

SECTION BY SECTION ANALYSIS OF THE WAITAKERE RANGES HERITAGE AREA ACT (WRHAAA)

***Based on clause by clause analysis in The Waitakere Ranges Heritage Area Bill as introduced into Parliament**

The Preamble describes the background to the WRHAA.

Section 1 relates to the Title of the WRHAA. The Act is the Waitakere Ranges Heritage Area Act 2008 (**WRHAA**).

Section 2 relates to commencement. The WRHAA will come into force on the day after it receives the Royal assent – being 9 April 2008.

Section 3 sets out the purpose of the WRHAA. The purpose is to recognise the national, regional and local importance of the Waitakere Ranges Heritage Area and to promote the protection and enhancement of its heritage features for present and future generations.

To assist in meeting this purpose, the WRHAA:

- establishes the Waitakere Ranges heritage area (the heritage area);
- states the national significance of the heritage area and defines its heritage features;
- specifies the objectives of establishing and maintaining the heritage area; and
- provides additional matters for the Councils and certain other persons to consider when making a decision, exercising a power or carrying out a duty that relates to the heritage area.

Section 4 relates to interpretation. Unless the context otherwise requires, terms and expressions used and not defined in the WRHAA, but defined in the Resource Management Act 1991 (**RMA**), have the same meaning as in the RMA.

Section 5 establishes the Waitakere Ranges heritage area. The location and boundaries of the heritage area are shown on the indicative map in Schedule 1. The Waitakere Ranges heritage area is described in Schedule 2. If there is an inconsistency between the map in Schedule 1 and the legal description in Schedule 2, Schedule 2 prevails.

Section 6 provides that extensions to the boundary by Order in Council can only be made on the written request of the landowner to include their land in the heritage area, and if the land is located in the district of a territorial authority, has a contiguous boundary with the heritage area and has features that are consistent with one or more of the heritage features. Any other changes to the boundary must be made via an amendment to the WRHAA.

Section 7 states that the heritage area is of national significance and sets out its heritage features. The heritage features individually or collectively contribute to the significance of the heritage area. These features include:

- the terrestrial and aquatic ecosystems of prominent indigenous character;
- the different classes of natural landforms and landscapes;
- the coastal areas;
- the natural functioning streams;
- the quietness and darkness of the Waitakere Ranges and coastal parts of the area;
- the dramatic landform of the Ranges and foothills

- the opportunities that the area provides for wilderness experiences, recreation, and relaxation in close proximity to metropolitan Auckland;
- the eastern foothills which act as a buffer and provide a transition from metropolitan Auckland to the forested ranges and coast;
- the subservience of the built environment to the area's natural and rural landscape;
- the historical, traditional and cultural relationships of people, communities and Tangata Whenua with the area;
- its distinctive local communities;
- the Waitakere Ranges Regional Park and its importance as an accessible public place with significant natural, historical, cultural and recreational resources; and
- the public water catchment and supply system.

Section 8 sets out the objectives of establishing and maintaining the heritage area. The objectives include:

- protecting, restoring and enhancing the heritage features and the heritage area;
- ensuring the impacts on the area as a whole are considered when decisions are made affecting any part of it;
- carefully considering risks and uncertainties, using the best information available and endeavouring to protect heritage features when considering decisions that may result in significant adverse effects on the heritage features, including those effects that threaten serious or irreversible damage to the heritage features;
- recognising and avoiding adverse potential or adverse cumulative effects of activities on the environment (which includes the amenity of the heritage area) or its heritage features;
- recognising that, in protecting the heritage features, the heritage area has little capacity to absorb further subdivision;
- ensuring that any subdivision or development of itself or in respect of its cumulative effect, is of an appropriate character, scale and intensity, does not adversely affect the heritage features and does not contribute to urban sprawl;
- maintaining the quality and diversity of landscapes in the heritage area by protecting landscapes of local, regional or national significance, restoring and enhancing degraded landscapes, and managing change within the landscape in an integrated way;
- managing aquatic and terrestrial systems in the area to protect and enhance indigenous habitat values, landscape values and amenity values;
- recognising that people live and work in the heritage area in distinctive communities and enabling them to provide for their social, economic, environmental, and cultural wellbeing;
- providing for future uses of rural land in order to retain a rural character in the area;
- protecting those features of the area that relate to its water catchment and supply functions; and
- protecting in perpetuity, the natural and historic resources of the Waitakere Ranges Regional Park.

Section 9 requires that the RMA must prevail over the provisions of the WRHAA in the event of a conflict. However, this does not apply to sections 13(1)(a)(ii) or 15(2)(b) of the WRHAA.

