

DECISION OF THE HEARING PANEL APPOINTED BY THE WAITAKERE CITY COUNCIL TO CONSIDER SUBMISSIONS ON THE HENDERSON VALLEY/OPANUKU LOCAL AREA PLAN, PURSUANT TO THE WAITAKERE RANGES HERITAGE AREA ACT 2008 AND LOCAL GOVERNMENT ACT 2001.

1. Introduction:

Following a number of resolutions by the Policy and Strategy Committee¹, a number of public meetings with the community, and innumerable stakeholder discussions and technical work², a draft Local Area Plan for Henderson Valley/Opanuku including background reports was opened for public submissions during July 2010, with 35 written submissions being received.

Following the receipt of those written submissions, a number of changes were made to the text of the Draft LAP (the Amended LAP). This document was then sent to all submitters, along with an invitation to speak to the Hearing Panel in relation to their submission, and any other matters which the Amended LAP may have raised.

17 submitters chose to take this opportunity, and a hearing was held into the Henderson Valley/Opanuku Local Area Plan, in the Waitemata Room, Waitakere Central, on the evening of 4 October, 2010.

This report summarises the written and verbal submissions made to the various iterations of the LAP, and further changes made to the Amended LAP as a result of those verbal and written submissions and the deliberations of the Hearing Panel on behalf of the Waitakere City Council.

This report also confirms the final form of the Henderson Valley/Opanuku Local Area Plan document as a Local Area Plan pursuant to the relevant provisions of the Waitakere Ranges Heritage Area Act 2008, and the Local Government Act 2001.

Official minutes of the proceedings of the Hearings are attached at Appendix 1.

¹ Refer also the Henderson Valley/Opanuku Local Area Plan Hearing Agenda Report (being the 4 October 2010 Agenda of the Policy and Strategy Committee) for more detail on the delegations and resolutions of the Committee.

² This consultation and LAP development process is also summarised but in much greater detail in the Background Reports to the HVO LAP, available at www.waitakere.govt.nz

2. Written Submissions to Draft LAP:

35 written submissions were received to the Draft LAP. Staff made a number of amendments to the Draft LAP as a result of the written submissions, (resulting in the Amended LAP) and these changes were endorsed by the Policy and Strategy Committee on 2 September 2010, for the purpose of further discussions with the community.

As a result of a number of written submissions seeking the opportunity to speak, the Committee also established a Hearing process and delegated a Hearing Panel to hear those verbal submissions of those who wished to speak (all those who made a written submission were invited to do so), and to make any subsequent amendments to the LAP and finalise it on behalf of the Waitakere City Council.

Copies of the Amended LAP were sent to all submitters, along with an invitation to attend and speak to the Hearing Panel in relation to any further changes required to the Amended LAP.

11 submitters chose to speak at the Hearing and a number of submitters and interested residents also attended the Hearing held on the evening of 4 October 2010.

This report summarises the Hearing Panels deliberations and decisions, and the resulting changes to the Local Area Plan for Henderson Valley/Opanuku.

3. Verbal Submissions to Amended LAP:

All submitters who had previously expressed an interest in speaking attended and spoke, with the order³ following the published schedule, reproduced below:

Commencement Time	Submitter #	Submitter	
17.00		Chair of the Hearing Panel	Opening Remarks
17.10		Waitakere City Council	Staff Report
17.20	1	Kathleen and Steve Vitasovich	Personal
17.35	14	Peter and Carolyn Millington	Personal
17.50	29	Paul Absolum	Personal
18.00	30	Barbara and John Cridge	Personal
18.10	36	Andrew Mc Phee for	Auckland Regional Council
18.25	24	Jean Berry for	Preserve the Swanson Foothills Society
18.40	BREAK		
18.55	15	Rex and Jill Price	Personal
19.10	33	Judy Lawley	Personal
19.20	4	George and Mara Vitasovich	Personal
19.35	22	Ron Watson for	Henderson Valley Residents Association
19.50	16	John Edgar (& Ors.) for	Waitakere Ranges Protection Society
20.05	MEETING CLOSES		

Refer official minutes of the proceedings available on the Waitakere City Council website, and also attached as Appendix 1 for more details. An audio recording was also made of the Hearing.

³ Timing was not exactly as per the schedule, with submitters being allowed some leeway with over time, and some submitters taking less time than they had requested.

3. DELEGATIONS:

Following the hearing of spoken submissions from members of the community, as well as consideration of written submissions, the background information and the requirements of the Waitakere Ranges Heritage Area Act 2008, the role of the hearing panel is to consider whether further changes are required to the Henderson Valley/Opanuku Local Area Plan as currently written and endorsed by the Policy and Strategy Committee (the Amended LAP) following written submissions, and then to finalise and adopt the LAP for Henderson Valley/Opanuku.

These powers are delegated by the following resolutions of the Policy and Strategy Committee:

3. **Agree** to the creation of a subcommittee (the Hearing Panel), consisting of the Chairman of the Policy and Strategy Committee, Councillor Paul Mitchell, and the Director: Strategic Planning to consider submissions received on the Henderson Valley Local Area Plan.
4. **Agree** that the amended Henderson Valley/Opanuku Local Area Plan as endorsed in Resolution No. 2 above, be the basis of further discussion with interested submitters at a Hearing to be held on 4 and 5 October 2010.
5. **Agree** to delegate to the Hearing Panel, as agreed to in Resolution No. 3 above, final approval of any further amendments to the amended Henderson Valley/Opanuku Local Area Plan as a result of discussions with submitters at the Hearing into the Henderson Valley Local Area Plan prior to the Henderson Valley/Opanuku Local Area Plan being finally adopted by the panel on behalf of the Council, in accordance with the Waitakere Ranges Heritage Area Act 2008 and Local Government Act 2002.

