



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF AN EXTRAORDINARY MEETING COUNCIL

I hereby give notice that an Extraordinary Meeting of the Council will be held on:-

DATE: **Wednesday, 10 November 2004** **TIME:** **9.30 am**

VENUE: **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider the business as set out herein and to take any necessary action connected therewith.

8 November 2004

Audrey Chan
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8603

MEMBERSHIP:

Mayor	RA	Harvey, QSO, JP
Councillors	DQ	Battersby, JP
	PJ	Booth, OBE
	MFP	Chan, JP
	JM	Clews, QSO, JP
	RI	Clow
	LA	Cooper
	AK	Corban, OBE, JP
	RP	Dallow, QPM, JP
	WW	Flaunty, QSM, JP
	DE	Gilmour
	PA	Hulse
	JP	Lawley
	VS	Neeson, JP
	CA	Stone

(Quorum 8 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR AN EXTRAORDINARY MEETING OF THE COUNCIL TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON WEDNESDAY, 10 NOVEMBER 2004
COMMENCING AT 9.30 AM**

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1 APOLOGIES



2 WAITAKERE RANGES AND FOOTHILLS PROTECTION PROJECT

PURPOSE OF THE REPORT

The purpose of this report is to update the Council on the status of the Waitakere Ranges Project. The report also seeks:

- confirmation of the proposed package of responses for consultation;
- approval of the proposed consultation process and timeline for the project;
- approval of a boundary for the project area for the Phase Three consultation process;
- the creation of a joint Auckland Regional Council/Rodney District Council/Central Government/iwi/Waitakere City Council Waitakere Ranges Working Party to liaise regarding the implementation of the project;
- appointment of three Councillors to the Waitakere Ranges Working Party; and
- approval of the Terms of Reference for the Waitakere Ranges Working Party.

BACKGROUND

The Waitakere Ranges and Foothills Protection Project was initiated in early 2003 in response to concerns expressed by local people, local MPs, lobby groups, the Parliamentary Commissioner for the Environment (PCE) and the West Coast Plan, that the Waitakere Ranges and Foothills continue to be under pressure and further action is needed to ensure more secure protection for future generations.

The goal of the Waitakere Ranges and Foothills Protection Project as agreed by the partners is:

‘Through a partnership of iwi, Waitakere City Council, Auckland Regional Council & local Members of Parliament, and in close consultation with stakeholders, to find and implement ways of achieving better long-term protection for the natural and landscape values of the Waitakere Ranges and West Coast’.

Two phases of the planned three phase community consultation process have been implemented. The purpose of Phase One consultation was to share with the community the information gathered, discuss issues and commence the preliminary discussion around possible responses. This stage included presentations to a number of organisations and groups, a series of community workshop meetings, a telephone survey, community board displays, and an invitation to send in written responses.

The results of Phase One consultation (September - December 2003) showed most people believe that the Ranges and Foothills were not currently protected enough now and for the future, and that something 'extra' was needed. Following this phase, policy work was undertaken to identify or further develop already identified ways to provide that 'something extra'. These were analysed and those considered most suitable as methods or responses to fill the gaps and weaknesses in the current management system were identified in a 'proposed package' in Phase Two. Legislation was identified as one of the ways to provide long term protection but little detail was available for the community to discuss.

The key focus for Phase Two consultation was:

- a) Discuss visions and values for the eastern foothills included in the Waitakere Ranges project boundary;
- b) Gain feedback on the proposed package, particularly the legislation component.

The final report on the Phase Two consultation was presented at the former Council's Environmental Management Committee's July 2004 meeting. The key findings showed that no clear direction on the different components within the proposed package was evident from Phase Two consultation. This was not surprising, as little detail was able to be provided at that stage on the implications of the various measures suggested - most of the components showed a split of opinion on whether they should be forwarded. However, the majority of participants felt that the Ranges and foothills were important and needed to be protected. What was evident from the consultation was a desire for further detailed information to be provided, specifically around the implications of the various components. This work has been ongoing.

To date the Waitakere Ranges and Foothills Protection Project has investigated both regulatory and non-regulatory mechanisms for the further protection of the Waitakere Ranges and foothills. These can be grouped as follows:

Regulatory

- introduce legislation to address issues around permanence and certainty in relation to resource management matters;
- amend Regional Policy Statement and District Plan as required;
- amend Regional Growth Strategy.

Non-regulatory

- establish a Trust;
- investigate World Biosphere Reserve status;
- prioritise through the Councils' Long Term Council Community Plans (West Coast Plan, voluntary and non-regulatory methods);
- establish core staff teams within the Councils;
- develop an Implementation Plan.

The regulatory mechanisms provide the statutory framework for the management of the Waitakere Ranges and Foothills. The non-regulatory mechanisms complement the interpretation and enactment of those rules. These non-regulatory mechanisms provide a voluntary means whereby landowners and other stakeholders can implement actions 'on the ground'. These can include community assistance programmes for replanting and pest and weed programmes. The non-regulatory mechanisms are equally important in the long term protection of the Waitakere Ranges and foothills for the active management and stewardship they encourage. This is particularly critical given the mix of both public and private land that is currently included within the Waitakere Ranges and Foothills Protection Project area.

The longer term implementation of the Waitakere Ranges and Foothills Protection Project encapsulates the other components of the package. Given the hierarchy in regulation, legislation sets the overarching framework for the regulatory side. Decisions on the way forward for legislation will provide the direction for the other regulatory components and is the focus of the next phase of consultation.