Section 10 requires that, when preparing a regional policy statement or regional plan that affects the heritage area, the Auckland Regional Council must have particular regard to the purpose of the WRHAA and give effect to the objectives. This requirement is in addition to the matters to be had regard to under the RMA.

When evaluating a proposed policy statement, proposed plan, plan change or variation that affects the Waitakere Ranges Heritage Area, the Auckland Regional Council must similarly examine whether the proposed policy statement, proposed plan, plan change or variation is the most appropriate way to achieve the purpose of the WRHAA and whether it gives effect to the objectives.

When reviewing a regional policy statement or regional plan under section 79 of the RMA, the Auckland Regional Council must have particular regard to the purpose of the WRHAA and the heritage features and decide whether the regional policy statement or regional plan adequately achieves the purpose and gives effect to the objectives in the WRHAA.

Section 11 requires that Councils, when preparing a district plan that affects the heritage area, in addition to the matters in sections 74, 75 and 79 of the RMA, have particular regard to the purpose of the WRHAA and give effect to its objectives.

Councils, when evaluating a proposed district plan, plan change or variation that affects the heritage area must, in addition to the requirements under section 32(3) of the RMA, also examine whether the provisions are the most appropriate way to achieve the objectives of the WRHAA (having regard to the purpose of the WRHAA).

Section 12 provides that a request made under section 65(4) or section 73(2) of the RMA to change a regional or district plan that affects the heritage area may be rejected, in whole or in part, by a local authority if the request is inconsistent with the purpose or objectives of the WRHAA. To assist Councils in deciding whether to act under this section, the person making the request must explain how it is consistent with the purpose and objectives of the WRHAA. The person making a request must explain how it is consistent with the purpose of the WRHAA and the objectives.

Section 13 requires that Councils considering an application for resource consent for a discretionary or non-complying activity must, in addition to the requirements in the RMA, have particular regard to the relevant provisions of any national policy statement or New Zealand coastal policy statement and to the purpose and relevant objectives of the WRHAA. When considering the objectives of the WRHAA, Councils must have regard to any relevant policies in the regional and district plans.

When considering an application for resource consent for a controlled or restricted discretionary activity in the heritage area, the consent authority must consider the purpose and relevant objectives of the WRHAA as if they were matters specified in the plan or proposed plan over which the local authority has reserved its control or has restricted the exercise of its discretion.

Section 14 provides that if a consent authority grants a resource consent for an activity in the heritage area, the consent authority may impose conditions relating to one or more of the heritage features or the objectives, under section 108 of the RMA.

Section 15 requires that a person making a decision or recommendation relating to the heritage area for a designation or heritage order under the RMA must have particular regard to the purpose and objectives of the WRHAA and the relevant provisions of any national policy statement or New Zealand coastal policy statement.

Section 16 states that sections 309 to 313 of the RMA apply as if the following matters were stated in section 310 of the RMA as matters that a declaration may address including:

- the application of section 9 of the WRHAA;
- in relation to any of sections 10 to 15 of the WRHAA: the existence or extent of any function, power, right, or duty; whether an act or omission, or a proposed act or omission, contravenes or is likely to contravene any of these sections; and any other issue or matter relating to the interpretation, administration, or enforcement of any of these sections; or
- the matters provided for in section 36 of the WRHAA.

Section 17 sets out what Council must do when, in complying with section 76 of the Local Government Act 2002 (**LGA02**), it identifies an option under section 77 of the LGA02 that involves a decision relating to the heritage area.

Section 18 requires that the Auckland Regional Council must, when amending the Auckland Regional Growth Strategy, ensure that provisions are not inconsistent with the WRHAA's purpose or objectives. To the extent of any inconsistency, the WRHAA will prevail over the Auckland Regional Growth Strategy prepared under section 37SE of the Local Government Act 1974.

Section 19 requires that the Auckland Regional Council must prepare, adopt and maintain a management plan for the integrated management of the Waitakere Ranges Regional Park using the special consultative procedure set out in section 83 of the LGA02. In preparing, adopting and maintaining a management plan, the ARC must give effect to the WRHAA's purpose and objectives. A management plan can form part of a comprehensive management plan for all regional park land managed by the Auckland Regional Council.

The Regional Parks Management Plan 2003 must be treated as if it were the management plan prepared and adopted for the purposes of this section. For the avoidance of doubt, any part of the management plan relating to a reserve as defined in the Reserves Act 1977, must satisfy the management plan requirements of section 41 of the Reserves Act 1977.

