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FOREWORD

This report explores the catastrophic loss of New Zealand's special places to inappropriate subdivision and development. It follows on from *Reclaiming our Heritage: the New Zealand Landscape Conference* that was held in July 2003. That conference began to scope the scale of the problem and highlight some of the key issues. This report builds on that base and provides the first comprehensive look at the impact of the loss of landscape on our cultural identity and economic well-being.

By presenting five detailed case studies of places where outstanding and significant landscapes have already been lost or are under imminent threat, Raewyn Peart issues a wake-up call to all New Zealanders. The rural open spaces, unspoiled wildernesses and sublime coastlines that we all cherish are in the process of being degraded by an unprecedented development boom, fueled by low interest rates and facilitated by poor planning and decision-making. Even though the Resource Management Act requires councils to protect special landscapes, many councils have yet to identify where these are.

This report highlights the importance of landscape to our economic welfare. It reminds us that 'Brand New Zealand', which is based directly on our wonderful natural heritage, is of crucial importance to the export and tourism sectors that underpin the economy. This fact should ratchet landscape conservation up the agenda for urgent intervention before the qualities implicit in the brand become lost. We cannot afford to lose our distinctiveness in a crowded international market place.

The Environmental Defence Society (EDS) hopes that this report will stimulate debate and raise the profile of the issue. Above all, we need to address the legislative framework and its failings. The Resource Management Act is not delivering for our landscapes and needs changing. A National Policy Statement would help. Other action is also canvassed in the report. We are looking to stimulate politicians to intervene and fix the problem before it is too late.

EDS will continue to work on this issue. During 2004, we will be hosting the New Zealand Coastal Conference (www.eds.org.nz), which will examine best practice guidelines for development, as well as identifying the areas that should be off-limits altogether.

We are grateful to the Ministry for the Environment, the Department of Conservation, the Ministry for Culture and Heritage and some district councils for part-funding this exercise and to the New Zealand Law Foundation for providing financial support for the publication of this report.

We remain keenly interested in working constructively with all key stakeholders to develop innovative and effective ways of better protecting New Zealand's special places. Copies of the report are available from EDS - as are membership forms - if you wish to actively support our work.

Gary Taylor
Chairman of the Board of Directors
Environmental Defence Society Incorporated

www.eds.org.nz

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Responsibility for the contents of the report does, of course, rest with the author.

Raewyn Peart
Senior Policy Analyst
Environmental Defence Society Inc

EXECUTIVE SUMMARY

Introduction

This study arises from concern that New Zealand is losing its important natural and cultural landscapes. It draws together literature on landscape protection in New Zealand and elsewhere, includes a review of case law, and contains material gathered from case studies of the Waitakere Ranges, Coromandel Peninsula, Wakatipu Basin, Banks Peninsula and Whangarei District.

The study focuses on the protection of important landscapes, on privately owned land, from the impact of urban and rural-residential development and associated infrastructure. It pays particular attention to obtaining a better understanding of the problems being experienced with protecting important landscapes.

The importance of landscape

Landscapes are a touchstone for where we have come from, who we are and how we relate to the world around us. They are a critical component of our well-being as individuals and as a nation. Our unique landscapes provide people with physical and spiritual respite, links with the past and our cultural heritage, and havens for our biodiversity. They are also a source of creative endeavour and underpin a significant proportion of our economy.

Landscape is a complex and partially contested concept. It is clear that most people highly value landscapes which are strong on natural character and lack human artifacts. There is more divergence in the values attached to our 'middle' landscapes, those which show evidence of some human modification. Most people tend to adopt one of two viewpoints: either 'wild nature' or 'cultured nature'. We know much less about the importance New Zealanders place on cultural and historical landscapes, although we know they are highly significant to tangata whenua.

Most New Zealanders are very sensitive to structures being built in important natural landscapes and these need to be very carefully placed and well integrated into their surroundings, if they are to be placed there at all. Similarly, agricultural activities (such as production forestry) in important landscapes need to be well designed and carefully located.

Pressures on important landscapes

Societal changes in New Zealand, and greater exposure to the rest of the world, have resulted in an increased desire for lifestyle properties and an increased ability to pay for them. This demand for lifestyle properties is likely to continue to increase in the future, as the population ages and the number of professional knowledge workers increases. As the more accessible areas become highly priced, demand is rippling out to more remote areas, which may be less well equipped to cope.

This increasing demand has coincided with greater difficulties in intergenerational transfer of viable farming units. This has led to lifestyle subdivision becoming increasingly attractive to farmers. The liberalisation of land use planning under the RMA and the current tenure review process have significantly increased the amount of rural land potentially available for lifestyle development.

This coincidence of demand and supply is, in some areas, resulting in the intrusion of large built structures into the natural character of important landscapes, thereby destroying the key element that made many of them important in the first place. In other areas, where development is well managed, it can increase natural character through the regeneration of indigenous plant cover.

How we might protect important landscapes

The concept of protecting landscapes on private land has been around for decades and has been applied in many countries throughout the world. In practice, a range of approaches have been adopted, with the extent to which emphasis is put on regulation, as opposed to more collaborative approaches, varying. In important landscape areas, there has mostly been some attempt to insulate development control at least partially from local authority politics.

Key elements of a generic landscape protection model include a clear delineation of the area to be protected, central or state government funding to support local management efforts, strong development control, a comprehensive management plan and dedicated staff to implement it, public purchase of key land parcels, and promotion of stewardship and local economic development.

Legislative framework for landscape protection

The Resource Management Act 1991 (RMA) is not clear on what we are trying to achieve in terms of landscape protection. It acknowledges that landscapes are important, and that we should protect them if they are 'outstanding', but protection will not necessarily be provided if there are other competing considerations.

Although many parties have a function in protecting important landscapes under the RMA, the job is largely left to local councils with little support from outside entities. These councils, elected by the local community, struggle to mediate between competing local interests and can be captured by strong pressure groups.

At the national and regional levels there is a paucity of policy on landscape protection to guide local efforts. District plans, which are the main mechanism through which development pressures on important landscapes are managed, are generally weak documents.

Identification of important landscapes

Landscape assessment practice has been problematic and can fail to address landscape matters in an holistic manner. Cultural and historical associations with landscape have often been neglected in landscape assessment exercises, but a separate methodology for heritage landscapes is currently being developed. Landscape assessments have often failed to adequately address the policy environment and public perceptions of landscape categorization, resulting in poor linkages between the results of assessment and policy development.

The RMA protects natural landscapes which are outstanding at the district, regional and national levels. It also provides weaker protection for landscapes that contribute to amenity values. It is less clear on the extent to which heritage landscapes are to be protected. Recent amendments to the Act provide protection for 'historic heritage', but the scope of this concept as defined in the Act may fall short of a larger landscape approach.

Nationally and regionally important landscapes may not be protected in district plans if they are not identified in national and regional policy statements. This is due to the different scope within which the assessment process takes place.

We know that our outstanding landscapes are likely to be areas with high natural character and/or cultural significance. We do not yet have anything like a comprehensive identification of them throughout the country, or even agreement on how they should be identified. And, as emphasised by the Environment Court, *'If the areas of outstanding natural landscape cannot be identified then how can objectives and policies (and methods) be properly stated for them?'* (paragraph 97, C180/99)

Developing policy for landscape protection

The development of policy at a district level to protect important landscapes can prove to be a politicised process. Local politics becomes more intense when there is little central or regional government policy or checks and balances. The resultant approach can reflect the influence which particular interest groups have been able to exert over the process, rather than being based on sound resource management principles.

The policy approaches taken to landscape protection are generally weak at addressing the cumulative encroachment of built structures into predominantly natural areas, which is the key threat to important landscapes. Attempts are being made to develop planning tools which more effectively address this issue.

Implementation of landscape policy

Cumulative impacts have the biggest negative effect on important landscapes, but these can receive the least consideration when assessing resource consent applications. This is due to a lack of high quality information and difficulty in establishing an environmental 'bottom line'. More recently, efforts have been made to improve the assessment of cumulative impacts.

The processing of resource consent applications impacting on important landscapes is highly discretionary and quality is dependent on retaining a high level of skill and commitment amongst decision makers and their advisors. Councils can end up being responsible for implementing district plans which they had no hand in developing and which they do not particularly support. A prevailing 'approval culture' means that most resource consent applications obtain consent.

Little monitoring is carried out on the impact of development on important landscapes, and councils and the Environment Court may have little idea of the consequences of their decision-making. Monitoring systems are improving as plan provisions are being finalised.

Weaknesses in the landscape protection system

Weaknesses in the landscape protection system include problems with landscape assessment practices, the identification of important landscapes in policy and plans, the development of provisions in plans to protect important landscapes, and the processing of resource consent applications impacting on such landscapes. The result of these weaknesses appears to be a reduction in the naturalness and heritage values of important landscapes, although the extent of this has yet to be quantified.

Strengthening the landscape protection system

There are several options available to strengthen the landscape protection system. Some can be implemented immediately and some will take longer. An effective solution is likely to include the promotion of better practice, the promulgation of a strong national policy statement on landscape and new special purpose legislation which supports the piloting of protected landscape models.

Conclusions

This study has revealed that the quality of our management may not be up to the task of protecting our important landscapes. Such landscapes have been largely ignored by national and regional governments and have often become a contested battleground at the local government level. It is time to put in place an effective system to manage our important landscapes, which provides certainty of protection, as well as equitably balancing the rights of landowners and the broader public. This report has identified possible ways forward to achieve this. The next step is to identify the most appropriate package of interventions.

1 INTRODUCTION

New Zealand is a land of spectacular landscapes. Our small country contains rugged mountain ranges, spectacular glacial valleys and fiords, volcanic cones, wild coastlines and sweeping sandy beaches, subtropical and temperate forests, rolling pastoral farmland and more. We also have many historic and cultural landscapes. As New Zealanders we strongly identify with these landscapes; they help define who we are as a unique people and link us with our past. Landscapes also underpin our economy. International tourists are encouraged to visit a '100% Pure New Zealand' and the country's 'clean and green' brand sells New Zealand products overseas.

Not surprisingly, these outstanding landscapes attract a lot of people. They may be international or domestic visitors who enjoy the landscapes only briefly, owners of holiday homes who seek a coastal or rural retreat, or permanent 'lifestyle' residents who choose to live on the fringes of urban areas and physically or electronically commute.

This study stems from concern that we are losing these landscapes, concern that development along our coastline, around our lakes and waterways and in our high country is degrading our special places.

The Parliamentary Commissioner for the Environment (PCE) articulated this concern in his report *Managing Change in Paradise: Sustainable Development in Peri-urban Areas* (2001). After investigating six case study areas around the country, he concluded as follows:

> *... the current system of environmental management and planning may not be capable of promoting the sustainable development of peri-urban areas.*

This study builds on the work carried out by the PCE and seeks to answer the following questions:

- What are our important landscapes? (chapter 2)
- Why are they important? (chapter 2)
- What are the pressures on them? (chapter 3)
- How well are we managing these pressures? (chapters 4 to 8)
- What are the major weaknesses in our landscape protection system? (chapter 9)
- How can we strengthen our landscape protection system? (chapter 10)

Landscape management is a multifaceted task. Many things impact on landscape, including built structures, earthworks, roading, weeds and pests, wildling species, production forestry, marine farming and changes in agriculture. This study primarily focuses on part of this broader issue: the protection of important landscapes, on privately owned land, from the impact of urban and rural-residential development and associated infrastructure. Early on in the study, rural-residential development emerged as the strongest and most immediate threat to important landscapes. The report focuses on this key issue.

The bulk of the work carried out for this study was focused on obtaining a better understanding of the problems being experienced with protecting important landscapes, rather than on identifying solutions. Subsequent work will be required to more fully evaluate the most appropriate way forward, although some potential solutions are identified.