STRATEGIC CONTEXT

The Waitakere Ranges and Foothills Protection Project is a key project within the Green Network platform of the Long Term Council Community Plan. The 'Green Network' strategic platform contains a vision that would see streams and forests full of life, the Waitakere Ranges permanently protected and a Green Network in place linking the Ranges to the sea, as well as connecting the everyday lives of the people of Waitakere with the natural world.

The Council has indicated a strong commitment to working on the protection of the Ranges, whilst recognising that there are many different values relating to the Ranges, and that much is already being done to achieve protection. As the many tools for protection are varied and community views diverse, a robust process is crucial.

ISSUES

Project Boundary

As already discussed, two phases of consultation on the project have already been undertaken. For each of these phases, a draft boundary for the project area was part of the consultation material.

The project boundary is considered a critical issue for the Phase Three consultation process as this determines what area is potentially affected by the proposed package, and in particular the proposed legislation.

Phase One Boundary

The Phase One consultation process considered the whole of the Foothills Environment, Waitakere Ranges Environment, Bush Living Environment and Coastal Villages Environment made up the project area. The Phase One Consultation identified that there was divided community opinion about the suitability of including the eastern foothills (or parts) and this northern area of Foothills Environment, but general agreement that the other areas covered were appropriately included.

Phase Two Boundary

The second phase of consultation utilised a second draft boundary, mandated for use by the Environmental Management Committee in April 2004. This had been principally determined using a report commissioned by the Waitakere City Council that identified some criteria for determining the suitability of including areas of land or not. This second draft boundary differed from the first by:

- excluding the areas of Foothills Environment north of Swanson Road, on the grounds that this area is quite visually, geologically and topographically distinct from the area south of Swanson Road/West of Waitakere Road; and
- excluding the area of the 'Babich Concept Plan', in recognition of the fact that the Waitakere City Council has applied to the Auckland Regional Council to have this area included within the Metropolitan Urban Limits (notified in October 2004); and
- excluding the area within 500m of the Swanson Railway Station;
- the exclusion of areas within 500m of the Swanson Railway Station was in recognition of the fact that this area is likely to become the focus for discussions about intensifying residential and other development, in light of the Local Government Amendment (Auckland) Act 2004 (LGAAA2004).

The Phase Two Consultation revealed a similar lack of consensus about the appropriateness of including the eastern foothills (or part) as Phase One. Nevertheless, this consultation identified a high degree of support for the proposition that the eastern foothills need to be protected as a rural transition or buffer between the urban area and the Waitakere Ranges.

At the completion of the Phase Two consultation staff advised the Council that further work, in particular with regard to landscape issues would enable a boundary to be set using stronger technical criteria.

Proposed Phase Three Boundary

A1-A9

Since that time the landscape analysis work has been completed, and the proposed boundary for the Phase Three consultation process is attached at page A1. A detailed report on the analysis undertaken to produce this boundary is attached at pages A2 to A9. In summary however, the boundary has been based on the following principles:

1. The boundary must, as far as possible, encompass the concentrations of natural, landscape and cultural heritage resources in the Waitakere Ranges.
2. The area is to be contiguous.
3. A "buffer" to the areas with core values will be applied as appropriate.
4. The boundary should follow property lines and other boundaries well recognised by the community.
5. The boundary should cross Territorial Boundaries where the value of the resources dictates.
6. The boundary should recognise the known planning context.

A1

In essence the boundary recommended in the report is similar to that indicated at the Phase Two process and is attached at page A1. It generally excludes some of the land within a 500m radius of the Swanson Railway Station (being part of the land commonly known as the Penihana Land). This proposed boundary reflects other decision making (known planning context) that the Council has made in relation to support for full passenger transport services to the Swanson Train Station, and decisions in relation to the City's Growth Strategy and the Swanson Structure Plan. The Growth Strategy emphasises intensification of development around transport nodes, such as Railway Stations, and indicates that, at some time in the future, it will be appropriate to consider some of the land within 500m of the Swanson Rail Station for inclusion within the Metropolitan Urban Limits. Additionally, the Waitakere City Council is advocating that the western rail line be double tracked to the Swanson Rail Station, with consequent improvements in the frequency of trains servicing this station.

The boundary proposed here does not exclude all of the land within the 500m circle, because land to the west of Christian Road has already been considered for some intensification via the Swanson Structure Plan, based on the identified environmental constraints. The Swanson Structure Plan identifies a density of approximately one dwelling per 1.3 ha on those properties within the 500m circle, and this represents the sort of level of development that would provide a transition between the existing and potential urban parts of Swanson Village and the adjacent rural areas of the Waitakere Ranges and Foothills. (Note that the Swanson Structure Plan is currently before the Environment Court, and as a consequence may be amended in light of evidence presented there).

The boundary of the Waitakere Ranges and Foothills Protection Project, once established, will be one of the matters that is considered during the development of the detail of the Growth Strategy, and positioning it where it is proposed will clearly establish those areas where any significant intensification is not appropriate. Exclusion of the areas immediately adjacent to the Railway Station does not necessarily imply that a firm decision has been made to include areas within the Metropolitan Urban Limit. There are significant other parts of the City, discussed below under the heading "Policy Gaps Created as a Result of Proposed Boundary" that are also proposed for exclusion, in which future urbanisation is not appropriate, and is not expected to arise as a result of being excluded from the Waitakere Ranges and Foothills Protection Project area.

