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## North Shore City Council v Auckland Regional Council - [1997] NZRMA 59

The Environment Court:  
A 86/96

8 July - 26 August; 1 October 1996

His Honour Principal Environment Court Judge Sheppard presiding; Mr P A Catchpole and Mr I G C Kerr.

*Regional policy statement -- Metropolitan urban limit -- Whether the policy defining the limit was necessary in achieving the purposes of the Act -- Whether the policy defining the limit assisted the regional council in carrying out its functions -- Whether the policy defining the limit was the most appropriate means of exercising those functions -- Whether the definition of the limits had a purpose of achieving the objectives and policies of the regional policy statement -- Historic Places Act 1993, ss 11, 12 -- Land Transport Act 1993 -- Resource Management Act 1991, ss 5, 30, 32, 59, 60, 61, 74, 75, 79, 104, 272, 290, First Schedule, cls 5, 10, 14, 15, 16.*

The proposed Auckland regional policy statement included, for the purpose of containing urban development, a line of metropolitan urban limits. The subject land in these proceedings lay within the North Shore city district. The proposed line of metropolitan urban limits placed the subject land outside the metropolitan urban limits, and as a consequence the North Shore city district plan would have to preclude use or development of the land for urban purposes.

The subject land was located at the north-eastern tip of North Shore city. It was bounded to the west by Rodney district; to the north by the Okura Estuary; to the east by the Long Bay Regional Park and the Hauraki Gulf; and to the south by the existing urban area of North Shore city. The land fell into two catchments separated by a broad ridge, one draining to Long Bay, the other to the Okura Estuary. The appellants sought a redrawing of the line of metropolitan urban limits at the boundary between the North Shore city district and the Rodney district, so that the subject land would be within the metropolitan urban limits. The underlying policy of containment of urban development was not challenged in these proceedings. The Auckland Regional Council, in addition to presenting a full case in support of the decision to exclude the Long Bay/Okura area from the metropolitan urban limits, also sought a postponement of the Court's decision for 12 months to <sup>[1997] NZRMA 59 page 60</sup> enable it to complete a review of options for accommodating growth in the Auckland region.

**Held** (allowing the appeal in part):

(1) The appellants had been given the right to challenge the provisions of the proposed regional policy statement as notified, and they had exercised that right. Without their agreement to a postponement it was the duty of the Court, having heard the parties' cases, to give a decision on the appeal as soon as practicable. The decision would not be postponed.

(2) On these appeals the Court had to decide (i) whether the policy defining the metropolitan urban limits in the Long Bay/Okura area was necessary in achieving the purposes of the Act being the sustainable management of natural and physical resources; (ii) whether the policy assisted the regional council to carry out its functions under s 30 of the Act; (iii) whether the definition of the limits was the most appropriate means of exercising those functions; and (iv) whether the definition of the limits had a purpose of achieving the objectives and policies of the regional policy statement. The Court was not restricted to the metropolitan urban limits proposed by the parties, but rather the issue was where the limits should be defined in order to best achieve the purposes of the Act.

(3) Urbanisation of the part of the subject land in the Okura catchment would necessarily have significant adverse effects on the environment of the Okura Estuary. The estuary, its high quality waters and ecosystem, possessed life-supporting capacity which deserved to be safeguarded. Urbanisation of the Long Bay coast,

however, would not necessarily have significant adverse effects on the environment of the coast or the marine reserve.

(4) The landscape quality of the Okura Estuary and its margins was high, and the likely visual effects of urbanisation of that part of the subject land was such as to indicate that it should not be urbanised. The landscape quality and likely effects of urbanisation on the environment of the Long Bay catchment did not indicate that it should not be urbanised.

(5) The effects on the Long Bay regional park of urbanisation of the part of the subject land within the park's visual catchment was not relevant to the decision on these appeals.

(6) The decision on these appeals was not to be influenced (i) by effects of urbanisation on the proposed Albany subregional centre, or on employment self-sufficiency; (ii) by consideration of the realistic capacity of the North Shore district for infill and intensification; (iii) by regional transport issues; or (iv) by the presence of archaeological and historic remains and sites on the land.

(7) To achieve the purpose of the Act it was necessary for the metropolitan urban limits to be defined so as to exclude the land in the Okura catchment. It was not necessary that the land in the Long Bay catchment be excluded.

(8) A metropolitan urban limit defined so as to exclude the Okura catchment but to include the Long Bay catchment would assist the regional council in carrying out its functions, and would be the most appropriate means of exercising those functions.

### Cases cited

*Auckland Regional Council v North Shore City Council* [1995] NZRMA 424

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*Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145

*Elderslie Park Ltd v Timaru District Council* [1995] NZRMA 433

*Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497

*Leith v Auckland City Council* [1995] NZRMA 400

*McIntyre v Christchurch City Council* [1996] NZRMA 289

*Nugent Consultants Ltd v Auckland City Council* [1996] NZRMA 481

*New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70

*North Shore City Council, Re application by* [1995] NZRMA 74

*Te Runanga O Taumarere v Northland Regional Council* [1996] NZRMA 77

*Trio Holdings v Marlborough District Council* (Planning Tribunal, W 103A/96, 14 August 1996)

*Waimea Residents Association Inc v Chelsea Investments* (High Court, Wellington M 616/81, 16 December 1992, Davison CJ)

### References

under cl 14 of the First Schedule to the Resource Management Act 1991.

*David Kirkpatrick and Heather Ash* for the North Shore City Council

*Russell Bartlett, Douglas Allan and Donna Lewell* for the Okura Land Group

*Anthony Randerson QC, John Burns and Mark Cooper* for the Auckland Regional Council

The decision of the Court was delivered by His Honour

## Judge Sheppard.

### DECISION

#### *Introduction*

#### *The appeals*

These are references to the Environment Court (formerly called the Planning Tribunal - see s 6 of the Resource Management Amendment Act 1996) under cl 14 of the First Schedule to the Resource Management Act 1991 of the definition in the proposed Auckland regional policy statement of the line of metropolitan urban limits in the locality of Long Bay/Okura on Auckland's North Shore. By cl 15(2) of the First Schedule the references are appeals, and we refer to them as such [cl 15(2) is quoted at p 68].

The proposed regional policy statement was initially publicly notified on 12 February 1994; the time for lodging submissions closed on 17 July 1994; the time for lodging further submissions closed on 28 October in that year; the regional council heard the submissions from 14 July 1995; and it gave its decisions on them in October of that year. These appeals were brought by the North Shore City Council and by owners of land in the locality who are collectively called the Okura Land Group. Although the notices of appeal lodged on behalf of the city council raised other questions as well, at the hearing the cases of both appellants were confined to the line of the metropolitan urban limits.

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The subject land comprises some 700 ha which is within the North Shore city district. Some 398 ha of that land is owned by members of the Okura Land Group.

In the proposed regional policy statement, for the policy of containment of urban development, the line of metropolitan urban limits follows generally the northern side of Glenvar Road, and the subject land is outside the metropolitan urban limits. By s 75(2)(c) a district plan may not be inconsistent with the regional policy statement. So if the line of metropolitan urban limits remains as defined in the proposed regional policy statement, the North Shore district plan would have to preclude use or development of the subject land for urban purposes.

By these appeals, the appellants are seeking that the metropolitan urban limits in the proposed regional policy statement in the Long Bay/Okura area be defined at the boundary between the North Shore city district and the Rodney district, so that the subject land would be within the metropolitan urban limits. (It was accepted that some of the subject land at the top of the Okura catchment would in any event not be suitable for urban development because of its contour and vulnerability to erosion.) The North Shore city district plan could then provide for use and development of the subject land for urban purposes without being inconsistent with the regional policy statement.

In these proceedings no one challenged the proposed policy of containment of urban development, and no one submitted that the regional policy statement should not provide for metropolitan urban limits. The appeals were confined to the definition of the limits in the Long Bay/Okura area. However the appellants announced that they reserved any opportunity to challenge the existence of metropolitan urban limits that might arise on other future proceedings under the First Schedule.

#### *Adjournment refused*

[Passages have been omitted from this report.] After hearing argument, on 9 July we gave a decision declining the adjournments of these appeals. The record of our decision to that effect is Decision A 62/96.

#### *Appeal hearing*

After giving the decision declining to adjourn these appeals, we proceeded to hear the appeals. In addition to the principal parties, the Tribunal received submissions presented by counsel on behalf of the Auckland and Manukau City Councils, and heard evidence and submissions on behalf of the Okura Ratepayers and Residents Association Inc, the Keep Okura Green Society Inc, the Stillwater Ratepayers and Residents Association Inc, the Royal Forest and Bird Protection Society Inc, Auckland Civic Trust, Greenpeace (New Zealand) Inc, Waitemata Harbour and Hauraki Gulf Protection Society Inc, Gulf Defence Inc, the Campaign Against Dumping, Save Our Islands Trust Inc, and Te Tinana O Ngati Whatua Nui Tonu. All of those parties supported the regional council's position.

In the course of the hearing, evidence was given by 36 witnesses, nearly all of them expert witnesses. The

hearing continued over 24 hearing days. In addition to hearing the evidence and the submissions of the parties, in our deliberations since the hearing we have carefully reviewed all that material. In our judgment some of the evidence presented was not relevant to any issue

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which arises in these appeals, and did not deserve persuasive weight in deciding them. An example is evidence of responses to a questionnaire about opinions that had been published in a newspaper.

The purpose of this document is to explain our findings on the main questions, and our reasons for the decision on these appeals. It is not necessary for that purpose for us to give an account of the evidence of each of the 36 witnesses (cf *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145). To do so would add considerably to the length of this document without contributing to its purpose. In the interest of focusing attention on the basis for our decision, we confine ourselves to the main elements which have led to our conclusion; and we forgo detailed analysis of the evidence of each witness except to the extent that is necessary to explain our resolution of a direct conflict of fact.

#### *Postponement of decision*

The regional council's response to these appeals was that it was premature to make a decision whether Long Bay/Okura should be included within the metropolitan urban limits until the regional council had completed a review of options for accommodating growth in the Auckland region; that any need to accommodate growth on the North Shore did not have such urgency as to preclude the review process being undertaken; that the appeals should be adjourned for 12 months to enable the review process to be completed, after which the appellants would be at liberty to seek a further hearing date if there has been no agreed resolution by that time; and that the regional council would give an undertaking that it would use its best endeavours to complete the review process within the 12-month period, and would further undertake to consult with the North Shore City Council and the Okura Land Group and other interested parties during the course of the review. The heart of the regional council's position in that regard was that the costs and benefits of alternatives available for accommodation of growth need to be assessed on a regional basis.

The regional council claimed that it had initially carried out an appropriate evaluation of regional growth issues. However as a result of submissions on the proposed regional policy statement, and evidence of higher rates of growth than had previously been contemplated the regional council had agreed to review the management of growth, and had decided to incorporate provisions in the regional policy statement providing for that review.

The review process would not be carried on by the regional council alone. A regional growth forum has been established as a standing committee of the regional council, having representatives of each of the territorial authorities as well as regional council members. The regional council had previously carried out modelling of regional growth and transport issues called the Auckland Strategic Planning Model (referred to by the acronym ASP1). At the time of the appeal hearing it was starting further modelling based on revised inputs and procedures. The further modelling is referred to as ASP2. Again, that modelling is to be done with the help of a working party which includes representatives of the territorial authorities. It is expected that the outputs of the ASP2 modelling will be more reliable than those of ASP1, and those outputs would provide a basis for subsequent evaluation by a range of consultants before presentation to the regional growth forum. The forum may

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commission further studies, and there would be consultation with, and opportunity for representations by, the Auckland territorial authorities and other interested parties. If as a result of all those processes an alteration to the line of metropolitan urban limits is indicated, that alteration would be the subject of a variation or change to the regional policy statement, or of a proposed regional plan. Those are processes in which anyone would have rights of submission, and if they wish, reference to the Environment Court. The relevant provisions would continue to be reviewed from time to time.

