

Before Planning Commissioners

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER The Proposed Far North District Plan

SUBMITTERS: J Bayley (S490)
M Wyborn (S497)
P Thornton (S496)
Omarino Residents Association (FS411)
M Jepson (S494)
R Kloet (S495)
C Heatley (FS410)
W Goodfellow (S493)

**STATEMENT OF EVIDENCE OF CEDRIC OWEN BURN CONSULTANT 9TH JULY
2024 ON BEHALF OF THE ABOVE SUBMITTERS**

1 NAME AND QUALIFICATIONS

1.1 My full name is Cedric Owen Burn and I am authorised by the submitters listed above to give evidence to this hearing on their behalf.

1.2 I am a planning and resource management consultant and I have the following qualifications and experience:

I have a master's degree in Geography and a post-graduate diploma in Town Planning from Auckland University. I am a full member and past councillor of the New Zealand Planning Institute and have over 25 years' experience as a planner. I am a director of Green Group Ltd, a resource management and development consultancy specialising in statutory and environmental planning.

1.3 Through the course of my career I have had extensive experience in the coastal environment, including the preparation of district plan provisions, the preparation of Assessments of Environmental Effects and applications for resource consents for structures, reclamations and dredging in the coastal marine area (CMA) within the Waitemata Harbour, Hauraki Gulf, Wellington and the Northland Region.

1.4 Of particular relevance I have been involved in the preparation of Assessments of Effects (AEEs) for land use activities, jetties and associated dredging activities within the eastern Bay of Islands and on all of the properties which are the subject of my evidence. I am familiar with the land uses within and around those properties.

1.5 In addition, I have sailed to and within in the Bay of Islands over a number of years and in this time have developed an intimate familiarity with its coastline and waters.

2.0 CODE OF CONDUCT

2.1 I have read the code of conduct for expert witnesses in the Environment Court Consolidated Practice Note. I understand my obligations under the Code and agree to comply with it.

- 2.2 I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise.
- 2.3 To the best of my knowledge I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.
- 2.4 I am familiar with the provisions of the Proposed Far North District Plan (*the Plan*) as these apply to the submitter's properties and I am familiar with the various properties for which submissions have been made and have visited them all on several occasions.

3.0 INTRODUCTION TO EVIDENCE

- 3.1 I represent the interests of a number of submitters as listed above and in broad terms the various parties have common concerns with respect to the planning provisions in play, whilst having individual and unique concerns with respect to their individual properties.
- 3.2 In the interest of ensuring that the various submitter's concerns are able to be presented and at the same time being mindful of the Hearing Panel's comments as recorded in its December 2023 procedural memorandum, to avoid repetition I have addressed the common concerns of the parties collectively and also addressed the specific matters on a case by case as follows. Accordingly, I have split my evidence into two separate sections.
- 3.3 The first is an assessment of the appropriateness, suitability and efficacy of the regulation relation to the Outstanding Natural Landscape (*ONL*) overlay proposed to be introduced, which adopts an overarching approach intended to remind the commissioners of the planning purpose of such regulations; and secondly to touch on the specifics of each of the submitter's concerns and the characteristics of their properties affected by the introduction of the *ONL*.
- 3.4 Finally I comment on the suite of rules that, to varying degrees, apply to the properties, referring in particular to the amended versions attached to the relevant s42A reports

3.5 Whilst it is trite to observe I do not purport to be giving landscape architectural evidence as the issues in play are one step back from that and comprise an assessment of the suitability of the proposed regulatory regime. To some degree comment on the applicability of a specific example addresses the notion of outstanding natural landscapes, which I describe. This is not however, landscape architectural evidence.

3.6 From the outset I state that my evidence is not an adverse criticism of the imposition of rules and regulations as such, nor is it in opposition to the notion of outstanding landscapes. In my opinion it is a case of drawing back and considering firstly if the proposed rules are the correct and only method that should be imposed to achieve a suitable environmental outcome when regard is had to the stated purpose for such rules – that the *'raison d'être'* for the imposition is clear and then looking at the methodology that has been adopted in the Plan as to its applicability and suitability.

3.7 The Courts have made it clear that it is entirely appropriate to map ONLs stating:"

"In respect of a district council's functions, including integrated management of land, , the starting point for the first stage must be to identify the facts and the appropriate matters to be considered. In particular it is fundamental to consider Part 2 of the Act. That means it is mandatory to identify the matters of national importance . We do not see how that can be achieved without identifying (necessarily with a broad pencil, but with as much accuracy as possible) the boundaries of the areas concerned. " (My emphasis).¹

3.8 In that case and in responding to the question posed to the Court:

"Is the identification (including mapping) of an [outstanding natural landscape] in a planning instrument prepared under the Resource Management Act 1991 for the purpose of s 6(b) of that Act informed by (or dependent upon) the protection afforded to that landscape under the Act and/or the planning instrument?"