The material for the study was obtained from a variety of sources including:

- Case studies of the Waitakere Ranges, Coromandel Peninsula, Wakatipu Basin, Banks Peninsula and Whangarei District
- Papers presented at the *Reclaiming Our Heritage: The New Zealand Landscape Conference* held in Auckland on 25-26 July 2003
- Interviews with people involved in implementing protected landscape models in California, Ontario and Wales
- An interview with the Director of the International Centre for Protected Landscapes in Aberystwyth, Wales
- A review of case law on landscape protection
- A review of literature on landscape protection in New Zealand
- An internet-based search of overseas models of landscape protection
- A legal opinion on national policy statements.

The case study areas were selected on the basis that they contained outstanding landscapes of national significance, that these landscapes were under strong pressure and that the district councils agreed to participate in the study. The purpose of the case studies was to examine how landscape protection is being implemented on the ground. Information for the case studies was gathered from semi-structured interviews with a range of stakeholders, site visits and review of available printed materials. Although the material from these case studies provides useful insights into the management of important landscapes at a district level, the sample is too small and unrepresentative to enable the findings to be generalized to the country as a whole.

2 THE IMPORTANCE OF LANDSCAPE

Landscapes are a touchstone for where we have come from, who we are and how we relate to the world around us

What is 'landscape'?

'Landscape' is a complex concept. The English word is over 400 years old and derives from the Germanic word *landschaft*, and subsequent Dutch word *landschap*, which referred to a geographical area of human occupation. Over the subsequent centuries the meaning of 'landscape' has evolved to encompass many differing concepts. The two most widely used are the character of an area defined by the way people live and the scenery. The scenic and natural component of landscape has historically received the most policy attention in New Zealand and the tension between the different concepts of landscape continues in landscape assessment practice today (Swaffield and Fairweather 2003: 79-80; Grant 2003:191).

More recently, a concern has developed to protect New Zealand 'cultural' or 'heritage' landscapes, which reflect the inter-relationships between people and the environment over time. They may be significant to Pakeha, Maori and/or other cultures. Stories can provide a powerful link between the present and past human relationships with the landscape (Sims and Thompson-Fawcett 2002: 261-262; Department of Conservation (DoC) 2002).

Landscape, as the concept has evolved, means more than just what we can see. It is an important nexus of the interaction between humans and nature.

This study investigates the management of landscapes that are important to New Zealanders. The term 'important landscapes' is used in the report to encompass those landscapes identified as 'outstanding' under section 6(b) of the Resource Management Act 1991 (RMA), significant under section 7 and important to 'promote the sustainable management of natural and physical resources' under section 5.

Why are landscapes important?

Natural and cultural landscapes play a critical role in enhancing our social, cultural, economic and ecological well-being. They help to define the uniqueness of New Zealand as a country and underpin our sense of place, who we are and where we have come from. They also form the core of the New Zealand 'brand' which attracts tourists to the country and helps to sell New Zealand products overseas.

The presence of accessible natural landscapes provides the opportunity for people to escape the pressures of modern living, to get back in touch with nature, and to refresh their minds and bodies.

The change from rural to urban lifestyles has divorced us from our environment and many people now live in cities, increasingly oblivious to the power of nature. A strong connection to the land can give us identity, a perspective of ourselves in time and place. We can see ourselves as New Zealanders in New Zealand. We start to know who we are by knowing where we feel 'at home' (Edgar 2003: 50).

Accessible natural landscapes significantly increase the quality of life in urban settlements. Take the Waitakere Ranges away from Auckland or the Port Hills and Banks Peninsula away from Christchurch and the quality of life in those cities would drop significantly. The quality of life in urban areas is not only important for the well-being of current residents but has been identified as significant in the attraction and retention of members of the 'creative class'. These talented individuals are critical to economic development in the context of a growing 'knowledge economy' (Florida 2002: 218).

Historical landscapes provide New Zealanders with an understanding of earlier relationships to the land. They can encapsulate many layers of stories about the past. It is important to preserve these landscapes as *'a nation which does not celebrate its history is insecure and impoverished'* (New Zealand Historic Places Trust (NZHPT) 2003: 5).

For Maori, the landscape provides a critical connection to their deities, ancestors and descendants through whakapapa (Sims and Thompson-Fawcett 2002: 260). Whakapapa encompasses the concepts of ancestry, heritage and history. It incorporates the recounting of stories which link people with the land (NZHPT 2003: 7). For example, Tipene O'Regan eloquently describes the importance of passing on this whakapapa to future Ngai Tahu generations:

If we have been successful in our delivery, they will look upon a river and know its name and who died there and at a rock and know who was born there and where battles were fought and where peace was made. Most of all, they will care that it was so and cherish the knowledge that those memories are part of their being – of who and what they are as Ngai Tahu people (O'Regan 2000: 231).

Natural landscapes also provide a haven for New Zealand's unique biodiversity, whether as existing or regenerating indigenous habitats or through opportunities for indigenous species to be introduced into exotic production systems (Meurk and Swaffield 2000).

New Zealand landscapes have long been a source of inspiration for artistic expression. Artists such

as Colin McCahon, Don Binney, Rita Angus, Ralph Hotere and Grahame Sydney have reflected New Zealand's unique landscapes in paintings (Simpson 2003). Landscapes are also the backdrop of high profile films such as *The Piano, Lord of the Rings* and *Whale Rider* and have underpinned the growing success of the film industry in New Zealand. Our landscapes are therefore a powerful source of creativity and support creative industries which are a focus of the government's Growth and Innovation Framework (Ministry of Economic Development 2003).

Landscapes make a significant contribution to our economy through underpinning tourism. Research carried out by Tourism New Zealand has indicated that the key motivation for visitors coming to New Zealand is their interaction with the landscape. The contribution of tourism to the economy is substantial. Two million international visitors arrived in New Zealand in 2002 and spent an estimated $6.1 billion in foreign exchange. (Tourism New Zealand 2003: 1, 7).

Landscape is also a large component of New Zealand's clean green image which is a substantial driver of the value of New Zealand goods and services in the international market place. The image is worth at least hundreds of millions and possibly billions of dollars (PA Consultants, 2001: 7).

So landscapes are about far more than aesthetic and cultural identity – important though these are. New Zealand's economic welfare is intimately connected with the conservation of our landscapes.

What landscapes are important to New Zealanders?

Considerable survey-based research has been carried out over the past decade by researchers at Lincoln University on perceptions of, and preferences for, the natural character of landscapes. Little research has been carried out into preferences for cultural and heritage landscapes.

Studies of perceptions of the natural character of landscapes have found strong consensus on which types of landscape are most preferred and which are least preferred. At the most preferred level are landscapes with a high degree of natural character, including modest to high relief, water, tall indigenous forest and no evidence of humans. At the least preferred level are landscapes low in natural character, including urban or production landscapes with buildings and strong geometric patterns (Swaffield and Fairweather 2003: 85).

The studies found less consensus in the middle ground, where pastoral, forestry or coastal landscapes contained some evidence of human modification. People tended to fall into one of two groups when evaluating these middle landscapes. The first and larger group, comprising roughly 60 per cent of the population, exhibited a 'wild nature' orientation and considered monoculture production systems such as pasture or exotic forestry to be more natural and preferred when compared to built artifacts such as houses. The second and smaller group, comprising roughly 30 per cent of the population, exhibited a 'cultured nature' orientation and had a greater acceptance of some evidence of human artifacts, particularly if they were older and picturesque, and visually well integrated within and subservient to the wider landscape. These were considered more natural and preferred when compared to monoculture production systems (Swaffield and Fairweather 2003:85-86; Swaffield 2003).

It is this divergence of views on what is most important in the 'middle ground' of landscapes that has resulted in dispute within processes under the RMA. Yet, rarely is the basis of the conflict articulated.

For example, in relation to the proposal to subdivide pastoral coastal land on the headland of Pakiri Beach north of Auckland into 15 lots, the major issue in contention during the appeal to the Environment Court (*Arrigato Investments Ltd & Ors v Rodney District Council* A115/99) was the visual impact of residential structures on the coastal landscape. Substantial revegetation of the site was proposed as part of the development. Three landscape architects gave evidence at the hearing. The two who appeared on behalf of the regional council, reflecting a 'wild nature' orientation, expressed concern about the negative visual impact of the proposed built structures on the remote beach experience. The third landscape architect giving evidence on behalf of the applicant contested this viewpoint.

The Court, led by Judge Whiting accepted the latter's evidence and expressed the view that 'the intrusion of buildings on a ridgeline, even in the coastal environment, is not inherently unattractive' (paragraph 35) and, further, that pastoral 'development' was relatively unappealing (paragraph 43). He considered that the opportunity to return indigenous vegetation to the slopes above Pakiri Beach was more important than any concern about the intrusion of housing and firmly rejected the view that the pasture presently on those slopes was natural and had appeal in its own right.

In contrast, a division of the Environment Court led by Judge Sheppard (*Kapiti Environmental Action Inc v Kapiti Coast District Council* A60/02) expressed preference for cultivated land as opposed to buildings because it still preserved the naturalness of the area. When applying the

'permitted baseline test' to a subdivision proposal on dunes along the Kapiti Coast, the Court found that in respect of production forest:

> *Apart from the harvest period, a person using the beach or adjacent public track need not have a feeling of being overlooked, or of the natural character of the area having been marred, as one might at the sight of dwellings among dunes (paragraph 125).*

From a policy point of view, in order to protect what is important to most New Zealanders, it is important to cater for both sets of preferences when making decisions impacting on important landscapes (Swaffield 2003). The results of the research indicate that most New Zealanders are highly sensitive to structures being built in important natural landscapes and that these need to be very carefully placed and integrated into their surroundings if they are to be placed there at all. Similarly, agricultural activities (such as production forestry) in important landscapes need to be well designed to avoid geometric shapes and hard edges and impacts on key landscape features such as coastal headlands.

Summary of key points

- Landscapes are a touchstone for where we have come from, who we are and how we relate to the world around us. They are a critical component of our well-being as individuals and as a nation. Our unique landscapes provide people with physical and spiritual respite, links with the past and our cultural heritage and havens for our biodiversity. They are also a source of creative endeavour and underpin a significant proportion of our economy.
- Landscape is a complex and partially contested concept. It is clear that most people highly value landscapes which are strong on natural character and lack human artifacts. There is more divergence in the values attached to our 'middle' landscapes, those which show evidence of some human modification. Most people tend to adopt one of two viewpoints: either 'wild nature' or 'cultured nature'. We know much less about the importance New Zealanders place on cultural and historical landscapes, although we know they are highly significant to tangata whenua.
- Most New Zealanders are highly sensitive to structures being built in important natural landscapes and these need to be very carefully placed and well integrated into their surroundings if they are to be placed there at all. Similarly, agricultural activities (such as production forestry) in important landscapes need to be well designed and carefully located.

3 PRESSURES ON IMPORTANT LANDSCAPES

Societal changes have coincided with the restructuring of the rural economy and the land use planning regime to place unprecedented development pressures on many of our important landscapes.

One of the strongest and most immediate pressures on important landscapes in New Zealand is lifestyle development. This typically consists of the establishment of large houses, on blocks of several hectares, in historically rural areas outside urban limits. The sale of lifestyle properties across New Zealand continues to reach new heights with $2.1 billion worth of such property being sold during the year to March 2003, almost double the $1.2 billion recorded three years earlier (Bayleys Research 2003a). Demand for beachfront properties shows no signs of abating with such properties in Rodney, Waiheke Island and the Coromandel increasing in value by an average 2,000 to 2,500 per cent between 1982 and 2001 (Milne 2003).

