal, the de-facto policy to do away entirely with car parking requirements for Okahu Landing reverses the longstanding position that has applied under Concept Plan B12-03 in the Operative District Plan. Contrary to the Council’s indication that such changes in policy were the only matters going to be assessed under s 32 RMA, no s 32 analysis of this proposal, and its related provisions, has been undertaken at all.

### Relief Sought

Replace the sentence “*To prioritise the use of land within the precinct for marine-related and recreation activities no parking is required*” with the sentence “*To ensure future redevelopment at Okahu Landing appropriately manages its effects on existing activities within the Okahu Marine Precinct and adjoining road network, adequate additional car parking will need to be provided.*”

Amend the description of Sub-precinct A to refer specifically to “*berth-holder car parking*” as a use within the Marina sub-precinct.

## **5861/14 & 15 - K.2.14 – 3.4 Land use controls – Parking/K.2.14 – 4 Development controls**

### Reason for Submission

Rule 1: The exclusion of the requirements of clause 3.2 of the Auckland-wide Transport rules and the application (in its place presumably) of a Matter for Discretion that “*sufficient car parking should be available for boat users of the marina and the marine related sport and recreation facilities, particularly during peak boating times*” where applications for structures and activities not otherwise provided for are considered, is opposed.

It is acknowledged in Concept Plan B12-03 in the Operative District Plan that car parking is in short supply at Okahu Landing and accordingly expansion of existing facilities was constrained. That Concept Plan was made operative over a decade ago. The problem has not gone away or subsided, even despite the recent reconfiguration of car parking at Okahu Landing and the development of car parking by the Marina. Recent parking and access surveys completed by OMMT over the whole of Okahu Landing have precisely quantified the extent of the problem. The development of new vehicle generating activities at Okahu Landing will place further pressure on existing car parking, those established activities that rely on it, and the surrounding road network, especially at peak times.

There has been no s 32 RMA assessment of this proposed change. There is no rational resource management basis to remove the requirement for car parking for activities that may be developed at Okahu Landing in the future. Council’s proposal to re-write the rules to advantage future development is inappropriate.

Rule 2: Not opposed.

Rule 3: Sub-precinct A is the area of Okahu Landing occupied by the Marina and the car parking associated with the Marina. This rule effectively forces the Marina to maintain a supply of car parking at Okahu Landing for the use of those activities Council wishes to see developed in sub-precinct B, where it proposes no car parking be required. The rule is opposed. While it is true that the Marina is obliged to provide 141 car parks in order to comply with its development approvals (not 158), that is not a position that may inure in perpetuity. The rule is also wholly inconsistent with the policy change to do away with car parking requirements for new development at Okahu Landing, unreasonable and inappropriate.

Rules 4 and 5: Not opposed.

### Relief Sought

Delete Land use controls 1 and 3 from K.2.14.3.4.

Include a new Development control requiring all activities within the Okahu Marine Precinct to comply with the Auckland-wide Transport Rules.

### **Council's Evidence**

20. Mr Spiro's evidence for Council responds to these submission points, recommends a few minor changes to provide clarity, but generally maintains the notified provisions including, significantly, the exclusion of activities within Sub-precinct B from the need to provide any additional car parking. He has included suggested changes in a 'tracked change' version attached to his evidence. For ease of reference, I propose to work through Mr Spiro's suggested changes in the document in sequence.

### **Explanation and Precinct Description**

21. I have no issue with the proposed change to the first explanatory paragraph – it merely provides clarification (Comment MS1).
22. I also tentatively agree with Mr Spiro's proposed clarification to the precinct description paragraph that was the subject of direct submission by the Trust (5861/8) (Comment MS2). This is because the Landing, zoned POS-SAR, is a valuable community resource in this established coastal location and it would be unfortunate for it to be utilised solely for public car parking. Sub-precinct C is the appropriate location for that at peak times.
23. However, Mr Spiro's suggested changes render the first sentence ambiguous and as such, do not respond to the issue raised in the Trust's submission. Is it marine-related and recreation activities that do not require additional parking that are to be prioritised? Or is it, marine related and recreation activities that would otherwise require parking, but will not be required to provide it here because Council wants to ensure these activities can locate here without doing so?
24. Further review of Mr Spiro's evidence suggests that it is the latter, although it is not entirely clear, because proposed Policy 2 directly raises management 'in a comprehensive manner' of parking associated with activities at the Landing. Not requiring any car parking is not in my opinion 'comprehensive management'. This policy imperative is carried through as well into Policies 4c and 5b.
25. I return to this issue later, suffice to say that if the Hearing Panel does not accept that the proposed precinct rules, which relieve activities in the precinct from having to provide any car parking, are appropriate, then this statement will require revision.