3.9 The Court answered:

¹ See *Man O'War Station Limited v Auckland Council* (2017] NZCA 24; (2017) 19 ERLNZ 662; (2017] NZRMA 121 at [31(a)].

*“However, the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) of the Act requires an essentially factual assessment [30] As *Man O'War Station Limited v Auckland City Council* recognised (in the context of a policy instrument that enunciated related values), much turns on what is sought to be protected. Mapping only assists in identifying the geographical extent of what is sort to be protected. Listing those values that inform why a feature or landscape is an ONF or ONL is an important further element of setting out what is sought to be protected. That is particularly given the significant element of judgment required to select features and landscapes as "sufficiently natural" to warrant identification as ONFs or ONLs. In particular, that selection includes choices to the significance or otherwise of human modifications to a feature or landscape. Associated with those choices are judgments as to the resilience, or otherwise, of the feature or landscape to further human modification. Transparency in the ODP about those choices is highly desirable, in terms of certainty, in that it helps inform what is inappropriate subdivision, use and development.” (My emphasis). It is clear that a comprehensive analysis of these values should have formed an element of the Plan when contemplating the imposition of ONLs across the district. This information should have been included in the proposed plan and not justified in a post-facto landscape assessment.*

- 3.10 ONL's once imposed may have a draconian impact on the reasonable use and enjoyment of land with in some cases land uses within an ONL defined as prohibited. The circumstances where an ONL is imposed requires careful and judicious assessment and ground proofing in every case as to the suitability of that imposition. In this evidence I discuss the planning notion of an ONL as determined by the Environment Court and higher courts and urge the Commissioners to consider in the specific cases of the submitters that I represent the suitability of imposing an ONL on their respective properties.
- 3.11 Planning regulations endure in a district plan for a considerable period of time, sometimes outliving their usefulness as the world changes around them. The background to some planning rules have also been lost over time and become inexplicable to contemporary practitioners as a consequence. Some planning management techniques are introduced as a response to political directives and some in crude and simple terms are fashionable to adopt. A degree of care is thus

called for when contemplating the introduction of regulations that may have an enduring influence, particularly where that influence may be difficult to circumvent and gives rise to no actual discernible environmental or social benefit.

- 3.12 An immediate descent into a detailed discussion over the merits or otherwise of imposing a regulation over the use and development of a particular property bypasses the need to consider the usefulness and relevance of the introduction of the rule itself. Questions such as ‘why this method in preference to others?’ Why is it needed at all need to be considered first.
- 3.13 In this evidence I offer a discussion on the notion of outstanding landscapes (ONL) as developed through case law by the Environment Court. It becomes clear that the notion of an ONL is one that should be accorded only to landscapes that have little or no cultural component and reserved for the truly exceptional – the ‘outstanding’. There are two components to consider in any given case - the natural and the outstanding. The mundane should not be lumped into such landscapes.
- 3.14 It is I suggest, important to consider what is trying to be achieved through the application of these rules and whether in a given circumstance that either little is to be achieved or the imposition of such regulations imposes an undue and unreasonable burden on individual landowners as they struggle to manage the use and development of their land within such an artificial construct.
- 3.15 I have commented on the evidence of the council’s landscape advisor, not in terms of landscape advice *per se* but more in terms of the espoused methodology. The sites subject to the imposition of an ONL have not been ground proofed and some rely on elderly arial photography as the only probative basis for claims that an ONL exists.
- 3.16 This type of analysis has been criticised by the courts in the past and if, as it appears to here, is being relied on to provide a basis for the imposition of an ONL then that evidence should be set aside as unreliable. Similarly I am concerned to see suggestions that given time when planting has reached its climax phase that a particular site will take on the qualities of the an ONL. If it is not an ONL now speculation as to what it may become over time is not helpful to the Commissioners and in my opinion can be described as ‘fanciful’ in the meaning famously attributed to that term by the Environment Court.

4.0 THE CONCEPT OF AN OUTSTANDING LANDSCAPE (ONL)

- 4.1 The imposition of an ONL as a set of rules on a property is a challenging process “because landscapes share with ecosystems (Whittaker, 1967; Økland, 1990) the property that, by and large, their composition, structure and processes vary in a gradual, continuous manner along multiple ‘directions of gradual variation’. The multidimensional structure of the physical landscape **makes all approaches involving classification artificial**, because they involve drawing boundaries in a basically continuous environment, with its correspondingly continuous change in composition of landscape elements. The numerous characterisation approaches that have been, and are still in use, for description of the structure of the landscape are per se a proof that no single correct characterisation method exists.”² (my emphasis)
- 4.2 The concept of ‘landscape’ is a human construct and can be considered as the visible features of an area of land, its landforms, and how they integrate with natural or human-made features, often considered in terms of their aesthetic appeal. The notion is thus one of aesthetics and human appeal and may vary between cultures and their associated idiosyncratic values.
- 4.3 The Resource Management Act 1991 does not define an Outstanding Natural Landscape at Part 1 Interpretation and application of the Act.
- 4.4 The Act references at Part 2 Section 6 ‘Matters of National Importance’ that : “*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance*” (inter alia):
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

² Halvorsen a , Lars Erikstad Trond Simensen a,c,*, Rune [2018] Methods for landscape characterisation and mapping: A systematic review 2018

It seems to me that the RMA does not refer to an outstanding natural landscape *per se*, simply referring at 6(b) to “landscapes” in an inclusive manner. The notion of an outstanding landscape being one that has been created by local authorities.