1271/2010

Further, the meeting of the Hearing Panel was undertaken under the following resolutions (as outlined within the Hearing Report):

1. **Receive** the Hearing on the Henderson Valley/Opanuku Local Area Plan Report.
2. **Agree** to amend the Henderson Valley/Opanuku Local Area Plan including Background Reports, with any appropriate further amendments, after consideration of written submissions received, and verbal submissions made at the Henderson Valley/Opanuku Local Area Plan Hearing.
3. **Approve** the Henderson Valley/Opanuku Local Area Plan, as amended in accordance with Resolution 2, on behalf of the Waitakere City Council, and in accordance with the Waitakere Ranges Heritage Area Act 2008 and Local Government Act 2002.

1509/2010

The official minutes are available on the Waitakere City Council website⁴.

The initial Hearing meeting was adjourned following the last verbal submissions, with resolutions 1 and 2 being confirmed.

Resolution 2 and 3 were further confirmed at a reconvened meeting held on the 21 October 2010 (*Resolution 1511/2010*).

⁴ <http://www.waitakere.govt.nz/AbtCnl/ct/policystrategy.asp> see also Appendix 1

At this reconvened meeting the Panel, with the assistance of key staff, discussed the major changes to be made to the LAP, including the text and maps, and delegated the final approval of the LAP following the making of these changes to the Director: Strategic Planning:

1. **Approve** the Henderson Valley/Opanuku Local Area Plan, as amended in accordance with Resolution 2, on behalf of the Waitakere City Council, and in accordance with the Waitakere Ranges Heritage Area Act 2008 and Local Government Act 2002.
2. **Agree** to delegate to the Director: Strategic Planning, authority to approve the final wording of the Henderson Valley/Opanuku Local Area Plan in line with the Policy and Strategy Committee discussions held on Thursday, 21 October 2010.

1511/2010

This document records the deliberations and decisions of the Hearing Panel and the final approved wording of the Henderson Valley/Opanuku Local Area Plan, as approved by the Director: Strategic Planning.

4. FURTHER CHANGES TO HV/O LAP RESULTING FROM SUBMISSIONS AND DELIBERATIONS:

Almost all submitters who spoke to their submissions, and almost all written submissions (and indeed almost all staff interactions with persons interested in the LAP) have been directly, or indirectly about the issue of subdivision in the area, either advocating for additional opportunities or seeking greater controls.

Many submitters also made comment that the LAP in general, other than the response to subdivision was pretty good, and that it had considered the range of diverse opinions about the future of the area within the community, and provides for a future that most accept as appropriate in the context of the WRHHA.

For this reason, and with the danger of appearing to focus on subdivision at the expense of all else kept in mind, this decision report has also focussed on the issue of how the LAP will direct future decision makers, applicants and the community with respect to the issue of subdivision. As it was generally accepted by submitters, and also in the opinion of staff and the Hearing Panel, that the majority of the LAP (i.e. the vast bulk of which does not relate to subdivision) does not require further significant amendment, these other important issues require little discussion in this decision report, as very few changes are required or necessary.

However a number of minor and consequential amendments and corrections have been made to a number of parts of the LAP relating to issues other than subdivision, and are highlighted in the track changes version of the Text attached and discussed in the 'Other Matters' section below.

4.1 SUBDIVISION:

Because the issue of the future subdivision regime to be applied to Henderson Valley/Opanuku has not been discussed across the wider community in a formal land use planning or Council initiated way before, the issue of subdivision, particularly the future strategic direction to apply to its management, has been a particularly 'hot' issue, as it is in most local planning discussions given the significant effect it can have on the future character of an area, and of course the potential future financial position of many landowners and households.

This has been compounded by the fact that the Henderson Valley/Opanuku Local Area is also located between the Oratia and Swanson Structure Plan Areas, and had previously been indicated as the location for the next Council initiated Structure Plan, (to follow Swanson) prior to the commencement of the Waitakere Ranges and Foothills Protection Project.

Many residents have been directly or indirectly involved in these neighbouring areas Structure Planning process' as concerned residents, members of an interest group, or as a relative or friend of someone who is, and as a result were concerned not only at the potential for physical, community and social change to the area possible under this process, but also the toll on the community in terms of energy and money required to fight (or support) the Structure Plan, and the potential for divisiveness within the community to occur as a result.

On the issue of subdivision it is obvious that there is a dichotomy of opinion in the community between two opposing positions on subdivision, namely:

- subdivision should not be allowed to occur in the area (beyond what is currently allowed); and
- further subdivision can or should occur.

This range of opinion is closely related to geography, with most of those residents who have advocated for additional subdivision opportunities generally being located adjacent to the urban area, who, rightly or wrongly, have anticipated urban development opportunities for their land, (or at least more intensive rural development opportunities) given the proximity of the urban area and the amenities it provides including shops, employment, transport infrastructure and reticulated services, and that there is little in the way of a rural or ranges character or any heritage features in these areas. Related to this sincerely held view is a sense of aggrievement or injustice in relation to the issues of zoning, the MUL and the more lately the WRHAA, and the Council's (including past Councils) actions (or lack thereof) in relation to the lack of provision of these 'stolen' development opportunities for their land.