Section 20 requires the Auckland Regional Council to review the management plan prepared and adopted under section 19(1) every 10 years.

Section 21 clarifies that the WRHAA does not limit or affect the responsibilities or powers of Watercare Services Limited in relation to the heritage area under the Auckland Metropolitan Drainage Act 1960 or section 707ZZZZS of the Local Government Act 1974.

Section 22 requires that any Council exercising a power or carrying out a function in relation to the heritage area under an enactment specified in Schedule 3, must exercise the power or carry out the function having particular regard to the purpose and objectives of the WRHAA.

Section 23 provides for Waitakere Ranges Heritage Area covenants to be entered into with the agreement of land owners and Councils to provide for the management and protection of the land.

Section 24 clarifies that the WRHAA does not limit or affect the Foreshore and Seabed Act 2004.

Section 25 provides that a Council may prepare and adopt a local area plan (**LAP**) regarding a heritage area in its district in order to promote the purpose and objectives of the WRHAA and to provide objectives in relation to the future amenity, character and environment of the local area, the well-being of local communities and to inform the decision-making processes that relate to the heritage area. The section sets out the

matters that a local area plan must address and allows Council to amend, revoke or replace such a plan.

Section 26 states that Councils may decide their own processes when preparing, amending, revoking or replacing a LAP, but in doing so they must at least ensure that the process:

- encourages interested or affected persons to participate and contribute;
- complies with the consultation principles contained in section 82 of the LGA02;
- has regard to the current Waitakere Ranges Regional Park management plan prepared under section 19 of the WRHAA if the plan is for a local area that is adjacent to or includes part of the Park; and
- includes consultation with Tangata Whenua, namely Ngati Whatua and Te Kawerau A Maki.

Section 27 clarifies that by adopting a LAP a Council is not making a decision to act on any specific matter included in that LAP. However, any Council decision that is, or may have consequences that would be, significantly inconsistent with its LAP must clearly identify the inconsistency, the reasons for it and any intention the Council has to amend the plan to accommodate the decision. No other person can require a Council or any other person to implement a LAP or any provision of it.

Section 28 states that a Council may include any part of its LAP that relates to the use, development or protection or natural resources in its district plan and if it does so the Council must treat the relevant parts of the LAP as a proposed plan change under Part 1 of Schedule 1 of the RMA. For the avoidance of doubt, the LAP, or part of the LAP, has no effect on any decision under the RMA.

Section 29 provides for the Crown or Councils entering into a deed of acknowledgement with Tangata Whenua in respect of land in the heritage area to acknowledge any statement of particular historic, traditional, cultural or spiritual relationship with the land. Deeds of acknowledgement must not relate to any water or to any private land in the heritage area, or be inconsistent with any registered interest in land to which it relates.

Section 30 sets out the purpose and effect of a deed of acknowledgement.

Section 31 clarifies the relationship between a deed of acknowledgement under the WRHAA and other deeds of acknowledgement. A deed of acknowledgement under the WRHAA does not prevent the Crown or Councils from entering into further deeds of acknowledgement with other Tangata Whenua.

Section 32 requires that a notice of any deed of acknowledgement entered into, or an amendment to, or revocation of, a deed of acknowledgement, be notified in the Gazette as soon as possible after the occurrence of the thing to which it relates.

Section 33 sets out consultation processes that Councils must enter into with Tangata Whenua in addition to any specific opportunities for contribution identified in a deed of acknowledgement made under section 29(5) of the WRHAA. The consultation requirements in this section do not apply to Council decisions that relate to land held in fee simple by persons other than the Crown or Councils.

Section 34 requires that the Councils must jointly monitor the state of the environment in the heritage area; the progress made towards achieving the objectives; and the funding impact arising from activities to be undertaken specifically to give effect to the WRHAA. The Councils must jointly report on the findings every five years.

Section 35 clarifies that the WRHAA does not limit or affect any rights of title or ownership of land or natural resources, or the ability to bring a claim or continue to bring a claim in any Court or Tribunal.

Section 36 provides transitional provisions. Any resource consent lodged, but not finally determined before the commencement of the WRHAA, must be continued and completed as if the WRHAA had not been enacted. Any plan changes, variations, proposed policy statements, heritage orders or notices of requirement for designation notified but not finally determined before the commencement of the WRHAA must similarly be completed as if the WRHAA had not been enacted.

Schedule 1 contains an indicative map that shows the location and boundary of the heritage area (established by section 5).

Schedule 2 describes the heritage area established by section 5.

Schedule 3 specifies the Acts to which section 22 applies.