



OFFICE OF THE  
CONTROLLER AND AUDITOR-GENERAL WAITAKERE CITY COUNCIL

*Te Mana Arotake*

23 JUL 2003

574788

18 July 2003

Our Ref: LG05-0015-C

Denis Sheard  
Legal Services Manager  
Waitakere City Council  
Private Bag 93 109  
Henderson  
WAITAKERE CITY

Dear Mr Sheard

**LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 - APPLICATION  
FOR DECLARATION**

I refer to your letter of 23 June 2003.

You have applied for a declaration under section 6(4) of the Local Authorities (Members' Interests) Act 1968 ("the Act") to enable the Mayor and four councillors to participate in discussion and voting on the matter of proposals to establish a Waitakere Ranges protection area.

For the reasons set out below, we are prepared to grant the declaration.

**The proposal**

You have told us that the Council is presently considering proposals which may lead to the establishment of a Waitakere Ranges protection area. A range of methods has been mooted, including district plan changes and special legislation.<sup>1</sup>

I appreciate that ideas are at a very early stage, and that such things as the actual methods or instruments adopted, the types and extent of controls, the extent of geographical coverage, and even the name of the initiative may evolve as the matter progresses.

**Pecuniary interests**

At this stage, it seems likely that land owned by His Worship the Mayor, Bob Harvey, and Councillors Hulse, Stone, Presland and Yates, may fall within the proposed protection area.

<sup>1</sup> Particular mention has been made of private or local legislation, based on overseas examples. Other policy tools mentioned so far include district plan rules, advocacy and information, active management, land purchase, private reserves, national policy statements, conservation areas, and national parks.

We assume that, at least in some of these cases, this land includes the residence of the member concerned.

If the protection area proceeds, it is likely to impose significant controls over activities that are allowed to occur in the Waitakere Ranges. There is a reasonable chance that this will have some effect on the value of land which is within the protection area (although it is probably too soon to say whether this effect will be positive or negative, or to predict the extent of any such effect). For that reason, persons who own land in the area may well have a pecuniary interest in the matter.

### **The law**

As you are aware, section 6(1) of the Act prohibits a member from participating in discussion or voting on matters coming before meetings of the local authority or its committees, in which he or she has a pecuniary interest (other than an interest in common with the public).

However, section 6(4) says:

Notwithstanding anything in subsection (1) of this section, the Audit Office may, of its own motion or upon written application made to it by the member concerned, declare that that subsection shall not apply with respect to any specified matter or specified class of matter to be considered by the local authority or committee, as the case may be, if the Audit Office is satisfied that the application of that subsection would impede the transaction of business by the local authority or committee or that it would be in the interests of the electors or inhabitants of the district of the local authority or of the area under its jurisdiction that the subsection should not apply.

A declaration under this subsection has the effect of suspending the section 6(1) prohibition in relation to the specified matter. We can only grant a declaration if we are satisfied that applying section 6(1) to this matter:

- Would impede the transaction of business of the Council; or
- Would otherwise not be in the interests of the City or its electors or inhabitants.

### **Grounds for request**

Your application has been made on behalf of, and with the written consent of, the members concerned.

You have applied primarily on the second of the above grounds. Some of your reasons touch on the smooth transaction of business by the Council, but you have properly conceded that the number of councillors affected would not be likely to affect the ability of the Council to convene a quorum.

We also note you have not applied for the alternative option of an exemption under section 6(3)(f) of the Act. We think you were right not to do so. We could not safely say, at this point in time, that the pecuniary interests of the affected members are remote or insignificant.

## Relevant considerations

You have told us that the Council has a reputation, both nationally and internationally, for championing natural heritage and ecological issues over many years. In support of that image, we note that the Council describes itself as an “eco city”, and has a motto “Naturally the West”. We accept that matters of natural heritage hold a special significance in Waitakere City. This may well be in large part due to the local prominence of the Waitakere Ranges which, despite being adjacent to a large metropolis and having a significant proportion of their area in private ownership with some residential development, are still largely covered in native forest and retain a relatively unspoilt feel.

The Waitakere Ranges cover more than half of the land area of Waitakere City. On one estimate, up to 75 percent of the City’s land area could potentially be affected by a protection area.<sup>2</sup> A recent officer report describes the Waitakere Ranges as an “icon” of the City.

It is clearly apparent to us that the Waitakere Ranges constitute the most significant natural feature of Waitakere City, and one of the most significant natural features of the Auckland region. They are recognised for their visual landscape quality, biological significance, physical features, heritage values, and recreational opportunities.<sup>3</sup> Nevertheless, their proximity to urban areas means they are under pressure from pollution, pests, weeds, and urban expansion into their foothills. We understand that the protection of the Waitakere Ranges is a “key strategic platform” of the Council.

It is difficult, at this early stage, to predict the type or extent of controls that would ultimately apply across the protection area. But it is sufficient simply to accept that they could well be nationally unprecedented, and the prospect of restrictions on activities, both on private and public land, could raise strong concerns amongst landowners and local residents. Although individual properties and residents may be affected in different ways, the controls would not be aimed at the rights or interests of any particular individual or small group of individuals. Rather, this is a high level policy issue for the Council, affecting much of the district.

We accept that all of these issues will be particularly important to the residents of the Waitakere Ranges. We note that three of the members the subject of your application are the ward councillors for the Waitakere ward (one of four wards which make up the City). As such, these members represent the people most affected by any protection area. If they were excluded from deliberations, the Waitakere ward would in effect be unrepresented over the matter.