The shortage of beachfront and lifestyle properties in more popular locations, and the extraordinarily high prices being paid for them, is spreading the demand to other cheaper and more remote areas such as New Plymouth, the West Coast, Wanganui, Raglan and the East Cape (Milne 2003). Areas which have traditionally experienced little development demand are coming under increasing pressure. These previously more isolated communities may struggle to effectively respond to this fast pace of change.

Other significant pressures on landscape include changes in agricultural activities, with sheep and beef farms being converted to more intensive dairy farming, the establishment of exotic forests, the development of aquaculture and the spread of weeds and pests.

Drivers of the demand for lifestyle properties

So what is fueling this extraordinary demand for lifestyle properties? The likely explanation is an increase in the number of people aspiring to own such a property in New Zealand, coupled with an increase in wealth and the availability of low interest finance to enable their purchase.

A trend towards more flexible working arrangements for the affluent and the growing number of knowledge workers or members of the 'creative class', has enabled compressed work hours and/or telecommuting, with more time away from the office (Florida 2002: 121). This trend has been facilitated by the growing utility of the Internet. With bigger chunks of quality time available, lifestyle property has become more desirable. Real estate agents talk about the growing trend for Aucklanders to own a small apartment in the city and invest the bulk of their capital in a large house on the Coromandel Peninsula or coast north of Auckland. It is the beachside residence where these high income professionals entertain their friends and spend their recreational time. The small fibrolite bach is transforming into the large 'Mediterranean' villa.

New Zealand also has a growing population of retirees. In 2002, 12 per cent of the population, or approximately 480,000 people, were aged 65 years or over (Ministry of Social Development 2003). This proportion is projected to expand to 26 per cent of the population by 2051, or around 1.2 million people (Statistics NZ 2002: 20-21). This large number of increasingly fit and active retirees will be looking for attractive retirement locations.

New Zealand's population is becoming more and more concentrated in the North Island, especially the Auckland region, and is highly urbanized. In 2001, 32 per cent of the country's population was located in the Auckland region, 76 per cent in the North Island and 86 per cent in an urban area (Ministry of Social Development, 2003). The population in the Auckland region alone grew by almost 40,000 during the year to June 2003, with 56 per cent of the country's growth occurring in the Auckland region during that period (ARC 2003: 1-2). This compressed population in relatively small parts of the country results in high pressures on coastal and lifestyle areas within daily or weekly commuting distances of the main population centres. In addition, the more urbanized we become as a society, the more important areas of wilderness are likely to become, as an antidote to urban stresses.

The growing interest in New Zealand lifestyle property by international buyers is also increasing demand. Threats such as the terrorist attack in New York on September 11, SARS and mad cow disease, coupled with increased publicity through films such as *Lord of the Rings* and the low value of our dollar, have made our small 'clean green' and politically stable country at the bottom of the Pacific Ocean seem very attractive. The rise in Internet property marketing has also made property purchase much more accessible to overseas buyers and New Zealand expatriates.

So, where do these people get the money to purchase their dream lifestyle residences? There has been a steadily rising national disposable income in New Zealand since 1992. However, this increased wealth has been mainly captured by the top 20 per cent of income earners, concentrating large amounts of disposable income in the hands of relatively few (Ministry of Social Development 2003).

In addition, over the past decade in places such as Auckland, substantial rises in the prices of top real estate have further concentrated increasing wealth and provided additional capital for lifestyle

property or retirement purchases (Bayleys Research 2003b). The proceeds from dairy conversion farm sales in Southland by retiring farmers are also providing large chunks of capital, which are being used to purchase lifestyle blocks in important landscapes such as the Wakatipu Basin.

Drivers of the supply of lifestyle properties

The main drivers of the supply of lifestyle properties are the increasing attractiveness of the sale of farms for rural-residential development, coupled with an increased ability to subdivide rural land for those purposes.

Farming is no longer seen as such a desirable career choice for the young; less than half of farm households in one study expected that one of their children would take over the family farm. Often members of the successor generation have little equity to put towards purchasing the farm and need to be assisted by gifts and zero or low interest loans from their parents. At the same time, the retiring couple need to extract capital from the farm, to fund their retirement. Other family members also expect to receive some benefit from the family's prime asset (McCrostie Little and Taylor 1998). At retirement, these intractable issues can make sale, or at least subdivision of part of the farm, a more practical and attractive option than ongoing farming of the whole property.

One way of increasing a marginal farm's viability is to increase its size through amalgamation with adjacent properties. However, where rural land prices rise due to the demand for lifestyle blocks, it can be difficult for a farmer to purchase additional land holdings. The increased rates, which usually accompany increased land values, place an additional fixed cost on farm budgets.

All these factors combine to make the sale of farmland for rural-residential development an attractive option for many farmers. No other rural economic activity can effectively compete with the economic returns from lifestyle subdivision.

The liberalization of the controls on rural land use, since the RMA came into force, has enabled the lifestyle subdivision potential of farms to be realized in many areas. In addition, the government's tenure review process for pastoral lease land, much of which is in the South Island high country, has served to increase the availability of land for lifestyle development. Pastoral lease land currently covers around 2.4 million hectares or around 20 per cent of the South Island and 10 per cent of New Zealand. Of the 306 pastoral leases, some 172 are currently in the tenure review programme, and the trend is for over half the land in the leases to be freeholded (Sage 2003: 157). Leases allow grazing of the land for pastoral farming purposes but restrict other uses. Once the land is freeholded, landowners will for the first time be free to seek consent under the RMA for tourism and lifestyle subdivisions and development.

The impact of lifestyle development

Lifestyle development usually involves the construction of large houses and associated infrastructure such as driveways and garages. In important landscapes, this type of development can result in the intrusion of large man-made structures into predominantly natural areas. This can be in the form of large houses dotted across the valley floor and hillsides, as has occurred in the Wakatipu Basin; development extending along the coastline, as is happening on the Coromandel Peninsula and in the Whangarei district; or the transformation of small bach settlements into intensively developed suburbs, as is happening at Piha Beach in the Waitakere Ranges. This has the effect of reducing the naturalness of these areas, the very quality demonstrated by public perception studies as being the most highly valued. On the other hand, lifestyle development, if well managed to avoid the visual intrusion of buildings, can result in an increase in naturalness through the indigenous revegetation of eroded pastureland.

Summary of key points

- Societal changes in New Zealand, and greater exposure to the rest of the world, have resulted in an increased desire for lifestyle properties and an increased ability to pay for them. This demand for lifestyle properties is likely to continue to increase in the future, as the population ages and the number of professional knowledge workers increases. As the more accessible areas become highly priced, demand is rippling out to more remote areas, which may be less well equipped to cope.
- This increasing demand has coincided with greater difficulties in intergenerational transfer of viable farming units. This has led to lifestyle subdivision becoming increasingly attractive to farmers. The liberalization of land use planning under the RMA and the current tenure review process have significantly increased the amount of rural land potentially available for lifestyle development.
- This coincidence of demand and supply is, in some areas, resulting in the intrusion of large built structures into the natural character of important landscapes, thereby destroying the key element that made many of them important in the first place. In other areas, where development is well managed, it can increase natural character through the regeneration of indigenous plant cover.

4 HOW WE MIGHT PROTECT IMPORTANT LANDSCAPES

The concept of landscape protection on private land has been around for over half a century, has international recognition, and has been applied in numerous countries around the world.

Degradation of important landscapes is a result of market failure, where the individual decisions of landowners on the use of their land fail to maintain important landscapes which are a public good. For this reason, governments have frequently intervened to restrict private property rights over important landscapes in order to protect the public interest.

The concept of protected landscapes

The concept of protecting landscapes on private land has been around for many decades. The Netherlands began protecting privately owned landscapes in the 1920s by placing restrictions on landowners who wished to develop their rural land (Dower 1999). A network of protected landscapes was established in England and Wales shortly after World War II. In 1987, the World Conservation Union (IUCN) specifically recognized the value of protecting lived-in working landscapes, with the identification of protected landscapes or seascapes as Category V Protected Areas (Beresford and Phillips, 2000:20). Protected landscapes became one of six internationally recognized categories of protected areas as shown in Figure 1.

In 1992 the World Heritage Committee provided for the protection of cultural landscapes under the International Convention for the Protection of the World's Cultural and Natural Heritage (World Heritage Convention). Tongariro National Park was the first cultural landscape to be inscribed in the World Heritage List in 1993 (Rössler, 2000:29-30). Numerous countries have now implemented the concept. In New Zealand, the protected landscape concept has so far only been applied to national parks where all land is in public ownership.

Protected landscapes are usually areas with exceptional natural and/or cultural values. These are places where the natural landscapes have been transformed by humans or, conversely, where the natural setting has shaped people's way of life. They are places where conservation objectives are achieved primarily on privately owned and worked land. The purpose of protected landscapes is to reinforce the positive aspects of the relationship between people and the land and to avoid or mitigate negative aspects. The concept also seeks to support the local economy, often through tourism, and provide opportunities for the public to visit and experience the area (Beresford and Phillips, 2000:20; Lucas 1992: 2-3).

Figure 1: IUCN categories of protected areas

Ia.	Strict Nature Reserve
Ib.	Wilderness Area
II.	National Park
III.	National Monument
IV.	Habitat/Species Management Area
V.	Protected Landscape/Seascape
VI.	Managed Resource Protected Area

Source: Phillips 2002:8

Models of protecting landscapes

Many different models have been adopted for protecting landscapes around the world. Models which have been applied in the United Kingdom, Canada and the United States of America are described in Appendix 1. These are summarized in Figure 2, within a typology which includes a continuum from models with a heavy emphasis on regulation through to those using more voluntary approaches. Many of the models in practice, however, draw from a range of approaches including the use of some regulation, financial incentives and education. The main difference lies in the emphasis given to each component of the package.

From the international review carried out, it is evident that many other countries have been facing very strong development pressures on their special landscapes for decades. Large and growing urban populations have created demand both for urban development on the outskirts of cities and for wild, tranquil and scenic places to escape the pressures of urban living.

In many of the cases reviewed, where areas of regional or national importance were under heavy pressure, the normal planning and development control system managed by local authorities was found wanting. This was because local authorities were seen as too susceptible to the influences of local developers and they were generally unable or unwilling to devote the resources required to effectively manage the areas. In addition, often the boundaries of an important landscape crossed several local authorities, making cohesive management difficult.

From the review, it is possible to identify some key elements of a possible 'generic' landscape protection model, which are shown in Figure 3:

Figure 2: Categorisation of overseas approaches to landscape protection

Category	Examples
Separate plan and regulatory authority	National Parks (England and Wales) Niagara Escarpment (Ontario, Canada)
Overlay regulatory authority	California Coastal Commission (California, USA) Adirondack Park (New York State, USA)
Overlay plan	Oak Ridges Moraine (Ontario, Canada) Adirondack Park (New York State, USA)
Overlay policy	Areas of Outstanding Natural Beauty (England)
Co-operative management	Hudson River Valley Greenway (New York State, USA)
Financial incentives	Countryside Stewardship Scheme (England) Hudson River Valley Greenway (New York State, USA)
Purchase	Land Trusts (USA) National Trust (England) California Coastal Conservancy (California, USA) Oak Ridges Moraine Foundation (Ontario, Canada)

In all the initiatives studied which were specifically targeted at landscape protection, important areas were clearly delineated. The central or state government typically carried out the delineation in consultation with local authorities and the public. In England, the areas proposed for National Parks and Areas of Outstanding Natural Beauty (AONBs) were identified through a nationwide survey commissioned by central government. The survey identified areas of beautiful and relatively wild country. The final designation of the areas was confirmed after a process of consultation with local authorities and the public. In Canada, the boundaries of the Oak Ridges Moraine protected area were established by the Ontario government based on the geological boundaries of the formation. There were relatively few challenges during the public consultation process. The boundaries of the Niagara Escarpment, proposed by the Ontario government, followed the line of the uplift, but the width of protection was very controversial as landowners sought to exclude their land from the protected area. As a result, the final protected area was 63 per cent smaller than that initially proposed.