The regional council sought the opportunity to carry out that review, and to consider a number of options for accommodating growth in the northern sector, before any change to the proposed location of metropolitan urban limits is contemplated. Its counsel, Mr Randerson, observed that if the outcome of the review process was agreement that Long Bay/Okura should be included within the metropolitan urban limits, then in these proceedings the Court would be able to direct the regional council to amend the proposed regional policy statement accordingly. Conversely if, after the 12-month period, agreement has not been reached and the appellants wished to pursue their claims that the subject land should be within the metropolitan urban limits, they would be able to bring the matter back to the Environment Court for adjudication. Counsel also submitted that a decision to include Long Bay/Okura within the metropolitan urban limits would in practice be irrevocable in terms of the effects on the environment of commencing urbanisation of that land.

The proposal of postponing a decision on the appeals pending completing the proposed review was opposed

by the appellants, who urged that the Tribunal should give a decision on their appeals on the evidence presented at the appeal hearing.

It was the case for the Okura Land Group that a review of the metropolitan urban limits could and should have taken place prior to notification of the proposed regional policy statement, or at the latest prior to giving a decision on their submissions. On their behalf, Mr Bartlett urged that including the Long Bay/Okura area within the metropolitan urban limits would not involve commitment to any particular form of development of the subject land, as regional and controls could ensure that even development within the metropolitan urban limits recognises the sensitivity of particular environments. He also submitted that the effect of the regional council's position was not to justify the line of the proposed metropolitan urban limits at Okura as necessary for achieving the purpose of the Act, but to hold its options open.

On behalf of the North Shore City Council, Mr Kirkpatrick submitted that the regional council's proposal for postponement of the Tribunal's decision showed the regional council's concern that there had been inadequate assessment of the definition of the metropolitan urban limits in the Long Bay/Okura area. He also submitted that the subject of the proposed review would be options that had already been the subject of analysis, and that the review would involve a non-statutory process through the regional growth forum.

This question calls for us to choose whether to give a decision on the appeals now, on the evidence presented at the appeal hearing, or whether to postpone a decision for a year, to see whether as a result of the review

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processes described, the parties can agree on where the line of metropolitan urban limits should be.

We consider that there are merits in both options. Although some criticism was directed at the ASP2 modelling and the review processes that would follow it, we are satisfied that ASP2 would be a further improvement on the ASP1 modelling which informed the decision to set the line of metropolitan urban limits in the proposed regional policy statement at Glenvar Road, so as to exclude the subject land. In short, there is a likelihood that the decision on that subject following the review would be a better decision in the sense of better achieving the purpose of the Act than the regional council's decisions about that line in preparing the proposed regional policy statement for notification, and on the submissions of the appellants on that topic.

However we are not persuaded by the argument that a decision made now to allow these appeals would necessarily lead to irrevocable adverse effects on the environment. The improved modelling, and the evaluation and studies that would follow it, will be valuable in making methodical decisions about directing pressures for growth of metropolitan Auckland on a regional basis. Yet that modelling and evaluation, and any further studies, will not be focused on the environmental effects of urban development of the subject land. On these appeals we have heard considerable evidence about the environmental effects of urban development of the subject land. Even if the Court gives a decision on these appeals now, it will be a decision based on findings from that evidence. And even if by this decision the Court allows these appeals, that would not authorise uncontrolled urban development of the subject land having significant adverse effects on the environment. Any urban development would be subject to control by the regional council over earthworks, sediment and stormwater discharges, and to control by the city council in terms of the form, density and locality of development. The regional council would have opportunities by submissions and by appeals to influence the city council's exercise of its controls.

We accept the regional council's contention that the costs and benefits of various options for responding to pressures for growth of metropolitan Auckland should, for the purpose of settling regional policy, be assessed on a regional basis. As the Planning Tribunal recognised in *Re application by North Shore City Council* [1995] NZRMA 74, the purpose of setting metropolitan urban limits is to perform the regional council's function of achieving integrated management of the natural and physical resources of the region. However that does not preclude the Court from making a judgment now on a regional basis. At the hearing of these appeals all parties had opportunity to present evidence and submissions on the advantages and disadvantages, on a regional basis, of including and excluding the Long Bay/Okura area, and other areas, in and from the metropolitan urban limits. It is our duty to make findings on the evidence presented.

We consider that the stronger argument for giving a decision now, without awaiting the review, is that this is the Court's duty, and it is what the Act contemplates. The very notification of a proposed regional policy statement gives the instrument some influence, even before

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submissions on its content have been decided - see for instance ss 74(2)(a) and 104(1)(c) which direct planning authorities to have regard to a proposed regional policy statement. Because a proposed regional policy statement has such influence even before it can be challenged, the preparation of such an instrument for notification has to be done carefully. Therefore a regional council has to act responsibly to be sure that any provisions which would have the effect of limiting activities are necessary for achieving the purpose of the Act.

It should not be inferred that we are finding that the Auckland Regional Council did not prepare its proposed regional policy statement carefully, or that it did not act responsibly. That is not the case. Rather our point is that having notified the proposed regional policy statement, the regional council has the opportunity of justifying any of its contents that are challenged as being necessary for achieving the statutory purpose. On these appeals which challenge contents of the proposed regional policy statement, the regional council is seeking to postpone a decision on that challenge on the basis that it may be able to make a better decision following further modelling and evaluation. Its wish to further improve the quality of its policy can only be commended. However planning is never settled; it is often possible for further studies to be done, with a view to better planning. Yet the process of independent consideration of plans, and of challenges to their contents, can also contribute to their quality. Once a plan has interim effect, it is timely for any challenges to be considered. If a planning authority does not wish to meet any challenge, its course is to withdraw the instrument so that it ceases to have interim effect. In this case the regional council, while urging postponement of our decision, did not seek to avoid responding to the challenge, but presented a full case in support of excluding the Long Bay/Okura area from the metropolitan urban limits.

The appellants have been given the right to challenge the provisions of the proposed regional policy statement as notified, and they have exercised that right. It is a right to an appeal decision by a judicial body which is entirely independent of the primary decision-maker, not a right to a review by a committee of the primary decision-maker. This Court has been given the duty to hear and decide such challenges. In general it is the Court's duty to do so as soon as practicable after the proceedings are lodged, unless in the circumstances of a particular case it is not appropriate to do so - see s 272(1). If the appellants had agreed to postpone the appeal process until after the review (as other appellants challenging the metropolitan urban limits have done) that would have been a different case. Without their agreement to postponement, it is our duty, having heard the parties' cases, to make our findings and give a decision on the appeals as soon as practicable. We hold that we should do so, and we decline to postpone our decision on the appeals.

The effect will be to determine whether the Long Bay/Okura area is to be included within, or excluded from the metropolitan urban limits in the regional policy statement when it is approved. Of course that is without prejudice to the regional council proposing a variation or change after it has completed the intended review process. Yet in this decision we should not anticipate any such action, but make our decision on the assumption that it will be effective for the life of the regional policy statement.

#### *Basis for decision*

Before we address the various topics on which we have to make findings, we should state our understanding of the basis on which the Court should decide the issue raised by these appeals.

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The purpose of the Resource Management Act is of central importance. It is stated in s 5:

5. Purpose
- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The other provisions of Part II of the Act, ss 6 to 8, are also important. They are to be understood as accessory to the principal purpose described in s 5 (*New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70, 84).

The functions of regional councils under the Resource Management Act are described in s 30. Relevantly, they include ways of achieving integrated management of the natural and physical resources of the region, objectives and policies in relation to effects of the use, development and protection of land which are of regional significance, and control of use of land for soil conservation and for maintenance and enhancement of the quality of water in water bodies and coastal water.

Section 59 provides:

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

Section 60(1) directs:

There shall at all times be for each region one regional policy statement prepared by the regional council in the manner set out in the First Schedule.

Section 61 directs that a regional council is to prepare its regional policy statement in accordance with its functions under s 30, the provisions of Part II, and its duty under s 32. When preparing a regional policy statement, a regional council is to have regard, among other things, to management plans and strategies prepared under other Acts (s 61(2)(a)(i)).

Relevant provisions of s 62 are:

- (1) A regional policy statement shall make provision for such of the matters set out in Part I of the Second Schedule (and such of the matters set out in Part II of that Schedule as are of regional significance), that are appropriate to the circumstances of the region, and shall state --
- (a) The significant resource management issues of the region; and
  - (b) Matters of resource management significance to iwi authorities; and
  - (c) The objectives sought to be achieved by the statement; and
  - (d) The policies in regard to those significant issues and objectives, and an explanation of those policies; and
  - (e) The methods used or to be used to implement the policies; and
  - (f) The principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
  - (g) The environmental results anticipated from implementation of those policies and methods; and
  - (h) The processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions; ... and
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- ...
- (i) The procedures to be used to review the matters set out in paragraphs (a) to (ha), and to monitor the effectiveness of the statement as a means of achieving its objectives and policies; and
  - (j) Any other information that the regional council considers appropriate; and
  - (k) Such additional matters as may be appropriate for the purpose of fulfilling the regional council's functions, powers, and duties under this Act.
- (2) A regional policy statement shall not be inconsistent with any national policy statement, New Zealand coastal policy segment, or water conservation order.

Section 79(1) directs that a regional council is to commence a full review of its regional policy statement not later than 10 years after the statement became operative.

The application of the First Schedule to a regional council's preparation of its regional policy statement provides the code of procedure for preparation and publication of a proposed regional policy statement, for lodging and decisions on submissions, and for references to the Environment Court. The provisions of that Schedule which are relevant are contained in cls 14, 15 and 16:

- 14. Reference of decision on submissions ... to the Environment Court**
- (1) Any person who made a submission on a proposed policy statement or plan may refer to the Environment Court --
- (a) Any provision included in the proposed policy statement or plan, or a provision which the decision on submissions proposes to include in the policy statement or plan; or
  - (b) Any matter excluded from the proposed policy statement or plan, or a provision which the decision on submissions proposes to exclude from the policy statement or plan, ...
- if that person referred to that provision or matter in that person's submission on the proposed policy statement or plan. ...

- 15** Hearing by the Environment Court
- (1) The Environment Court shall hold a public hearing into any provision or matter referred to it.
- (2) Where the Court holds a hearing into any provision of a proposed policy statement or plan (other than a regional coastal plan) that reference is an appeal, and the Court may confirm, or direct the local authority to modify, delete, or insert, any provision which is referred to it. ...
- 16** Amendment of proposed policy statement or plan
- (1) A local authority shall make an amendment to its proposed policy statement or plan to give effect to any directions of the Environment Court . ...

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Section 290(1) is also relevant to the authority of the Environment Court in deciding an appeal and provides:

- (1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against, or to which an inquiry relates, as the person against whose decision the appeal or inquiry is brought.

As the Planning Tribunal did in *Leith v Auckland City Council* [1995] NZRMA 400 at 408, we adopt the approach stated in K A Palmer *Local Government Law in New Zealand* (2nd ed 1993 at 646) that on appeals under cl 14 of the First Schedule no party has a formal onus of proof, that there is no presumption that the respondent's policy is necessarily appropriate or correct, and that the proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and planning.