- 4.5 Case law has evolved the concept of an ONL, which comprises the two elements – ‘outstanding’ and ‘natural’. In *Wakatipu Environmental Society Inc and ors v Queenstown-Lakes District Council* [2000] NZRMA 59, at [88] and [89] the Court held *“that ‘Natural’ means ‘a product of nature’. It may therefore include pasture and exotic tree species but not human-made structures. A landscape with structures may still have a degree of naturalness but it will be less natural than an unaltered landscape or a landscape without structures and with a lack of human influence.”*
- 4.6 The Environment Court has indicated that such landscapes may contain relatively unmodified and legible landforms, be marked by the presence of (usually native) vegetation, and convey the feeling of being uncluttered by structures and/or obvious human influence. [*High Country Rosehip Orchards Ltd v Mackenzie DC* [2011] NZEnvC 387]³
- 4.7 It seems to follow reasonably that an unaltered landscape – at least as far as the introduction of buildings and the like are concerned – could be described as ‘natural’. Where there are signs of cultural intervention such as man-made structures, roading and the like, the naturalness of the landscape is diminished or removed and the term natural should not be applied to it. This seems to be echoes in the rules of the proposed plan which seek, *inter alia*, to limit the size of any proposed buildings to 25m².
- 4.8 The second element ‘outstanding’ or ‘*outstandingness*’⁴ conveys the concept of exceptional, superior or excellent. *“A landscape will be considered outstanding if it is “conspicuous, eminent, remarkable or iconic” within the context of the area concerned – the district if the assessment is being undertaken for a district plan and the region if it is for a regional policy statement or plan.”*⁵

³ See <https://www.environmentguide.org.nz/issues/landscape/protection-of-landscapes-and-features/what-is-an-outstanding-natural-feature-or/>

⁴ Outstandingness is an archaic word meaning exceptionality. Noun. *“The state of being famous or having influence. prominence. Distinction”*

⁵ <https://www.environmentguide.org.nz/issues/landscape/protection-of-landscapes-and-features/what-is-an-outstanding-natural-feature-or/>

4.9 This implies that the landscape is something exceptional that lifts it above the ordinary and mundane and warrants the imposition of planning controls intended to recognise, manage and protect such a landscape. Again, it follows if the landscape in question does not have these qualities that the imposition of such controls is not merited. Simply being a coastal property in my opinion does not constitute anything exceptional in the Bay of Islands.

4.10 The criteria for assessing whether a landscape is outstanding include:

- Natural science factors (geological, topographical, ecological, and dynamic components of the landscape)
- Aesthetic values (including memorability and naturalness)
- Expressiveness or legibility (how obviously the landscape demonstrates the formative processes leading to it)
- Transient values (occasional presence of wildlife or other values at certain times of the day or year)
- Whether the values are shared and recognised
- Value to tangata whenua
- Historical associations

4.11 There are thus two matters – which I describe as ‘tests’ to address when a landscape or an element of it comprises an ONL. Firstly whether it can reasonably be considered to be ‘natural’ in the manner described by the Court and secondly whether it is truly ‘outstanding’.

4.12 The definitions of the Proposed Plan contains the definition of *Sensitive Environment*, which means:

- a. *The coastal environment;*
- b. *An outstanding natural feature or landscape;*
- c. *Scheduled site and area of significance to Māori;*
- d. *Significant natural areas;*
- e. *River flood hazard areas;*
- f. *Coastal hazard areas;*
- g. *Scheduled heritage resource; and*
- h. *The area within a 100m setback from the edge of a surface water body.*

- 4.13 This definition is not helpful as it neither explains or defines what is meant by a sensitive environment and simply offers a list of what are considered to be examples of such environments. What qualifies these examples as 'sensitive' is not explained. Outstanding Natural features and landscapes are listed at (b) in this definition as examples of sensitive environments.
- 4.14 The Plan does not however separately define an outstanding natural landscape and certainly not in the terms referenced by the Environment Court cited above. It is thus difficult to ascertain what the Plan is seeking to manage as there is a lacuna over any overt definition. Reliance on definitions of terms of art contained in other statutory documents is fraught. Whilst what may have been meant can possibly be 'stitched together' from surrounding terminology a question must remain over what was intended and meant by the Plan.
- 4.15 The provisions in the Plan relating to landscapes are to be found in. *Part 2 – District Wide Matters*. The section states (inter alia) that For the purposes of preparing, changing, interpreting and implementing the District Plan all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these strategic objectives.
- 4.16 The section contains the following objective: SD- EP-05

'The natural character of the coastal environment and outstanding natural features and landscapes are managed to ensure their long-term protection for future generations.'