Most initiatives were funded from outside the local area. For example, in England and Wales, the national park authorities are funded almost solely by central government. AONBs have only really taken off since central government funding was made available to pay local authorities for dedicated staff and the preparation of a management plan. The Niagara Escarpment Commission and California Coastal Commission

Figure 3: Key elements of a 'generic' landscape protection model

- Clear delineation of important landscape areas (wider than specific landscape features)
- Central or state government funding to support local management efforts
- Strong development control which is at least partially insulated from the influence of local politics
- A management plan for the landscape area
- Staff dedicated to managing the landscape area as a holistic unit.
- An ongoing public purchase programme to secure strategic parcels of land
- Good public access combined with high quality educational and interpretative materials
- A stewardship programme to support landowners in sustainable management endeavours
- A local economic development programme to ensure ongoing economic returns from rural activities
- Branding the area as special
- Monitoring the impact of the landscape management effort.

are primarily funded by the respective state governments.

Strong regulatory control has been required in most areas where there is strong development pressure. Various mechanisms have been adopted in an attempt to insulate the development control process, at least to some extent, from the vagaries of the local political process. In some cases, such as the English and Welsh national parks and the Niagara Escarpment, development control has been taken entirely out of the hands of local authorities with a new authority taking over the decision-making role. In other cases local authorities have retained a decision-making role but this has been tempered, either by overlaying a regulatory authority to approve local plans and/or hear appeals, or overlaying policy requirements or plans which guide local decision-making and clearly give protection precedence over development. In New Zealand, the same regulatory regime with land use control delegated to local councils applies to all private land irrespective of the strength of development pressures.

A management plan has been prepared for many landscape areas. This enables a strategic and holistic approach to be taken to the management of the area as an integral unit. In respect of AONBs, the lack of a management plan was identified as a major weakness and prompted the passing of new legislation which made its preparation mandatory.

The provision of professional staff, who are dedicated to managing the area, has also been seen as a key element of success in many areas. Such staff are able to develop a holistic view of how the area should be managed, rather than being diverted off into other local authority issues. They are able to dedicate time to developing strong stakeholder relationships within the area, which is also critical to success.

Most of the models investigated included a public purchase programme for parcels of land important from an ecological, landscape and/or cultural viewpoint, as well as for land required to ensure good public access. A range of models has been applied to public purchase. In some cases the government has set up a separate agency, such as a conservancy or foundation, which is provided with government funds and has a mandate to secure the permanent protection of land. In other cases, purchase is executed by non-governmental organizations, such as land trusts, which raise funds through membership subscription, public subscription, donation and government grant. Permanent protection is secured by a range of means, including outright purchase and the placing of restrictive covenants on land. However, in most cases it is accepted that the majority of land will remain in private ownership.

Ensuring public access to specially protected areas, and providing high quality educational and interpretative material, has been seen as important in securing public support for the ongoing protection of these areas. In both the Oak Ridges Moraine and Niagara Escarpment, considerable effort has gone into land purchase and negotiations with landowners to provide a walkway right along the protected area. In England and Wales, concern about public access to the countryside more generally prompted special legislation dealing with this issue. Along the California coast, it was the development of gated communities, which effectively privatized coastal areas, that helped prompt the establishment of the Coastal Commission.

Although regulatory controls have proved effective in stopping urban development encroaching on special areas, they do not assist with the proactive management of rural land to protect landscape and biodiversity values. As a result, most landscape protection models have placed emphasis on developing positive stakeholder relationships and providing technical information and financial incentives to landowners. For example, in England and Wales, generous funding has been made available to support farmers carrying out restoration work through management agreements.

The success of landscape management models is reliant on rural activities remaining economically viable. For this reason, in some areas emphasis has been placed on promoting local economic development, usually through harnessing the economic benefits of the increased tourism which the protected landscapes can attract.

Very little monitoring is carried out on the effectiveness of landscape protection models. For this reason it is difficult to carry out any quantitative assessment as to how effective they have been. Many people interviewed for the project expressed the view that monitoring was very important, but it was difficult to find the funds to carry it out.

Summary of key points

- The concept of protecting landscapes on private land has been around for decades and has been applied in many countries throughout the world. In practice, a range of approaches have been adopted, with the extent to which

emphasis is put on regulation, as opposed to more collaborative approaches, varying. In important landscape areas, there has mostly been some attempt to insulate development control at least partially from local authority politics.

- Key elements of a generic landscape protection model include a clear delineation of the area to be protected, central or state government funding to support local management efforts, strong development control, a comprehensive management plan and dedicated staff to implement it, public purchase of key land parcels, and promotion of stewardship and local economic development.

5 LEGISLATIVE FRAMEWORK FOR LANDSCAPE PROTECTION

The RMA acknowledges that landscapes are important but provides that we should only protect them if they are 'outstanding' and in the absence of other competing considerations

Legislative purpose

So what are we seeking to achieve in terms of landscape protection in New Zealand? In the absence of central government policy on the issue, we are left with the purpose provided in the key applicable piece of legislation, the RMA.

The RMA is a somewhat schizophrenic piece of legislation. It binds together the progressive thinking behind the concepts of promoting sustainable development and honouring the Treaty of Waitangi with the more conservative neoliberal approach of minimizing market intervention (Coombes 2003, McDermott 1998). The tension between these two approaches while the Act was being drafted resulted in the internationally recognized concept of 'sustainable development' being reduced to the lesser concept of 'sustainable management'. The Act has also moved away from a strategic, proactive approach of managing development to a reactive approach of managing 'effects' of development. Apart from water conservation orders, which were a successful approach to protecting wild and scenic rivers grafted onto the RMA from an amendment to the previous Water and Soil Conservation Act 1967, the Act does not give priority to the protection of important natural resources from development.

'Outstanding natural features and landscapes' and 'historic heritage' are to be protected under the RMA as a matter of national importance, but only from 'inappropriate subdivision, use, and development' (sections 6(b), 6(e)). This presupposes that some form of development may be appropriate. What is 'appropriate' is not clearly identified in the Act and is left to be determined on a case by case basis. This leaves the outcome open to the vagaries of the different assessment methods and weightings adopted by different decision makers, based on differing quality of information. There is no clear indication of what the purpose of protecting these areas is or what is to be achieved through their protection.

Even if proposed development is not 'appropriate' it can be approved under section 5 of the RMA, if it is considered to promote the 'sustainable management of natural and physical resources'. This is because the matters in section 6 of the Act are subject to section 5. In determining whether or not a development promotes sustainable management, the courts have tended to make an overall judgement, rather than testing the effects of the proposal against environmental bottom lines or balancing positive and negative effects (Milne 1999: 7). This broad approach places in the hands of decision makers a very large amount of discretion as to whether or not a proposal should receive approval. Ultimately it gives the Environment Court substantial power, because the exercise of its 'overall judgement' can only be challenged in the High Court if it is exercised in an unlawful manner.

A telling example of how this operates in practice is in relation to the protection of the Mt Roskill volcanic cone in Auckland. A key issue under the RMA was whether or not a large cutting should be permitted on the side of the volcanic cone for the purposes of building State Highway 20. The Environment Court found that the Mt Roskill cone was an outstanding natural feature and a matter of national importance, by virtue of Section 6(b) of the RMA. Notwithstanding this, the Court decided not to protect the cone. This was on the basis that:

> *To shift the SH20 corridor to positions beyond the present notice of requirement proposal could have horrendous consequences on businesses, industries, schools and residents who have gone about their affairs over the last 50 years in reliance upon the provisions of the District Plan, This would in our opinion be contrary to the purpose of the Act as set forth in s 5 by causing a disruption to the social, economic and cultural well-being of people and communities (Auckland Volcanic Cones Society Inc v Transit New Zealand & Ors AP123-SW02, paragraph 41).*

The Environment Court's decision was upheld by the High Court. The RMA was unable to protect the cone, but an obscure piece of legislation, the *Reserves and Other Lands Disposal and Public Bodies Empowering Act* 1915, may have succeeded where the RMA failed. This legislation provides that it is unlawful for any person to make a cutting of any kind on the side of a volcanic cone in Auckland, without leaving an angle or batter of not less than forty degrees, without express authorization on behalf of the Governor-in-Council. Transit New Zealand has apparently now found a way to shift the road corridor further away from the cone and to reinstate part of the slope when faced with this more prescriptive requirement (Rudman 2003).

This example illustrates the weakness of highly discretionary legal provisions and the strength of clear directory provisions when dealing with protection issues. It raises questions as to what extent legislation driven by sustainable management imperatives will protect important landscapes, without a clear direction to do so.

Another example of how section 6(b) factors can be overridden by other considerations is in relation to the Port Hills in Christchurch (*Rutherford Family Trust V Christchurch City Council*

C26/2003). The Environment Court found that the rural Port Hills were an outstanding natural landscape under section 6(b). The appeal related to a proposal to rezone part of Monck's Spur, within the outstanding landscape area, from a rural to a residential zoning. The proposal failed to provide for the protection of an outstanding landscape as a matter of national importance and the Court found that it did not, on its own, comprise sustainable management. However, as a result of the landowner offering to vest 40 hectares of land on the Spur in Council, the Court granted consent to the rezoning. This was on the basis that the vesting comprised environmental compensation, and outweighed the matter of national importance, to provide a net conservation benefit.

In respect of a cultural landscape, the Environment Court led by Judge Kenderdine found that Kakapo Bay, the subject of an application to establish a marine hatchery, was of such an outstanding nature that the whole bay deserved to be preserved as a historic precinct. However, it granted consent to the application on the basis that only purchase by an organization such as the NZHPT could accord the area the appropriate significance and that preserving its historical significance had to be achieved through the provisions of the Historic Places Act 1993 rather than the RMA (*New Zealand Marine Hatcheries (Marlborough) Limited & Or v Marlborough District Council* W129/97: pages 11,13).

Roles and responsibilities

There are six main types of statutory bodies with a potential function related to protecting important landscapes under the RMA. However, many of them fail to carry out these functions for a variety of reasons.

(a) *City or district (local) councils* are charged with controlling the 'effects' of the use, development or protection of land (section 31(b)). The main mechanisms at their disposal to achieve this are rules in the district plan and the processing of resource consent applications. Although non-statutory mechanisms such as financial incentives and education can also be deployed, they are rarely the main instrument adopted. The protection of important landscapes has largely fallen on these local bodies with little external support.

(b) *Regional councils* have the more hands-off role of preparing 'objectives and policies' in relation to 'regionally significant' effects of the use, development or protection of land (section 30(b)). This is achieved through the preparation of a regional policy statement and/or regional plans. Most regional councils have failed to substantively address landscape issues in their policy and planning documents. A 1999 review found that only three out of 12 regional policy statements had identified outstanding features and landscapes (Sovka 2000: 5). This appears largely due to the overlapping functions of regional and district councils in respect of landscape protection, and a consequent reluctance of regional councils to become involved in a function impacting on land use which is more clearly within the jurisdiction of local councils.

(c) *The Department of Conservation (DoC)* has the statutory role of an advocate for the conservation of natural and historic resources including landscapes (section 6(b) Conservation Act 1987). DoC has had limited involvement in landscape issues on private land under the RMA. This has been largely a resourcing issue, with DoC concentrating its limited resources on management of the public estate and on biodiversity protection. Where the Department has become involved, it has most often been in coastal environments or where the landscape has a high natural component. DoC, through the Minister of Conservation, also has the role of preparing the New Zealand Coastal Policy Statement (NZCPS) which was adopted in 1994.

