

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

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

AND of appeals under s 156(3) of the LGATPA

BETWEEN R WALDEN

ENV-2016-AKL-000229

THE STRAITS PROTECTION SOCIETY  
INCORPORATED

ENV-2017-AKL-000096

G & C SMART

ENV-2017-AKL-000110

Appellants

AND AUCKLAND COUNCIL

Respondent

Principal Environment Judge L J Newhook sitting alone under section 279 of the RMA  
In CHAMBERS at Auckland

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CONSENT ORDER

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[A] Under s 279(1)(b) of the RMA, the Environment Court, by consent, orders that:

- (a) The Straits Protection Society Incorporated appeal is allowed in its entirety, and the G & C Smart and R Walden appeals are allowed in part, subject to the agreed amendments to the Auckland Unitary Plan (Operative in Part) set out in **Annexure A** to this order.

[B] Under s 285 of the RMA, there is no order as to costs.



## REASONS

### Introduction

- [1] These appeals relate to aspects of the decision of the Auckland Council on the proposed Auckland Unitary Plan, now the Auckland Unitary Plan (Operative in Part).
- [2] Mr Walden lodged an appeal (the Walden appeal) against the Council's decision pursuant to s 156(3) of the LGATPA, which was contingent on the outcome of the High Court judicial review proceedings filed by The Straits Protection Society Inc (CIV-2016-404-002349). The Straits Protection Society Incorporated appeal (the Straits appeal) and the G & C Smart appeal (the Smart appeal) were lodged in July 2017 pursuant to s 156(3) of the LGATPA after the High Court had issued its judgment in the related judicial review proceedings: ***The Straits Protection Society Incorporated v Auckland Council***.<sup>1</sup>
- [3] The appeals challenged the Council's decision to accept the recommendation made by the Auckland Unitary Plan Independent Hearing Panel to delete the Rural Urban Boundary (RUB) for Waiheke Island from the Regional Policy Statement (RPS) and, as a result, the Unitary Plan entirely.
- [4] Housing New Zealand Corporation, Man O'War Farm Limited, G & C Smart, Ms E Waters, Mr K Vernon and the Straits Protection Society Incorporated all joined the Walden appeal as interested parties under s 274 of the RMA. Mr Vernon<sup>2</sup> and Man O'War Farm Limited<sup>3</sup> have since withdrawn their respective interests in this appeal topic.
- [5] Housing New Zealand Corporation also joined the Straits appeal and the Smart appeal under s 274 of the RMA.

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<sup>1</sup> [2017] NZHC 1351.

<sup>2</sup> By email to the Environment Court dated 11 August 2017.

<sup>3</sup> By letter to the Environment Court dated 14 September 2017.



- [6] The parties have reached an agreement that will resolve the Straits appeal in its entirety, and the Smart and Walden appeals in part,<sup>4</sup> specifically:
- (a) The Straits appeal at paragraphs 5 and 17 of its Notice of Appeal;
  - (b) The Smart appeal at paragraphs 6 and 8(a) of their Notice of Appeal; and
  - (c) The Walden appeal at paragraphs 8 and 10, insofar as the first component of the second element of relief is addressed, being that the “RUB at Waiheke Island be reinstated into the Regional Planning framework as notified in the Proposed Auckland Unitary Plan”.
- [7] The Agreement involves a reinstatement of the RUB for Waiheke Island as well as certain amendments to the RPS and district plan components of the Unitary Plan. The amended provisions are set out in **Annexure A**.
- [8] In making this order, the Court has read and considered the appeals and the memorandum of the parties dated 20 December 2017.
- [9] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.
- [10] The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order.
  - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the RMA, including in particular Part 2.



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The remaining aspects of the Walden and Smart appeals, which address site-specific alterations sought to the final location of the RUB for Waiheke, are subject to a separate Court timetable, with a second Court-assisted mediation date to be scheduled in early 2018.

