

**AGENDA FOR A MEETING OF THE COUNCIL TO BE HELD IN THE CIVIC CENTRE,
6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON TUESDAY,
24 MAY 2005 COMMENCING AT 9.30 AM**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Council by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Council may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 WAITAKERE RANGES HERITAGE AREA BILL

PURPOSE OF THE REPORT

The purpose of this report is to present the final draft of the Waitakere Ranges Heritage Area Bill, and to update Council on issues that have arisen through the 2005 consultation process, so that Council can decide whether or not to adopt the Bill and to promote it in Parliament.

BACKGROUND

Waitakere City Council, from the creation of the City in 1989, has been concerned about the long term protection of the character of the Waitakere Ranges and Foothills. Through the 1990s the focus was to develop and implement a new District Plan to promote the sustainable management of the area under the Resource Management Act 1991. However public pressure grew to deal more comprehensively with protecting, long term, the Waitakere Ranges and foothills.

A1-A6

In 2003 Council initiated the Waitakere Ranges and Foothills Protection Project. The project is outlined at pages A1 to A6. A range of voluntary, regulatory and other proposals were developed as a mutually reinforcing package of actions. It was clear that there were some initiatives that required legislative action to extend the mechanisms available to Council to manage the area to achieve the desired long term outcomes for the area.

In July and August 2004 the Council (jointly with Auckland Regional Council) approached the Associate Minister for the Environment (with responsibility for the Resource Management Act) and the Minister of Local Government, and discussed the options of including changes in the proposed Resource Management Act amendments or in the foreshadowed Local Government (Auckland) Amendment legislation - i.e. in Government legislation. In response, Cabinet resolved to invite the two Councils to prepare a local bill to provide for "the additional protection of the Ranges and foothills".

A7-A39 In November 2004 the incoming Council resolved to work with the Auckland Regional Council and Rodney District Council, and to proceed with drafting legislation and consulting with the public. A report on the public engagement and consultation process associated with this phase is attached at pages A7 to A39.

A36-A39 In February 2005 the Council considered the first draft of the Bill. It was noted that, as a tool, the Bill was consistent with the Council's agreed policy objectives. The Council agreed that work should be undertaken to deal with technical matters in the Bill, and to undertake discussions with specific landowners in order to improve the draft bill. The Council sought a report back on progress in May 2005 before a final decision on whether the draft legislation should be submitted to Parliament by June 2005. The resolutions are set out at pages A36 to 39.

An oral update of landowner and public engagement since February 2005 was given at the 4 May 2005 meeting, and is summarised in the Consultation and Communications Report.

Since February 2005, the Bill has been revised to make it shorter, simpler and easier to follow, to meet the changing drafting standards of Parliamentary Counsel, and to incorporate matters raised in consultation with the public, individual landowners, Council's community boards, Te Taumata Runanga, the Pacific Islands Advisory Board, and government departments.

The joint Working Party (Waitakere City Council, Rodney District Council, Auckland Regional Council members and MP's) have met regularly to advise on process and content issues.

At its meeting on 4 May 2004, Waitakere City approved the boundary for the Heritage Area within the City. Rodney District Council has also decided on a boundary for the Heritage Area within its District, and will consider on 26 May 2005 whether or not it will approve the Bill and jointly promote it to Parliament.

The Auckland Regional Council has already agreed to support the legislation and promote it in Parliament. A process has been established for the Council's approval of a final draft.

STRATEGIC CONTEXT

The strategic context of the Bill has historical and contemporary policy dimensions.

Historically, the heritage importance of the Ranges has long been recognised. In the 1890s public and Auckland City Council pressure led to the Crown vesting 2,000 hectares in the Ranges in the Auckland City Council "as reserves for the purposes of recreation and the conservation of native fauna and flora". This area was added to by public acquisition and gifts. In the 1920s and again in the 1930s, there were campaigns to have the area declared a National Park.

The region-wide significance was recognised with the establishment in 1941 of the Auckland Centennial Memorial Park commemorating the centennial of the “Metropolitan District of Auckland”. That Park is the foundation that has grown into the Waitakere Regional Parkland of 17,000 ha. It has remained in the hearts and in the affection of Aucklanders as an essential touchstone of the natural world for city dwellers. In addition, since the turn of the 20th century increasing areas of the Ranges were acquired and managed as a key regional infrastructure asset for the collection and supply of potable water - the essential underpinning of a growing city.