(d) *The Ministry for the Environment (MfE),* through the Minister, is able to develop national policy statements on nationally significant issues such as outstanding landscape protection. These policy statements help shape the manner in which issues are dealt with by regional and district councils. There is currently no national policy statement on landscape although the NZCPS does address some landscape issues in the coastal environment. The Ministry has prepared two 'best practice' guides focused on managing impacts of development on landscape values (MfE 2000a & b), has carried out preliminary work to develop an indicator for the natural character of the coast which includes landscape considerations (Boffa Miskell Limited 2002), and has supported the development of 'best practice' resources on landscapes and historic heritage, which are hosted on the quality planning website (www.qualityplanning.org.nz).

(e) *The New Zealand Historic Places Trust* is identified as a heritage protection authority under the RMA (section 187(c)) and can therefore seek to have heritage orders included in district plans over places of 'special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural or historical reasons' (section 189(1)(a)). The Trust

has largely confined itself to seeking the protection of specific historic sites and places rather than broader landscapes and it is unclear whether a heritage order under the RMA could be sought over an entire landscape.

(f) *The Environment Court,* as part of its jurisdiction, determines appeals on regional policy statements, regional and district plans and resource consent applications. Given the broad and imprecise wording of the RMA, the Environment Court has considerable discretion to determine the content of policy statements and plans as well as the fate of development proposals. Arguably, the Court has become the prime policymaker on landscape protection issues, in the absence of central government direction. This can be problematic, because policymaking involves weighing up competing issues in the public interest, in contrast with the court process which involves an assessment of competing technical evidence provided within an adversarial framework.

Other important stakeholders in landscape protection under the RMA include:

- *Iwi authorities and tribal runanga* with whom the city or district council must consult during the preparation of the proposed plan (section 3(1)(d) First Schedule). In addition, councils must take into account any relevant planning document recognised by an iwi authority, when preparing or changing policy statements and plans (sections 61(2A), 66(2A), 74(2A)). Where attempts were made to address landscape issues by councils in the case study areas, they frequently adopted a scenic approach and failed to take account of tangata whenua links with the landscape. This situation may change as more iwi management plans are prepared and implemented.
- *Landowners* or developers who are seeking to increase the value of their interest in land through obtaining greater subdivision and/or development rights. In some areas, landowners and resource users such as forestry and mining companies have organised themselves into pressure groups to influence the district planning process.
- The concerned individuals and *environmental organisations* that are seeking to preserve the natural values of the landscape for the benefit of residents and/or the public more generally. Some areas have highly mobilised communities and well-resourced, effective environmental pressure groups. Other areas have neither.

The *Queen Elizabeth the Second National Trust,* although not having a formal role under the RMA, plays an important role in landscape protection through negotiating open space covenants with landowners. The Trust also offers a range of assistance to landowners in respect of the protection and enhancement of natural features on private land (Queen Elizabeth the Second National Trust, 2003: 5).

These groups can be conceptualised as representing different interests in landscape protection at a local, regional or national level as shown in Figure 4.

Although the legislation provides for a range of parties to be involved in landscape issues at the national, regional and local levels, in practice, landscape protection on the ground has been largely left to local councils. They seek to map a path between the competing interests of landowners and developers on one hand and concerned individuals and environmental pressure groups on the other. The outcome is heavily influenced by how mobilised and well resourced these competing groups are.

A better understanding of which parties become involved in the development of district plan provisions on landscape, in practice, was obtained through the information gathered in the five case studies carried out for this project. Interviewees were questioned about a range of issues, including the involvement of various parties in the development of district plan provisions on landscape. In each case study area a different group of players influenced the process.

In the Coromandel Peninsula, the district council and well-mobilised landowners and other development interests had the greatest influence on the development of district plan provisions relating to landscape protection. DoC and the regional council did not become involved. District plan landscape issues have yet to reach the Environment Court and seem unlikely to do so. In terms of environmental pressure groups, there are local pockets of effective activism but a notable absence of any environmental pressure group engaging in district plan landscape and coastal issues affecting the peninsula as a whole.

In the Wakatipu Basin, DoC and the regional council similarly did not become involved in landscape protection issues. Environmental interests were well mobilised in the form of the Wakatipu Environment Society Incorporated which was successful in getting landscape protection issues before the Environment Court. Once there, the Environment Court took over the leading role in finalising the landscape provisions of the district plan, assisted by resource management professionals representing the various parties.

In the Waitakere Ranges, DoC did not become involved in landscape protection issues, but the regional council had identified important regional landscapes in its regional policy statement. Landowner and development interests were only mobilised in localised areas. Environmental interests were well mobilised in the form of the Waitakere Ranges Protection Society. District plan landscape issues have largely not gone to the Environment Court, with the exception of the Oratia Structure Plan.

In the Banks Peninsula, DoC has engaged in landscape issues and landowner interests were well mobilised in the form of the Canterbury Branch of New Zealand Federated Farmers. The regional council played only a minor role and environmental interests were poorly mobilised. District plan landscape issues have yet to get to the Environment Court.

In the Whangarei District, DoC has been very active in landscape issues, with the regional council again playing a small role. The forestry industry has been active in landscape issues but neither landowners or environmental interests are particularly well organised. District plan landscape issues have yet to get to the Environment Court.

Policy statements and plans

The RMA provides a multi-level framework of policy statements and plans to implement the purpose of the Act. At the apex of the hierarchy are national policy statements which state objectives and policies on matters of national significance, such as the protection of outstanding landscapes (section 45(1)). As already indicated, a national policy statement on landscape does not currently exist. However, the NZCPS does address landscape issues on the coast. It essentially seeks to encourage subdivision and development in areas where landscape values have already been compromised and to discourage this in more pristine parts of the coast. In practice, the NZCPS has not been influential on landscape issues and is currently under review.

Regional policy statements provide an overview of the resource management issues of the region and identify policies and methods to achieve integrated management of the natural and physical resources of the region as a whole (section 62). This includes the management of regionally important landscapes but, as already indicated, many regions have failed to identify these landscapes in their policy statements.

Figure 4: Roles in the protection of important landscapes under the RMA

District plans are the prime mechanisms for directly controlling land subdivision and development impacting on important landscapes (sections 31, 72). Provisions of district plans are significant because they determine what activities potentially impacting on important landscapes require a resource consent before commencing, what factors will be taken into account when the resource consent application is considered, and whether or not a resource consent can be granted or declined.

Compensation is not payable to landowners for controls placed on the use of their land under the RMA. However, if a land use control in a district plan 'renders any land incapable of reasonable use' and 'places an unfair and unreasonable burden on any person having an interest in the land', the Environment Court can direct the local authority to change the provision (section 85).

The preparation of first generation plans under the RMA has proved difficult. Half of the 80 district plans which have been prepared under the RMA were still not operative 11 years after the Act came into force (MfE 2003: 41). Research carried out by the University of Waikato, under the auspices of the International Global Climate Institute, has identified that district plans are generally weak documents. The research evaluated 16 regional policy statements and 34 district and combined plans and found that most councils produced inferior plans. Problem areas included a lack of factual data on which to base the plan, poor identification of issues to be addressed, poor provision for monitoring, and a failure to adequately address the role of Maori in land use and resource management (Ericksen et al 2000).

District plan provisions are primarily implemented through the processing and monitoring of resource consents.

Resource consents

The RMA provides that landowners can use their land without the need to obtain a resource consent unless such a consent is required by the district plan (section 9(1)). The presumption is reversed for subdivision; it is only permissible to subdivide land if expressly authorised in a district plan or by a resource consent (section 11(1)).

Activities are classified into six categories:

- *Permitted activities* which do not require a resource consent if they meet standards or conditions in the plan
- *Controlled activities* which must be granted consent but on which conditions can be imposed
- *Restricted discretionary activities* for which consent can be declined but only in respect of matters for which discretion has been reserved (section 104C)
- *Discretionary activities* for which consent can be granted or declined
- *Non-complying activities* for which consent can only be granted if the adverse effects on the environment will be minor and the activity is not contrary to the objectives and policies of the relevant plan (section 104D)
- *Prohibited activities* for which consent cannot be granted and for which a plan change must be secured before the activity can proceed.

The requirement that a non-complying activity not be contrary to the objectives and policies of the relevant plan has resulted in plan objectives and policies being subjected to a high level of scrutiny. Objectives and policies are often written in broad and non-specific terms which have proved insufficient to sieve out non-complying activities which were not considered appropriate by the plan drafters. The Environment Court has also, in some cases, interpreted plan provisions liberally. For example, in the Arrigato decision, consent was granted to a non-complying proposal to subdivide a headland at Pakiri Beach into 14 rural-residential lots, despite a proposed change (Change 55) to the district plan having as an objective:

> *To protect and retain the natural, coastal, non-urban and remote character of the Pakiri Coastline and surrounding rural backdrop.*

The High Court *(Auckland Regional Council v Arrigato Investments Limited & Ors* AP138/99) stated that 'taking into account the various statutory documents and in particular Change 55, I find it difficult to see how the court could conclude that this proposal was in any way consistent with them' (paragraph 29). However the Court of Appeal subsequently overturned this finding *(Arrigato Investments Limited & Ors v Auckland Regional Council & Ors* CA84/01).

Decisions are made on resource consent applications after considering actual and potential effects on the environment and relevant provisions of policy statements and plans (section 104). In terms of the effects to be considered, a 'permitted baseline' principle was developed by the courts which required adverse effects, which could be created by activities permitted by the plan, not to be taken into account when assessing the effects of a proposal (CA84/01). This principle has now been largely enshrined in the RMA through the Resource Management Amendment Act 2003, although the amendment has reduced the permitted baseline principal from being a mandatory requirement to being optional. The

amendment provides that, when considering an application for a resource consent, the consent authority may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect (sections 104(1), (2)). This considerably widens the discretion of decision makers when considering applications for resource consents. It also lowers the 'minor effects' hurdle for non-complying activities and is likely to result in more non-complying activity applications obtaining consent. In the context of weak plans and, as discussed in section 7, local decision-making influenced by political considerations with few checks and balances, the application of the permitted baseline principle is likely to have a negative impact on important landscapes.

Summary of key points

- The RMA is not clear on what we are trying to achieve in terms of landscape protection. It acknowledges that landscapes are important, and that we should protect them if they are 'outstanding', but protection will not necessarily be provided if there are other competing considerations.
- Although many parties have a function in protecting important landscapes under the RMA, the job is largely left to local councils with little support from outside entities. These councils, elected by the local community, struggle to mediate between competing local interests and can be captured by strong pressure groups.
- At the national and regional levels there is a paucity of policy on landscape protection to guide local efforts. District plans, which are the main mechanism through which development pressures on important landscapes are managed, are generally weak documents.

6 IDENTIFICATION OF IMPORTANT LANDSCAPES

We are far from having a comprehensive identification of our outstanding landscapes or even agreement on how they should be identified

Categorisation of important landscapes

The RMA effectively groups landscapes into three categories. The first and most important category is *'outstanding natural landscapes'* under section 6(b). These are to be protected from 'inappropriate subdivision, use, and development'. All persons exercising powers and functions under the Act are required to 'recognise and provide for' such protection. What is 'natural' has been defined by the Environment Court as being something which is a 'product of nature'. It therefore includes pasture and exotic tree species but not man-made structures. A landscape with structures may still have a degree of naturalness but it will be less 'natural' than an unaltered landscape or a landscape without structures (C180/99 paragraphs 88, 89). Section 6(b), as currently interpreted by the Court, supports a 'wild nature' approach to landscapes.