You have pointed out that, if some policy methods were utilised, the members may be able to participate because of the exception to the pecuniary interest rule in section 6(3)(e) of the Act, which relates to the preparation of a district plan. However, you say it would be undesirable for members to be diverted or influenced in their consideration of various options

<sup>2</sup> The Council presently uses the term “Waitakere Ranges”, in this context, to include the regional park; water supply land; land zoned Coastal Villages Human Environment, Waitakere Ranges Human Environment, Bush Living Human Environment, Foothills Human Environment (excluding Redhills); and some other open space, special and community land adjacent to those zones.

<sup>3</sup> We understand that the Auckland Regional Policy Statement identifies the Waitakere Ranges as a major landform, as a botanically rich area containing some endangered or depleted fauna species, and as an area of national and international importance.

by the possibility that they could be allowed to participate if they chose some methods, but not others. We agree. That would not be a sound basis for policy-making. In addition, there may be practical difficulties – particularly in the early stages – in determining whether or not a particular proposal is or is not likely to become part of the district plan.

All councillors are aware of your intention to apply for this declaration. You have told us that you are not aware of any opposition to your application amongst other councillors, and there does not appear to have been any public debate over whether or not the members affected should be allowed to participate in this matter.

### **Declaration**

For the reasons discussed above, we are satisfied that to apply section 6(1) of the Act to this matter would not be in the interests of the City or its electors or inhabitants, and that we should make a declaration accordingly. In particular, we accept that:

- The Waitakere Ranges are of major significance to the City, and issues of natural heritage generally have a high profile in the City;
- This matter involves a range of different interests, and in particular has the potential to significantly affect the future control and use of land in the Waitakere Ranges, and as such is likely to arouse great interest in local residents (both inside and outside the area to be protected);
- This matter is primarily concerned with district-wide issues with a high policy and political element, rather than with issues mainly affecting the rights and interests of a small group of individuals;
- If the pecuniary interest rule were to apply, the constituency of people most affected by the matter would in effect be unrepresented in the Council;
- It would not be in the interests of the City for as many as five members to be unable to participate in a matter of such high and wide significance on the basis of a pecuniary benefit that is at this stage uncertain and unquantified; and
- It would not be in the interests of the City for the policymaking process to be complicated and skewed by the possibility that five members could participate in considering some options, but not others.

The declaration is in the following terms:

*The Audit Office declares, under section 6(4) of the Local Authorities (Members' Interests) Act 1968, that section 6(1) of the Act will not apply with respect to discussion or voting on any matter before the Waitakere City Council or any of its committees directly concerning proposals to establish a Waitakere Ranges protection area. This declaration will continue in effect until the next triennial elections of the Council.*

There are several points which need to be noted about the scope and effect of this declaration.

The “matter” the subject of the declaration is fairly broadly worded, because we accept that its name and form may well change over time. However, we are concerned that it must not

be interpreted as giving *carte blanche* to members who have a pecuniary interest in any matter which relates to such a large part of the City. Therefore, we must make it clear that the declaration is only intended to apply to a proposal or series of integrated proposals – whatever called – which are broad and significant and which aim to establish a comprehensive range of controls which have general effect over a large portion of the land area commonly known as the Waitakere Ranges. We expect that, wherever this declaration is relied on in relation to any particular proposal, the genesis of that proposal will clearly be able to be traced directly back to the Council's consideration of:

- An officer report dated September 2002 called "The Waitakere Ranges – our Green Network Taonga"; and/or
- An officer report dated April 2003 called "Current Status of Protection for the Waitakere Ranges"; and/or
- An officer report dated April 2003 called "Protection of Waitakere Ranges – Process".

The declaration is *not* intended to cover pecuniary interests in any or every matter which could be said to be connected with land use controls in the Waitakere Ranges. For instance, it is not intended to cover proposals which deal with discrete issues affecting only a few specific sites or a relatively small and defined locality; or particular appeals about resource consents or district plan provisions; or the administration or enforcement of any protections in relation to any particular person. Nor is the declaration intended to apply to any marine reserve proposals.

Because of the breadth of the matter, we consider it appropriate to impose a time at which the declaration will expire. After the next election, the composition of the Council may well be different, and matters may have advanced to the point where there are other relevant issues for us to take into account when considering whether to grant any new declaration, and the scope of any such declaration.

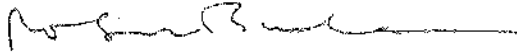
You will note that the declaration has been worded to apply to all committees of Council, as well as the full Council. However, you have not asked us to consider the situation of the Waitakere Community Board (which is treated under the Act as a separate local authority). You may wish to make a separate application in due course in respect of that Board, if any members of the Board are similarly affected by reason of property ownership. At this point, we simply note that it may well be that the "impeding the transaction of business" ground would be sufficient to justify granting a similar declaration there if all, or almost all, members of that Board have a pecuniary interest in the matter.

### **Conclusion**

I would be grateful if you would advise the members concerned of the contents of this letter. Given the importance of this matter to the Council, you may consider it appropriate to make it available to all councillors, and/or to table it at a Council meeting.

If you have any queries about this declaration, please do not hesitate to contact Edrick Child on 04 917 1600 or me on 04 917 1507.

Yours sincerely



Robert Buchanan  
Assistant Auditor-General - Legal

Chief Executive	
Corporate Services	
City Services	
Health	
Consulting Services	
ACU (R&T)	
Strategic Group	
Consent Services	
Field Services	
Legal	