There is also a widely held view on both sides of this issue, that the WRHAA's primary purpose is to preclude any further subdivision within the Heritage Area. While the WRHAA does not say this explicitly, it certainly 'raises the bar' in terms of the consideration of subdivision (and indeed any activity undertaken within the heritage area) and requires that any subdivision should '*not contribute to urban sprawl*' and should '*maintain a rural character*', and requiring decision makers '*to recognise, that in protecting the heritage features, the area has little capacity to absorb further subdivision*'.

Most 'pro-subdivision' advocates have therefore recognised (or at least accepted) that urban development is not appropriate in the Heritage Area, and that any development within the area should not impact on what is special about the wider area.

However, opinion within this group are varied on what does actually constitute 'urban development' and to what extent any subdivision and subsequent development on their land would impact, if at all, on the rest of the valley or the special features it may or may not contain. Their concerns with the proposed approach in the LAP, and in particular the RUAs is that they do not provide definitive/specific/easy to implement (or intensive enough) development in these areas.

Most 'no'- subdivision concerns raised in relation to the LAP related to how the proposed approach to subdivision would or could:

- undermine the otherwise good efforts made in developing the LAP (regarding keeping the area 'much the same')
- is contrary to the purpose (or at least the spirit or intention of) the WRHAA; or
- does not provide sufficient detail on what the future of the LPMAs, or REA areas in particular would be, leading to inappropriate ad-hoc applications or uncertainty on the part of applicants and the community.

However, there is almost universal agreement that the Structure Plan process (as it has been experienced in the Waitakere context) is not the way to resolve the issue because:

- it is expensive and time consuming (Swanson has been ongoing for over 10 years to date)
- it is divisive and contentious within the communities it applies to; and
- as a method, it ends up focussing on subdivision at the expense of all other considerations.

All of these reasons were behind the decision in 2002 to reallocate monies identified for Structure Planning in Henderson Valley (and elsewhere) into a review of Structure Planning and provide a strategic basis for the future of the Ranges and Foothills, eventually culminating in the promotion and passing into law of the WRHAA.

These reasons, in addition to technical work undertaken as part of the LAP indicating very limited potential for accommodation of additional development have also lead to the decision in this LAP, that a Catchment wide based Structure Plan is neither appropriate or necessary. In making this comment, it should be noted, that a catchment wide assessment (as required under the District Plan and ARPS

Structure Plan Methods) of a range of issues⁵ has been undertaken, resulting in the decisions outlined in this report and the LAP – essentially, a formal ‘structure plan’ process would have resulted in a very similar outcome to what has been proposed in this LAP.

Nevertheless, the principles of Structure Planning, (as set out in the Waitakere District Plan and the ARPS) should be applied to the LPMAs and the renamed Rural Edge Areas (albeit at a ‘sub-catchment’ scale) to provide the detailed guidance required in these areas to ensure the objectives for them and the wider LAP area and Heritage Area are achieved.

In relation to the Larger Properties, most submissions were supportive of the approach to better manage the opportunities these sites already have, with some comment around the detail of how that might be achieved.

The Hearing Panel’s main task in relation to the question of subdivision has therefore been to determine:

- Should the LAP contain the RUIIMAs (or something similar) or not, and
- If yes, should the guidance for these areas be based on
 - principles (and therefore relatively general and subject to future interpretation), or
 - specific (and therefore provide more certainty).

Given sufficient time and resources, it would be recommended that the RUIIMAs be further investigated (in relation to all those matters outlined in Policy 21 – see Appendix 2 & 3) and a definitive and specific outcome for each them be provided within the LAP.

However, with pending changes to Auckland’s local governance, including loss of key staff to redundancy or new roles, there is insufficient time to be specific (in relation to matters such as lot layout and location of building platforms) in this first LAP, even if this was considered to be appropriate. In addition, the key statutory role of a LAP is to provide guidance to decision makers, including whether or not further work is required to inform a future plan change to provide direction and more detail for the LPMA and REAs, or to amend a possible future LAP.

Principles are outlined in this LAP, its supporting Objectives, Policies and Actions that any development within the areas identified must be based on. It is also important to state that these reflect the current, and will be in addition to any Regional or District (or Unitary) Plan criteria that is relevant at the time that any such development is contemplated.

A schedule (outlining when any change should be investigated or contemplated) is also included in the Policies, recognising that the existing potential (on the Large Properties) can be realised at any time, and should be better managed as a matter of urgency (i.e. in the short term).

For the RUIIMAs (renamed to ‘Rural Edge Areas’ to better reflect their current and future rural nature, but also that they are juxtaposed with adjacent urban development), the relevant policies outline that these should be implemented in the ‘medium to long term’ – keeping in mind that ‘long term’ in the context of the LAP refers to generations (i.e. ~50 years).

The existing District Plan (Policy 0.11) and Regional Policy Statement (Plan Change 6) provisions also contain considerable constraints on the provision of additional *rural capacity* particularly in the Heritage Area. This is to both recognise the provisions of the WRHAA (i.e. the area has little capacity to absorb further subdivision) and recognition that at the regional level there exists considerable *rural capacity*,

⁵ Such as heritage, landscape, flooding, ecological etc – refer Background Reports for more information.

sufficient for 20 to 30+ years supply. This regional level capacity is also replicated in Henderson Valley/Opanuku with considerable existing vacant sites and subdivision opportunities (mainly on the LPMAs) to provide for at least 20 years supply given past population growth rates and projections based on current demographics. This is not to say that if more opportunities were provided that they wouldn't be taken up, or that there is no market demand for rural living, but that there is no pressing strategic need to provide for additional residential opportunities in the area.