It is not yet clear whether outstanding natural landscapes can include areas heavily modified by residential development. In *Flanaghan v Christchurch City Council* [2002] NZRMA 279, the Environment Court led by Judge Sheppard found that the Port Hills was an outstanding natural feature and landscape and that the fact that some parts have been modified by residential development did not deprive that land of its outstanding nature (paragraph 43, 44). Just over a year later, a differently constituted Environment Court led by Judge Jackson took the contrary position and expressed the view that residential areas comprising suburbs of the city could not be said to be part of an outstanding natural landscape (*Rutherford Family Trust v Christchurch City Council* C26/2003).

Section 6(b) potentially excludes cultural and historical values of landscapes which may not be linked to their natural values. The recent amendment of the RMA, to incorporate 'historic heritage' as a matter of national importance under section 6(f), may provide historical landscapes with some protection. However, the definition of 'historic heritage' in section 2 of the Act emphasises sites, places and surroundings and fails to refer to the broader concept of landscape.

The terms 'cultural landscapes' and 'ancestral landscapes' were included in the definition of 'historic heritage' in the Resource Management Amendment Bill (No. 2) as reported back to the House by the Local Government and Environment Select Committee. A Supplementary Order Paper was, however, later introduced which deleted these words. It included an explanatory note to the effect that these terms were already covered by the definition of 'historic heritage', but this view has yet to be tested.

What is 'outstanding' is to be determined through an assessment at the level of decision-making. A district council, when considering what are its outstanding landscapes, is required to make that assessment on the basis of comparison with other landscapes within its district. Similarly a regional council is required to identify what landscapes are outstanding in relation to others within the region (C180/99, paragraph 84). It can therefore be construed that central government is the appropriate policymaking level at which to identify landscapes which are outstanding in terms of the country as a whole.

These different frames of reference may result in variable outcomes depending on the circumstances. Where the whole or a large part of a district is a nationally or regionally outstanding landscape, the area identified as outstanding at a district level is likely to be smaller. For example, a regional landscape assessment identified the entire Banks Peninsula as a regionally outstanding landscape, although this finding was not translated into the regional policy statement which failed to identify any outstanding landscapes. The district council took a different perspective and, in a recent variation to the district plan, has only identified small portions of the district as outstanding. This was on the basis that:

> *Some would have it that Banks Peninsula, as a whole is an outstanding feature and landscape. The Council has gone further than this however and selected some areas within Banks Peninsula, which warrant more care than the district as a whole. Before a feature qualifies as outstanding it needs to be out of ordinary within Banks Peninsula (Banks Peninsula District Council 2003:72).*

If, however, no or very few regionally or nationally outstanding landscapes are identified within a district, a district-wide assessment is likely to result in the identification of larger areas for protection than are merited from a regional or national perspective.

The second category of landscapes can be termed *'amenity landscapes'*. They are protected under section 7(c) and (d), where all persons exercising powers and functions under the Act are required to have particular regard to 'the maintenance and enhancement of amenity values' and 'maintenance and enhancement of the quality of the environment'.

There is a third category which includes *'other landscapes'* for which there is no specific protection, but which are more generally protected under the broader sustainable management purpose of the Act.

Assessment of landscapes

Methodologies which have been adopted for landscape assessment can be broadly grouped into two categories: user-independent methods and user-based methods. User-independent methods focus on the more objective aesthetic and/or ecological aspects of landscape. User-based methods seek to probe the more subjective human perceptions, associations and preferences related to landscapes (Swaffield and Foster 2000:21).

During the 1990s, landscape assessment practice in New Zealand emphasised user-independent approaches. These typically incorporated a visual assessment only, or a combined visual/biophysical assessment, with little information about community perceptions (Swaffield 1999a: 6). This was largely because public preference studies were expensive for local authorities to undertake and were not often budgeted for. More recently, greater efforts have been made to incorporate public perception information.

Approaches taken to landscape assessment by different landscape architects have lacked consistency. For example, in a survey of twenty-one landscape architecture practices around New Zealand, fourteen different criteria were cited as a basis for qualitative assessments, with each one typically being used by only one to three respondents (Swaffield 1999a:6-7). This may be due to landscape architects, who are now largely employed in private practice, developing proprietary methodologies as a way of gaining a competitive edge.

In 1999, the New Zealand Institute of Landscape Architects (NZILA) convened a conference which focused on identifying the key elements of a landscape assessment framework suitable for use in implementing the RMA. The framework adopted a user-based methodology identifying community consultation and involvement as highly desirable, if not essential, when interpreting and evaluating landscapes (Swaffield 1999b: 45, 49).

More recently, DoC and the NZHPT have been developing a methodology for identifying heritage landscapes. This approach attempts to identify significance by examining the interactions between physical remains, stories associated with those remains and current relationships with the heritage site (DoC 2002:1). The methodology involves professionals, such as historians and archaeologists, as well as the active participation of tangata whenua and communities that hold much of the knowledge relevant to heritage landscapes (NZHPT 2003: 5). Although this process used the assessment framework developed by the NZILA as a starting point, it has since diverged, resulting in poor integration between methodologies which focus on visual landscape assessment and those currently being developed for heritage landscape assessment.

The Environment Court has adopted its own approach to landscape assessment under the RMA, which it is applying to landscape issues coming before the Court. The criteria were first developed in the *Pigeon Bay case* (*Pigeon Bay Aquaculture Ltd & Ors v Canterbury Regional Council* C32/99), which related to a proposal for a marine farm in Pigeon Bay on the Banks Peninsula. The Court, led by Judge Jackson, put together a list of seven relevant factors to be taken into account when assessing the significance of landscape. The first four were taken from the Canterbury Regional Policy Statement, which itself was based on a Canterbury regional landscape assessment carried out in 1993. The next two were taken from the evidence presented by a landscape architect at the hearing, and the last was added by the Court itself as a result of sitting on another case where historical associations of the bay were at issue.

The factors, as further developed by the Environment Court in the hearings on the Queenstown-Lakes District Plan (*Wakatipu Environment Society Inc & Ors V Queenstown-Lakes District Council* C180/99), are:

- The *natural science* factors – the geological, topographical, ecological and dynamic components of landscape
- Its *aesthetic values* including memorability and naturalness
- Its *expressiveness* (legibility): how obviously the landscape demonstrates the formative processes leading to it
- *Transient values*: occasional presence of wildlife; or its values at certain times of the day or of the year
- Whether the *values are shared and recognised*
- Its value to *tangata whenua*
- Its *historical associations.*

These factors are a useful aid for assessment purposes, but are largely based on a landscape assessment prepared over a decade ago in the context of the Canterbury region. They lack the professional scrutiny and broader perspective that could be achieved through the development of national 'best practice' guidelines.

The Environment Court, led by Judge Jackson, has expressed some reservations about the value of landscape assessments and resultant plan provisions. In the case of farming areas, it appears to favour a more integrated management approach which addresses multiple aspects of land management. The Court stated:

There may be a number of districts in New Zealand (for example, Queenstown Lakes District) where zones based on landscape are a way to achieve the purpose of the Act. However, in working landscapes such as a large part of Hurunui district we consider that zonings based on more practical conservation directed purposes might have been more useful ... We have some doubts about whether the "outstanding" zoning leads to truly integrated management of the adverse effects of land use on land. We think those matters, together with the section 6(c) matters we have raised, could usefully lead to a different type of zoning, not one based on the very subjective basis of landscape assessment' (Wilkinson & Or v Hurunui District Council C50/2000, paragraph 39*).*

In respect of the identification of outstanding landscapes under section 6(b) of the RMA, two different approaches have emerged amongst New Zealand landscape architects. The first is a targeted approach and involves the identification of relatively small areas of clearly outstanding landscape on which protective rules can be focused. This has essentially been the approach taken for the Auckland region.

The second broader approach involves the identification of extensive landscape settings as outstanding, sometimes including whole districts, with an emphasis on design, education and management guidelines as the policy approach (Swaffield 1999b: 49). This broader approach was taken in the Canterbury regional landscape study which recognised the whole of the Banks Peninsula as an outstanding natural landscape. However, this extensive classification was not well received by the community and consequently was never formally endorsed by the council (Tasker 1999:25). This latter approach is more consistent with the international approach to protected landscapes identification.

Where professional landscape evidence has not been available in relation to the identification of outstanding landscapes, the Environment Court has substituted its own judgement for professional analysis. For example, in the *Arrigato* case (A115/99) none of the three landscape architects who gave evidence at the hearing was able to provide an analysis as to whether or not the area affected by the proposed subdivision was an outstanding landscape. In the absence of such evidence the Court found that it was not outstanding in terms of section 6(b) of the RMA.

In relation to references on landscape protection provisions in the Queenstown-Lakes District Plan, of the five landscape architects who gave evidence, only one gave an opinion on where the boundaries of the outstanding landscapes lay. The Court was largely left to demarcate the areas itself and did so without supporting expert assessment. It justified this approach by stating that:

... ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis (C180/99, paragraph 99).

This view of assessment neglects the less visually apparent aspects of a landscape, such as its cultural and historical associations. It is simplistic.

Professional assessment as to the categorisation of landscapes is sometimes not available to the Environment Court, because the work required to assess whether or not landscapes are of significance to the region or district has not been carried out. Cash-strapped councils may not have commissioned adequate landscape assessment work, and resource consent applicants are not in the position to commission district or region-wide assessments to support their application. In these cases, Environment Court judges and commissioners are left to make important policy decisions on the significance of landscapes, without adequate information or technical assessments.

Translation of assessment into policy

There has generally been a poor translation of landscape assessment outcomes into policy. Although assessments have been prepared for many of the districts and regions across the country, this has not necessarily resulted in more effective landscape provisions in plans. An informal survey of 22 districts indicated that, of the 15 that had carried out professional landscape assessments, nine had substantially reduced landscape provisions in their plans following public submissions and lobbying from the farming community, and six plans still had minimal landscape content (Rackham 1999: 37).

The controversy over the incorporation of the results of landscape assessments into plans has led one member of the profession to observe:

*... as a result of the well-publicised negative reactions to some assessments, there are now councils that seriously doubt the value of professionally addressing landscape issues. Assessments are seen to be too subjective, fraught with difficulties – particularly in relation to private property rights in rural areas. In the worst instances communities have been alienated and district plans have lost even the (inadequate) landscape provisions carried over from earlier district schemes (*Rackham 1999: 34*).*

This lack of public acceptance of the results of landscape assessments, which are carried out for

the purpose of regional and district planning, underscores the difficulties with some of the methodologies adopted. In particular, the sequence of actions has proved problematic, with public consultation being left until after the technical assessment has been carried out, rather than being incorporated as an integral part of the assessment process (Swaffield 2003).

A summary of how important landscapes have been identified in district plans in the five case study areas is shown in Figure 5. This shows that four out of the five have identified outstanding landscapes, three have identified amenity landscapes and only one has identified cultural landscapes. Only in the case of Waitakere City was the identification informed by comprehensive technical landscape assessment work incorporating information about public perceptions. In the case of the Wakatipu Basin, the Environment Court determined the important landscape areas on the basis of evidence presented at the hearing and site visits. In respect of the Banks Peninsula, the boundaries were a mix of recommendations of a task force, whose members did not include any landscape architects, some technical assessment and political decision-making. In the Whangarei District, a comprehensive landscape assessment was carried out, but the recommendations were substantially changed before being incorporated into the district plan.