The area proposed for exclusion forms a relatively distinct landform unit, with land to the south rising quite steeply from the Blewitt Stream (which roughly corresponds to the property boundary along which the Waitakere Ranges and Foothills Protection Project boundary is proposed to lie). The landscape study referred to above identifies that, from a landscape perspective, the area does not form part of the Waitakere Ranges and Foothills Protection area.

The boundary recommended follows exactly or very closely the Metropolitan Urban Limit along most of its length. Aside from Swanson, the other notable exception is in the Titirangi/Laingholm area, where there are substantial areas of native vegetation and fauna habitat, outstanding landscapes and high natural character within the Metropolitan Urban Limits but continuous with the rest of the Waitakere Ranges. This area is considered to be an integral part of the Waitakere Ranges. Waitakere City Council is seeking that the special character of this area and consequent constraints on any significant intensification, despite its inclusion within the Metropolitan Urban Limits, are recognised in the amendments that will be made to the Regional Policy Statement in response to the LGAAA2004, and the intention is to also make this explicit in the amendments made to the Waitakere District Plan.

View of the Political Liaison Group

The boundary was considered at the Political Liaison Group meeting of 27 September, and that group agreed that the boundary proposed here is appropriate, except for Swanson. In relation to that, the Group recommended:

- include all of the rural Swanson Stream catchment south of Swanson Road/Waitakere Road within the Waitakere Ranges and Foothills Protection Project area as shown on Map 4 -Swanson.

The Political Liaison Group considered that while several studies have identified that this area, and also the land around the West Coast Road/Shaw Road intersection in Oratia, may be suitable for further development, such development needs to be within a Waitakere Ranges and Foothills Protection Project context. The Group also felt that there needs to be significant community discussion about what type and scale of development is appropriate to the creation of a "rural village" in these areas and that excluding this area from the project area might lead people to believe that a decision has already been made to bring them inside the Metropolitan Urban Limit.

However, Waitakere City Council and Auckland Regional Council staff consider that including all of the land down to Swanson Road could foreclose options identified as appropriate in the Council's Growth Strategy, as it could be difficult to identify any areas within the boundary for inclusion within the Metropolitan Urban Limit and consequent intensification. This will be particularly so if legislation is developed for the Waitakere Ranges and Foothills Protection Project area, as such legislation would likely have a strong focus on precluding urbanisation from the area covered. Indeed, inclusion of the 'Penihana' land within the Waitakere Ranges and Foothills Protection Project area could imply that a decision not to proceed with intensification of this area has already been made. As discussed above, exclusion from the Waitakere Ranges and Foothills Protection Project area does not indicate any final decision on the nature of development of the land. Rather, it helps protect the future options available for the land.

Seaward Boundary of the Project

One aspect of the boundary that had not been given consideration by the Council to date is that of its seaward extent. Where the boundary lies at the coast is clearly a very significant issue. At this stage it is considered that the most appropriate location for the seaward boundary, in particular as might relate to legislation is Mean High Water Springs (MHWS), which demarcates the beginning of the coastal marine area, and the edge of the Waitakere City Council Resource Management jurisdiction.

Boundary in Relation to Rodney District

As regards the alignment of the boundary in the north west, where Waitakere City and Rodney District abut, all three boundaries developed to date have followed the Waitakere City boundary, i.e. excluded parts of Rodney District. Although there are undoubtedly areas in Rodney District that could be considered 'part' of the Waitakere Ranges, and subject to the same pressures and constraints as the Waitakere Ranges in Waitakere City, it is not appropriate to identify any parts of Rodney District within the Waitakere Ranges and Foothills Protection Project area without the agreement for such from the Rodney District Council and the people of Rodney. Rodney District Council staff have indicated that they will be conducting public consultation on this matter in the near future.

Policy Gaps Created as a Result of Proposed Boundary

The decision to exclude a large area of the Foothills Environment at Waitakere Village, Pakinui and Swanson North, as well as the Crows Road Bush Living Environment from the project area does create a policy gap in terms of these areas. Additional work will be required to address this issue, and once a final decision is made by the Council on the boundary, following the Phase Three consultation, amendments to the District Plan Policy may be required.

In summary, the boundary recommended for the Phase Three consultation process includes most of the area between the western flank of the Metropolitan Urban Limits (between Swanson and Oratia) and Mean High Water Springs, as well as (most of) the Titirangi/Laingholm area. The area contained within this proposed boundary is not homogeneous, with the eastern foothills in particular being highly varied in terms of both their character, and the quality of the resources and values there. They are nevertheless considered to be an intrinsic part of the Waitakere Ranges, and also serve as a buffer and transition between the urban area and the 'core' of the Waitakere Ranges. Any degradation of the quality of this area can impact on the values of the 'core' parts of the Waitakere Ranges, through a reduction in environmental quality, and adverse effects on landscape and amenity. There are also varying values and character in the coastal villages and throughout the area generally. The heterogeneous nature of the areas within the proposed boundary require differing management regimes which must be recognised in any provisions that apply to this area, including any legislation developed. Nevertheless, (and notwithstanding the inclusion or otherwise of parts of Rodney District), it is considered that the areas delineated combine to comprise the entity that is the Waitakere Ranges, and thus should be included within the Waitakere Ranges and Foothills Project area.