This existing policy and statutory stance is supported by the Hearing Panel and in the LAP by not providing for any additional capacity in the LPMAs (no increase in numbers, rather providing more flexibility in terms of location/lot size), and indicating in the policy schedule that the REA's should be investigated in the medium to long term, when supply of rural capacity may be closer to constraint. It is also worth noting that initial investigations of a sustainable rural residential development in these areas using the catchment based analysis undertaken to date suggests that something in the order of approximately 5 to 10 additional dwellings⁶ could perhaps be accommodated (across the Opanuku and Lower Henderson Valley Rd areas combined⁷).

For this reason, the REA's are not considered to be in conflict either with the current ARPS (being scheduled for implementation at a future period under a future Regional Policy Statement or its equivalent), or with the spirit of the WRHAA in its restriction on urban sprawl and limited capacity for further subdivision. In addition, these identified areas contain few 'heritage features' and their rural character is considerably compromised by proximal urban development.

This is not to say that urban development is appropriate (it is not), but that there is potential for some carefully considered rural development to occur without impacting on the values of these areas or the deeper valley. The REA's are included in the LAP to manage, in the long term, the rural edge and to ensure that a hard contrast is maintained, and where possible rural character is enhanced, and for this reason, the Policy has been amended to refer to 'activities' (which includes subdivision) rather than just subdivision, also removing a potential that the Policy could be read as implying a presumption towards subdivision as a first option.

However, any development (including subdivision) that may occur within these areas must still meet a number of key tests, including maintenance of 'a rural character'. Exactly how this may be achieved (if at all) must be determined in an integrated way across the whole of the individual REA, prior to any additional development (if any) occurring.

The provision of Rural Edge Areas in the LAP are based on the view that a 'hard edge' is appropriate, necessary and sustainable, but that such an edge is only truly sustainable in the long term where it is appropriately and logically located and defensible – in the REA locations identified, the MUL (and to a lesser degree and by association the WRHA boundary⁸) is not in a location that is logical, or defensible – its arbitrary location serves to undermine its power and status as a planning tool including the majority of those locations where it is appropriately located.

⁶ Assuming a ~2Ha average and excluding existing development where this average is already met.

⁷ This figure does not include the Upper Paremuka area, which the submission provided proposes that an additional 32 dwelling sites could be accommodated in addition to the 18 in the area already, resulting in an average lot size of less than 1Ha.

⁸ The MUL is primarily a policy boundary used in the ARPS to delineate rural from urban, by controlling the location of 'urban activities' and in this particular location reflects more the extent of the 'inner drainage area', not landscape or physical delimitations (as the current Regional Policy Statement Policy for considering MUL location rightly requires). The WRHHA boundary closely follows the MUL for similar reasons, essentially drawing a line at the current MUL, but has less of a binary view of 'activities' – some parts of the Ranges Heritage Area are indeed urban (i.e. inside the MUL such as Titirangi/Laingholm) but is concerned the protection and enhancement of the heritage features, including protection and enhancement of rural character, but does not control subdivision per se.' Rural character' is not a constant or absolute, but varies with location across the Heritage Area, Foothills and the Valley.

Provision of additional opportunities (of around a 2Ha average site size based on work undertaken to date – refer *Stephen Brown Environments Ltd Henderson Valley/Opanuku Landscape Assessment, April 2010*) in the relatively small and discrete areas shown in the LAP (refer Figure 3) is an appropriate and sustainable approach to provide both a buffer and transition between the existing MUL/Ranges Area boundary, maintain a rural character, and establish a defensible and appropriate ‘landscape and cadastral pattern boundary’ in addition to the existing ‘policy’ boundaries that currently exist (i.e. the MUL and WRHHA).

Provision of such development opportunities will (if a ‘one time only’ regime is implemented as recommended) ensure that there is a permanent and long term contrast maintained, even in the event of the amendment or deletion of the existing ‘policy’ boundaries⁹.

Some misunderstandings in relation to the opportunities the REAs represent (as evident in the submissions) could be addressed by making the parameters clearer, but it is illustrative, that those landowners from within the RUAs suggested that a more intensive *rural* development could occur (i.e. rural sites of a smaller size than 2 Ha), while those submitters from without suggested the REAs represented potential for *urban* development – this variation in understanding reflects the level of one-on-one discussion and explanations that has occurred with the landowners in the REA areas, (which has occurred more sporadically with stakeholders outside of the areas) who as a result have a greater understanding of what has been proposed.

It is important to emphasise that these areas do not represent potential for urban development – they must remain rural, and based on work commissioned to date for the whole valley, rural in these locations means no less than 2Ha (or 1Ha at the *absolute minimum*, while maintaining a 2Ha average). More specific investigations should occur, applying to the areas identified as a whole, which should work from the basis of ‘where can additional development go’ to determine the actual allocation of opportunities to the underlying present cadastre. It must also be stated, that the 2Ha average sized rural sites that have been suggested, still represent a significant contrast to the 800-350m² urban sites directly abutting them.

Unfortunately, time has run out for this future detailed work to be included in the first LAP for Henderson Valley/Opanuku, but the LAP can signal the opportunity and the work to be done, as a signal to the Auckland Council. In addition, while a long term view is taken in this LAP, the WRHAA provides for not only the preparation, but also the amendment, revocation and replacement of a LAP (provided that the process of doing so encourages people to participate and follows the principles of consultation included in section 82 of the LGA 2002).