Summary of key points

- Landscape assessment practice has been problematic and can fail to address matters in an holistic manner. Cultural and historical associations with landscape have often been neglected in landscape assessment exercises but a separate methodology for heritage landscapes is currently being developed. Landscape assessments have often failed to adequately address the policy environment and public perceptions of landscape categorisation, resulting in poor linkages between the results of assessment and policy development.
- The RMA requires the protection of natural landscapes which are outstanding at the district, regional and national levels. It also provides weaker protection for landscapes that contribute to amenity values. It is less clear on the extent to which heritage landscapes are protected. Recent amendments to the Act provide protection for 'historic heritage', but the scope of this concept as defined in the Act may fall short of a landscape approach.
- Nationally and regionally important landscapes may not be protected in district plans if they are not identified in national and regional policy statements. This is due to the different scope within which the assessment process takes place.
- We know that our outstanding landscapes are likely to be areas with high natural character and/or cultural significance. We do not yet have anything like a comprehensive identification of them throughout the country, or even agreement on how they should be identified. And, as emphasised by the Environment Court, *'If the areas of outstanding natural landscape cannot be identified then how can objectives and policies (and methods) be properly stated for them?'* (paragraph 97, C180/99)

Figure 5: Identification of important landscapes in district plans within five case study areas

Study Area	Outstanding landscapes identified?	Amenity landscapes identified?	Cultural landscapes included?	Who identified?	How identified?
Coromandel Peninsula	No	No	N/A	N/A	N/A
Wakatipu Basin	Yes	Yes	No	Environment Court	Evidence and Court site visit
Waitakere Ranges	Yes	Yes	Yes	ARC and District Council	Public preferences study, technical assessment and iwi assessment
Banks Peninsula	Yes	No	No	District Council in association with Task Force	Technical assessment substantially modified by Task Force recommendations and political decision
Whangarei Coast	Yes	Yes	No	District Council	Technical assessment substantially modified by political decision

7 DEVELOPING POLICY FOR LANDSCAPE PROTECTION

The results of landscape policymaking can represent a compromise position as much as sound resource management and is often weak at addressing the cumulative encroachment of built structures into predominantly natural areas

Once important landscapes have been identified, the next step is to develop policies which ensure the protection of the values which make them important. This does not necessarily mean that development is not able to occur or that the land will be locked up in perpetuity. But it does require having a good understanding of what values are to be protected, what activities threaten these values and how these threats can be effectively managed. It means making well informed and high quality decisions and adopting sound management practices. This section explores how landscape policy is developed, through examining experience on the ground in the five case study areas.

The politics of landscape policymaking

The development of policy to protect important landscapes at a district level can prove to be a politicised process. In four out of the five case study areas, significant changes in the level of landscape protection provided in proposed district plans ocurred as a result of changes in the political orientation of councils and/or dissatisfaction expressed by interest groups (see Figure 6). The resultant approach taken to landscape protection in the district plan can thereby reflect the influence which particular interest groups have been able to exert on the process as much as sound resource management.

For example, on the Coromandel Peninsula, the proposed plan as notified provided for subdivision as a discretionary activity in the rural and coastal zones for lot sizes no smaller than 60 hectares. Outstanding landscapes were not identified or specifically protected. As a result of strong opposition to these provisions, the council's decisions on submissions reduced the minimum lot size in rural and coastal areas from 60 hectares to a 20 hectare average. A section of the plan identifying objectives, policies, methods and results relating to the coastal zone was removed. The policies relating to landscape shifted from an emphasis on protection towards encouraging development associated with the revegetation of land. Outstanding landscapes are still not identified.

In the Wakatipu Basin, in 1995, the council notified Change 99 which provided for a 150 hectare minimum lot size for rural subdivision. This proposal aroused considerable opposition and the proposed plan, which was subsequently notified, provided for a 20 hectare minimum lot size for rural subdivision as a discretionary activity. The proposed plan also, for the first time, incorporated Areas of Landscape Importance. Subdivision and buildings within these areas were generally non-complying activities. These provisions aroused considerable opposition and the council's decision on submissions removed all reference to the Areas of Landscape Importance. In addition, the minimum lot size for subdivision in rural areas as a discretionary activity was reduced to 4 hectares, thereby opening the area up to much more intensive development. The Wakatipu Environment Society Incorporated appealed the landscape provisions to the Environment Court. The Court identified outstanding natural landscapes and visual amenity landscapes. Subdivision and buildings within these areas were given a discretionary status with the removal of any minimum lot size requirement. Eighty-nine landscape criteria against which to assess activities in these landscape areas are now contained in the proposed plan although not all are applicable to any one proposal.

In the Banks Peninsula, the proposed district plan identified extensive landscape and coastal protection areas throughout the district, within which buildings were a discretionary activity. In the rural zone, including these protection areas, a minimum lot size of 20 hectares was provided for as a controlled activity and a minimum lot size of 4 hectares provided for as a discretionary activity. As a result of strong opposition to these provisions, the council established a Banks Peninsula Rural Task Force which developed recommendations, that had the effect of reducing the landscape protection area from 31,150 to 7,900 hectares and the coastal protection area from 15,350 to 360 hectares. These recommendations were largely adopted by the council in a variation notified to the plan, although the areas of coastal and landscape protection were enlarged in some places.

In the Whangarei District, a comprehensive landscape assessment, carried out for the purposes of preparing the proposed district plan, identified extensive areas of outstanding and amenity landscapes. However, the results of the assessment were significantly watered down when translated onto the proposed plan maps. In rural areas, including important landscape areas, subdivision down to 1 hectare in the countryside environment and 3 hectares in the coastal environment was provided for as a controlled activity, with subdivision down to 2,000 square metres provided for as a discretionary activity in both zones. Buildings in outstanding and amenity landscape areas were a permitted activity, but only if they met prescribed conditions including height and ridgeline controls. As a result of submissions the council toughened up these provisions, so that subdivision down to 4 hectares in the countryside environment and 6 hectares in the coastal

Figure 6: Changes in district plan landscape policy

Area	Proposed plan as notified	Proposed plan after council decisions	Current proposed plan
Coromandel Peninsula	No important landscapes identified; rural and coastal subdivision min lot size 60 ha (discretionary)	No important landscapes identified; rural and coastal subdivision min lot size 20 ha av (discretionary)	No important landscapes identified; rural and coastal subdivision min lot size 20 ha average (discretionary)
Wakatipu Basin	Extensive areas of landscape importance identified in which buildings and subdivision non-complying; rural subdivision min lot size 20 ha (discretionary)	No important landscapes identified; rural subdivision min lot size 4 ha (discretionary)	Outstanding and visual amenity landscapes identified; same rules for all landscapes but different assessment criteria and objectives and policies for differently classified landscapes; all subdivision and buildings in these areas discretionary activities with detailed assessment criteria except for most farm buildings which are controlled
Banks Peninsula	Extensive landscape and coastal protection zones identified in which buildings a discretionary activity; rural subdivision min lot size 20 ha (controlled), 4 ha (discretionary)	No council decision on rural chapter of plan	Severely reduced landscape and coastal protection zones identified in which buildings a discretionary activity; rural subdivision min lot size 20 ha (controlled), 4 ha (discretionary)
Whangarei District	Outstanding and notable landscapes identified with buildings permitted but control on building height and ridgeline ocation; rural subdivision min lot size 1 ha (controlled), 2,000 m^2 (discretionary); coastal subdivision min lot size 3 ha (controlled), 2,000 m^2 (discretionary)	Area of outstanding landscapes reduced and buildings restricted discretionary; areas of notable landscapes increased with buildings permitted but control on building height; rural subdivision av lot size 4 ha min, min lot size 4,000m^2, parent min lot size 8ha (controlled), av lot size 1.5ha min, min lot size 2,000m^2 (discretionary); coastal subdivision av lot size 6 ha min, min lot size 2,000m^2, parent min lot size 12ha (controlled), av lot size 3ha min, min lot size 2,000m^2 (discretionary); conservation benefit lot for discretionary subdivisions	Outstanding landscapes identified with buildings restricted discretionary; notable landscapes identified with buildings permitted but control on building height; rural subdivision min lot size 4 ha (controlled), av lot size 4ha (discretionary); coastal subdivision min lot size 6 ha (controlled), av lot size 6ha; conservation benefit lot (discretionary)
Waitakere Ranges	Outstanding landscapes identified and incorporated into natural area layer; Ranges Environment subdivision min lot size 4 ha (restricted discretionary); Foothills Environment subdivision min 4 ha or in accordance with structure plan (controlled); buildings permitted in both areas if not on a sensitive ridge or headland, cliff or scarp	Outstanding landscapes identified and incorporated into natural area layer; Ranges Environment subdivision av min lot size 4 ha and min net site area 2 ha (restricted discretionary); Foothills Environment subdivision min lot size 4 ha or in accordance with structure plan (controlled); buildings permitted if not on a sensitive ridge or headland, cliff or scarp	Outstanding landscapes identified and incorporated into natural area layer; Ranges Environment subdivision av min lot size 4 ha, min net site area 2 ha (restricted discretionary); Foothills Environment subdivision min lot size 4 ha or in accordance with structure plan (controlled); buildings permitted if not on a sensitive ridge or headland, cliff or scarp

environment was provided for as a controlled activity. A subsequent variation to the proposed plan provided for subdivision as a discretionary activity down to an average lot size of 4 and 6 hectares respectively, with controls on the minimum size of specific lots. Buildings became a restricted discretionary activity in outstanding landscape areas.

Some of the difficulty in providing for landscape protection in district plans has resulted from the manner in which the identification of such areas has been approached. Only in the Waitakere Ranges were public preferences rigorously incorporated into landscape assessment work and this was through the regional landscape assessment. In the Wakatipu Basin, a technical assessment was used as background material to inform the preparation of the district plan. In the Banks Peninsula, the identification of landscape protection areas was based on a landscape assessment carried out some years previously for a different purpose and did not include public input. In the Coromandel Peninsula, no important landscapes were identified. In Whangarei, the identification of important landscapes was based on a comprehensive technical landscape assessment exercise, but this did not incorporate any information on public perceptions within the district or any public consultation.

Difficulties can also arise from changes in the makeup of councils during the district plan preparation process, which can take many years. In some cases, councillors become responsible for implementing district plans which they had no hand in preparing and do not particularly support. For example, in the Wakatipu Basin, the proposed plan was prepared and notified in 1995. In 1998, a differently constituted and more 'development friendly' council made decisions on submissions on the proposed plan and was responsible for resolving the majority of the references. In 2001, a differently constituted council became responsible for resolving references and implementing the district plan. In the Coromandel Peninsula, the proposed plan was developed and notified in 1997, by a council dominated by 'progressive green' councillors. The council released decisions on submissions in 1998, just before the election, when a council dominated by more 'centrist' councillors was elected. This council is now responsible for resolving references as well as administering the plan which it does not particularly favour.

Different interest groups have had varying influence over the process of developing landscape policy at a district level, depending on local land use and ownership patterns and local community dynamics. For example, in the Waitakere Ranges, where land use is dominated by urban and rural-residential living, an environmental pressure group had a strong influence over the outcomes. In the Banks Peninsula, where most land is still utilised for extensive pastoral farming, farmers had a strong influence over the outcomes. In the Coromandel Peninsula, where land use is much more diverse and where there is a large number of absentee owners, developers had a much stronger influence over the outcomes. In the Wakatipu Basin, where the council failed to provide for any landscape protection in decisions on submissions on the plan, the Environment Court has mainly arbitrated landscape policy. In Whangarei, DoC is playing a key role, particularly on the coast.

Local politics can become more intense when there is little central or regional government policy or checks and balances. Of the five case study areas, only in the Waitakere Ranges did the regional council substantively engage in landscape issues and the regional policy statement identify important landscapes. Only in the Wakatipu Basin has the Environment Court had any significant influence on landscape protection provisions in the district plan. DoC became involved in landscape issues in only two case study areas: Banks Peninsula and Whangarei District. In the case of the Coromandel Peninsula, there has been no engagement by the regional council, DoC or the Environment Court in landscape protection policy, making it particularly susceptible to local politics.

Policy approaches

Many different approaches have been applied to the development of policy to protect important landscapes. Figure 7 summarises the main approaches which have been identified in the case studies: strategic planning, constraints mapping, density control, site-specific assessment of effects, net conservation benefit and voluntary protection. These approaches are not mutually exclusive and districts commonly employ more than one method.