The current context is that the natural character and the rural character of the Ranges and foothills are highly valued by the regional community and the resident community of about 21,000 people. Its character transcends tenure and covers 25,000 ha of both public and private land. For Waitakere City the area contains defining features of the City. However there are inadequate tools to ensure the long term protection of its distinctive character.

The Regional Policy Statement and the District Plan recognise the importance of the area and provide a consistent framework for its sustainable management within the generic framework of the Resource Management Act, covering both public and private land. However, the regional parkland is no longer statutorily protected to a level commensurate with its regional and national importance, despite the efforts, policy, investment and practice of the Auckland Regional Council.

Resource Management Act policies and plans have been amended to give effect to the Auckland Regional Growth Strategy. These statutorily reinforce the containment of metropolitan Auckland, and the protection of the Ranges and foothills from intensive urbanisation. In the case of Titirangi-Laingholm, areas within the urban limits, their future is clarified as low density urban areas, not as a focal area for residential intensification.

Strategically the Ranges and foothills have a limited capability to absorb further urban-scale subdivision and development. As that limit is met the character of redevelopment becomes critical to retain the distinctive personalities of localities in the Ranges and foothills.

It has become especially apparent during the consultation for this project that the proactive retention of a band of rural land between the urban area and the protected parkland is strategically important to the City. In this area many former land uses have become obsolete, overcome by economics, competition, disease and human factors; so that the strategic task today is managing the transition to future rural uses, rather than necessarily protecting the existing uses. The strategic intent is to protect a rural character rather than **the existing** rural character.

The protection of the Ranges and foothills is a central objective of the “Green Network” Platform of the City’s Long Term Council Community Plan. The slow growth and protection of this area is part of the City Growth Strategy and the corollary to the urban intensification objectives of the Council. As the urban city intensifies, the strategic importance of the unspoiled coast, the protected Ranges and the rural foothills will grow.

Finally, there is a strategic context of the City’s District Plan regime, which is now largely in place and operative, or shortly to be so. The regime is an effects-based set of policies where development consents are assessed against criteria that protect the bio-physical bottom lines of a sustainable city. This type of regime should result in better, more certain long term outcomes, although it appears to reduce certainty for applicants. In practice it also tends to focus on the here and now and on individual properties, rather than on the long term or wider contexts. The regime could be better attuned and provide better quality regulation if there were a better articulation of long term social, economic, cultural and environmental outcomes, and an ability to assess development applications against those outcomes. The plan must be reviewed after 10 years and this in itself creates some long term uncertainty about the extent of policy re-litigation possible at that time.

THE WAITAKERE RANGES HERITAGE AREA BILL

A40-A70

The Explanatory Note attached at pages A40 to A53 and Certified Map of the Boundary (which will be circulated separately) accompany the Bill during the pre-parliamentary and parliamentary steps leading to enactment. A copy of the 17 May 2005 draft Bill is attached at pages A54 to A70. The approval of Council is sought for all three documents.

The draft Bill has been drafted by Simpson Grierson on behalf of the Auckland Regional Council and Waitakere City. Close contact has been maintained with the Office of the Clerk of the House and Parliamentary Counsel's Office throughout the drafting process. There has also been significant input from Government Departments, Council's own legal advisers, and the Council's appointed working party of members. The Bill has also been scrutinised by peer practitioners.

The draft Bill is a local bill. A local bill is a public bill promoted by a local authority that affects a particular locality only. A local Bill can only deal with a single matter. Because the protection of the Waitakere Ranges and foothills is a single matter in a single contiguous locality (in two territorial districts) it meets these criteria (the Clerk of the House is the final arbiter in this matter). A local bill cannot directly amend a Public Act (e.g. the Resource Management Act). The Bill has been drafted within these limitations.

The Council is asked to agree to be a promoter of the Bill jointly with the Auckland Regional Council, and subject to their agreement, Rodney District Council. Rodney will consider this matter on 26 May 2005.

The promoter of the Bill should ask a local MP to take charge of the Bill in the House. Logically, this should be one of the MPs on the Working Party, whose electorate includes part of the area.