Proposed Consultation Material

Legislation

Throughout the time in which the Council has been working on the Waitakere Ranges and Foothills Protection Project, the issue of most discussion has been the possibility of a local government bill to put in place measures which address the issues of permanence and certainty around the management of the Waitakere Ranges and Foothills Protection Project Area.

The Auckland Regional Council, Strategic Policy Committee has formally resolved to support legislation as part of a package of options for achieving the long term protection of the Waitakere Ranges and Foothills. The former Waitakere City Council's Environmental Management Committee has resolved to support legislation as part of the package for consultation as part of the Phase Three consultation.

A further detailed report on this agenda outlines the detailed policy framework and an outline of proposed drafting instructions with regard to legislation and the likely implications for private landowners.

With regard to the consultation material, the policy and implications of the legislation is proposed to form a substantial component of the material both communicated and consulted on. The following information is proposed to be included within the material:

- an explanation of the reasons which led the Council to believe that legislation is the preferred method for dealing with the issues of long term permanence and certainty with regard to resource management in the Waitakere Ranges and Foothills Protection Project area;
- an outline of the proposed policy responses to the issues to be dealt with through legislation;
- an outline of the proposed content of the legislation;
- an outline of the likely impacts of the legislation on individual landowners. This information would not be site specific, but focussed on a range of different types of examples from typical activities currently undertaken in the project area, through to the likely implementation over time.

The other components of the proposed package are all longer term measures which would form part of an ongoing programme of implementation. As such it is proposed to include an outline for these measures and their how these might be forwarded in the longer term.

Consultation Process

To date two phases of consultation have been undertaken as part of the project. The first of these established the issues and areas of concern, and the second phase discussed the proposed package to address the issues. The final stage of consultation is proposed to fully outline the components of the proposed package, and in particular detail the proposed local government legislation, in order to get feedback on which of the components should be pursued by the Council, and what, if any amendments should be made to the detail of the proposals. In addition the consultation process seeks to determine views on the proposed boundary of the project, in particular as it relates to the proposed legislation. The consultation is proposed to be undertaken as follows:

November - February	Consultation on the detailed package <ul style="list-style-type: none">• Attendance at community organised meetings, residents and ratepayers groups and other organised group forums;• Production of a Special Edition Waitakere City News, including a submission form for written comments back to the Council;• Production of pamphlets on the components of the package.
February 4	Submissions close
End February	Special Council meeting to make decisions on the final package for implementation.

Project Timeline

The following outlines the proposed timeline for the next 18 months for the Waitakere Ranges and Foothills Protection Project. Extensive discussion has already been had through the project to date regarding the range of issues. The timeline proposed envisages a clear period for feedback on the appropriateness of proposed legislation in particular, with a view to a prompt decision by the Council whether or not to pursue this. If, following consultation, the Council does want to pursue legislation, then the timeline would allow for this to be substantially progressed within the current session of central government.

In October 2004, as a result of ongoing discussions with central government, Cabinet issued an invitation to the Waitakere City Council and the Auckland Regional Council to prepare a local government bill to further protect the Waitakere Ranges and offering assistance of central government agencies in the preparation of such a bill. Further information provided to the Council staff by central government officials indicates that if a Local Bill were presented to the Clerk of the House by the beginning of April, this would be able to be considered within the current session of Parliament.

November - 4 February 2005

- Communication and Consultation over Package, with a focus on the Legislation component;
- Rodney District Council consultation with local community about whether to include areas within the project;
- Decision by the Rodney District Council, the Auckland Regional Council, iwi and central government as to their degree of involvement in the project;
- Setup of a joint Waitakere Ranges and Foothills Protection Project Working Party;
- Updating to the Councils and the Working Party on progress with consultation over the proposed legislation.

End February 2005

- Decision of the Waitakere City Council on whether to progress legislation, and the final form of legislation, including the final text of the draft bill.

If the Council decides to proceed with a Local Government Bill

March 2005

- Public advertising of draft bill in libraries and the District Court (legal requirement as part of the process of presenting a local bill to parliament).

April 2005

- Draft Bill Presented to the House of Representatives for First Reading. Bill sent to Select Committee.

May-June 2005 (possible indicative date only as this decision rests with parliament)

- Submissions to Select Committee on the draft bill.

July 2005 (possible indicative date only as this decision rests with parliament)

- Select Committee Hearings on the draft bill.

August 2005 (possible indicative date only as this decision rests with parliament)

- Recommendations to the House on changes to the bill as a result of Hearings.

September 2005 (possible indicative date only as this decision rests with parliament)

- Passage of the bill through the House into law.

Concurrently

February -March 2005

- Preparation of draft 2005/2006 Waitakere City Council, the Auckland Regional Council and the Rodney District Council Annual Plans. Inclusion of funding to progress components of the package;
- Scoping of the Waitakere Ranges Implementation Plan.

April - June 2005

- Consultation over the draft 2005/2006 Annual Plan;
- Decisions on 2005/2006 Annual Plan;
- Commencement of consultation over the Waitakere City Council Long Term Council Community Plan and the long term funding of measures to further protect the Waitakere Ranges and Foothills;
- Set up of a Waitakere Ranges and Foothills community forum/networking group to progress discussions regarding the Trust and Biosphere Reserve components of the package.

August 2005-March 2006

- Development of the Waitakere City Council 2006/2016 Long Term Council Community Plan;
- Drafting of the Waitakere Ranges Implementation Plan.