Therefore, the new Auckland Council could implement the subdivision policies of this LAP by

- undertaking a plan change (which is public process) after developing a ‘concept plan’ or similar for each of the areas;
- processing ad-hoc Non-Complying Activity Consents (which should be notified);
- undertaking to amend the LAP, once the work required to provide more certainty is completed, and then changing the District Plan and/or processing consents.

⁹ For example, the Ministry for the Environment “Building Competitive Cities – Reform of the urban and infrastructure planning system, A discussion Document” highlights the Governments view that the MUL as a policy tool (or more specifically its implementation) has impacted negatively on housing affordability and urban land supply, and the Minister for the Environment has on a number of occasions expressed his personal disapproval of the MUL as an urban planning tool. The discussion document is part of the consultation to inform changes to the Resource Management Act 1991. The Minister of Local Government has also expressed a wish to investigate the repeal a number of Local Bills, including the WRHAA. The MUL and Heritage Area are current policy tools that may not be permanent, however, it is the Hearing Panels’ view that the principles they represent are appropriate to apply in this area, in perpetuity.

4.1.1 Opanuku Rural Edge Area

This area, covering 5 properties, 351 to 359 Henderson Valley Road, has been identified as a REA for a number of reasons including

- The Stephen Brown Environments Landscape Assessment report identified the pastoral area abutting the MUL as an area of Low Landscape Sensitivity;
- Initial public consultation identified concerns with the recently commenced urban development in this area appearing to ‘spill over’ into the Valley
- Landowners in the area identified issues with access to and maintenance of the rear sections of their properties which is being exacerbated by recent Project Twin Streams work on the reserves (replanting and stock fencing) which they support;
- Access to the rear of these properties is also via a 3rd parties land (i.e. Council esplanade reserve) and sometimes a 4th parties land (neighbouring property) via informal arrangements which may cease at any time – essentially the rear of the properties are ‘landlocked’.

The REA is intended to address these issues by:

- Access to the rear of these properties could be resolved in the long term by requiring any new road access from a small road reserve onto the existing South Kensington Road crossing each of the properties in turn, removing the necessity for informal fording and stream crossings by stock, vehicles and persons, as well as solving the legal issue of passing through 3rd party property to achieve this;
- A small number (i.e. around ~6) of additional dwellings could potentially be accommodated in the area, (with access from South Kensington Road) such development being carefully located and in association with tree planting and etc to reduce the visual impact of the dense urban development adjacent (including on the wider rural viewing catchment), while still maintaining a rural character.
- Should this occur, covenants and other permanent legal mechanisms, as well as mitigation works such as planting and weed control will ensure the resulting cadastral pattern is permanent, and effects on rural character, the stream and the surrounding bush are avoided, and to meet the tests of the WRHAA, improved.

A number of issues will still require resolution before such an action can be undertaken including:

- The area will need to be treated as a single landholding (or sub-catchment) with future building platform locations allocated by landscape values, and working with geotechnical and flooding constraints, rather than based on existing cadastre;
- The number of building sites possible from this approach may be less than the number of existing titles in the area (n=5) perhaps leading to equity issues;
- The titles are long and narrow in a N-S orientation, but access to South Kensington Rd (being a pre-requisite) and the subsequent arrangement of buildings within the area will be on a E-W orientation – this requires a high level of cooperation – i.e. all the owners will all need to work together, or nothing can be achieved.

The Subdivision Policy Map has been amended to identify the REA as applying to the properties, with a No Development Area indicating the extent of the 1:100 year floodplain and existing streamside reserves, and noted in the supporting Policy. This notation is intended to apply to the consideration of increased *density* (as defined in the District Plan) and not the evolution of the existing dwellings (though they are within the floodplain, and removal of the existing right to erect a minor household unit on the ‘front’ of the section may need to be foregone if additional development opportunities are provided at the rear).

The Low Landscape Sensitivity area is also shown providing a starting point for the consideration of where additional development (i.e. building platforms) opportunities (if any) should be accommodated. Any area of the REA which is outside of this Low Sensitivity area will be part of the curtilage or land area of any resulting new title, and would retained as pasture or revegetated as found appropriate.

4.1.2 Lower Henderson Valley Road Rural Edge Area

This area encompasses the properties fronting Henderson Valley Road, from 270 Henderson Valley Road to 83 and 107 Forest Hill Road.

This area has been identified as a REA because:

- The Stephen Brown Environments Landscape Assessment report identified the lower pastoral area abutting the MUL, behind the existing row of urban zoned dwellings on Henderson Valley Road as an area of Low Landscape Sensitivity;
- A number of landowners in the area identified a desire to increase the development potential of their land;
- There are few heritage features in the area, it is proximal to a number of urban facilities, but plays a key visual role in signalling the urban/rural edge particularly when travelling down Henderson Valley Road towards the Valley.
- The key 'gateway' feature of the vineyard terracing at the frontage of 266 Henderson Valley Rd (Juanita Gardens) will require careful management in partnership with the present owners.

The REA is intended to address these issues by:

- Facilitating a comprehensive assessment of the potential of the area to accommodate limited additional rural development in the medium to long term, while maintaining the visually rural backdrop to the urban area;
- Facilitate through negotiation and permanent protection the retention and management of the vineyard terracing at the frontage of 266 HV Rd in the short term;
- Identifying areas of No Development (being the 1:100 year floodplain and the vineyards and terracing), and areas of Low Landscape Sensitivity to guide the future assessment of activities in the area.

Based on the existing landscape work, only some of the properties within the area will have potential for further development, as they are either at a land area of 2Ha, or are developed to an existing density of 2Ha, resulting (assuming a 2Ha average site size) in the potential for ~7 additional dwellings beyond what currently exists.