It contains the following policies;

NFL- P1 ***Avoid*** *adverse effects of land use and subdivision on the characteristics and qualities of ONL and ONF within the coastal environment.*
(emphasis mine)

NFL-P2 ***Avoid*** *significant adverse effects and avoid, remedy or mitigate other adverse effects of land use and subdivision on the characteristics and qualities of ONL and ONF outside the coastal environment.*

- 4.17 The term ‘avoid’ sets a very high bar and this matter has been confirmed in *Royal Forest and Bird Protection Society of New Zealand Inc V New Zealand Transport Agency*, a case heard by the Supreme Court and for which a decision was released in May 2024. The Supreme Court's decision emphasises the point it made in its 2014 King Salmon decision: that where Resource Management Act 1991 (RMA) planning instruments direct that adverse environmental effects be avoided, “avoid means avoid”. However, “avoid” policies must be read in the round and in context.” [SC 25/2021 [2024] NZSC 26]. To impose such a requirement on a landowner using a ‘broad pencil’ such as appears to be the case seems on the face of it inequitable.
- 4.18 The proposed plan states.” *ONL and ONF provide significant public benefit for the district, including the economic benefits of tourism, recreational use, as well as providing and protecting ecological, aesthetic and cultural values. Consideration needs to be given to recognising and protecting the characteristics, qualities and values of ONL and ONF while ensuring the community's health, safety and wellbeing, and enabling the use of Māori land.*”
- 4.19 Notably the plan is silent on existing activities such as farming and rural residential and lifestyle property activities.”⁶ In the case of the various submitters represented there are no discernible benefits arising in terms of economics, tourism, recreational activities, the protection of ecological, aesthetic or cultural values consequent on the imposition of an ONL on their properties. Nor does the imposition of an ONL on these properties give rise to any effect on the community’s health, safety or wellbeing. Arguably it has a contrarywise effect on the submitter’s lands.
- 4.20 To summarise these points I observe:
- That at the risk of sounding trite that outstanding natural landscapes need to be both natural and outstanding. Where either quality is insufficient then this needs to be acknowledged and that landscape or part of it passed over for identification as an ONL
 - That geographical identification without detailed ground proofing and due regard for existing land uses without explanation of values to be so identified is insufficient in isolation to relegate a landscape to comprising an ONL particularly where a ‘broad pencil’ has been employed

- That the implications of getting the imposition of an ONL on an individual landowner are potentially very significant and adverse – compelling costly and arguably unnecessary applications for resource consent.

4.21 In the following evidence I will discuss the specific properties of the various submitters and offer my assessment of the appropriateness of imposing an ONL on each. I will also discuss the methodology employed in reaching the current position and offer the Commissioners my opinions on how the submitter's interests can be addressed.

5.0 THE PROPERTIES

5.1 The properties that are the subject of submissions and cross-submissions and addressed in my evidence are located within the Bay of Islands as follows:

Within ONL 49 Parekura Headland & Orokawa Peninsula

Bayley (s490.001; 002; 003; 004; 005; 006) located at Orakawa Bay. Note, Mr Bayley's submission is wrongly attributed to myself in the s42A table)

Wyborn (s497.001; 002; 003; 005; 006; 009; 010; 011; 012; 013) located at Te Huruhi Bay

Ironwood Trustees (s496.001; 002; 003; 006; 007). Two sites; one at Jacks Bay and at the other at Waipiro Bay

Thornton (s496.001; 002; 003; 004; 005; 006; 009; 010; 011; 012.) One of 17 sites within the Omarino Estate fronting Waipohutukawa Bay.

Omarino Residents Assn (FS411.001; 002; 003; 004; 005; 006; 009), a gated large lot subdivision comprising 17 sites on the Omarino Peninsula west of Parekura Bay

Jepson (s494.001; 002; 003; 004; 005; 006; 007; 008; 011; 012; 013; 014) located on the western shore of Clendon Cove

Within ONL 43 Islands of the Bay of Islands

R Kloet (S495.002; 003; 004; 005; 006; 007; 008; 009; 101; 011; 012; 014; 015) Property adjacent to Cook's Cove, Moturohia Island.

C Heatley (FS410.001; 002; 004; 005; 006; 007; 008; 009; 010; 011; 012; 014; 015); Property adjacent to Hahangarua Bay, Moturua Island.

Within ONL45 Karakahuarua to Rawhiti Point

⁶ See Part 2 – District Wide Matters.

W Goodfellow(s493.001; 003; 005; 004; 006; 007; 008; 011; 012; 013; 014) landholding adjacent to Omakiwi Cove.

5.2 The submissions I have listed above are opposed to all or part of the subject properties as illustrated in the attachments being included within the ONLs as noted above. In addition the primary submitters listed above sought the amendment to rules imposed on development within the ONL, Coastal Environment Overlay and the Rural Production Zone.