In *Nugent Consultants Ltd v Auckland City Council* [1996] NZRMA 481 the Planning Tribunal referred to s 32(1) and held (at p 484):

... a rule in a district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development, or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan.

That was a decision on a reference of a proposed district rule. The element in that statement about a rule being necessary in achieving the purpose of the Act was derived from the requirement of s 32(1) which reads:

- (1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall
- (a) Have regard to --
- (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and
- (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
- (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and
- (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and
- (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)
- (i) Is necessary in achieving the purpose of this Act; and
- (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

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Those provisions do not only apply to district rules. They apply to any "objective, policy, rule or other method in relation to any function described in subsection (2)". The provisions of the proposed regional policy statement about the metropolitan urban limits are a policy - see *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424 (CA) at 430. That policy relates to a function described in s 32(2), namely the public notification under cl 5 of the First Schedule of a proposed regional policy statement, and a decision made by a local authority under cl 10 of the First Schedule, on a proposed regional policy statement or plan. So the duties imposed by s 32(1) applied to the regional council in its function of adopting the metropolitan

urban limits policy, and they should be observed by the Court in deciding these appeals, in the same way as they applied to the Auckland City Council and to the Planning Tribunal in *Nugent's* case.

Of course the function being performed by the Auckland Regional Council in adopting the metropolitan urban limits policy was not the same function as that which was being performed by the Auckland City Council in adopting the district rules the subject of *Nugent's* case. The regional council was performing functions conferred on it by s 30(1), of which the following are pertinent:

- (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
- (b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
- (c) The control of the use of land for the purpose of --
  - (i) Soil conservation:
  - (ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:

Accordingly the basis for deciding the reference in *Nugent's* case, quoted above, needs to be modified to apply to the present reference of a policy in a proposed regional policy statement by replacing the words relating to a territorial authority's function under s 31 with corresponding words relating to a regional council's function under s 30. Accordingly we hold that the basis for decision-making on these appeals is for the Court to decide:

Whether the policy defining the metropolitan urban limits in the Long Bay/Okura area in the proposed regional policy statement is necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined):

Whether the policy defining the limits assists the regional council to carry out its functions of achieving integrated management of the natural and physical resources of the region; in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance, for the control of the use of land for the purpose of soil conservation, and (for the maintenance and enhancement of the quality of water in water bodies and coastal water) of control of actual or potential effects of the use, development, or protection of land in order to achieve the purpose of the Act:

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Whether the definition of the limits is the most appropriate means of exercising those functions: and

Whether the definition of the limits has a purpose of achieving the objectives and policies of the regional policy statement.

For applying the first of those tests, we bear in mind the meaning to be given to the word "necessary" in the context of s 32. In *Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council* (1993) 2 NZRMA 497 the Planning Tribunal held (at p 543) that in s 32 the word "necessary" is to be given a meaning similar to expedient or desirable, rather than essential. On appeal, that construction was endorsed by the Full Court (*Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 178).

We accept the correctness of Mr Bartlett's submission that the Court's inquiry is an open one, that the subject is the location of the line defining metropolitan urban limits, not a movement of the line. The issue is not so much whether the metropolitan urban limits in the Long Bay/Okura area should be defined at Glenvar Road (as proposed by the regional council), or whether they should be defined at the boundary between North Shore city and Rodney district (as proposed by the appellants), but rather the issue is where the metropolitan urban limits should be defined in the Long Bay/Okura area in order to best achieve the purpose of the Act.

#### *The scene*

#### *Long Bay/Okura area*

The subject land lies at the north-eastern tip of North Shore city. To the west is the Rodney district; to the north is the Okura Estuary; to the east is Long Bay Regional Park, and beyond it are the coastal waters of the Hauraki Gulf; and to the south there is the existing urban area of North Shore city, and the established and expanding suburbs of Glenvar in the west and Torbay in the east. The small settlement of Okura sits on the southern edge of the Okura Estuary.

The land has a predominantly easterly aspect; with much of it lying toward the Hauraki Gulf. It is rolling to hilly land, and it falls into two catchments, one draining to Long Bay, and the other to the Okura Estuary. The watershed between the catchments is a broad ridge which lies in a north-easterly direction. Okura River Road and Vaughans Road follow the ridge.

The seaward slopes are mainly in pasture, and inland parts of the land have mixed vegetation, including extensive areas of scrub and trees. The land to the west of the area is generally steeper and more dissected, and there is a higher proportion of bush, regenerating scrubland and exotic vegetation. In the east, the ridge tops are broader with more expansive areas of flat land; and there is very little bush or vegetative cover, other than pasture, even in the valley bottoms.

The land to the west has smaller lots, and rural lifestyle blocks are associated with Glenvar, Okura River and Vaughans Roads. In the east and north there are larger land holdings in pasture abutting Long Bay Regional Park and the southern bank of the Okura Estuary.

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### *Infrastructure*

In general there was no issue that if urban development of the subject land is allowed, the necessary infrastructure is available. The North Shore City Council has expanded the Rosedale Sewage Treatment Plant so that it can accommodate the city's present and future sewerage needs, and a first stage of urban development at Long Bay/Okura could be connected to the treatment plant by the Albany/Oteha Valley sewer, though subsequent stages of development would require another main sewer. Before the treatment plant expansion, access to the sewerage system was limited to properties generally along and south of Glenvar Road.

Water could be supplied for early stages of urban development from the water main on East Coast Road and a proposed new reservoir at the intersection of Lonely Track Road. For later stages, a new main might be required. The North Shore City Council has embarked on a three-year process to upgrade its treatment of solid waste. Electricity could initially be supplied from a substation at Albany by high voltage lines up the Oteha Valley Road to a substation at Torbay; and later a new substation at Okura would be required.

Although it may be difficult to provide public passenger transport to serve urban development of the Long Bay/Okura area in a cost-effective manner, it is likely that there would be high use of private vehicles. The arterial road infrastructure that serves Long Bay/Okura could be upgraded to accommodate the traffic generated by urban development there. There are a primary school and a secondary school already in the area.

In short, there are no infrastructure limitations on urban development of Long Bay/Okura.

### *Future growth*

It was common ground that there is and will continue to be pressure for the number of people living in Auckland, including the North Shore city, to increase. There was an acceptance that if the expected growth can be accommodated, there would be an increase of about 12,000 households per decade, or on average some 1200 households per annum, in the North Shore city district.

However most of the North Shore district has already been developed for housing and other urban activities. The only remaining areas that have not yet been developed for urban activities are at Greenhithe, Albany, Paremoremo and Long Bay/Okura. Greenhithe and Albany are within the metropolitan urban limits, and have been zoned for urban activities in the proposed North Shore district plan. Urban development of those areas has already been started, and is likely to proceed apace over the next few years. Paremoremo is outside the metropolitan urban limits and it was accepted for the present purpose that it is not likely to be urbanised. The Long Bay/Okura area is the only remaining "greenfields" area in the North Shore district for future urbanisation.

Apart from urbanising "greenfields", the only way of meeting the pressure for more households in the North Shore is for intensification of existing urban areas. That can occur by infill housing, and also by replacing existing housing with higher density developments of townhouses and apartment blocks. Intensification of both kinds has already occurred on the North Shore, but there is some community resistance to the extent of intensification that would

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be involved if 12,000 additional households per decade are to be accommodated after the remaining

greenfields have been urbanised.

There were considerable differences of opinion about such questions as the capacity of North Shore district to accommodate additional households, how many households could be provided by urbanising Long Bay/Okura, and when the capacity of the North Shore to accommodate pressure for more households would be reached, without Long Bay/Okura being urbanised. Definite answers cannot be given to those questions, as they depend to some extent on conjecture. We do not think that it is necessary to attempt answers to those questions to decide these appeals. That is because it is quite clear, and beyond dispute, that the capacity of Greenhithe and Albany to accommodate additional households will be filled over the next ten years or so, that intensification of the existing urban areas will meet a practical limit well short of the theoretical maximum, and that sooner or later the North Shore will not be able to accommodate additional households at a rate of 1200 per year.

Urbanisation of Long Bay/Okura, if permitted, would make a contribution to the city's capacity to accommodate growth. However at the most it would only be able to absorb 4000 or 4500 households, which would extend the time when the city could not absorb further growth by three or four years. For resource management reasons, it may only be able to accommodate 2500 households or even less, accommodating no more than two years' growth.

The regional council's metropolitan urban limits policy is broad-brush long-term integrated resource management. It is not concerned with details, which are mainly the province of district planning. There is no challenge in these proceedings to the policy itself, and the total effect of allowing these appeals can only affect the time of reaching capacity of one of the constituent districts of the region by from less than two years to four years or so. For the present purpose it is sufficient that we find that there will continue to be pressure for additional households in North Shore city, more than can be accommodated in the present metropolitan urban limits, and if the line defining the limits is so placed that Long Bay/Okura is included within them, there would be more people wanting to live there than there would be room for.

#### *Planning history*

It was part of the cases for the appellants that urbanisation of Long Bay/Okura would not be ad hoc but part of a long term and well-considered strategy, and that the Auckland Regional Council and its predecessor the Auckland Regional Authority had been active participants in the process leading towards urbanisation of Long Bay/Okura. Evidence was adduced to show that growth studies by successive regional planning authorities since the 1950s have consistently included Long Bay/Okura in the northern growth corridor for metropolitan Auckland. It was contended that long term and consistent commitments to strategic directions that have been entered into in the past should not be set aside lightly but only where there are compelling public reasons. Such a practice, it was urged, provides certainty for investors in both public and private sectors, and a basis for stable land use and environmental policies.

The regional council had three responses. First it contended that no statutory document had ever been issued by the Auckland Regional Council

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or its predecessor which included Long Bay/Okura within the metropolitan urban limits, except for a brief period between 1974 and 1977 when the maps in the 1974 regional planning scheme had referred to the future form of urban development extending to include Long Bay/Okura. Other than that, the northern extent of the metropolitan urban limits had been at Glenvar Road for some 15 or 20 years. Secondly, the regional council submitted that whatever may have been the position under former regimes under the Town and Country Planning Acts, the Resource Management Act 1991 called for a fresh start, a "clean slate" approach, to achieve the purpose of that Act. Counsel relied on the Planning Tribunal decision in *Leith v Auckland City Council* [1995] NZRMA 400 to that effect. The third response was to observe that no representative of any of the appellants comprising the Okura Land Group had been called to give evidence of disappointed expectations of urban zoning for their land.

The evidence of Mr R J Burton and Mr D R Hughes for the Okura Land Group tracing the regional documents did not conflict with the first submission for the regional council. We find that over many years the regional council and its predecessors have considered the possibility of urbanisation of Long Bay/Okura, as can be seen from various reports about future growth of Auckland, but that the only statutory instrument published by any of them which provided for urbanisation of that area was the Auckland regional planning scheme under the former Town and Country Planning Act 1953 which was in force from 1974 to 1977. We place little weight on the contents of reports that were not carried forward into formal planning instruments exposed to the challenges of submissions and appeals.