The Hearing Panel also spent considerable time discussing the options for the long term protection and continued use of the vineyard terracing at 266 Henderson Valley Road, which is considered to be a key gateway and heritage feature of the area, including rates remission, some funding to pay the owner to continue to maintain and use the area, enabling a site specific subdivision with a covenant regime, as well as a range of other options. A number of general changes to the LAP have been made as a result which apply to the whole of the REA and the LAP area, but no specific policy response for this particular site has been included in the LAP, and the mechanism to ensure the retention of this iconic feature will need to be determined in detailed discussions between the owner and the new Auckland Council

Essentially, the Hearing Panels opinion is that inclusion of the terraced area as a 'No Development Area' (in addition to the 1:100 year floodplain which makes up the remainder) should be balanced or offset by some form of consideration towards the owners to assist them to continue to maintain it for the benefit of not only themselves, but the wider community.

These options are recommended to be investigated in the short term by the Auckland Council, with the general provisions applying to the rest of the area, including the question of additional subdivision to be investigated in the medium to long term.

4.1.3 Upper Paremuka Catchment/Upper Paremuka Structure Plan Appeal Area:

This area, bounded by Sturges, Candia, and Tasman Roads, and the MUL, is subject to an existing District Plan appeal (RMA734/98 and RMA729/98) related to the Babich Urban Concept Plan Area (now within the MUL and subject to an urban zoning) which it abuts to the north.

This area is also within the Upper Paremuka Catchment (the rest of the HV/O LAP area is within the Upper Opanuku) and is the last portion of this catchment that is not urbanised.

This appeal, originally related to a wish to have the land urbanised, but as the appellants did not have an appeal seeking the MUL also be moved, the scope of the appeal has been narrowed to seek more intensive rural development than the 4Ha rules currently applying (which do not provide for any more development in the area).

A draft Structure Plan has been developed by consultants acting for the appellants (refer submission # 32, Paremuka Landowners Group) which outlines their wishes for the area. This draft Structure Plan has not been comprehensively assessed for the purposes of consideration or notification under the Resource Management Act 1991, (that will occur through the Resource Management Act 1991 appeal resolution process) but only as a part of a submission to this LAP.

As the appeal predates the passing of the WRHAA, s32 of the Act provides that the settlement of the appeals must proceed as if the WRHAA had not been passed.

As a consequence of this submission, and a number of others from landowners in the area also seeking more intensive development, and as the LAP would not apply to the future of the area, the area was removed from the LAP area.

As a result of this removal, representatives of the appellants or the Paremuka Landowners Group did not make further verbal submissions to the Hearing Panel, being generally satisfied with this decision¹⁰.

Verbal submissions made by submitters who attend have however resulted in a revision of this position, particularly the argument put forward by Mr D Allen for the WRPS, that the LAP should outline the Council's view on the future of the area as a part of the Heritage Area, and should not await a possible future and as yet unknown decision of a court.

While the Court is not able to consider the WRHAA or the LAP in reaching its decision on the existing appeal, it is hoped that the LAP will provide some assistance as to the issues and opportunities facing the area, and the Councils policy regarding the future of the area.

A cursory discussion of the Structure Plan Concept Map with technical advisors during the development of the LAP suggests that while the location of some of the indicated building platforms may be of concern and the density proposed may be too intensive to maintain 'a rural character', the general principles outlined in the draft Structure Plan are appropriate and supported being the extensive revegetation of a degraded ecosystem, considerable public areas and walkways, hydrological neutrality and all new access from the urban roading system, and covenants to preserve the resulting settlement pattern in perpetuity.

The approach taken to the development of the draft structure plan, as evident in the submissions, including a comprehensive assessment of a range of issues resulting in a well considered and

¹⁰ Pers Comm, to Kyle Balderston.

integrated plan for the area, also provides a model for the work required to be applied to the REA's prior to the implementation or consideration of changes to the density rules applying to these areas. This has been undertaken in general accordance with the ARPS and District Plan Structure Planning Methods.

The "Upper Paremuka Structure Plan Appeal Area" has been identified in the LAP Subdivision Policy Map, but not as a 'Rural Edge Area', and is also mentioned in the supporting Policies and Actions, but also highlighting that it is identified as such only because of the pre-existing appeal.

The general principles of the LAP are otherwise applicable to the area, in terms of having a rural future, and 'a' rural character, albeit that that rural character may be a different kind of rural to other parts of the Valley and other parts of the foothills, and in settling the appeal, the Council should seek to ensure the values identified in the LAP for the wider area, are reflected in any decision of the Court.

4.2 Other Matters

A number of other matters have been raised in written and verbal submissions that require some comment and discussion.

4.3.1 Foothills Walkway

Several submissions raised a variety of concerns relating to the Foothills Walkway concept. These concerns included:

- priority should be on providing for locals not visitors
- priority should be on fixing/maintaining existing footpaths before spending on new ones
- privacy and security concerns
- increases in visitors and flow on effects from this (traffic, reduction in quietness, new facilities etc)

In addition, strong feedback in the initial public meets was a desire to be able to get around the valley safely and easily, including by foot, bike and/or horseback, without using a vehicle. Considerable concerns have also been raised in relation to increasing traffic speeds and volumes, particularly on Candia and lower Henderson Valley Roads.