**Order**

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

- Straits and Smart*
- (a) The appeals are allowed to the extent that the Council is directed to include new text in the RPS and section G1, and include a new annexure in the Auckland Unitary Plan (Operative in Part), as shown in **Annexure "A"** to this order (additions are underlined); \*
  - (b) The Straits appeal is allowed in its entirety, and the Smart and Walden appeals are allowed in part; and
  - (c) There is no order in relation to costs.

\* *Mr Walden withdrew his appeal on 9 February 2018*

SIGNED at AUCKLAND this *1<sup>st</sup>* day of *March* 2018



*[Signature]*  
\_\_\_\_\_  
J Newhook  
Principal Environment Judge

## "A"

1. Amend Chapter B Regional Policy Statement of the Auckland Unitary Plan (Operative in Part) by adding a new policy in section B2.2.2, as follows:

### **B2. Tāhuhu whakaruruhau ā-taone - Urban growth and form**

...

#### **B2.2. Urban growth and form**

...

##### **B2.2.2. Policies**

...

##### *Quality compact urban form*

...

(9) Apply a Rural Urban Boundary for Waiheke Island (identified in Appendix 1B) as a regional policy statement method.

2. Amend Chapter B Regional Policy Statement of the Auckland Unitary Plan (Operative in Part) by including new explanatory text in section B2.9, as follows:

### **B2. Tāhuhu whakaruruhau ā-taone - Urban growth and form**

...

#### **B2.9. Explanation and principle reasons for adoption**

...

A compact urban form is one with clear boundaries where the residential and commercial areas are relatively close together. In Auckland, most urban growth is expected to be inside the Rural Urban Boundary:

- to promote efficient and timely provision of infrastructure;
- to protect natural and physical resources that have been scheduled for particular identified values; and
- to avoid urbanisation without appropriate structure planning.

The location of the Rural Urban Boundary is a district plan land use rule pursuant to section 9(3) of the Resource Management Act 1991, other than for Waiheke Island where it is an interim regional policy statement method until it is considered as part of a plan change to incorporate the Auckland Council District Plan – Operative Hauraki Gulf Islands Section into the Unitary Plan.

A compact urban form can deliver a range of benefits by:

- enabling a range of housing choices in size, typology and price within neighbourhoods;
- protecting sites and areas with identified high environmental values;
- providing access to open space and social facilities;
- fostering productivity, creativity and social vitality by enabling social and business networks based on spatial proximity;
- promoting an integrated approach to land use and transport; and
- providing investment certainty about use and development strategies.

...

3. Amend Chapter G Rural Urban Boundary of the Auckland Unitary Plan (Operative in Part) by inserting new text, as follows:

### **G1. Rural Urban Boundary**



The Rural Urban Boundary identifies land potentially suitable for urban development.