The Bill is organised in the following manner:

- It contains a preamble that gives the background to, and reasons for the legislation.

Establishment

- The Waitakere Ranges Heritage Area is defined. This is the area within which the legislation will operate, as agreed by Council on 4 May 2005;
- The heritage features of the area are defined. These are the features which individually or in combination give the Ranges and foothills (and the localities within that area) their distinctive character - they are the elements to be protected for the enjoyment of future generations.

Policy

- Long term objectives are set for the management of the area.

Implementation

- The purpose and objectives are implemented through existing and new mechanisms in the Resource Management Act; existing and new mechanisms in the Local Government Act; through an obligation to have regard to the Act in administering other statutes; by recognising and providing for voluntary private landowner initiatives to project heritage features; and through public recognition of ancestral associations of importance;
- Transitional provisions manage the implementation transition and serve to avoid unintended legal process disruptions to matters already in train.

The Bill is accompanied by an Explanatory Note which sets out the policy objectives, outlines the provisions, and justifies the regulatory interventions. The Explanatory Note contains important information, and may be seen as the promoters' reasoning and introduction to the Bill for Parliament and the public. The Note is dropped once the Bill is enacted.

ISSUES

The Council has been clear that any legislation should have an effect and be efficient in protecting the values of the Ranges and foothills in the long term. It has recognised that the capability of the area to absorb development is limited, and nearing its limit in many places. In response to continuing pressures from the adjacent metropolitan urban area, it has sought to project the distinctive non-urban character of the Ranges and foothills, and to provide for urban intensification in the new town centres of New Lynn, Henderson and Westgate.

At the same time, the Council has been concerned not to arbitrarily or unreasonably remove private property rights through legislation. Currently the most contentious area in this respect is the foothills, especially adjacent to the metropolitan urban edge. In much of this area previous changes to the District Plan have "down-zoned" proposed "future urban" areas and removed an anticipated subdivision potential. This has left a legacy of resentment among many landowners who had anticipated windfall profits from future subdivision. Many of them perceive the present Bill as intended to restrict even further the enjoyment of their land.

The Bill reflects those earlier decisions to not urbanise these areas, and it reflects the statutory reality that the regional policies on metropolitan urban limits are now in force and unlikely to change in the foreseeable future.

The Bill takes the next step and provides a policy framework and new mechanisms to facilitate the land use transition of this area. The transition to be made is from being a rural area with a mixture of obsolete land uses and innovative land uses (but in many ways blighted by expectations of urbanisation) to a new rural character. The "new" rural foothills should attract innovative and mixed uses and enterprises that are rural in scale, intensity and character; and identifiably different from the neighbouring metropolitan urban area, and from the protected bush areas of parkland.

The Bill provides a way forward which provides increased certainty for the future character of the area and is positive about community, social and economic dimensions of that future, as well as environmental. The provisions for Local Management Area Plans in particular establish a sophisticated, community-based, forward looking process for managing this transition.

Historically the control of subdivision has been a contentious issue. However, it is evident that in many areas (eg. Titirangi, Piha) the capacity for further subdivision is very limited. In the future the character and scale of development will be a more prominent issue in these areas. The Bill sends a clear and early signal on these matters, and through the Local Area Management Plan provision provides an innovative approach to their resolution.

The effect of the Bill on land owners property rights is to continue the position already established through the District Plan, but to provide a more comprehensively based and forward-looking approach to local development, so that the bounds and outcomes are cleaner and principled. These are significant gains with respect to land owners interests in the future character of neighbourhoods.

Implementation Issues

The success of the Bill will depend on the effort made to implement it. Key areas will be in the provision of guidance and training of regulatory staff, and in the community engagement and development of Local Area Management Plans.

The success will also depend on the in-tandem implementation of other parts of the wider package such as the recently approved work on rates and economic development, and on the promotion of the Green Network covenants initiative.

Some provision has been made in the Annual Plan for resources to prepare for the implementation of the Bill through Resource Management Act processes in 2005/2006. The Long Term Council Community Plan 2006/2016 will address the work programme and funding requirements to implement the Act, and prepare Local Area Management Plans, and to deliver projects from a wider package of measures for the Ranges and foothills.