5.3 My evidence will largely address the ONL overlay and the relevant assessment report that underpins the s42A assessment, however I will also discuss the rules relating to the ONL Coastal Environment Overlay and the Rural Production Zone and the amendments to these suggested in the S42A report.

6.0 SECTION 42A LANDSCAPE ASSESSMENT

6.1 The ONLs identified in the Proposed District Plan maps appear to replicate those in the operative Regional Policy Statement (*RPS*) and the maps produced for that document. The section 42A assessment prepared by Ms Absolum also appears to rely on the analysis undertaken to identify the mapped ONLs in the RPS.

6.2 The ONLs identified in the RPS map notations are the subject of “Assessment Worksheets” which contain a section entitled description and characteristics followed by an Evaluation Section and photographs of the “Unit”. The majority of these photos appear to have been taken from aircraft flying at some altitude such that a broad view of the land is possible only.

6.3 In this regard I note that the explanation to Policy 4.5.1 of the RPS acknowledges that a “broad pencil” approach has been used to identify ONLs and that *“the policy contemplates refinement of the maps in accordance with method 4.5.4, following further detailed assessment, provided the change is undertaken using the attributes and criteria listed in appendix 1.”*

6.4 Further Policy 4.5.2 clearly anticipates more detailed assessment. This is echoed by clause 4.5.4 (1) which states that:

within two years of this regional policy statement becoming operative the regional and district councils shall notify a plan change to their relevant regional and district plans to incorporate the regional policy statement maps subject to method 4.5.4(2)

- 6.5 As I understand Ms Absolum's assessment this was undertaken by examination of aerial photographs and Google Maps and drive by views from local roads where possible. As far as I can determine Ms Absolum did not undertake detailed site inspections of any of the properties that are the subject of the submissions I provide evidence in support of.
- 6.6 At page four of her report Ms Absolum concedes that the presence of less 'natural vegetation' such as gardens, forestry and orchards is unlikely to be appropriate within either a HNC or ONL overlay. Whilst I understand that Ms Absolum may have been operating within constraints of time and budget it seems to me that, given the expectation enunciated in the regional policy statement a more fine grained assessment was indicated as necessary to be undertaken, and it is a pity that her brief did not extend to a more detailed assessment including "ground truthing" the delineation of the footprint of the ONLs.

7.0 ONL ASSESSMENT

- 7.1 In the following evidence I will describe the location and attributes of the specific properties of the various submitters. I offer suggestions as to how the relevant ONL overlays may be modified from what appears to have begun life as a generalised landscape construct identified with a "broad pencil" and derived largely from examination of oblique aerial photographs, to tangible geographical entities that properly reflect the policy intent of the Proposed District Plan and the higher order instruments upon which it is founded. I consider that the modifications I suggest will allow for the reasonable and practical use of the properties in question without undermining the characteristics and integrity of the wider ONLs.
- 7.2 In doing so, as I have stated I do not purport to do so as a landscape architect, but in the apparent absence of detailed evaluation as directed by the RPS I offer my assessment based on my direct familiarity with the properties in question "on the ground" having prepared resource consents for land use activities and coastal permits associated with these and other properties in the Bay of Islands. Accordingly, my evidence will firstly describe the submitters' properties supplemented by photographic illustrations and subsequently suggest suitable adjustments to the ONL overlay on the planning maps. Finally, I will address the provisions referred to in submission as these appear in amended form in the s42A report.

- 7.3 The properties owned by the submitters are all located along the southern shores of the Bay of Islands coast south of the Rawhiti Inlet from Clendon Cove within Manawaora Bay to Omakiwi Cove in Parekura Bay. With the exception of the Goodfellow property all are extensive residential properties that enjoy riparian rights.

Bayley Submission

- 7.4 The Bayley property is located on the southern shores of the Orokawa peninsula as illustrated at Appendix 1. As the site photographs illustrate the property is one of several that extend over a distinct strip of level land along Orokawa Bay. The land contains several dwellings set within landscaped grounds. While there are bush clad hills occupying the rear of the sites there is a distinct hiatus, both in topography and vegetation at the riparian margin. I also note that there are other enclaves of residential development along the Orokawa Peninsula, all of which comprise residential development set in well-manicured grounds as distinct from the steep bush clad, and largely unmodified slopes of the peninsula.
- 7.5 To the extent that the riparian edges margins of these properties are essentially residential in character occupied as they are by houses surrounded by landscaped grounds with lawns and gardens I consider that there is merit in excising the area identified in the map from the ONL.