Waitakere Ranges and Foothills Working Party

In order to provide political oversight and information sharing through the past 18 months of the project a Political Liaison Group consisting of representatives from the Waitakere City Council, the Auckland Regional Council, Central Government MPs, iwi and the Rodney District Council was formed. The main role of the group was to:

- Work to achieve a comprehensive, integrated approach to the Ranges;
- Share information and discuss crossover issues;
- Receive and debate issues, reports and project updates and provide advice to staff;
- Liaise with key partners and other local MPs and relevant Ministers of the Crown;
- Represent the political wing at community consultation exercises, and consider feedback;
- As appropriate, keep their respective organisations informed and seek direction/decisions.

A10-A11

The Political Liaison Group has played an important role in liaising between agencies and staff regarding the project to date. Now that the project is entering its final phase of consultation and decision making however, it is considered that the majority of reporting should be undertaken directly to the appropriate Committees of the Waitakere City Council and the Auckland Regional Council. The need now is for a group to oversee the project through the consultation phase and then to take a significant role over the next three years in over-viewing the implementation of the Waitakere Ranges project. Accordingly it is proposed to set up a Waitakere Ranges and Foothills Working Party jointly with the Auckland Regional Council, iwi and the Rodney District Council. The proposed Terms of Reference for the group are attached at pages A10 to A11. The frequency of the meetings would vary depending on the phase of the project, with significant commitment during the last stage of consultation, and less frequency during the implementation phase.

Officers Steering Group

In addition to the political governance of the project, it is considered that a significant overview from a senior management level is required for the project, and that any reporting to the Joint Working Party and the parent bodies should come via the Officers Steering Group. Membership on this group is proposed to consist of senior staff from the Waitakere City Council, the Auckland Regional Council, the Rodney District Council and appropriate central government agencies - notably the Department of Conservation and the Ministry for the Environment.

Costs of the Waitakere Ranges and Foothills Protection Project

To date the project through its research, policy development and consultation phases has largely been funded by Waitakere City Council. The Auckland Regional Council has contributed staff time at all phases of the project, and central government has been involved largely through the attendance of central government MPs at the Political Liaison Group meetings and consultation meetings.

For the next stage of the consultation process, the Auckland Regional Council has offered further staff support, including the preparation of consultation materials, but as yet no direct financial support for the project.

The recent invitation from central government to prepare a local bill, also includes the offer of assistance from central government agencies in the preparation of any legislation, and it is recommended that this offer be accepted, while also seeking clarification of the extent of the support being offered.

RESOURCES

The Waitakere Ranges and Foothills Protection Project is seen as a key priority in the current financial year and has had a budget of \$110,000 allocated to the project in the 2004/2005 financial year. Policy, Project Management, Communications and support staff are allocated to work on the project. Staff support for the project has been offered by both the Auckland Regional Council, and recently, central government. Given the acknowledged regional and national significance of the Waitakere Ranges, however, now is considered an appropriate time to seek direct funding assistance from these two bodies for the completion of the consultation process and the implementation work which might follow.

CONCLUSION

The final consultation process for the Waitakere Ranges and Foothills Protection Project is proposed to commence in mid November 2004, with a view to the Council decision making on the implementation package at the end of February 2005. Should the outcome be that the Council wishes to proceed with legislation, then the timeline allows for this to be considered by central government within the current Parliamentary session.

RECOMMENDATIONS

1. That the Waitakere Ranges and Foothills Protection Project report be received.
2. That the consultation process and timeline as outlined in the agenda report for the Waitakere Ranges and Foothills Protection Project be approved.
- A1* 3. That the boundary of the Waitakere Ranges and Foothills Protection Project be as shown on the map attached at page A1 and to Mean High Water Springs on the coast, and that this be consulted on as part of the consultation process.
4. That the Council nominate three members to form part of a Waitakere Ranges and Foothills Working Party.
5. That the Auckland Regional Council, Central Government and the Rodney District Council be invited to nominate up to three (3) representatives to join a Waitakere Ranges and Foothills Working Party.
6. That Te Kawerau A Maki and Ngati Whatua both be invited to nominate a representative to join the Waitakere Ranges and Foothills Working Party.
- A10-A11* 7. That the Terms of Reference for the Waitakere Ranges and Foothills Working Party as outlined at pages A10 to A11 be approved.
8. That the Waitakere City Council representatives on the Waitakere Ranges and Foothills Working Party be delegated authority to sign off final versions of consultation and communications material produced for the Waitakere Ranges and Foothills Protection Project Phase Three consultation process.
9. That the Auckland Regional Council and central government be approached seeking direct contributions towards the costs of the Phase Three consultation and implementation of the Waitakere Ranges and Foothills Protection Project.

Report prepared by: Lois Easton, Group Manager City Development Projects.



3 WAITAKERE RANGES AND FOOTHILLS PROTECTION PROJECT - PROPOSED LEGISLATION

PURPOSE OF THE REPORT

The purpose of this report is to update the Council on the draft legislation developed as the basis for the community consultation process for the Waitakere Ranges Project, and seeks approval from the Council for this.

Another report on this agenda discusses the timeline, consultation process, governance and boundary issues associated with this project.

BACKGROUND

The Waitakere Ranges and Foothills Protection Project was initiated in early 2003 in response to concerns expressed by local people, local MPs, lobby groups, the Parliamentary Commissioner for the Environment (PCE) and the West Coast Plan, that the Waitakere Ranges and Foothills continue to be under pressure and further action is needed to ensure more secure protection for future generations.

