

# Environment Court Hearing – Review

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By Bernard Stanley

The Long Bay Environment Court reconvened on October 13th for three days of hearings to consider evidence on issues outstanding from the first round in July 2007 and subsequent negotiations (caucusing) between the parties required by Judge Jackson in his interim decision of July 2008.

To recap the story to date:

The urbanization of the Long Bay catchment was predicted in the decision of Judge Sheppard in the partially successful Environment Court appeal of 1996 by North Shore City Council against the ARC to move the Metropolitan Urban Limit (MUL) from Glenvar Road to Vaughans Rd. (The NSCC actually wanted to go all the way to the Okura Estuary! The Society was not a party to this action which was, in fact, the stimulus for its formation.)

NSCC issued its Structure Plan Variation 66 in 2005 which the Society comprehensively appealed at the Commission Hearing in Nov.2005. The Commission broadly approved the Council's Structure Plan with minor modifications in May 2006. After mature consideration of the daunting implications, the Society decided to adopt the sole remaining recourse for opposing the development by appealing the matter in the Environment Court. Other appellants to the action were the Landowners Landco

(who wanted more development), the Auckland Regional Council, Historic Places Trust, Okura Environmental Group, Department of Education, local Iwi and others (who wanted less development or had special interests to protect). NSCC was the sole respondent.

The Society's convenor, Fiona McLaughlin, undertook the daunting task of managing the Society's appeal, recruiting environmental lawyer Martin Williams to lead the case, assisted by expert witnesses: landscape architect Di Lucas, town planner Robert Scott, archaeologist Matthew

the need for four access roads which of course the Society had to accept. However, the Society did achieve an important concession in the agreement of all the parties to the shifting of the Beach Road extension further up the ridge to the west away from the Park boundary. A further matter of contention was the interface between the Historic Protection Area and the development on the Awaruku Ridge, in particular, the provision of view shafts between the housing units. The court has called for further evidence on this issue.

Meantime, NSCC have been compiling the rules governing the detail of the development (what is and is not permitted) – a monumental document of over a hundred pages requiring extremely close critical scrutiny to ensure no loopholes or uncertainties exist which may be exploited by the developer to the detriment of the quality of the development and indeed the intention of the Court.

Also outstanding is the ownership and management plan for the HPA. All the loose ends are supposed to be tidied up by mid November with the Court's final ruling indicated for December.

All of this has demanded a massive sustained effort from Fiona spanning nigh on four years ably assisted by her partner Phil Yates with his special expertise in creating visuals of various critical sections of the proposed development detail. Fiona's magnificent service to the Society, and indeed the whole North Shore community, was fittingly acknowledged recently by the conferring of its highest order of Civic Award by NSCC, such is the measure of her highly competent and dedicated contribution to this long and complex case undertaken by the Society as the watchdog of the public interest.❖

**Bernard Stanley** is a retired business executive who has been a leading member on the executive committee of the Long Bay - Okura Great Park Society from its inception. Bernard is a strong environmentalist who actively participates in water quality testing at Long Bay and who has a hands on role in the Environment Court case.

Campbell and later a traffic consultant.

Broadly speaking the Society's objectives in our appeal were:

1. To minimize the impact of the inevitable urban development on the amenity value of the Regional Park by the creation of unbuilt buffer zones in strategic areas on the Awaruku Ridge, the Homestead Spur and Grannies Bay.
2. To protect the archaeological and historic sites on the Awaruku Ridge.
3. To protect the water quality of the freshwater streams, the Marine Reserve and Long Bay beach from massive siltation during the extensive earthworks phases and pollution from stormwater and wastewater discharges from the subsequent urban development.
4. To protect the Vaughan and Awaruku wetlands.

For readers who have not attended an Environment Court hearing it may be helpful to explain the differing modus operandi from the more familiar criminal or civil court proceedings where there is a specific charge or case to be answered. In the Environment Court, the parties present evidence relevant to any aspect of any matter within the scope of the Resource Management Act (or other relevant provision, eg Coastal Policy Statement) – in this case the NSCC Structure Plan for urban development at Long Bay. The parties then have the opportunity to introduce expert witnesses to support their evidence and to cross question other party's witnesses in order to support or demolish their contentions as suits the party's particular case. The strategy is designed to draw the Judge's attention to the salient issues in the matter in the endeavour to influence his decision in favour of your contention. The Judge and his associates (two in this case) may also question the witnesses, but during the proceedings no decisions are given nor indications of the acceptance of the validity of any argument, except on points of law.

The first session of the Court was held over three weeks in July 2007. In his interim decision one year later, Judge Jackson broadly defined the zoning (areas, densities and nature) of development, the size of the riparian margins for streams, protected areas of native vegetation and stormwater treatment requirements. From the Society's point of view, we

particularly welcomed the creation of an extensive Historic Protection Area (HPA) free of all development encompassing the bulk of the archaeological and historic sites on the heel of the Awaruku Ridge adjacent to the Regional Park. Similarly, the creation of Grannies Bay and Homestead Spur Visual Protection Areas we considered a major achievement. We had argued the southern flank of Awaruku Ridge (within the Structure Plan Area) and Grannies Bay catchment to be of outstanding landscape value and that development of these areas would visually impair the amenity value of the Regional Park and thus should be free of all development or the effects thereof. In the case of the Awaruku Ridge, the Court protected part of the Awaruku Ridge on both visual and heritage grounds. The Court believed that the HPA would provide adequate visual protection to the Regional Park. In the case of Grannies Bay and Homestead Spur however the Judge ruled in favour of the outstanding landscape and imposed a Visual Protection zoning to the effect that a buffer would be created between new development and the Grannies Bay catchment and from the Regional Park adjacent to Homestead Spur. To achieve this it would be necessary to construct an artificial earth ridge on the southern limit of the Grannies Bay catchment. The height and extent of this ridge became a very contentious issue in the subsequent caucusing between the parties. This then became a very important issue argued in the second court session from Oct.13-15 just completed.

Another matter of importance directed by the judge to be negotiated in caucusing was the number and location of major access roads to the Long Bay development. The Council and Landco plans provided four - one from the north towards the end of Vaughans Rd, a second from the upper end of Glenvar Rd, (also providing a second access to the Regional Park) a third by extension of Ashley Ave adjacent to Long Bay College and a fourth, the extension of Beach Road (from near our existing signboard) across the Awaruku wetland adjacent to the Regional Park then diagonally across the ridge. The Society opposed the positioning of this access because of its impairment of the wetland, the amenity value of the Regional Park and questioned its necessity to service the development. The Judge ordered a traffic study necessitating the Society hiring an expert Traffic Consultant as did the other parties. The outcome of the consultant's investigations confirmed