In *Leith's* case the appellant referred to the Planning Tribunal provisions of a proposed district plan and submitted, among other things, that under the former district scheme owners of rural land had been free to

develop their land in an environment that facilitated low energy and limited capital input rural lifestyle, and that they had purchased land in good faith on that basis. However the Tribunal accepted submissions for the city council that provisions of the previous instrument were not relevant to the determination of the appeal under the Resource Management Act. We adopt the following passages of the decision (at 414) in that case as applicable to the present case:

In our opinion it is significant that the Resource Management Act is not a consolidation of former legislation that it replaces, but is deliberately a reform measure. The purpose of the legislation, stated in s 5, is substantially different from the purpose of district planning stated in s 4 of the Town and Country Planning Act 1977, which would have directed the provisions of the Great Barrier Island county district scheme. However appropriate the provisions of the district scheme may have been for its purpose, there is no reason to suppose that they are appropriate for the different purpose of a district plan under the Resource Management Act. Although it is possible that some of those provisions may, as Mr Kirkpatrick suggested, have some value in the consideration of alternatives, even that is by no means assured. In preparing a district plan under the new regime, the respondent was required to start with a clean sheet, and to focus on the purpose stated in s 5 ...

For this purpose we are willing to accept as a hypothesis, without having any basis for finding, that in the previous regime owners of rural land purchased it in

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good faith relying on being free to develop their land in a low energy and limited capital input lifestyle. Even so, they could have had no assurance that the regime would remain unaltered. Even if the Town and Country Planning Act had not been replaced by the Resource Management Act, the district scheme was subject to periodic review. The reality is that the Town and Country Planning Act has been replaced by the Resource Management Act and that Act has provided a different purpose for district planning. Whether or not the new purpose meets with Mr Leith's approval, the respondent and this Tribunal have to perform functions under that Act to serve that purpose. Mr Leith's submissions and appeals have been lodged under that Act, and can only be decided by reference to its purpose.

We accept the correctness of the regional council's third submission that there was no first-hand evidence of disappointed expectations by any member of the Okura Land Group. The second-hand evidence to that effect of their planning consultant Mr Burton lacked detail, and the absence of the first-hand evidence by any owner claiming to have purchased with an expectation of future urban development was not explained. We accept that there are advantages in adhering to strategies which have been established in the past, including giving confidence to public and private investors. However the strategies about metropolitan urban limits in the Long Bay/Okura area that were established in the past were those contained in the statutory instruments approved by the regional council and its predecessors. Reports of studies considering options that were not incorporated in statutory instruments do not have the same standing. Further, as indicated in the Leith decision, strategies and commitments made by reference to the former regime are not necessarily valid for the new regime.

In summary, we hold that the decision on these appeals should not be influenced by the planning history of the Long Bay/Okura area, but should be decided on the evidence before the Court by reference to the provisions of the Resource Management Act.

#### *Relevant considerations*

##### *Marine environment*

The most contentious aspect of the effects of urbanisation of the subject land on natural and physical resources was the effects on the quality of the marine environment to which the land drains. The importance of that question was enhanced by the fact that those waters, and especially the Okura Estuary, are the last on the east coast of North Shore city which remain unaffected by urban development and largely retain their natural quality; by the fact that they are included in a marine reserve (s 3(2) of the Marine Reserves Act 1991 provides that marine reserves are to be so administered and maintained that they are preserved as far as possible in their natural state, that the marine life is as far as possible to be protected and preserved, and that the value of marine reserves as the natural habitat of marine life is to be maintained as far as possible); and by the contents of planning instruments recognising their quality and seeking to protect them.

The first of those planning instruments is the New Zealand Coastal Policy Statement 1994 (*New Zealand Gazette*, 5 May 1994, p 1563), with which a regional policy statement is not to be inconsistent (s 62(2)). The coastal policy statement contains a policy that rules be made with the object of enhancing water quality in the coastal environment where that is desirable to

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assist in achieving the purpose of the Act, and in particular where there is a high public interest in, or use of the water (policy 5.1.1(a)). We find that there is a high public interest in the waters of the Okura Estuary, and in the waters off Long Bay Regional Park, for recreational use. The coastal policy statement also contains a policy (policy 3.3.1) that:

Because there is a relative lack of understanding about coastal processes and the effects of activities on coastal

processes, a precautionary approach should be adopted towards proposed activities, particularly those whose effects are unknown or little understood ...

The proposed regional policy statement itself identifies elements of natural character of regional significance. It identifies the Okura River as one of a number of "water quality and degraded areas" requiring greater emphasis for the avoidance and mitigation of adverse effects to water quality (map 5, sheet 1); and as one of a number of "areas of high ecological value susceptible to degradation" requiring greater emphasis for the avoidance and mitigation of adverse effects to water quality (map 5, sheet 3). The regional policy statement contains policies that adverse effects on water quality are to be avoided, or where that is not practicable, they are to be remedied or mitigated (policy 8.4.1); and that urban development is to be directed away from areas susceptible to degradation and/or with special values as detailed in the instrument, except in areas committed for urban development as specified (policy 8.4.21 as amended by decisions on submissions).

In the proposed Auckland regional plan: coastal (at the time of hearing these appeals, the regional council had not given decisions on submissions on the proposed Auckland regional plan: coastal), the Minister of Conservation has identified Long Bay/Okura as an area of significant conservation value (SCH 3-14); the coastal marine area immediately offshore of Long Bay/Okura is zoned coastal protection 2, and the area on the north bank of the Okura River is zoned coastal protection (map 1, sheet 34). The objectives include giving particular regard to preserving the natural character of the coastal marine area in the coastal protection areas 1 and 2 (policy 3.4.2). The objectives for natural features and ecosystems seek to protect, and where appropriate preserve, the ecological and physical values and processes of coastal protection areas (objective 5.3.3); there are policies of ensuring as far as practicable that changes in the size, quality and habitat diversity of coastal protection 1 areas arise only from natural processes (policy 5.4.2), and that coastal protection 2 areas are protected by avoiding inappropriate use and development which would damage or destroy their values and the ecological and physical processes operating in them (policy 5.4.3).

The high quality of the waters of Long Bay/Okura was also the subject of direct evidence by Dr M F Larcombe, a consultant natural environment scientist. He gave the opinion that the natural values of the Okura Estuary and the Long Bay/Okura coastal area are of regional significance, referring particularly to the description in the Auckland regional plan: coastal of intertidal habitats for a variety of animal and plant communities, and to intertidal areas in the estuary and outside its entrance being used as a feeding ground by wading birds. The witness also referred to a 1993 report of a survey of intertidal seafood resources which revealed a variety of such resources in Long Bay/Okura; and to a 1985 report of a study of the quality of the water of the Okura Estuary (which the witness confirmed from his own

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observations) showing high dissolved oxygen concentration and low nutrient concentrations, being important indicators of good estuarine water quality. Elevated turbidity and indicator bacteria values in the upper estuary were consistent with catchments that have been cleared and used for agricultural purposes.

Dr Larcombe deposed that increased sediment runoff during development of the subject land for urban uses would result in significant changes to the colour and clarity of natural freshwater systems, and would increase the suspended solids content and the turbidity of the estuary and coastal waters. That would result in reduced light penetration causing a reduction in photosynthesis by phytoplankton, benthic algae and macrophytes, deoxygenation of waters, and a decline in productivity which would affect the wider coastal ecosystem, including species of commercial and recreational value to humans. He observed that discharge of increased sediment into estuaries can have ongoing water quality effects for several years after a particular discharge event because sediment deposited on the seabed can be resuspended by wave action or tidal currents.

The witness acknowledged that there is a natural slow infilling of estuaries by sediment deposition, but he observed that under natural conditions high water quality is maintained and the low rate of habitat change enables a healthy marine ecosystem to be maintained. However he deposed that if sediment is discharged into estuaries at increased rates, water depth, tidal prism, current speed, wave action and water quality are reduced, leading to increased accumulation, instability in physical habitats, and instability in populations of marine organisms. Short term effects of increased sediment deposition would adversely affect benthic microflora, filter feeding shellfish, and possibly availability of food to surface-deposit-feeding gastropods. Major increases in deposition could result in smothering of benthic organisms, particularly those attached to hard substrates and relatively immobile filter feeders such as cockles. Once organisms have been smothered there would be a long term change in the estuary environment and the original equilibrium would be unlikely to be re-established for a period of years.

Dr Larcombe acknowledged that in the Long Bay coastal area, temporary deposition of sediment would be unlikely to cause major mortality of marine organisms, and would eventually be dispersed by wave and tidal action. However major increases in sediment load there could result in major deposition on intertidal sandy beaches and reef areas and in shallow subtidal areas, and could lead to some mortality of pool and crevice organisms and widespread mortality of reef and sandy seabed organisms.

In summary, Dr Larcombe concluded that urban expansion at Long Bay/Okura would result in significant adverse effects to the coastal environment during the development stages, and that best practicable options for control of sediment discharge from development areas to natural waters would be incapable of providing adequate protection for sensitive environments such as the Okura Estuary and the Long Bay coastal area. He was not satisfied that the necessary level of control of sediment runoff to prevent significant adverse effects in the Okura Estuary during the development stages could be achieved in catchment areas draining to the estuary. Although he acknowledged that development in the Long Bay catchment would have lesser effects, there would be adverse effects that he considered unacceptable in a marine reserve.

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In cross-examination Dr Larcombe accepted that control over sequencing and timing of urban development would be sensible, but he was not reassured that it would guarantee satisfactory environmental outcomes. The witness also agreed that if development was controlled to relatively small areas at a time, and earthworks minimised, the adverse effects would be considerably reduced. However he would not agree that a combination of the methods proposed by Mr C H Jenkins (a civil engineer called for the Okura Land Group) would be sufficient in a catchment where the marine receiving environment is sensitive to sediment deposition; and he believed that the best practicable option is not good enough for sensitive marine areas. He explained why increasing the size or number of stormwater settling ponds would not be effective. In short, Dr Larcombe did not resile from the evidence he had given, and we accept it.

There was considerable evidence about the extent of sediment runoff from urban development, but on one question there was no great conflict: that sediment retention ponds would only be able to trap between 60 per cent and 80 per cent of the fine sediments in the runoff. Inevitably between 40 per cent and 20 per cent of the suspended fine sediments in the runoff would reach the marine environment during the development phase, which would be a very large increase in the total quantity of sediment received by the estuary.

We turn to consider stormwater runoff to be expected from the area after development for urban activities. Mr A H Snelder, a consulting natural resources engineer, deposed that a significant component of the Okura Estuary is a depositional environment where fine particles carried in stormwater are deposited; that contaminants in stormwater would accumulate in those areas; that biota living in the sediments would be exposed to the contaminants; and that stormwater would also exhibit toxic effects in the water column. Mr Snelder accepted that stormwater treatment devices would be able to remove a proportion of suspended sediment and its contaminant load, but are unlikely to achieve more than approximately 75 per cent to 80 per cent efficiency, and there would be a residual discharge of contaminants, so the treatment devices would not be able to prevent long term degradation of sediment quality in depositional receiving environments. Although he fairly acknowledged that the rate at which contaminants would accumulate would depend on the extent of the urban development, and partly also on its nature (for example, whether an arterial road is included in the catchment), Mr Snelder did not resile from his evidence in cross-examination, and we accept it.

Dr R D Pridmore, a marine and freshwater ecologist, was called for the regional council to give evidence about the effect on the estuarine ecosystem of contaminants in sediment discharged in stormwater from urban development in the Okura catchment. He deposed that contaminants from stormwater can have significant adverse effects on marine biota with flow-on effects into the food chain, leading to changes in community structure and or decline in population abundance; and that such contaminants are persistent and accumulate in the environment, although their effects may not become apparent for many years. Dr Pridmore urged a precautionary approach because urbanisation would permanently alter the environment.

In cross-examination Dr Pridmore accepted that some development in the part of the subject land within the Okura catchment could produce a level of contaminants that could be cleansed, probably around 400 or 600 houses,

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but he held to the opinion, which we accept, that more extensive development would produce so much sediment containing contaminants that it would accumulate in deposits in the estuary and adversely affect its ecosystem.