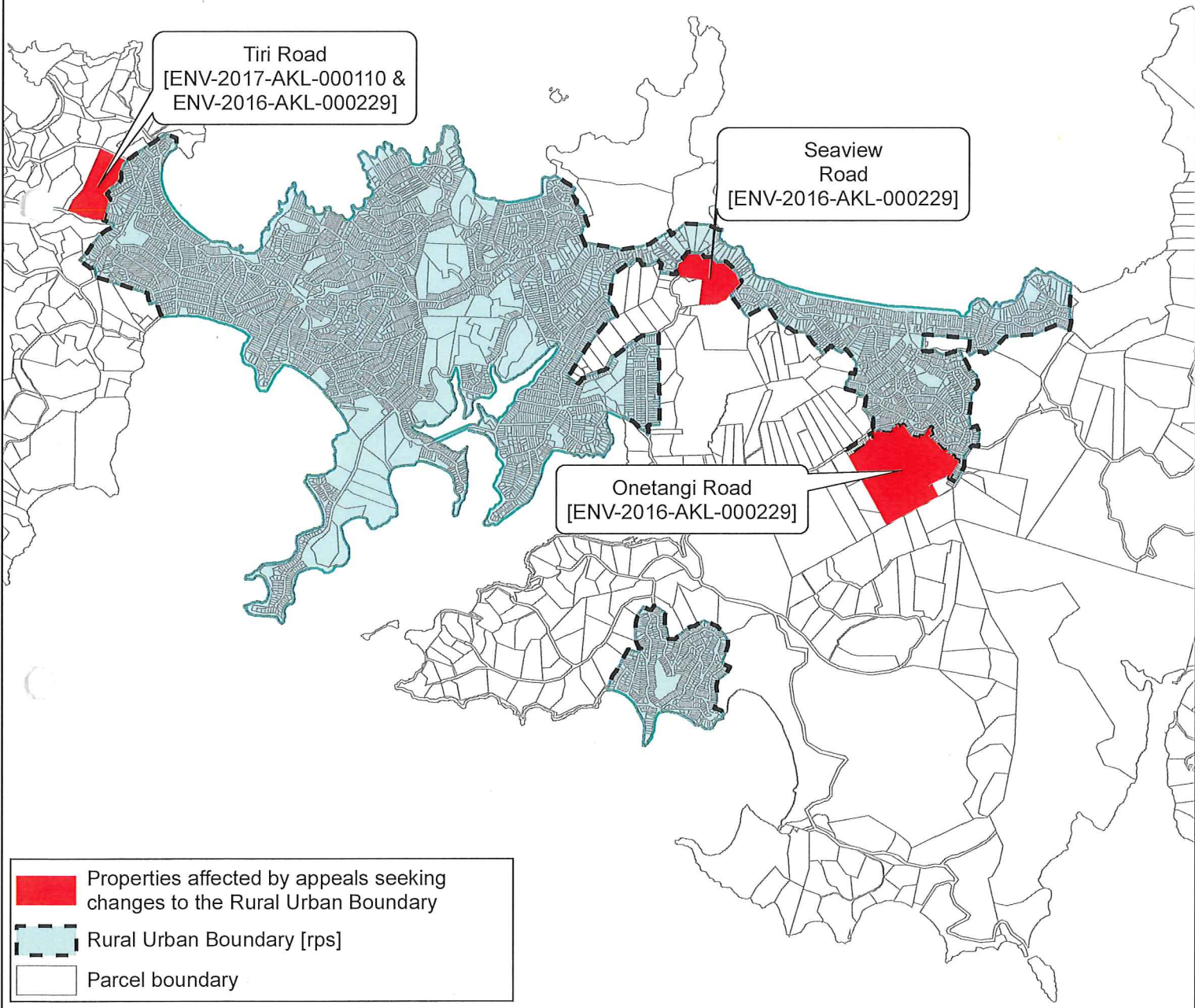
The location of the Rural Urban Boundary is a district plan land use rule pursuant to section 9(3) of the Resource Management Act 1991, other than for Waiheke Island where it is an interim regional policy statement method until it is considered as part of a plan change to incorporate the Auckland Council District Plan – Operative Hauraki Gulf Islands Section into the Unitary Plan.

The planning maps show the Rural Urban Boundary line. The only method for relocating the Rural Urban Boundary is by way of a plan change pursuant to Schedule 1 of the Resource Management Act 1991.

Any relocation of the Rural Urban Boundary must give effect to the objectives and policies of the regional policy statement which establish it.

4. Amend Chapter M Appendices of the Auckland Unitary Plan (Operative in Part) by inserting a new Appendix 1B, attached to this draft order as Annexure 1.

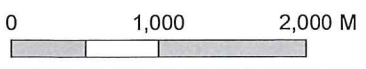




■ Properties affected by appeals seeking changes to the Rural Urban Boundary

--- Rural Urban Boundary [rps]

▭ Parcel boundary



### Appendix 1B – Waiheke Rural Urban Boundary