26. The descriptions of the three sub-precinct areas that follow this paragraph are generally accurate. However, based on the information I have provided above, it would be more accurate to state that: *“the Marina sub precinct applies to the consented marina activity and adjacent coastal structures within the CMA”*. And, for Sub-precinct B, that: *“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.”*

### **Objectives**

27. For the addition at Comment MS3 to ensure consistency, I consider that an additional cross reference to the objectives of the Marina zone, which applies to all of Sub-precinct A, should be included (as it has in the Policies).

### **Policies**

28. I agree with the proposed additions and amendments to the Policies. In particular, I generally support Policies 2, 4c and 5b – relating to sustainable management of car parking for marine related sport and recreation facilities. However I consider that they will need to be reconsidered to avoid confusion if Council’s policy intent is that no car parking will actually be required for them (as appears to be the case based on the proposed rules).

### **Rules/Controls/Assessment**

29. I have no issue with the additional cross referencing at the outset of the rules if its purpose is to ensure consistency.
30. As a general point, I have some reservations with the style of the rule framework which makes the Auckland-wide or underlying zone rules apply in the precinct “unless otherwise specified below”. This is because in the case of Sub-precinct B, for example, the underlying POS-SAR zone provides for the same activity, but with differing land use controls. Given that the controls define the activity status for the activities to be considered permitted (as per the rule tables), I am unsure whether this means they are different activities and both rules apply, or the same activity with the precinct rule only applying. I presume it is the latter that is intended, but the

style is ambiguous. Perhaps amendment of the phrase to read – “*unless the activity is otherwise specified in the table below*” – might assist to avoid confusion.

31. Turning to the table, in relation to Sub-precinct A, the column headed “*Land*” is superfluous, give that this sub-precinct only applies to the CMA.
32. I have no other concerns with the activity classifications in the table for any of the sub-precincts.
33. My interpretation of the provisions that follow (Land Use Controls) is that they would still apply to Sub-precinct A, despite the fact that it is entirely within the CMA. This is consistent with the final provisions for the Marina zone in Topics 033 & 034. The Development Controls apply in a similar way.
34. Turning then to the key issue in my opinion – Land Use Control 3.4.
35. Control 3.4.1 excuses activities in all of the sub-precincts from the need to comply with the Auckland-wide transport rules (3.2), even if they do not comply with the permitted GFA controls and require a restricted discretionary consent. Parking provision, and the effect of a lack of it on other activities in the precinct (and beyond), is also not a matter for discretion or assessment in Section 5. The underlying Marina and POS-SAR zone provisions would otherwise require all activities to comply with this Auckland-wide rule.
36. In Sub-precinct B, Restaurants and cafes, offices, marine retail, and clubrooms for marine-related clubs are all permitted activities subject to the GFA and other Land Use Controls at 3. From my experience, it goes without saying that all of these activities generate some demand for car parking, and yet the control provides that none need be provided. The provisions clearly foreshadow that no more car parks can be formed on the Landing, but despite that Council wishes to allow activities with parking demand to establish there anyway.
37. If the transportation effects of further development at the Landing were only of consequence to the Council’s tenants there, then these provisions would potentially be acceptable – effects would be internalised and would become self-regulating to some extent. However, the impact of under-provision of car parking for new activities has implications for existing lawful users of the car parking areas at the

Landing, and for motorists generally, as car parking demand over flows onto Tamaki Drive.

38. The Council has provided no specific traffic engineering evidence to support its position in Mr Spiro's evidence that allowing traffic generating activities to establish at the Landing will not cause adverse traffic effects off-site. Nor has it provided any evidence that there is sufficient capacity at the Landing for additional traffic generating activities to establish without adversely impacting on other existing users. In my opinion, the Council has failed to properly consider the effects on the environment of its proposed rules.
39. The issue is further compounded by the apparent proposal in Land Use Control 3.4.3 for all of the car parks developed for and relied on by the Marina to be privatised. The proposed control is 'novel' in my opinion because it makes compliance reliant on whether a certain state of affairs beyond an applicant's control exists or not. If the Marina chose to convert some of the area on its coastal deck to other marina related activities other than parking (it has a surplus of 17 spaces), then every proposed activity within Sub-precinct B would become restricted discretionary, because the car parks required by this control would not exist.
40. In my opinion, this Land Use Control is inappropriate. The control cannot make the Marina maintain the carparks under its control. It seems to be an attempt by Council to secure the Marina car parking for other users of the Landing, so that it can achieve redevelopment outcomes for its land, which outcomes might otherwise be frustrated if they could not proceed without additional car parking being available.
41. In my opinion, this entire Land Use Control (3.4 Parking) ought to be deleted and the default position per the Auckland-wide rules apply. If new activities at the Landing in Sub-precinct B cannot provide car parking then they ought to at least have the effects of that shortfall assessed and found to be acceptable, with input from affected parties, like the Trust, before proceeding. That outcome would also preserve the marina's position as a party potentially adversely affected by additional car parking demand being generated in Sub-precinct B by new activities.

**Max Dunn**

11 February 2016