An important part of the case for the Okura Land Group was the evidence given by Mr P C Kennedy, an environmental consultant, that if the population that would settle in Okura were to live in higher density housing on the North Shore or elsewhere in Auckland, where no significant stormwater treatment system exists, that would result in a greater increase in loads from such areas. He observed that from many parts of the North Shore, stormwater discharges would occur to areas identified in the proposed regional plan: coastal as conservation protection zone 1.

We accept the general correctness of what Mr Kennedy said. In the light of current knowledge and understandings about the adverse effects of stormwater discharges on marine environments, the absence of

treatment for stormwater from established parts of the Auckland urban area is regrettable particularly for stormwater which flows into depositional areas and other sensitive waters. The Auckland City Council for one is (to its credit) committed to an expensive programme for reducing the contaminants in stormwater discharges from its district. However even if it is appropriate to compare the effects on the environment of greater infill and intensification with those of urbanisation in the Okura Estuary, we place considerable weight on the facts that the estuary has the high water quality and natural life described by Dr Larcombe, which is recognised in its marine reserve status and in planning instruments which classify it as having significant conservation value, as being susceptible to degradation, and (on the northern side) where changes of habitat are allowed to arise only from natural processes, and (on the southern side) to be protected from development which would damage the ecological processes in it. By comparison, areas of harbour and sea into which stormwater from established urban areas flow are already degraded, and cannot in the foreseeable future support the life and ecosystems that they did in their natural state. We consider that the concept of sustainable management of natural resources is better achieved by protecting the Okura Estuary in its largely natural state and accepting increased contamination from established urban areas, than by allowing development which would result in contamination of the estuary.

On the evidence, we find that urbanisation of the part of the subject land in the Okura catchment would necessarily have significant adverse effects on the environment of the Okura Estuary. We also find that the estuary, its high quality waters and ecosystem, possesses life-supporting capacity which deserves to be safeguarded. However we have come to different findings about urbanisation of the part of the subject land in the catchment of the Long Bay coast. That is not a depositional area, and is subject to wave and tidal action. Controls on development, treatment of development runoff and stormwater, and other techniques would be capable of mitigating effects on the coastal environment. The extent to which they do would depend on details of design of subdivisional development and controls under the Resource Management Act by the regional council and the North Shore City Council. For the broadbrush definition of the metropolitan urban limits, we are not able to find that there would necessarily be significant adverse environmental effects on the receiving waters from urbanisation of that part, or that the marine life in the marine reserve would be imperilled.

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### *Landscape*

The landscape of Okura ranges from coastal headlands and ridges which are largely devoid of significant vegetation, but which offer outstanding views, to a series of deeply incised valleys that contain large pockets of remnant native forest, manuka and exotic shelter-belts. In general the land to the west of the area is steeper and more dissected, existing lot sizes are smaller and there is a higher percentage cover of bush, regenerating scrubland, and exotic vegetation. In the east, the ridge tops are broader with more expansive areas of flat land, existing lot sizes are larger and the landscape more denuded with very little bush or vegetation cover, other than pasture, even in the valley bottoms. The coastline itself contains a number of distinct character areas varying from the strongly tidal, mangrove covered estuary of the upper Okura River, the Okura settlement itself, an undulating southern river edge with broad rural valleys, dramatic cliff headlands of Piripiri and Okura Points, and discrete bays and a long sandy beach of Long Bay.

The existing pattern of land use also varies across the area. Rural lifestyle development is mainly towards the west and is generally associated with the existing pattern of roading. Larger land holdings remaining in the area are in the north and east. These abut the Long Bay Regional Park and are presently managed under an extensive rural pasture regime.

As a whole, Long Bay/Okura encompasses a considerable diversity of landscape types, character and values. Although much of this character is derived from the open pasture that dominates the Vaughans Road ridge and the ridge on which Long Bay College sits, it is also framed by a mixture of estuarine and sea margins, and inland valleys, all of which offer significantly greater visual drama and internal diversity than the open ridgelines. A good deal of the character of the subject land is also bound up in the sweeping views which it affords to the Hauraki Gulf, the Okura River and the outer reaches of the Weiti River. Significantly, it is the last area of land on the east coast of the North Shore city which has not been developed for urban activities.

Both the proposed Auckland regional policy statement itself (the Long Bay/Okura coastline is described as an area of landscape quality 5 and 6 (map 2, sheet 2); and the Long Bay headland to the Okura River as landscape sensitivity 6 (map 3, sheet 2)), and the proposed Auckland regional plan: coastal (1995) (the Long Bay/Okura coastline is identified as having a regionally significant landscape and all the Okura River landscape is classified as having outstanding landscape (map 1, sheet 34)), identify landscape values across the region, and contain policies for the protection of landscapes from inappropriate subdivision, use and development.

Landscape assessment work had been undertaken in 1984 (*An Assessment of the Auckland Region's Landscape*) in a study which evaluated the areas of the region which lay outside the metropolitan urban limits.

That landscape assessment was updated in 1994 for the coastal environment only but was extended to cover the urban area (*Auckland Urban Area Coastal Landscape Assessment 1994*).

Both the 1984 and the 1994 landscape assessments identified three landscape units along the coastal frontage of the Okura/Long Bay area. The coastal units are the Okura River Estuary through to Okura Point, Okura River mouth to Long Bay, and Long Bay itself.

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The proposed regional plan: coastal attributes these values to those three coastal units:

Okura River Estuary	Outstanding landscape
Okura River mouth to Long Bay	Regionally significant landscape
Long Bay	Regionally significant landscape

Of a total of 104 landscape units delineated along the Auckland urban area coastline, only 7 were identified as warranting classification as outstanding landscapes. The Okura River Estuary unit was one of them.

The 1984 assessment also delineated three inland units: a small unit surrounding the settlement of Okura; a large unit encompassing the eastern area which is characterised by the more broad open rural land towards the coast; and a western area which comprises areas of more dissected land form with more pronounced valley systems and generally greater vegetation cover.

Three witnesses addressed the visual and landscape matters relating to the Okura/Long Bay area. They were Ms R V de Lambert, Mr S K Brown and Ms H A McConachy, all of whom are qualified in landscape architecture.

The evidence for the appellants was that while the landscape of Long Bay/Okura remains largely "green" and is still dominated by open fields, its largely unexceptional qualities have been well documented in various landscape studies over the last 12 years. They maintained that the landscape does not justify locating Auckland's northern metropolitan limit at Glenvar Road.

Mr Brown considered that urban development could include extensive buffer planting and strategic location of reserves and other open spaces which would effectively separate the coastal environment from areas of urban development. He acknowledged that it would be impossible to totally divorce the river environment from development in its vicinity, but gave the opinion that the natural topography, combined with existing and future planting, could still create a significant buffer between the river and any further urban development on its southern flank. The witness remarked that it was likely that comprehensive urban development under the structure planning process would result in better development than would occur under the existing rural zoning. Even so, he recognised that urban development of any scale would appreciably affect a coastal environment that is classified as outstanding or regionally significant; and that it would be impossible to obviate all of the negatives associated with that change. In cross-examination Mr Brown accepted that urbanisation of the area would bring about a fundamental change to the character of the landscape.

Mr Brown also observed that the North Shore City Council's proposed residential expansion zone for Long Bay/Okura would be consistent with those proposed for Greenhithe and Albany, and that allowing the appeals would establish the metropolitan urban limit at points of natural division in the landscape, more defensible from a landscape standpoint than the existing limit at Glenvar Road.

Ms de Lambert urged that, given the outstanding and regionally significant coastal landscape values of the Long Bay/Okura area, it would be reasonable to adopt a cautious approach toward land use change in that area. She gave the opinion that the rolling open rural landscape unit adjacent to the coastal units has significant landscape sensitivity, and that urban development

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within the visual catchment of the outstanding and regionally significant coastal landscapes of Long Bay/Okura would lead to the degradation of those values. Ms de Lambert considered that a planted buffer along the river edge, as described by Mr Brown, would provide some separation of development from the river, but would not protect the visual catchment of the river from the effects of urbanisation. To avoid such effects, the line of metropolitan urban limits would need to restrict urban development from impinging on any part of the visual catchment of the river. The witness accepted that the western part of the Long Bay/Okura area is similar to Greenhithe and Albany, but gave the opinion that the coastal and eastern coastal hinterland areas of Long Bay/Okura are significantly more sensitive to development because of landform and association with the landscape values of the coastal environment. She acknowledged the value of structure planning, but would not accept that it would provide certainty about the actual form of the built environment which would result, or its landscape and visual effects.

Ms McConachy gave the opinion that urbanisation would destroy the sensory component of the rural

environment of the Okura Estuary, and the visual, aesthetic, and environmental quality of the landscape. In cross-examination it turned out that Ms McConachy had misunderstood the classification of the Okura Estuary landscape in the planning instruments, and had assumed that urban development of the subject land would be comparable with that in East Coast Bays. In view of the provisions of the proposed district plan, we are not persuaded that the assumption is necessarily valid. In view of the partisan nature of some of Ms McConachy's evidence, we place less value on Ms McConachy's opinions than on the more objective professional opinions of Ms de Lambert and Mr Brown.

We ourselves visited the Long Bay/Okura area, as well as other areas of the region which have been discussed and compared, on two occasions. We were able to view the part of the land falling to the Okura Estuary from a boat on the estuary, as well as from various vantage points on land. From our observations we accept the evidence that there is a close relationship between the part of the subject land in the Okura catchment and the estuary, and that it would not be realistic to expect that urban development of that land could be effectively disguised, or the visual and landscape effects of that development on the environment could be adequately mitigated. We find that planting along the banks would not be sufficient for that purpose.

The landscape assessment, and the planning instruments, place high values on the landscape of the margins of the Okura River and the estuary. We accept that the landscape values in the Okura catchment are worthy of protection. We find that any urbanisation of the Okura catchment would bring about a fundamental change to the landscape character.

In the Long Bay catchment the situation is somewhat different. Views from the Vaughans Road ridge back towards the south are already compromised by the existing residential development at Glenvar Road and the existence of Long Bay College and the primary school. A large part of the area is visible from various positions throughout the Long Bay Regional Park and from the beach. Although planting may have some screening effect in some areas, it is unlikely that it will be able to effectively screen many of the areas. However the present views are not completely rural given the housing along Glenvar Road and the recent residential development on Toroa Point to the south of Long Bay beach.

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In summary, we find that the landscape quality of the Okura Estuary and its margins is so high, and the likely visual effects on the environment of urbanisation of the part of the subject land within its visual catchment are such as to indicate that in those respects it should not be urbanised; and that the landscape quality, and the likely visual effects on the environment of urbanisation of the part of the land within the coastal catchment are not such as to indicate that in that respect it should not be urbanised.

#### *Long Bay Regional Park*

The regional council also raised an issue about the effect on the Long Bay Regional Park of urbanisation of the part of the subject land within the visual catchment of the park. The Long Bay Regional Park contains 110 ha of land on the Hauraki Gulf coast between the current metropolitan urban limit at Beach Road and the mouth of the Okura Estuary. Part of the subject land, in the Long Bay catchment, currently forms a rural backdrop to the park, being visible from various viewpoints within the park, including from the beach, from the shallow waters off the beach where people bathe, from the middle section of the park up a wide valley, and from coastal walkways on the northern section.