Wyborn Submission

- 7.6 The Wyborn property is located on the northern end of Dicks Bay within Manawaora Bay as illustrated in the Appended material. As the site photographs illustrate the property occupies a distinct domestic enclave within an area of surrounding bush. As for the Bayley property the site enjoys riparian rights and has a substantial jetty extending from the shore into Dick's Bay. The site is accessed by a sealed drive extending from Manawaora and contains two substantial dwelling set within landscaped grounds and several outbuildings.
- 7.7 While the landscaping of the site includes native species, these have been introduced such that this property, like that of the Bayley property has the distinctive characteristics of a substantial coastal holiday residence rather than a house inserted in a predominantly bush setting. Accordingly I consider that there is also merit in excising this site as identified in the appended map from the ONL.

Ironwood Trustees Submission

- 7.8 Ironwood Trustees own an extensive property at Jacks Bay within the General Residential Zone. The majority of the property is located on to the west of Kempthorne Road adjacent to the Jacks Bay foreshore and occupies a site of some 12.4 hectares that was formerly the Jack and Jill Camping Ground. A significant portion of the north eastern corner of this site is occupied by a stand of indigenous bush which has been enclosed by the submitters by predator free fencing.
- 7.9 Kingfisher Point marks the northern end of Jacks Bay and is largely bush clad on both the southern and northern slopes as illustrated on the appended site photographs. Several residential sites averaging 5 hectares in area are located at the northern slopes of Kingfisher Point and overlooking Dick's Bay to the north. These sites are identified as being within the ONL despite they being little different in terms of topography and vegetative cover from the balance of the land on the southern slopes of Kingfisher Point, which is outside of the ONL. Moreover, as far as I can determine these are the only sites zoned General Residential in the Bay of Islands coast that have an ONL overlay imposed on them I can only assume that this apparently arbitrary identification of the ONL is a result of the "broad pencil" approach which appears to have relied on a limited suite of oblique aerial photos.
- 7.10 While there are currently two dwellings located on the point as the photograph of the land shows, any further development of these residential sites will inevitably dilute the "naturalness of the landscape.
- 7.11 In any event I consider that the "avoidance" policy stance and the suite of rules that are contained in the Proposed District Plan create an unreasonably high regulatory hurdle to the development of these sites for residential activity. Accordingly, I consider that it is appropriate that the ONL be removed from these sites as illustrated in the appended version of the planning maps.

Thornton and Omarino Residents Association

- 7.12 The Thornton property is within the larger Omarino subdivision (*Omarino*). The land holding subject of the Omarino subdivision comprised 141 ha. and was previously part of a larger pastoral farming unit was granted consent in 2008. The subdivision comprises 17 residential allotments of varying sizes as illustrated in the attached appendix. The Thornton property is some 10.7 hectares in area on the

northern coast of the subdivision fronting Waipohutukawa Bay. it is typical of the majority of lots within the subdivision that are arranged so that they abutt the coast and enjoy riparian rights with generous areas in each site identified for residential development with houses and outbuildings.

7.13 The subdivision consent for the development specifically identified buildable areas and curtilages on each site and required a comprehensive revegetation programme over the balance of the land. This programme has been completed and the vegetation is now well established.

7.14 The consents were granted subject to the consent notice included within the appendix. This consent notice places a comprehensive suite of controls over the development of the sites including the following:

- Restrictions over building heights
- Limitations over buildings visible from the sea to ensure a planted the backdrop has reached sufficient height.
- Limitations on the number in type of buildings on each site.
- Ongoing maintenance of revegetated areas.
- Adherence to design guidelines including cladding and colours.
- Prohibition over the construction of buildings within 30 metres of MHWS on sites abutting the coast.

7.15 The Thornton property within Omarino is illustrated in the appended aerial photograph as is another property currently being developed for a substantial residence. These examples exemplify the nature of development that may occur within the subdivision in conformance with the consent notice requirements.

7.16 In my view this development in accordance with the consent notice requirements is entirely consistent with the rules that the proposed plan applies to the ONL such that the rules of the Plan relating to the ONL impose an unnecessary, and redundant, layer of compliance on the properties within the development. For this reason I consider that the council may confidently rely on the consent notices that apply to development within Omarino to achieve the outcomes sought by the ONL such that the ONL may be removed.

Jepson Submission

- 7.17 The Jepson property is located on the headland at the eastern end of Clendon Cove. While the outer end of the headland is topographically prominent and is clothed in native bush, as the appended illustrations show, the southern portion of the property is largely given over to pasture and a collection of buildings set within landscape grounds. A substantial jetty also extends into the Cove from this part of the property.
- 7.18 Given the very domesticated nature of this part of the property it appears to me that it contributes little or nothing to the overall attributes of the ONL. Accordingly I suggests that the ONL boundary be redrawn to exclude this part of the site as illustrated in the appended map.