The goal of the Waitakere Ranges and Foothills Protection Project as agreed by the partners is:

'Through a partnership of iwi, Waitakere City Council, Auckland Regional Council & local Members of Parliament, and in close consultation with stakeholders, to find and implement ways of achieving better long-term protection for the natural and landscape values of the Waitakere Ranges and West Coast'.

To date the Waitakere Ranges and Foothills Protection Project has investigated both regulatory and non-regulatory mechanisms for the further protection of the Waitakere Ranges and Foothills. The research done during 2003 revealed that the following issues and threats were of major significance in the Ranges and Foothills:

- Development pressures from redevelopment of existing sites, development of existing vacant sites and creation of new sites;
- That the role of the Foothills as part of the Waitakere Ranges landscape and as a buffer is not well identified in current planning frameworks;
- Human impacts of existing residents e.g. building size increases, noise, lights, traffic, domestic pets, weeds, increased infrastructure;
- Poor management of visitor numbers and visitor impacts especially in coastal locations; and
- The spread of weeds and pests - with associated insufficient resourcing and fragmentation of management.

This research was taken out to the community for discussion in 2003.

This report deals with proposed legislation that responds to the views expressed in the consultative process that there needed to be more certainty about the long term protection of the character and values of the Ranges and Foothills, particularly through the development process.

In addition to a number of reports on the issues to the Environmental Management Committee a number of workshops were held with the last Council and the Political Liaison Group (an advisory group of Waitakere City and Auckland Regional Councillors, iwi and local Members of Parliament) regarding the content of legislation. These established the key concepts and principles to be included in any draft legislation to be taken out for discussion with the community.

STRATEGIC CONTEXT

The Waitakere Ranges have long been recognised as a key strategic asset to Waitakere City and the region, with a rich and unique ecology and high biodiversity and landscape values. They are recognised as being nationally, regionally and locally important - both for their intrinsic values, and because of their proximity to the Auckland metropolitan area.

The Waitakere Ranges and Foothills Protection Project is a key project within the Green Network platform of the Long Term Council Community Plan. The 'Green Network' strategic platform contains a vision that would see streams and forests full of life, the Waitakere Ranges permanently protected and a Green Network in place linking the Ranges to the sea, as well as connecting the everyday lives of the people of Waitakere with the natural world.

The Council has indicated a strong commitment to working on the protection of the Ranges, whilst recognising that there are many different values relating to the Ranges, and that much is already being done to achieve protection. As the many tools for protection are varied and community views diverse, a robust process and inclusive process to establish any new measures is important.

ISSUES

Why Legislation?

A number of key pressures and threats to the Waitakere Ranges and Foothills have been identified by the Council. Of these, two:

- the issue of gaining a greater level of certainty of outcomes from the resource management process; and
- the issue of gaining greater permanence of the resource management standards into the future, have been identified as being best addressed by legislation.

The Resource Management Act 1991 is the principal piece of legislation which guides the resource management process, including the preparation of the main Regional and local planning documents - the Regional Policy Statement and the District Plan. While Waitakere City's District Plan is widely acknowledged as being both a robust and environmentally sensitive Plan, because individual resource management decisions are made on a site by site basis, its implementation, including through the decisions of the Environment Court, does not always well address the issues of cumulative or incremental effects on the environment.

For example, a recent re-survey by the Auckland Regional Council of the landscape values of the region indicates that the Piha Road area, which 10 years ago was regarded as an Outstanding Natural Landscape, has had its landscape values degraded to a level where the landscape is now no longer regarded as outstanding. This has largely occurred as a result of development of previously vacant sites created in the early 20th Century with associated bush clearance and earthworks.

A local bill developed by Waitakere City Council could address the uniqueness of the Waitakere Ranges and Foothills by requiring some extra consideration through the resource management process. This would not duplicate existing processes but would mean that the unique values of the Waitakere Ranges and Foothills, and their role on the edge of metropolitan Auckland was recognised through the consent and District Plan/Regional Policy Statement review processes.

Key benefits of legislation can be summarised as follows:

- The best way of achieving greater certainty with regard to development outcomes;
- Greater recognition of the specific values and threats that are unique to the Waitakere Ranges;
- Greater emphasis on managing the area as a whole, rather than looking at issues on a site by site basis;
- Greater certainty of outcome through the resource management process – landowners would be clearer on what they can and can't do;
- Greater certainty for communities about the way in which their environment would be managed in the long term and the outcomes that the area was being managed to achieve.

Aims of Legislation

Past resolutions of the Council have established the following principles regarding what the proposed legislation aims to achieve, in particular:

- Recognising that the Waitakere Ranges are special and deserving of care and protection, now and in the future;
- Recognising that current District Plan provisions have been reached after years of consultation and should be respected;
- Permitting changes to the District Plan to be made as long as they accord with the principles of protection that the legislation would establish (there being no adverse environmental effects);
- Acknowledging that activities currently permitted by the District Plan and enjoyed by landowners should not be affected;
- Allowing the continuation of current statutory processes including Structure Planning;
- Requiring bodies exercising statutory powers which affect the Ranges and Foothills to take into account the need to consider effects of development on the landscape and to avoid the potential cumulative effects development would have on the Waitakere Ranges and Foothills.