Several contentions about the effect of urbanisation of the subject land on the park were advanced on the regional council's behalf. The first related to the recognition when the park was established in the mid-1960s that there would eventually be urban development of the land adjacent to it. It was submitted that this was of historic value only, and that there is now a growing recognition for city dwellers to have alternative experiences available in regional parks around Auckland. We were urged to accept that Long Bay is uniquely placed to provide a combined beach and rural experience because of its close proximity to Auckland and its easy accessibility by public transport. It has over 1 million visitors annually and on a typical summer weekend day there are 10,000 to 15,000 visitors on the main beach and picnic areas, and a further 300 to 500 people along the bush, farmland and coastal walks to the north. The management plan for the park, which was adopted in 1994 following public consultation, recognises the importance of maintaining a rural backdrop and countryside character; and the North Shore district plan also recognises the importance of retaining the rural setting of the park. It was also suggested that urbanisation would defeat a plan to form a new visitor entrance to the park off Vaughans Road. Finally concern was expressed about potential in summer (when swimming is a principal activity at the park) for adverse effects of urban development on water quality and clarity arising from sediment run-off, and for degradation of fresh and salt water bodies from the effects of contaminants in stormwater.

Dr D N B Whyte, the regional council's manager, parks operations, deposed that regional parks are "primarily about providing accessible countryside experiences", integral to which "is a perception by the visitor that they

have left the urban environment behind" and that "the sense of urban escape or remoteness ... provided by regional parks is particularly at risk ... where park boundaries do not include the full visual or natural catchment". The witness stated that the Parks Service advocates compatible zoning and land use within those catchments, and that "it is not often practicable nor desirable for park land to be purchased solely to preserve surrounding rural countryside".

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Dr Whyte gave the opinion that any urban development of the rural backdrop visible from coastal hilltops, beach area and entry points associated with Long Bay Regional Park would strongly detract from the remote rural character of the park; and that any urban development near the park boundary would be likely to destroy the park's ability to provide a countryside experience. He urged that the current setting be maintained to ensure that one of the most accessible pieces of east coast countryside retains its countryside values. In cross-examination Dr Whyte acknowledged that the southern part of the reserve is overlooked by recent residential development on Toroa Point, which seriously affects the qualities of the reserve; and although he had not read the structure planning provisions of the North Shore proposed district plan, he did not believe that they could mitigate all adverse effects on the regional park of urbanisation of the land in its visual catchment.

Evidence was also given in support of the regional council's position about the Long Bay Regional Park by a consultant landscape architect, Ms R V de Lambert. She gave the opinions that the primary visual catchment of the regional park incorporates the area required to retain the rural setting of the main public parts of the park, and that it will need to retain an essentially rural nature. The witness deposed existing residential development on Toroa Point significantly degrades the quality and value of the park, and that it is the park's northern area which is of greater significance and value both as a landscape and recreation resource. She observed that the long narrow shape of the park makes it vulnerable to the potential impacts of urbanisation and the loss of its essentially regional park values, which rely not only on its coastal setting and relationship with the sea, but equally and more vulnerably on its rural setting. In that regard Ms de Lambert referred particularly to the views obtained from the walkway in the northern part of the park, classifying the rural backdrop as fundamental to the experience, without which it would be devalued and of arguable regional park value. She acknowledged that planting could in the long term buffer the potential effects of urbanisation, but because of the contours of the ground would not be able to totally screen out urban development.

In cross-examination Ms de Lambert explained her understanding that regional parks differ from metropolitan parks in giving a perception of not being in an urban environment, in this case the rural setting and the coastal environment. She considered that understanding of the values of coastal environments and the importance of regional parks as separate from urban environments had changed tremendously since 1964, and that the value of regional parks and of outstanding and regionally significant coastal environments is far more significant than the history of acquisition of the land for park. Ms de Lambert explained that Long Bay Regional Park has two quite different characters. The northern portion of the park is much more consistent with regional values, being separate from an urban environment and having some perception of remoteness. The southern part is almost in transition from a regional park towards a metropolitan urban park. She agreed that the existence of buildings does not necessarily diminish the experience of a regional park.

For the Okura Land Group Mr Bartlett submitted that the personal philosophies of Dr Whyte and Ms de Lambert about the function of regional parks, as opposed to metropolitan parks, do not bear on any objective landscape assessment. The appellants did not accept that Long Bay Regional

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Park was established to provide a rural experience, nor that that can be expected to be its purpose and function in the future. Their counsel observed that it is the southern end of the park, which is overlooked by residential development, which is apparently the most popular area; and that the main activities at the park are swimming, picnicking and boating. Mr Bartlett referred to the provisions of the proposed North Shore district plan for structure planning and neighbourhood unit planning, to controls on subdivision, and to mention in the management plan for acquisition of more land and establishment of screen planting. Counsel invited the Court to find that those provisions, in combination, could remedy or mitigate any perceived adverse effects on the park.

Evidence was given for the Okura Land Group by Mr S K Brown, a consultant landscape architect. He acknowledged that it is generally accepted that part of the park's appeal lies in its rural backdrop, particularly along the more isolated stretches north of Vaughans Stream. Mr Brown gave the opinion that the prime focus for virtually all the park is the sea, with the amalgam of cliffs, ridges, knolls and gullies on its fringes providing a substantial frame and backdrop, and helping to separate the park from most of its hinterland. He deposed that the undulating terrain and vegetation suggest that retention of a rural ambience is achievable in conjunction with urbanisation, provided there is an appropriate structure planning response to the interface. The witness also observed that urban development would present opportunities for better public access to the northern half of the regional park, which has been much less accessible. He considered that Long Bay

Regional Park is more comparable with Ambury Park, on the edge of Mangere, than with the more remote and natural regional parks such as Tawharanui, Tapapakanga, and Awhitu. Mr Brown accepted that some of the park's backdrop would recognisably change with urbanisation, but he believed that structure planning could ensure maintenance of the park's integrity and character while introducing opportunities for better access and development of new park facilities.

In cross-examination the witness deposed that management of the park is aimed at screening the visual catchment of the central lowland of the park by planting to create a definite separation between the reserve and the land that surrounds it. He also referred to additional planting inland from Pohutakawa Bay and to extensive revegetation in Grannies Bay, to inland parts that frame the lowland behind the manager's house being largely screened by vegetation, and he observed that because of the slopes a combination of location of reserves, development density and screening would have to be used to provide buffering between the most heavily used part of Long Bay and any urban development inland. Mr Brown gave his opinion that the urban development on Toroa Point visible from the park did not diminish substantially from the quality of the park at that location, in that it was part of the accepted framework for the park and that a good deal of the park is given over to quite intensive use including children's playgrounds, a miniature railway, restaurants, baches and so on, which line the back of the park.

We find that at the time the land at Long Bay was acquired by the Auckland Regional Authority for a regional park in 1965, it was anticipated that the land around it would eventually be urbanised, and indeed the Authority agreed to do what it could to have a designation for reserve

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removed from adjoining land. However we accept that the regional council is free to take a different attitude 30 years later.

We are not persuaded to accept the clear distinction between regional parks and metropolitan parks described by Dr Whyte and Ms de Lambert. That classification may be useful for parks administrators, but parks do not all fall easily into either category. Indeed we find that the southern part of Long Bay Regional Park is no more a regional park than are Cornwall Park and Auckland Domain. We do not accept the notion that a restraint on use, development or protection of land outside a park can be justified by classification of the park as a regional park.

We accept that Long Bay Regional Park is called a regional park, that it is administered by a regional council, and in the northern part of the park one can experience a sense of remoteness because the adjoining land has not been urbanised. Even in the southern part of the park there are places where one may not be aware of the proximity of urban development. We also accept that the quality of the experience available in those parts of the park would be diminished by urbanisation of the parts of the subject land in the park's visual catchment, but we find that this could be mitigated by vesting on subdivision of strategically placed reserves, by planting, and by other measures.

In general (as Dr Whyte said), it may not often be practicable or desirable for park land to be purchased solely to preserve surrounding rural countryside. However in respect of the Long Bay Regional Park there is (as counsel for the appellants reminded us) an express policy in the regional council's current management plan to "actively pursue the acquisition of land adjoining the park so as to protect the park's visual backdrop and catchment integrity and to provide for appropriate additional recreational uses" (*Long Bay Regional Park Management Plan 1994*, p 108).

In our opinion the regional council's published policy of actively pursuing acquisition for the purposes described is appropriate. Likewise it is also appropriate for the regional council to seek to influence the detail of zoning and any structure and neighbourhood planning of that area, to mitigate adverse effects on the regional park, particularly if the land comes within metropolitan urban limits. However we do not accept that if the land in the park's visual catchment would otherwise be placed within the metropolitan urban limits, it should be left outside the limits so as to protect the regional park from any adverse effects of urbanisation. If it is to be fully protected from all of those effects, the land should be acquired.

We are not persuaded that urbanisation of the subject land would defeat a plan to form a new visitor entrance to the park off Vaughans Road. The current visitor entrance to the park off Beach Road is only accessible through a developed suburban area. However if the regional council adheres to the attitude presented at the appeal hearing, it is free to negotiate with the owners to acquire whatever part of the land it wishes to implement its plan. In our judgment if the land should otherwise be included within the limits to achieve the purpose of the Act, the plan to provide a new visitor entrance off Vaughans Road does not provide a sound basis for excluding the land from the metropolitan urban limits.

In summary, we do not accept the regional council's submission that the effects on the regional park of urbanisation of the part of the subject land within its visual catchment should influence our decision on these

appeals.

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*Albany commercial centre and employment self-sufficiency*

Witnesses for the Okura Land Group expressed opinions to the effect that urbanisation of Long Bay/Okura would contribute to the viability of the proposed Albany subregional centre, and to employment in the Albany area, for which provision has been made in the proposed North Shore district plan. The centre is intended to have a "core" area providing retailing, office, civic and community facilities, a "frame" area for retail showroom, service industry and office park activities, a sports stadium (which is already under construction), and special development areas.

Mr Burton gave the opinion that development in the northern sector of the North Shore city would lend support to realising the employment potential of Albany, and which would be supported by development of residential areas around Albany including Greenhithe, Albany itself and Long Bay/Okura. He expressed the view that the regional council's strategy would work against the creation of the Albany employment centre as a major focus in the northern sector.

A statistical and retailing consultant called for the Okura Land Group, Mr M G Tansley, gave the opinion that urbanisation or otherwise of Long Bay/Okura has a more specific implication for job growth than its potential contribution to the general trend, because of its latent capacity to contribute to the viability of the Albany subregional centre. However in cross-examination he agreed that even with Long Bay/Okura urbanised the new Albany commercial centre would be uneconomic, at least in the short term. He accepted that to prop up a centre with doubtful economics would not by itself be a sufficient reason to urbanise Long Bay/Okura, and explained that development of Long Bay/Okura and the Albany centre are parts of an integrated strategy, so that if one part is taken away it would affect another part of it. He agreed that development of the centre should be delayed until conditions are right, and observed that without Long Bay/Okura that may involve waiting a very long time.

A management consultant specialising in economic and marketing issues who was called for the regional council, Mr J M Norling, identified the Long Bay/Okura area as being within the secondary trade area of the proposed centre, and that the potential population of Long Bay/Okura (if urbanised) would represent an important and significant component in the support for the centre. However he gave the opinions that without Long Bay/Okura there would still be sufficient population in the primary and secondary trade areas to support a major retail centre at Albany; that the future status of Long Bay/Okura is but one issue affecting the future development of the centre; and that residents of Dairy Flat would make a greater contribution to the viability of the centre than would residents at Long Bay/Okura.