The Foothills Walkway concept is intended to provide an overarching programme to address all these issues in an integrated way, including by ensuring local community connections are prioritised and maintained. In addition, the Foothills Walkway Concept recognises and identifies the limited opportunity to create new connections between communities through subdivision, should not be lost though a lack of forethought.

Where the limited remaining subdivision opportunities occur, and where this subdivision provides the opportunity for a linkage, this should be negotiated as part of the suite of mitigatory measures required to offset the impacts of increased development. In addition, making a full connection between existing roads or public lands is also likely to require negotiation and agreement, and possibly purchase of easements or similar over land which will never be subdivided.

It should also be remembered, that it may be many years (if ever) before a full cross-foothills walkway is established, and in the mean time, small improvements to walking connectivity between and within communities will also be occurring, as an off-road trail must connect to existing footpaths and roadsides to be useable and accessible.

Provision for visitors is a part of the overall vision for the walkway, including the potential for improving access for rural visitor activities (such as B&Bs, vineyards etc), and provision of an alternative, more rural/pastoral experience to the bush tracks of the nearby Regional Parkland.

The popularity of the Project Twin Streams Opanuku Walk and Cycleway (which has a section adjacent to lower Henderson Valley Road) has resulted in some parking issues in the proximity of this section, as some users, somewhat perversely, drive to and then walk or cycle the path. Provision of a 'carpark' will only encourage this behaviour, (and reduce green open space) but the roadside berms adjacent could be easily improved and maintained to provide for safer and less disruptive roadside parallel parking.

This does highlight that the provision of walking opportunities can generate visitor issues, but the type and nature of the rural trail or track surface will not be anything like the wide and level, and very urban style facility that has been established, which will limit the popularity of the trails and footpaths. A number of bush trails start and finish in the Valley, including those providing access to Fairy Falls, and

have existed for many years – usage of the Foothills Walkway (once established) is anticipated to be of a similar scale and nature to the usage these existing tracks which do not appear to have caused any discernable issues at all.

The Foothills Walkway concept identifies an opportunity for connections to be progressively established over the long term, with a priority on local connections and existing paths, perhaps eventually coalescing into a cross foothills network, of rural trails, footpaths and bush tracks, from Swanson to Titirangi.

However, the opportunity to establish further connections, particularly when subdivision occurs, should not be lost or foreclosed.

4.3.2 Site or Activity Specific Policies

A number of written submissions sought the inclusion in the LAP of site or activity specific policies or actions to better provide for or recognise the particular issues or special nature of the activities currently occurring, or to better provide for a future activity or expansion of the existing activity.

These sites/activities where site or activity specific policies have been suggested or considered during the course of the LAPs development include (in no particular order):

- Carey Park
- Adidam Centre
- Baha'i National Centre
- Superb Herb
- Kiwi Valley
- Corazon Wines
- Henderson Valley School and Hall
- And others

The LAP does identify specific activities and sites in the Background Reports as part of the description of the current state, and recognises and outlines the contribution these activities play in terms of current and future character and amenity of the area, including rural character, rural production, visitor activities and spiritual and educational needs of the wider community and locals, in the Current Character and Amenity Statement.

Policies, Objectives and Actions (which will apply to new or expanded activities) have been written to be relatively generic and principled, (rather than specific to particular sites or activities¹¹) and to apply to all activities (residential and non-residential, existing and future) and their evolution over time (given the long term nature of the LAP), rather than to write specific policies which may not remain relevant or suitable as activities change and evolve to accommodate changing conditions.

Translation of the LAP into the District Plan, or interpretation of applications under the District Plan with the assistance of the LAP (and Background Reports) if and when consents are required is considered to be a more appropriate process for dealing with the issues at the time that they arise.

Some amendment to aspects of the LAP to better recognise these activities and enable (or at least not preclude) their future evolution have been made.

¹¹ With the obvious exception of the Large Property Management Areas and Rural Edge Areas and the activity of subdivision

In some instances these activities and sites are currently undertaking work to plan the future direction of their sites, or have not commenced or completed any future master plan or similar, and so this has not been able to be considered for inclusion in this LAP development process.

It is intended that the principled approach in the LAP will assist this more detailed work to identify the opportunities and issues arising from these very diverse existing and potential future activities for both the owners and their neighbours, while also assisting in the achievement of the Character and Amenity Statements and objectives of the WRHAA.

4.3.3 Future Rural Activities

A number of submissions raised issues with the provision in the LAP for 'future rural activities', and concerns that such provision may lead to an increase in visitor type activities, with associated traffic, noise and other impacts on the character of the Valley. Many submissions also felt that a focus should be on enabling 'truly rural' activities and/or that 'lifestyle' use was also a valid and valued aspect of the current and future character of the area and should be recognised.

These concerns, particularly in relation to visitor activities, are also repeated or reflected in a number of submissions to Plan Change 36 "Rural Activities and Social, Cultural and Economic Wellbeing of the People and Communities of the Waitakere Ranges", decisions on which have now been released¹². This plan change is intended to address the current situation, where any *non-residential activity* other than a *rural activity* was essentially a non-complying activity, generally requiring notification and assessment against the high level policies and objectives of the District Plan. The plan change introduces a graduated scale of consent categories with small scale and benign activities such as B&Bs or gate sales being permitted, and larger scale retail and rural production being subject to assessment criteria and performance standards, and activities outside of these parameters (such as abattoirs and intensive livestock raising) still being subject to the high level and more stringent non-complying consent process.