R Kloet Submission

- 7.19 The Kloet property is located on Motuarohia Island within the southern part of the Bay of Islands. The property is one of several sites located on or near the shores of Cook's Cove, which has been the subject of European settlement since its purchase by one John Roberton in the early 1800s, with the house Roberton built still in existence at Cook's Cove. Today some 44 hectares of the island are privately owned with the balance of 19 hectares a DOC reserve.
- 7.20 The appended aerial photo illustrates the pattern of residential development around Cooks Cove including the Kloet property. This is characterised by substantial dwellings (including that build by John Roberton in the 1800s) overlooking the Bay within which is located a substantial jetty used by the adjacent property owners to achieve access to the island.
- 7.21 While the property owners are careful in their stewardship of the bush on the island, the land within the curtilage of the dwellings, including that of Mr Kloet, has been planted and maintained with extensive areas of lawn planted with domestic species of plants such that in my view the properties do not have the necessary natural elements that warrant inclusion in the ONL. Accordingly I consider that the ONL should be removed from these properties as illustrated in the appended excerpt from the planning maps.

Heatley Submission

- 7.22 The Heatley property is located on Moturua Island within the southern part of the Bay of Islands. As illustrated in the appended aerial photo the property comprises a site containing extensive landscaped grounds including two substantial dwellings and outbuildings set in an area of lawn, part of which is given over to a “pitch and putt” mini golf course. The property has riparian rights and abuts MHWS on the shores of Opunga Bay. A substantial jetty associated with the property also extends from the point at the northern end of the bay. As the photographs illustrate the property is clearly visible from a seaward perspective.
- 7.23 Given the extensive and visible presence of lawn, landscaped grounds, dwellings and other buildings on this property I consider that there is justification in removing the ONL overlay from the property as illustrated in the appended excerpt from the planning maps.

Goodfellow Submission

- 7.24 The Goodfellow property includes a large tract of land abutting Omakiwi Bay and extending over Okiua Point which forms the northern arm of the Bay which has been the subject of a subdivision consent granted by the Far North District Council in 2019.
- 7.25 Aside from a riparian strip to the west of Rawhiti Road the balance of the land has, until recently, been in pine forest which has recently been harvested.
- 7.26 Simon Cocker, who I understand was one of the authors of the ONL study undertaken for the NRC, carried out a landscape and visual effects assessment for the jetty proposal in Omakiwi Bay in 2003. In that assessment Mr. Cocker noted that the area of the site subject to pine plantation and harvesting had diminished biotic and experiential values as a result of these activities, such that it no longer meets the threshold for identification as outstanding and is of a scale which warrants its exclusion from the ONL.
- 7.27 Since Mr. Cocker’s assessment further modification to the riparian land abutting the Bay has occurred through the dumping of dredged material as a result of the current programme of Caulerpa removal being undertaken in the waters of the Bay. The effects of this activity are illustrated in the last photograph of the appended illustrations.

7.28 While Ms Absolum (see p11 of her report) opines that despite this activity, the “ONL worksheet accurately describes the existing situation on the property”. Her view is bolstered by the observation that planting of manuka over the harvested land will “enhance the landscape values identified in the worksheet over time.

7.29 With respect, Ms Absolum’s view appear to be overly optimistic, given the current state of the land, and is also one that seeks to look into a landscape “crystal ball” rather than assessing the situation as it exists today. In my view, based upon the opinion expressed by Mr Cocker and the activity currently taking place on the land the area I have delineated on the appended map no longer warrants inclusion in the ONL.

ONL Conclusion

7.30 It seems to me that those parts of the submitters’ land that I have identified may have escaped consideration as a consequence of “the broad pencil” assessments undertaken for the Northland Regional Council mapping exercise. As the illustrations appended to my evidence clearly show, these locations are generally characterised by dwellings set within extensive landscaped grounds together with other elements of domestic or rural infrastructure, such as outbuildings access roads and the like. Collectively they do not appear to exhibit the natural attributes that the courts have considered critical to the identification of ONL’s that are discussed above.

7.31 It also seems that, had a more fined grained assessment of the RPS ONLs been undertaken as directed by Policy 4.5, these locations, among others, may well have been excluded from the ONL overlay,

7.32 Further, the removal of these areas from the ONL will not only enable the use of the land for reasonable residential and/or farming use (subject to zone and other overall rules) but also ensure that the integrity of the ONL as is maintained as having the true characteristics of outstanding “naturalness” anticipated by the courts for such landscapes.

8.0 S42A PLAN PROVISIONS ASSESSMENT

8.1 In this section of my evidence I will focus on the s42A appendices containing the recommended amendments to the chapters on natural features and landscapes and the coastal environment. In doing so I recognise that much of the matters of concern to the submitters have been addressed in these recommended

amendments. Accordingly, I will confine my comments to those parts of the provisions that I consider would benefit from further refinement, firstly considering the recommended amendments to the Natural Features and Landscape chapter and secondly to the amendments to the Coastal Environment chapter.