The witness also gave the opinion that the claimed benefits for employment self-sufficiency on the North Shore of urbanisation of Long Bay/Okura were overstated, if not flawed. He observed that the level of self-sufficiency was not likely to be affected by whether 4000 households are located in Long Bay/Okura or at Dairy Flat or Paremoremo.

In cross-examination Mr Norling affirmed that urban development of Long Bay/Okura could represent support for about 5000 m<sup>2</sup> of retail space at the Albany centre, so if Long Bay/Okura is not developed, that would represent 5000 m<sup>2</sup> of less competition available at the centre. He also agreed that to some extent development of Long Bay/Okura could cushion the effect

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on the Browns Bay retail centre of the development at Albany, which would be positive for Browns Bay.

There is no dispute that if Long Bay/Okura is urbanised, the residents there would provide support for the proposed Albany subregional centre. We cannot be confident that if Long Bay/Okura is not urbanised, there would not be equivalent support for the centre from elsewhere. Whether, if Long Bay/Okura is not urbanised, there would be urban development at Paremoremo or at Dairy Flat instead, or intensification elsewhere within the secondary trade area, is conjectural. Mr Tansley's understanding that development of Long Bay/Okura and of the Albany subregional centre are parts of an integrated strategy was not demonstrated. However even if that is accepted, there has been no sound basis for assuming that Long Bay/Okura would be urbanised. Apart from the period 1974 to 1977, Long Bay/Okura has been beyond the metropolitan urban limits. Planning based on its being urbanised has anticipated the outcome of the present proceedings. We consider that the support which residents of Long Bay/Okura may provide for the Albany centre is not a sound reason for including that area within the metropolitan urban limits.

We also accept the desirability of improving the employment self-sufficiency on the North Shore, and especially in the northern sector. However despite claims of a link between managers' homes and locations of

their businesses, we have not been persuaded that urbanisation of Long Bay/Okura would necessarily affect the extent of employment likely to be in the Albany business zones, or in the Albany subregional centre.

In summary, we conclude that our decision on the issue in these appeals should not be influenced by the claimed positive effects of urbanisation of Long Bay/Okura on the proposed Albany subregional centre, or on employment self-sufficiency in the northern sector of North Shore city.

#### *Infill and intensification*

There was considerable evidence given at the appeal hearing on the feasibility and likelihood of further infill and intensification of housing in the existing urban areas of North Shore city. Earlier in this document, under the subheading "Future growth", we have referred to the differences of opinion about the capacity of the North Shore district to accommodate additional households. We accept that if Long Bay/Okura is to be outside the metropolitan urban limits, then that will result in greater pressure, sooner or later, for additional housing elsewhere either additional greenfields development on or beyond the periphery of the urban area, or additional infill and intensification within the existing urban area, or more likely pressure for both. Those of course are important questions for the local authorities responsible for planning, both at regional and district levels. They are a focus of the regional growth forum mentioned earlier.

The Environment Court has the same duty and discretion in respect of a decision appealed against as the person against whose decision the appeal is brought (RMA, s 290(1)). However the Court is not itself a planning authority with executive functions of identifying and evaluating specific provisions for a planning instrument (*Waimea Residents Assoc Inc v Chelsea Investments* (High Court, Wellington M 616/81, 16 December 1992, Davison CJ; *Leith v Auckland City Council* [1995] NZRMA 400, 411). If the Court allows these appeals, it is not for the Court to consider whether consequential amendments

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to their planning instruments are necessary. The respondent and the North Shore City Council would have to do that. Accordingly, we do not consider it necessary, to enable us to decide these appeals, for us to attempt to resolve the differences among the experts about the extent to which additional households can realistically be expected to be accommodated within the existing urban area of the North Shore district. We refrain from taking the opportunity to make findings on those questions.

#### *Regional transport*

The regional council's transport group manager, Mr B J Mein, had considered the issue in these appeals from a regional transport perspective, and he gave evidence of his conclusion that to include Okura within the metropolitan urban limits would be contrary to the development of a more efficient and sustainable land transport system for the region. He acknowledged that it would not have a huge impact, but he considered that it would have a noticeable impact at the margin. The average density of development would be relatively low, residents would need to travel for shopping and employment, and he expected a high use of private vehicles. He considered that an attractive passenger transport service would be difficult to provide in a cost-effective manner and that residential development in other locations, such as Dairy Flat, may be preferable for passenger transport efficiency.

The witness relied on the Auckland Regional Land Transport Strategy, published under the Land Transport Act 1993. That instrument contains policies of harmonising land use and transport planning in a more sustainable way, of encouraging greater use of passenger transport, of ensuring that there is an effective and efficient regional transport network for the movement of people and goods; and of managing the existing transport system effectively and efficiently.

Mr B A Foy, North Shore city transportation planner, described the city's computer-based transportation model which he had used to evaluate future land use options. He had run the model using four options for urban form in North Shore city: continuation of existing (city council) policies; containment emphasis; peripheral emphasis; and mixed-nodal development. He reported that although the growth in vehicle-kilometres travelled is expected to rise distinctly, the increase in vehicle-minutes travelled will be even greater, reflecting growing traffic congestion from projected household and employment growth. His analysis showed that the containment option had the least number of vehicle-kilometres travelled, but the second-highest number of vehicle-minutes on the network, showing that this option is more likely to have higher levels of congestion than the mixed nodal option. Mr Foy also deposed that his analysis showed that the mixed nodal and containment options would experience the lowest increases in emissions of carbon dioxide, and that the mixed nodal option would produce approximately 2 per cent less growth in carbon monoxide emissions than the other options. He observed that over an entire year (2011) the mixed nodal option had an advantage over the options in terms of emissions and lower fuel use.

The witness concluded that the modelling showed that at the strategic level there appears to be no locally

significant transport effects of Long Bay/Okura being urbanised, other than required infrastructure upgrading; and that an appropriate roading network could be designed and implemented using connections to the existing major arterial routes. He also concluded that

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a policy which promotes the accommodation of households and jobs in places to which the road network can be designed to accommodate growth such as around Albany, have distinct advantages over a policy which places housing in already congested areas without commensurate opportunity for employment; and that there appeared to be no significant adverse effects on the North Shore or the regional transportation system from the urbanisation of Long Bay/Okura.

In cross-examination Mr Foy agreed that he had not modelled any option which included development growth beyond the North Shore city boundaries, and that the extent to which public transport is used was constant for all the options.

We accept that effects on the efficiency and sustainability of transport in the region can be relevant to a decision about the location of metropolitan urban limits, and we also accept that effects on potential efficiency of public transport services can be a significant aspect of that relevant consideration. Further we accept the value of the policies of the Auckland Regional Land Transport Strategy about co-ordinating land use and transport planning, encouraging greater use of public transport, and ensuring that there is an effective and efficient transport network in the region. There could be little dispute over those general policies, even if there may be differences about how they are to be applied and implemented.

We accept Mr Mein's opinion about the effect on regional transportation and on public transport efficiency of possible urbanisation of Long Bay/Okura. We do not understand Mr Foy's analysis to have produced results to the contrary of Mr Mein's opinions, in that the city council modelling did not directly address those questions. We also accept Mr Foy's evidence of the results of the modelling about the relative effects of the containment and mixed nodal options on growth of vehicle emissions and fuel use. We regard the advantage of the mixed nodal option over the containment option in those respects to be slight. We also accept Mr Foy's evidence that there is value in locating urban growth in areas where the infrastructure can accommodate it, and that the arterial road that serves Long Bay/Okura could be upgraded to accommodate the traffic generated by urban development there.

In summary there are factors indicating that urbanisation of Long Bay/Okura would have adverse effects on regional transport (especially in inefficient public transport) and factors indicating the opposite (particularly in relative advantages over mixed nodal development over containment of development). In our judgment the advantages and disadvantages broadly neutralise each other so that the net effect does not indicate that the metropolitan urban limits should include or exclude Long Bay/Okura, and regional transport issues should not influence our decision of these appeals one way or the other.

#### *Tangata whenua concerns*

Evidence was given by Mrs P Te R Warner on behalf of Te Tinana O Ngati Whatua Nui Tonu, representing regional trust boards of the Ngati Whatua people who are tangata whenua in Auckland. The case of the Tinana was to support the regional council and the retaining of the metropolitan urban limits at the existing line. The grounds for that position were, in short, to halt destruction of natural resources that remain unspoiled, allowing for the responsibilities and concepts of kaitiakitanga to be maintained and practised;

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and to allow time to locate, identify, record data and register sites of archaeological value and significance to the uniqueness, national heritage and identity of the tangata whenua.

Earlier in this document we have addressed the extent to which locating the metropolitan urban limits in the position sought by the appellants may lead to harm to natural resources, and in the next section we address the possibility of it leading to harm to archaeological sites. This Court recognises the interest of the tangata whenua in advancing those matters in these proceedings. We specifically record the nature of their case. The particular grounds are considered under the appropriate subheadings, and to avoid repetition, we do not address them separately in the context of the case presented by Mrs Warner for the tangata whenua.

#### *Archaeological sites*

The submissions made for the Okura Ratepayers and Residents' Association and the other societies associated with it included reference to archaeological sites within the part of the subject land which drains to the Okura Estuary. Evidence was given in that regard by Dr S E Bulmer, an experienced consultant archaeologist. It was Dr Bulmer's evidence that in the subject land there are 60 archaeological sites which have been recorded and that the entire area is of archaeological and historic significance, as those sites are identifiable places in a landscape that was widely occupied. The recorded sites are mainly middens, but there

are two paa recorded in Long Bay/Okura, one on the southern shore of the estuary and another near Vaughans Stream, there are 20 recorded sites with terraces and store pits, and also unrecorded terraces, and also garden plots, store pits, field drainage, and other historic sites. The witness described a group of nine sites to the west of the Okura settlement as appearing to be a concentrated settlement, a rare survival of that kind of complex; and deposed that she expected that similar complexes may be found to the east of Okura village and possibly in other valleys in the area, but the locations and present condition of them was not known.

Because stream valleys were the focus of inland settlement, Dr Bulmer urged that no development of sediment settling ponds in the valleys should be allowed except with major archaeological investigation. She also considered that construction of house sites, drives and roads would potentially have a major impact on the archaeological landscape, and even on reserves that are set aside on subdivision historic sites can be destroyed unless they are historic reserves and their management is established.

In cross-examination Dr Bulmer stated that she was not aware of the specific provisions about structure plans in the proposed North Shore district plan.

On the evidence of Dr Bulmer we find that there are a number of known archaeological and historic sites on the subject land, and that there are likely to be more sites that have not yet been identified or recorded. We accept that any development of the subject land would need to be carried out in compliance with the Historic Places Act 1993. That may well require further archaeological survey work, and possibly the obtaining of authorities under ss 11 or 12 of that Act.

However the extent of the known and likely sites described by Dr Bulmer is not such as to justify a finding that there should be no urban development at all of the subject land, or that the land should be excluded from the metropolitan urban limits on that account. The provisions of the Historic Places Act, and of the district plan, are intended to ensure that any development is designed in such a way that archaeological and historic values are respected. Resort may be made to this Court in respect of applications for authority under the 1993 Act, and in respect of the contents of, and applications made under, the district plan. It is not necessary or appropriate for us to consider now the detail of the provision that should be made in that regard.

In short, we find that the existence of archaeological and historic sites on the subject land should not influence our decision on where the metropolitan urban limits should be defined in respect of that land.