Given the recent changes to the District Plan, a process which has been undertaken in parallel with the LAP, the LAP has concentrated to providing more localised guidance on the 'appropriate scale and nature' and features and qualities of various areas of the Valley, (for example the key aspects of quiet and low traffic volumes which predominate away from Candia and lower Henderson Valley Road) and which are highlighted relation to the 3 broad Character Areas identified in Figure 2 and noted in various in Policies and Objectives.

This broad delineation will be of use to applicants, consent assessment and residents under a resource consent process, but has been illustrated in Figure 2 a intentionally 'fuzzy' way as these boundaries are not fixed in time or space¹³ and are difficult to determine exactly 'on the ground' – for this reason the transition point between upper and lower valley has been located on Figure 2 more or less at the present 'bush line' (serving as a physical marker) rather than an elevation/contour or future character boundary, or boundary between areas of relative quietness¹⁴. In contrast, the Residential Enclave is fixed and immovable and easy to determine by way of cadastral pattern on a map, and on the ground by the abrupt change in character.

¹² <http://www.waitakere.govt.nz/AbtCnl/pp/districtplan/districtplanchanges.asp#planchange36>

¹³ For example the bush line may move further 'down' the valley, or the point of transition may become clearer if new or intensified productive activities create a more obvious contrast.

¹⁴ The Objectives and Policies that relate to these various areas relate not just to a single physical characteristic of the 'place' (such as elevation or bush coverage), but more to the way that it functions and the values it exhibits and contains, both now and in the future.

Visitor Activities:

A number of changes have been made to the LAP to assist to address concerns around the effects of such activities (regarding visitor traffic, noise and light spill), particularly in the upper valley and residential enclaves, but non-residential and productive rural activities are a long existing feature of the area, and are responsible for much of its existing landscape and rural character.

Despite the Valley being a relative cul-de-sac, with poor access into the deeper Ranges, it has a concentration of some of the busiest and largest visitor activities of any area in the Foothills – that most residents¹⁵, despite the presence of such activities feel the area is peaceful and quiet, suggests they can, and indeed do contribute to the character of the area. Many of the visitor focussed activities also rely on (effectively sell) these rural qualities to their customers, and it is in their interest to maintain and enhance them, benefiting locals and visitors alike.

Rural production (of food and beverages, arts and crafts, experiences and accommodation) also assists those landowners who chose to undertake those activities, to derive some income from their land, which will provide greater long term certainty of the maintenance of rural character and landscapes if they are not only valued intrinsically but also economically.

Lifestyle Blocks and Hobby Farming:

Associated with the concerns relating to a focus on productive rural activities, particularly visitor focussed ones, was a lack of attention paid to the present predominant use of many semi-pastoral properties in the valley – as lifestyle blocks or hobby farms.

Many residents derive great pleasure from their small holdings, raising livestock or horses, restoring bush and streams, as well as maintaining a household and working for most of the week elsewhere. The ability to have a small rural holding in close proximity to the amenities of Auckland is a key value of residents – it is also the reason for the considerable pressure on this area and many other peri-urban areas to provide for more opportunities for people to enjoy this lifestyle choice.

In addition it has been felt that given the decline in productive rural activities in the valley to a few remaining larger operations, the fragmentation of much of the land into small holdings and the predominance of lifestyle use, that an assumption that increasing productive rural use is unrealistic and does not reflect most landowners future plans.

As a result of these submissions a number of changes have been made to the LAP to recognise the present and future lifestyle use of much of the properties, that this opportunity is a key valued feature of the area, that they are productive in their own way and that they contribute positively to rural character and landscapes and social and community wellbeing.

Policies in relation to enabling productive rural use are also retained, as while the land may now be in fragmented ownership (which is unlikely to be reversed), it has not gone anywhere, and its productive potential has not reduced significantly – future opportunities for *economically* productive use such as pastoral or horticultural leasing or small cooperatives should not be foreclosed, and a number of rural production activities still operate successfully in the area.

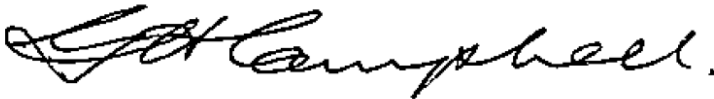
¹⁵ A number of immediate neighbours to some of the activities have raised concerns with the operation of some of the visitor activities in the valley on their sense of quietness in particular, but also vehicle movements and effects on the environment from waste water and the actions of visitors themselves.

5. DECISION:

After examining the Background Reports, the various draft versions of the Local Area Plan for Henderson Valley/Opanuku as it has been amended through the process, and considering the written and verbal submissions made on the Local Area Plan, the Hearing Panel, under duly delegated authority from the Waitakere City Council, the Policy and Strategy Committee pursuant to sections 25 and 26 of the Waitakere Ranges Heritage Area, hereby

ADOPTS the Local Area Plan for Henderson Valley/Opanuku as amended by this decision and attached hereto.

Dated this 31st Day of October 2010



Dr Graeme Campbell,
Director: Strategic Planning, Hearing Panel Member

NOTE: The Decision Version of the Text and Maps as attached to this decision will be shortly incorporated into the pictorial format of the Draft LAP for wider public dissemination and use.

Consequential amendments as made to the Background Reports as a result of this decision and Hearing, including the Consultation Report will also be made available at this time.

Appendices

1. Official Minutes of the Henderson Valley/Opanuku Local Area Plan Hearing Panel (Policy and Strategy Committee)
2. Adopted Local Area Plan for Henderson Valley/Opanuku (Decision Version (Track Changes) - October 2010)
3. Adopted Local Area Plan for Henderson Valley/Opanuku (Decision Version ('Clean') – October 2010)