Natural Features and Landscape Chapter

- 8.2 At the outset I reiterate my observation that there appears to be no generally accepted definition of an outstanding natural landscape that incorporates reference to characteristics, qualities and values contained in such a landscape as refined by the decisions of various courts.
- 8.3 This creates a difficulty of interpretation with respect to policies NFL- P2 and NFL- P3, which seeks that adverse effects on such qualities are avoided. Accordingly, I would suggest that the word “natural” be inserted in this policy before the word “characteristics” to make it clear that it is this attribute that is the subject of the policies.
- 8.4 As a corollary to the above I also suggest that criterion “o” in NFL-P8 be refined by the removal of the word “nearby” and the addition of the words “contained within an ONL or ONF “ at the end of the sentence.
- 8.5 The CON1 criterion for residential buildings seems to me to require amendment to make it clear that a building may occur within an approved building platform without assessment by a landscape architect. For this reason I suggest that it be amended to delete the word “and” so that it reads **or approved**.
- 8.6 Given the current inclusion of many man-made structures within ONLs in particular I suggest that the matter of control “a”. in NFL-R1 be amended to refer to effects on the **natural** characteristics, qualities and values. In a similar vein I suggest that the matter of discretion “a” be amended to refer to effects on the **natural** characteristics.
- 8.7 Given the extent of the ONL as notified over land that is occupied by existing residential development located within the Coastal Environment, I consider that it is unwarranted to create an additional level of restriction for development within this environment. Accordingly I suggest that the words “outside the coastal environment” be deleted from the criteria for restricted discretionary activities under the heading CON-1 and that consequently the non-complying category be deleted.

8.8 Given that the ONL overlay as notified includes locations where building platforms have been identified and approved by way of subdivision consents (e.g. within Omarino and at Omakiwi Bay) I suggest that earthworks rule PER-1 include a further category worded as follows:

13. *where it is undertaken within a consented building platform.*

8.9 In order to achieve greater precision in the language of the rule I suggest that the word “and “at the end of NFL -S1 1. be replaced with “or”.

8.10 To allow for development anticipated by the identification of a building platform through subdivision or another consenting process I suggest that rule NFL – S3 be amended as follows:

Clause 1: “Any earthworks **outside a consented building platform** must not exceed..

Clause 2: Any indigenous vegetation clearance **outside an approved building platform** must not exceed.

Coastal Environment Chapter

8.11 While the objectives and policies for the overall have been rationalised to a large extent there still seems to me to be unnecessary duplication of themes expressed in the Natural Features and Landscape chapter. Accordingly I suggest that policies CE- P10 d., e., f. and n. be deleted.

8.12 I consider that the setback rule at CE-S4 fails to acknowledge the proximity to residential development on sites which enjoy riparian rights around the shores of the Bay of Islands and which also access the CMA via jetties, boat ramps and the like.

8.13 I suggest that a general coastal protection yard of 20 metres be provided for as a permitted standard – as is the case in Auckland, which similarly enjoys significant coastline and associated controls.

8.14 I also suggest that a controlled activity be introduced which provides for buildings and structures to be within this yard that have a functional need to be adjacent to MHWS. such as boat sheds, the landward parts of jetties and boat ramps etc.

9.0 CONCLUSION

- 9.1 In my evidence I have attempted to demonstrate how the ONLs as they appear in the Plan may be refined through a more intensive ground truthing assessment. While my evidence of necessity focusses on the landholdings owned by the submitters, they demonstrate the need for such an assessment to ensure that land that does not have the necessary qualities identified by the courts are excluded.
- 9.2 I stress the point made at the outset that the submitters have no aversion to the notion of the introduction of an ONL with the caveat that such often profound and restrictive planning controls only be introduced in the circumstances where the two tests of 'natural' and 'outstanding' are demonstrably met in any given case.
- 9.3 The planning concept of the protection and enhancement of an ONL has, notwithstanding the statutory mandate for its consideration a notion of sanctity associated with it. Something of identified considerable intrinsic value sufficient to distinguish it from the generally prevailing landscape and environs is protected to ensure that sanctity endures and with the intention (to paraphrase the language of s.(6) of the Act) to protect outstanding natural landscapes from inappropriate subdivision, use, and development.
- 9.4 The protection albeit inadvertently, of lands that do not warrant an ONL classification that has been imposed perhaps by the oft referenced broad tipped pencil, will serve only to dilute the value of other land that truly merits protection as an ONL. Inevitably comparisons will be drawn being properties and used as an argument to debase an ONL.
- 9.5 It is behoved on the Council to get the application of such rules as accurate as possible at the front end of the process to avoid unnecessary cost and unfairness to those incorrectly burdened with an ONL. To that end the amendments sought to the submitters' properties is supported when regard is had to the tests based on the determination of the courts as discussed in my evidence is weighed.
- 9.6 I would be pleased to elaborate on any matter in my evidence to assist the commissioners.



Owen Burn MA DipTP MNZPI

List of Appendices

Appendix: ONL Bayley

Appendix: ONL Wyborn

Appendix: ONL Ironwood

Appendix: ONL Thornton and Omarino

Appendix: Consent Notice, Omarino

Appendix: ONL Jepson

Appendix ONL R Kloet

Appendix ONL Heatley

Appendix ONL Goodfellow