Government Agency Issues

Government departments have been consulted throughout the process of drafting the Bill. At the time of writing this report, final comments have not been received from the Office of Parliamentary Counsel or from the Department of Internal Affairs. An oral update will be given on these matters but it is prudent to anticipate that some changes (at least to style) might be expected from Parliamentary Counsels' Office scrutiny of the Bill.

Consultation Issues

A71-A103

The programme of consultation and public engagement has been very effective. The programme is summarised at pages A71 to A103. It has resulted in:

- A high level of public awareness of the project;
- A high ability for affected landowners and members of the public to express their views and to have them heard by the Council;
- Opportunities for individual conversations with landowners to explain the likely effect of the proposals on individual properties and local areas;
- A high exchange of information;
- Robust and vigorous public debate on the proposals;
- The incorporation into policy and law drafting of provisions that will avoid perverse adverse effects of the legislation, and make it more workable.

Next Steps

Should the Council's resolve to approve the draft Bill and promote it in Parliament, the following will be the next steps:

- The Bill, map and the Explanatory Note will be reviewed to incorporate any changes requested by Councils, and to tidy up any remaining issues, and prepared for presentation to Parliament;
- Pursuant to Parliamentary standing orders the Bill is then put on public display in the District Court, at Council's offices and in other places for 15 working days;
- There will be a publicity campaign and opportunity for the public to provide comments during this period. The Council will give an analysis and response to comments in its submission to the Select Committee;
- Once the preliminary procedures have been completed and certified, the Bill and relevant papers will be forwarded to the Office of the Clerk in Parliament;

- The Clerk checks the Bill for compliance and prepares it for introduction to the House of representatives;
- Following its introduction and first reading, the Bill will be referred to a Select Committee for its consideration and a further round of public submissions.

CONCLUSION

This report should be read with the accompanying appendices on the background to the project, and consultation, the Explanatory Note to the Bill, and the Bill itself. Together they show that the draft Waitakere Ranges Heritage Area Bill has been carefully crafted in response to Council policy, community input, and the Cabinet invitation. The Bill:

- raises the status and profile of the area;
- adds value to the regulatory processes of the Council, and will improve the quality of land use regulation;
- focuses on long-term outcomes for the area, and provides a detailed framework for more consistent and cost-effective decision-making about development;
- will assist in the integrated and holistic management of this area;
- will bring longer-term certainty to the direction of the District Plan and Regional Policy Statement and Regional Plan policy for the Ranges and foothills;
- is innovative in providing new tools for use by communities and councils to plan for the future in a way that protects the essential natural, historic, cultural and rural heritage character of the Ranges and foothills;
- firmly establishes the commitment to containing the metropolitan urban growth of Auckland along this western flank, reinforcing the City's plans for nodal intensification around town centres.

RECOMMENDATIONS

1. That the Waitakere Ranges Heritage Area Bill report be received.
2. That the Council agrees that the consultation undertaken since December 2004 has met its objective of having a wide and informed debate about the issues contained in the Bill.
3. That the Council notes that the Auckland Regional Council has previously resolved to support the Bill.
4. That the Council notes that Rodney District Council have agreed on a contiguous area of foothills to be included in the Heritage Area, if they resolved on 26 May 2005 to support the Bill.
5. That the Council notes the support for the Bill expressed by the Pacific Islands Advisory Board, Te Taumata Runanga, all the Community Boards in the City, and the Auckland Conservation Board.
6. That the Council approves the draft Bill, Explanatory Note and accompanying Map for the purposes of submission to the House of Representatives as a local bill.
7. That the Council delegates to the Chief Executive, and the members on the Working Party (Mayor Bob Harvey, Councillors Hulse, Clews and Lawley) authority to approve any minor amendments and any amendment arising from this meeting.
8. That the Council agrees that once finalised the Bill and accompanying papers be notified and lodged in the District Court pursuant to the standing orders of the House of Representatives.

9. That the Council agrees to be a promoter of the Bill in Parliament.
10. That the Council invites a local Member of Parliament to take charge of the Bill in the House.
11. That once the Bill has been introduced into the House, officers report further on the process and timetable, and on the opportunities for involvement by the Council.
12. That the Council considers in its Long Term Council Community Plan 2006-2016 making provision for measures for the implementation of the Act and for other elements of the protection package.
13. That the Council thanks the Working Party for their work in guiding the preparation of the Bill.

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