What is Proposed

A12-A13

The proposal is to create legislation for a "Waitakere Ranges and Foothills Heritage Area". The proposed legislation would work within the existing Resource Management Act 1991 and not create another layer of regulation. The key values of this area would be clearly identified and high level policies would outline the type and level of protection that is being sought for these values. Such legislation is modelled on the Hauraki Gulf Marine Park Act, although with a greater emphasis on identifying and protecting the area's unique values and on managing incremental and cumulative effects. A draft version of what the proposed legislation could look like has been developed by Waitakere City Council and Auckland Regional Council staff and is attached at pages A12 to A13.

Effect on Current Development Rights

A14-A15

Any legislation drafted which is specific to the Waitakere Ranges and Foothills, in order to be effective in addressing the issues of certainty and permanence, is going to have an effect on the current resource management regime. A detailed analysis of what the current draft proposed legislation effects might be on landowners is attached at pages A14 to A15.

These effects can be summarised as follows:

- In the short term there would be very little effect on landowner's current subdivision or development potential. The main impact would likely be felt at the level of Discretionary Activity and, in particular Non Complying Activity applications (those not allowed for in the District Plan standards) when they are considered by both the Council and the Environment Court. It is likely to lead to more marginal subdivision or development applications being either declined, or attracting additional conditions, for example requiring covenanting of bush, revegetation or weed control;
- In the short - medium term (5-10 years) as the Regional Policy Statement and District Plan are subsequently aligned to the legislation, changes to objectives, policies and assessment criteria within the plan are likely to occur. Such changes would create a clearer framework for interpretation of the rules, in particular to deal with issues such as cumulative effects. Some changes to the rules are also possible, if the need for this becomes apparent;
- In the medium - long term (10 year District Plan review and beyond) there is likely to be a gradual tightening of the rules, particularly in the areas of activities which are currently Discretionary or Non Complying. Generally, it is expected that the legislation would lead to a more careful resource management regime applying to the area. The other major effect is likely to be that what people can and can't do will become more certain, as the provisions applying become more specific, to address the specific issues that apply in each area.

Detailed Analysis of Legislation: Issues, Outcomes, Methods and Content

In order to inform the development of proposed legislation, and to create a clear policy basis for such legislation a detailed analysis of the:

- key issues;
- proposed outcomes;
- methods within the legislation to achieve the proposed outcomes; and
- the consequences of such methods has been undertaken.

A16-A18 This detailed analysis is attached at pages A16 to A18 and provides the rationale for detailed wording within any draft legislation.

Detailed Analysis of Proposed Legislation: Implications

A14-A15 As discussed above, the table attached at pages A14 to A15 outlines the detailed implications of the proposed legislation on an area by area basis. It is important to note that it is impossible to predict these implications fully, as legislation is always subject to interpretation by decision makers. However, one of the key tests of any proposed legislation will be how certain it is possible to be about such interpretation. Achieving certainty will require precision of language in the drafting of the Bill and precision of concepts behind that drafting.

Effect of Proposed Legislation on Regional Provisions

The Regional Policy Statement would need to be aligned with the legislation. In the Resource Management Act 1991 framework this would have a flow on effect as the District Plan must not be inconsistent with the Regional Policy Statement.

The extent to which change is required in Regional documents will depend largely on the wording of any proposed legislation. However, the Regional Policy Statement currently identifies the Waitakere Ranges as an area of national and international significance. Currently, however, no specific objectives or policies are present which relate to the Waitakere Ranges and Foothills. The proposed draft legislation would likely result more specific objectives and policies, with a flow on effect of perhaps Waitakere Ranges and Foothills specific objectives, policies and rules in Regional Plans such as the Regional Air and Water Plan, and the Regional Coastal Plan.

All of these would strengthen protection of this unique area and give greater certainty to communities.

District Plan Provisions and Implementation

The District Plan contains the objectives and policies and methods to manage the resource management issues within the City. District Plan rules specify when resource consents will be required and what type of consent this will be. The proposed legislation would seek to guide both subdivision and development (land use) consents, and the objectives and policies that inform the consenting process. These are discussed in turn below, along with an outline of the potential effects that legislation would have in a number of different localities in the City.

Subdivision

A19-A21

Concerns about the cumulative effects of subdivision in the Waitakere Ranges and Foothills have been one of the strongest issues driving the discussion around the development of legislation. The issues around subdivision are in many ways specific to the area to which they apply, and thus are discussed in more detail at pages A19 to A21 according to the various District Plan Human Environments.

In summary, the proposed legislation is not expected to have a major effect in the short to medium term (5-10 years) on the subdivision provisions that currently apply to the Waitakere Ranges and Foothills Protection Project area. Many of these provisions have been substantially amended since the District Plan was first proposed in 1995, generally to a more rigorous standard with stronger conditions attached to subdivision.

The effect of the proposed legislation on the 10-year review of the District Plan is more difficult to determine. It is possible, that should the current standards prove to be inadequate in managing the adverse effects of subdivision, further tightening of the rules may occur. Monitoring of the effects of the current provisions may reveal adverse effects that have not been predicted during the development of these subdivision provisions, or it may find that Council has achieved an appropriate balance in the management of the cumulative effects of subdivision. Additionally, in the longer term, the more explicit identification of issues and values could be expected to give rise to greater certainty as to the subdivision potential of land within the Waitakere Ranges and Foothills.