#### *Judgment and determination*

In preceding sections of this document we have stated our findings on various questions that we consider relevant to deciding these appeals. We summarise those findings. We have concluded that urbanisation of the part of the subject land in the Okura catchment would necessarily have significant adverse effects on the environment of the Okura Estuary, and that the estuary, its high quality waters and ecosystem, possesses life supporting capacity which deserves to be safeguarded. However we have not accepted that there would necessarily be significant adverse effects of urbanisation on the environment of the Long Bay coast, or on the marine life of the marine reserves. We have found that the landscape quality of the Okura Estuary and its margins is so high, and the likely visual effects of urbanisation of the part of the subject land within its visual catchment are such, as to indicate that in those respects it should not be urbanised; but that the landscape quality and the likely effects on the environment of urbanisation of the part of the land within the coastal catchment are not such as to indicate that it should not be urbanised. We have not accepted that the effects on Long Bay Regional Park of urbanisation of the part within its visual catchment should influence our decision. We have concluded that our decision should not be influenced by effects of urbanisation on the proposed Albany subregional centre, or on employment self-sufficiency; by consideration of the realistic capacity of the North Shore district for infill and intensification; by regional transport issues; or by the presence of archaeological and historic remains and sites on the land.

We now return to our understanding of the basis for deciding the appeals which we stated earlier in this document.

The first consideration is whether it is necessary in achieving the purpose of the Act that the line of the metropolitan urban limits in the Long Bay/Okura area be defined as in the proposed regional policy statement, or as sought by the appellants, or elsewhere. We have already quoted s 5 which states the purpose of the Act.

The case for the appellants was that defining the metropolitan urban limits on the district boundary as sought by them is necessary in achieving the purpose of the Act in that, in terms of s 5(2), it would manage use, development and protection of natural and physical resources in a way that would enable people to provide

for their social and economic wellbeing by occupying that land for urban activities while meeting the values described in paras (a), (b) and (c). It is our understanding that the point on which these appeals turn is the second part of that summary, not the first. In other words, the case turns on whether or not urbanisation would meet the values stated in

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those paragraphs, not on whether it would enable people to provide for their wellbeing.

That is not to suggest that the two main elements of s 5(2) can always be separated entirely. A way of managing of natural and physical resources which fails to sustain, to safeguard, and to avoid, mitigate, or remedy the matters stated in paras (a), (b) and (c) thereby also restricts the extent to which that way of managing the resources enables a community to provide for its wellbeing. Where (as in this case) there are a number of issues to be considered in deciding whether a proposal would promote the sustainable management of natural and physical resources as defined, it is our understanding that the duty entrusted to those making decisions under the Act cannot be performed by simply deciding that on a single issue one or more of the goals in paras (a), (b) and (c) is not attained.

Section 5 is contained within Part II of the Act, of which Justice Greig said in *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (at p 86):

This Part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way. Indeed it is for that purpose that the Planning Tribunal, with special expertise and skills, is established and appointed to oversee and to promote the objectives and policies and the principles under the Act.

We have considered in the light of those remarks the method to be used in applying s 5 to a case where on some issues a proposal is found to promote one or more of the aspects of sustainable management, and on others is found not to attain, or to attain fully, one or more of the aspects described in paras (a), (b) and (c). To conclude that the latter necessarily overrides the former, with no judgment of scale or proportion, would be to subject s 5(2) to the strict rules and principles of statutory construction which are not applicable to the broad description of the statutory purpose. To do so would not allow room for exercise of the kind of judgment by decision-makers (including this Court - formerly the Planning Tribunal) alluded to in the NZ Rail case.

As Mr Kirkpatrick reminded us, in *Elderslie Park Ltd v Timaru District Council* [1995] NZRMA 433 Justice Williamson said of assessment of effects in consideration of a resource consent application (at p 444):

During the course of argument there was debate as to whether in the context of adverse effect the council was entitled to have regard to any possible benefits of the proposed activity. In my view the council was entitled to do so because it is required to be satisfied about an "effect" which involves the end result of a number of factors, changes and influences. To ignore real benefits that an activity for which consent is sought would bring necessarily produces an artificial and unbalanced picture of the real effect of the activity. In determining whether an effect is minor it is appropriate to evaluate all matters which relate to the effect. These matters would include counterbalancing benefits and possible conditions.

As Mr Kirkpatrick said, the context of that case was slightly different from this. However we accept his submission that given the emphasis of the Act on

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integrated management, it would be odd for the philosophy behind the preparation of a plan to be significantly different from that to be followed when considering a resource consent application.

In a recent Planning Tribunal decision on a marine farming proposal, *Trio Holdings v Marlborough District Council* (Decision W 103A/96, 14 August 1996 at pp 36 and 37), the Tribunal's approach to applying s 5 was stated in the following passage:

We have concluded that the national (and international) significance of the development of the sponge and algal species in the proposal, if successful, is such that we should ensure that the adverse effects we identified earlier in the decision, if not avoided altogether, could be mitigated sufficiently to still enable the promotion of the concept of sustainable management of the site's natural resources to occur. The idea of "mitigation" is to lessen the rigour or the severity of effects. We have concluded that the inclusion of the word in s 5(2)(c) of the Act, contemplates that some adverse effects from developments such as those we have now ascertained may be considered acceptable, no matter what attributes a site may have. To what extent the adverse effects are acceptable is, however, a question of fact and degree. In this respect, the further aspect of the proposal is one which we consider has substantial merit - that sponge culture has far less adverse effects than mussel farms and that there is potential for even less as the lantern structures in which they are grown are perfected.

In conclusion we consider that if the proposal is restricted in the way proposed, the adverse effects are not so major as to refuse the proposal.

A similar approach (although less fully articulated) was taken by the Planning Tribunal in *Te Runanga O*

*Taumarere v Northland Regional Council* [1996] NZRMA 77 and in *McIntyre v Christchurch City Council* [1996] NZRMA 289 at p 319.

Application of s 5 in the way described in that passage from the *Trio Holdings* decision involves consideration of both main elements of s 5. The method calls for consideration of the aspects in which a proposal would represent management of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing, health and safety. It also requires consideration of the respects in which it would or would not meet the goals described in paras (a), (b) and (c).

The method of applying s 5 then involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. That recognises that the Act has a single purpose (see the memorandum appendix A to the *Report of the Board of Inquiry into the Proposed New Zealand Coastal Policy Statement*, February 1994, p 110). Such a judgment allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome.

In the present case, we start by addressing directly the application of the second main element of s 5(2), the "while" clause, to the findings we have made. In the light of our findings, it has not been established that it is necessary in achieving the purpose of the Act that the limits be defined as in the proposed regional policy statement, at Glenvar Road. The basis for the limit being established there in the past related to the area served by the North Shore sewerage system. That has only historic interest now, as the extension

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to the sewerage system would now allow for service to all the Long Bay/Okura area. However our findings about the adverse effects which urbanisation in the Okura catchment would necessarily have on the environment, in particular on the quality of the waters of the estuary and its ecosystem, and on the landscape quality of the estuary and its margins, support a definition of the metropolitan urban limits so as to exclude the land in that catchment. That is necessary to fulfil those aspects of the defined purpose of the Act described in paras (a), (b) and (c) of s 5(2). We find it reasonably foreseeable that future generations of Aucklanders will need accessible experience of an estuary in natural condition. The Okura Estuary is the last of its kind on the east coast of the North Shore which retains that condition. Urbanisation in the Okura catchment would not sustain the potential of the Okura Estuary to meet that need. The Okura Estuary possesses a capacity to support life, largely due to its natural condition, and the high quality of its waters and ecosystem. Urbanisation of the part of the subject land in that catchment would necessarily result in a significant deterioration of the quality of the waters, to the extent that their life-supporting capacity would be imperilled. Although development controls, settling ponds and other measures would mitigate adverse effects of urbanisation on the waters of the estuary, they would not avoid them.

That consideration conflicts with the extent to which allowing urbanisation of the part of the subject land in the Okura Estuary would represent managing the use and development of natural and physical resources in a way and at a rate, which would enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety by that urbanisation. However there are other opportunities for obtaining those benefits, by greenfields development elsewhere, and by infill and intensification of existing urban areas. Of course none of those opportunities would yield exactly the same benefits as urbanisation of the subject land; and all would have some environmental costs. Yet the Okura Estuary possesses such high natural values, and urbanisation would necessarily have such serious adverse effects on them, that in our judgment urbanisation of land in its catchment would not be sustainable management of natural and physical resources as defined. We therefore hold that to achieve the defined purpose of the Act it is necessary (necessary in the sense of expedient or desirable - see *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 178) for the metropolitan urban limits to be defined so as to exclude the land in the Okura catchment.

On our findings a similar conflict does not arise in respect of the part of the subject land in the catchment of the Long Bay coast. Urbanisation of that part of the land would not necessarily have such adverse effects on the environment section to outweigh the value of use and development of the natural and physical resources involved to enable people to provide for their wellbeing, health and safety by living there. We hold that it is not necessary to achieve the purpose of the Act for the metropolitan urban limits to be defined to exclude the part of the land in the Long Bay catchment.

The second consideration is whether the policy defining the metropolitan urban limits assists the regional council to carry out its functions. The relevant functions are those of achieving integrated management of the natural and physical resources of the region; of actual and potential effects of the use, development and protection of land which are of regional significance, and

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for the maintenance and enhancement of the quality of water in water bodies and coastal waters. In general the metropolitan urban limits assist the regional council to achieve integrated management of the natural and

physical resources of the region. However the precise line defining the limits in Long Bay/Okura is not significant in that respect. Integrated management could be achieved whether the limits are defined at Glenvar Road, or at the district boundary, or at some other location between them. Next there is the regional council's function in relation to any actual or potential effects of the use, development or protection of land that are of regional significance. In that regard, we find that the quality of the waters of the Okura Estuary, and the landscape value of the estuary and its margins, have regional significance because of their rareness in a location so accessible to the metropolitan urban area. Defining the line of the limits so as to avoid adverse effects on the estuary environment assists the regional council to carry out that function. Defining the line so as to avoid them also assists the regional council in its function of control of effects of the use and development of land for the maintenance and enhancement of the quality of water in the estuary and the coastal waters into which it flows. To summarise, we find that it would assist the regional council to carry out its relevant functions defining the metropolitan urban limits for the metropolitan urban limits to exclude the Okura catchment.

The third consideration is whether the definition of the metropolitan urban limits is the most appropriate means of exercising those functions. In our judgment the most appropriate means of exercising those functions is for the metropolitan urban limits to be defined so that the part of the subject land that is in the Okura catchment is excluded, and that the part that is in the Long Bay catchment is not excluded. In short, in our judgment the most appropriate line for the metropolitan urban limits is the watershed, or boundary, between the Long Bay and Okura catchments; and the purpose of defining the line there is to achieve the objectives and policies of the proposed regional policy statement and the purpose of the Act.

For those reasons the Court determines that the appeals are allowed in part, to the extent that the regional council is directed to alter the line of the metropolitan urban limits in the proposed regional policy statement so that instead of following Glenvar Road, the line follows the watershed or catchment boundary between the Long Bay and Okura catchments. If further directions are required to give effect to this determination, the appellants or the respondent have leave to apply for them.

In conclusion we consider that if the proposal is restricted in the way proposed, the adverse effects are not so major as to refuse the proposal.

It has long been the practice not to award costs on appeals about the contents of planning instruments. That is not an inflexible rule, and the Court has to be open to the possibility of making an exception. We are not aware of anything about these appeals that would justify making an exception in this case; and our provisional view is that it would be appropriate for every party to bear its own costs. However in case we have overlooked any relevant factor, the question of costs is reserved.