Management of Land Use

Rules in the Waitakere District Plan are of two major types - the Human Environment rules and the Natural Area rules. Each has a set of maps covering the City. The Human Environment rules and maps equate to traditional planning 'zones', with groups of properties in the same location having similar attributes or constraints identified as a particular Human Environment. The Human Environment rules include the subdivision rules, discussed above, but also cover the more traditional planning regulations, such as 'bulk and location rules' (building height, location on a site, size of building etc), driveways, and use of buildings. These rules include those relating to building on 'sensitive ridges' (ridges whose prominence means that development is likely to impact on landscape and amenity values), and 'granny flats', known as Minor Household Units. The Human Environment rules and the policies that inform them are the basis for managing the effects of activities on landscape, amenity values, neighbourhood character and heritage.

The Natural Area provisions are not conventional 'zones', as they relate to the nature of the natural values on a property, and do not follow property boundaries. Properties can, and frequently do, have multiple Natural Area identifications. For example, an area of native vegetation considered significant in terms of s6(c) of the Resource Management Act 1991 will be identified as Managed Natural Area, areas of pasture would be General Natural Area, and a stream could be Riparian Margins Natural Area. The Natural Area policies and rules are intended to manage the effects of activities on natural and physical resources. They are concerned with such things as effects of vegetation clearance, earthworks, impermeable surfaces, planting of weeds and grazing of stock on streams, vegetation and fauna habitat.

In general, the current District Plan rules relating to the Waitakere Ranges and Foothills Heritage Area could be categorised as strict, and certainly were considered so when first proposed in 1995. However, the work undertaken on the state of the Waitakere Ranges and Foothills indicates that some of these rules, and the implementation of the rules, are not giving an adequate degree of protection to some of the values in the Waitakere Ranges and Foothills.

In the short term, the proposed legislation in itself is not expected to have a significant impact on the District Plan rules, as the Resource Management Act 1991 provides a framework by which they can be amended to address the issues currently identified. Rather, the immediate effect of the legislation would be felt in the *implementation* of the rules, particularly for activities that are identified as non-complying. It is important to stress however that the number of non-complying activities currently approved by the Council or Environment Court is low, and non-complying activities would not properly be regarded by landowners as a property right, as they are things which are not provided for within the plan.

Effects on Environment Court Proceedings

The proposed legislation would provide greater certainty regarding outcomes in the Environment Court because the Court will have stronger guidance about the key values and priorities for management of the Waitakere Ranges and Foothills. The appeal process often involves 'balancing' the interests of parties in accordance with the purpose and diverse matters listed in the Resource Management Act. The framework contained in the proposed legislation would help to inform the Court over what matters should be given greater weight in considering any appeals on resource consent applications and District Plan changes.

Effects on Regional Parkland and Water Catchment Areas

The regional parkland and the water catchment areas are contained within two designations in the District Plan (identified as ARC1 and ARC2 on the Human Environment maps). The conditions associated with these designations make these areas subject to the Natural Area Rules and the Heritage Rules of the District Plan (plus several of the City Wide and Human Environment Rules not of particular relevance here). Thus, any effects on the Natural Area Rules of the legislation would also apply to these areas. These effects are not expected to be of major consequence, particularly to the water catchment areas, as generally there is very limited development within these areas. Moreover, the legislation would specifically acknowledge the importance of these areas for supplying water to the Auckland Region.

The Auckland Regional Council are currently considering whether they would like to see specific provisions in respect of the Waitakere Regional Parkland relating to the status, management purpose and processes of the parkland included within any proposed Waitakere Ranges and Foothills legislation. Inclusion of such provisions would have no impact on private landowners or Waitakere City Council and would put the parkland management within the same framework as the rest of the Waitakere Ranges and Foothills.

Issues of Compensation

This report identifies that the impacts of the proposed legislation on privately owned land are principally through refining and clarifying the interpretation of the Resource Management Act 1991 in relation to land. In other words, it does not propose a completely new statutory framework within which land use decisions are made, and the implementation of this legislation will be through Resource Management Act 1991 statutory provisions, such as the District Plan and the Regional Policy Statement. Accordingly, it is considered that any changes in the development potential of land are specifically precluded from compensation by Section 85 of the Resource Management Act 1991 which states:

*“(1) An interest in **land** shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.”*

Under Section 85, any person can challenge the inclusion of a provision in a statutory plan on the basis that their reasonable use of that land has been taken away. However, this requires them to demonstrate that the provision is precluding them from using their land in a way that would not have a significant effect on the environment or any other person. Provisions developed under this proposed legislation would have to go through a rigorous analysis, demonstrating their appropriateness, and the environmental effect which they are intended to address. All provisions developed in this manner should be defensible as appropriate Resource Management provisions.

RESOURCES

The Waitakere Ranges and Foothills Protection Project has been seen as a key priority in the current financial year and has had a budget of \$110,000 allocated to the project in the 2004/2005 financial year. Policy, Project Management, Communications and support staff are allocated to work on the project. Staff support for the project has been offered by both the Auckland Regional Council, and recently, central government.

CONCLUSION

This report outlines the rationale developed for possible local legislation for the Waitakere Ranges and Foothills Protection Project Area based on research and community discussion, and identifies the implications of the proposed draft legislation currently developed. It provides a level of detail about the proposal which it is considered will assist the community in deciding, through the community consultation, whether this is something they support, either in principle, or in detail. The information contained in this report, and its appendices is recommended as the basis of consultation material to be prepared for the community consultation process.

RECOMMENDATIONS

1. That the Waitakere Ranges and Foothills Protection Project - Proposed Legislation report be received.
2. That the information contained in this report and appendices provide the basis for the consultation material to be prepared for the community consultation process for the Waitakere Ranges and Foothills Protection Project.

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