(a) *Strategic planning* is driven by a long-term vision of how the district will develop as a whole and what this means for important landscapes within it. A vision is usually developed through a series of community visioning processes, complemented by technical assessments on issues such as likely future demand patterns and physical constraints. The vision guides the development of a policy framework for the district. The outcome may be a preference for conservation, with no or little subdivision. It may be for some level of development. In that case, local structure plans can be used to articulate how the vision will be realised within specific areas, in terms of the location and design of development.

    This approach has not yet been applied to landscape policymaking in any of the five case

study areas. It may, however, be used in future. In the Whangarei District, strategic planning has been applied in the development of a coastal management strategy and the associated local structure plans, and this may lead to future changes to the district plan. In the Waitakere Ranges, the council developed a West Coast Plan which identifies specific actions to be taken by statutory bodies in the area. The requirements under the Local Government Act 2002 for the development of long term council community plans (LTCCP) have prompted other councils to begin community visioning processes which may ultimately help to drive changes to district plans. For example, the LTCCP prepared by Waitakere City includes a 2020 vision of the Waitakere Ranges being permanently protected and a range of actions required to achieve this.

Figure 7: Summary of approaches to landscape policymaking

Policy Approach	Underlying Assumptions	Characteristics	Possible Outcomes	Examples of Application
Strategic planning	Policy should be driven by a long-term future vision for the district as a whole and for important landscapes within it.	Process driven by community visioning processes balanced with assessment of future demand and physical constraints. Local structure plan developed under umbrella of wider policy framework, indicating long-term development trajectory for area	Development directed into specific areas with clear urban limits and urban/landscape design guidance. Infrastructure investment linked to planned future development	Coastal Management Strategy: Whangarei District
Constraints mapping	Development will occur but should be directed away from sensitive landscape areas	Structure plan developed identifying sensitive areas and the maximum development potential of remaining land	Well designed development of local area but with cumulative encroachment of built structures on the wider natural landscape	Structure Plan: Oratia, Waitakere Ranges; Quail Rise Structure Plan, Wakatipu Basin
Density control	The impacts of development can be mitigated by spreading it out	Minimum lots sizes or minimum average lot sizes imposed on subdivision coupled with restriction on number of houses on a single lot	Scattering of houses or clusters of houses throughout rural areas	Minimum lot sizes: Banks Peninsula, Coromandel Peninsula, Waitakere Ranges, Whangarei District
Site-specific assessment of effects	Development will occur in appropriate areas but its impacts on landscape values should be mitigated	The impacts of a development proposal on landscape values is assessed against a set of criteria	Well designed individual developments, but may result in cumulative encroachment of built structures on the surrounding natural landscape	Landscape assessment criteria: Wakatipu Basin
Net conservation benefit	Trade-offs are required to achieve policy objectives and/or good environmental behaviour should be rewarded	More liberal development rights are granted in exchange for covenanting areas of land of landscape importance	Degradation of some important landscapes with a corresponding increase in areas protected from future development	Conservation lots: Coromandel Peninsula, Banks Peninsula, Whangarei District
Voluntary agreement	Private property rights should be respected	Negotiations undertaken with individual landowners to provide permanent protection	Permanent protection of parts of some important landscapes but other areas of important landscapes open to development	Conservation Trust: Banks Peninsula

(b) *Constraints mapping* is focused on managing the effects of development rather than on developing a strategic vision of how development should be managed. Within a defined area, sensitive environments such as important landscapes and habitats are identified. The maximum development potential of the remaining land, while still preserving the important environments identified, is assessed. Because this approach is based on an implicit assumption that development will occur in an area, it results in better designed development but fails to address the encroachment of built structures over the wider natural landscape. The question as to whether development in the area is desirable at all is not asked. This approach has been applied to the development of structure plans in the foothills of the Waitakere Ranges and to several structure plans prepared in the Wakatipu Basin.

(c) *Controlling development density,* through such mechanisms as minimum lot sizes, is based on the assumption that the impacts of development can be mitigated by spreading it out over a geographical area. Some districts have adopted an average lot size instead of a minimum lot size, to enable the clustering of buildings. This approach has long been used to restrict the incursion of urban development into rural areas. It reduces the density of development but can result in the scattering or 'pepperpotting' of buildings or clusters of buildings throughout the landscape.

(d) *Assessing the impacts of each individual development* proposal on its own merits is an approach that is often seen as more compatible with the 'effects-based' orientation of the RMA . Commonly, a set of criteria is developed by which the impact of the development on important landscapes is assessed. The development will receive consent if the effects are found to be acceptable. This approach has been applied most strongly in the Queenstown-Lakes District, where the district plan contains eighty-nine assessment criteria for activities in important landscape areas. Not all of these are considered in every assessment, but different criteria are applied depending on the type of landscape being impacted upon. The assessment approach may result in well-designed individual developments, but is not necessarily well suited to deal with the cumulative encroachment of built structures on the overall natural landscape. An assessment criteria which attempts to address cumulative effects is being applied to development within important landscape areas in the Queenstown-Lakes District. This requires that, where the proposed building platform is not clustered with existing houses, consideration be given to alternative locations or methods within a specified radius.

(e) *A net conservation benefit* approach represents a pragmatic attempt to achieve overall improved environmental outcomes. It is also a way to reward good environmental behaviour. The approach accepts that trade-offs are required, and that degradation of some important landscapes is acceptable if a corresponding environmental benefit can be achieved. However, the corresponding environmental benefit is not necessarily related to landscape protection. In some cases a negative impact on landscape will be accepted if permanent protection for other areas of landscape is provided. In other cases, the loss of important natural landscape values is accepted on the basis of other environmental benefits such as the protection or reinstatement of indigenous habitat that has more ecological than landscape benefit. This approach has been applied in relation to conservation lots in the Coromandel Peninsula, Banks Peninsula and Whangarei District.

(f) *A voluntary approach* is based on the assumption that individual property rights should be respected and that landscape protection should proceed from the voluntary actions of individual landowners. There are several nationwide initiatives to promote voluntary landscape protection, including the Nature Heritage Fund and Nga Whenua Rahui managed by DoC, heritage covenants managed by the NZHPT, and the activities of the Queen Elizabeth the Second National Trust. These provide support for the covenanting and management of important natural heritage areas on private land. Such initiatives make an important contribution to landscape protection, but a full assessment of their impact is outside the scope of this report. In the case study areas, a locally based voluntary approach has been most vigorously applied in the Banks Peninsula, where an independent Conservation Trust has been established as the main vehicle through which rural landscapes will be protected.

These approaches, with the exception of strategic planning, can be weak in addressing cumulative impacts. They may result in better designed or more dispersed development but, arguably, do not adequately address the key threat to important landscapes – the gradual and cumulative encroachment of built structures into predominantly natural areas.

Summary of key points

- The development of policy at a district level to protect important landscapes can prove to be a politicised process. Local politics becomes more intense when there is little central or regional government policy or checks and balances. The resultant approach taken can reflect the influence which particular interest groups have been able to exert over the process, rather than sound resource management.
- The policy approaches taken to landscape protection can be weak at addressing the cumulative encroachment of built structures into predominantly natural areas, which is the key threat to important landscapes. Attempts are being made to develop planning tools which more effectively address this issue.

8 IMPLEMENTATION OF LANDSCAPE POLICY

Decision makers are generally reluctant to decline resource consent applications impacting on important landscapes

There is little documented information on the implementation of landscape policy and further research is required to provide an accurate picture of the implementation process. The prime mechanism for implementation is the resource consent application process. This study has had to rely largely on anecdotal evidence in an attempt to build up a picture of how decisions on resource consent applications are impacting on important landscapes. Three areas are discussed below: assessment of the effects of proposals, decisions on resource consent applications, and monitoring outcomes.

Assessment of effects

Interviews with resource consent processing officers identified particular difficulties in assessing the cumulative effects of resource consent applications on important landscapes. This is for two main reasons: lack of a clear environmental bottom line and lack of good information.

In terms of the impact of buildings on important landscapes, it is difficult to determine an environmental bottom line beyond which cumulative impacts are not acceptable. This difficulty stems from a lack of clear vision as to how the landscape should evolve and what form of development is consistent with that evolution. District plans can be short on vision and consent processing officers can be left to make sense of, and apply, vaguely worded policies in an application-by-application, ad hoc manner.

Spatially referenced information on the cumulative effects of development already approved is often not available as a context within which to assess new applications. In terms of the case study areas, the Queenstown-Lakes District Council has only over the past couple of years begun assembling accurate GIS-based information to identify the location of approved building platforms in the rural areas of the district. In the Waitakere Ranges, the council has been determinedly trying to bring together information to identify the impacts of lifestyle subdivision and development, but has only recently been able to put together anything like a comprehensive picture. In the Coromandel Peninsula and Banks Peninsula, information on the cumulative impacts of development within the coastal area is not readily available. In the Whangarei District, a comprehensive monitoring system on the spatial location of resource consent approvals has recently been put in place with the first monitoring report produced in 2003.

Where there is poor information on cumulative effects, the assessment of effects in relation to a resource consent application inevitably focuses on site specific issues. Planners processing resource consent applications reported being effectively unable to recommend that consent be declined, because they lacked the information base whereby they could substantiate concerns about cumulative effects.

Decisions on resource consent applications

Two problematic elements of decision-making were identified during the study: the high level of discretion which is applied to decisions and the prevailing approval culture which frequently results in this discretion being exercised to approve applications.

Exercising discretion

The processing of resource consent applications involves a high degree of discretion, both in determining whether or not to notify the application and whether or not to grant consent. This level of discretion is increased by the potential to apply the permitted baseline test, where the consent authority can choose to ignore negative effects of a proposal on an important landscape if a permitted activity could hypothetically result in a similar effect.

The successful operation of a highly discretionary system is dependant on retaining a high level of skill and commitment amongst decision makers and their advisors. However, local councils, particularly those with small budgets and staff numbers, can experience a high turnover of staff. Even in Waitakere City Council, the largest council amongst those participating in the case studies, a turnover of a third of resource consent processing staff was reported in the previous year. The Banks Peninsula District Council reported extreme difficulty retaining staff, due to the possible amalgamation with Christchurch City Council. Such high staff turnover can lead to loss of institutional memory and skills, as well as making it difficult to mentor and develop junior planners. Councils also lack a critical mass of people with landscape skills.

A highly discretionary system is also susceptible to changes in political orientation of councils. For example, a council can significantly change outcomes for important landscapes within the district without making any changes to the district plan, through taking a more permissive or restrictive approach to notification and approving non-complying activities. The case studies documented the strong political swings which have occurred in council orientation at a local level.

These weaknesses are magnified where there are few checks and balances on local level decision-making. Currently, no regional or national body consistently keeps a watch on local decision-making under the RMA. Although the MfE tracks the quantity and the timing of decision-making, it does not track quality. The Department of Conservation infrequently becomes involved in landscape issues on private land. Regional councils, with a few exceptions, have failed to substantively engage in landscape protection issues. In some areas, local watchdog groups play an effective role in scrutinising the decision-making of local councils, but these tend to ebb and flow as key members move on or burn out.

Approval culture

Interviews carried out for the case studies identified a general reluctance by decision makers to decline resource consent applications, even when they are for activities which impact on important landscapes. Anecdotal evidence indicated that efforts are focused on improving the design and location of buildings to mitigate their effects and rarely is an application turned down outright.

This view appears to be supported by the scant quantitative evidence available. For example, in the Whangarei district during the 2001/02 financial year, only 1.5 per cent of resource consent applications were declined and, of the 39 applications for non-complying activities processed only one was declined (Whangarei District Council 2003: 24-25). In the Banks Peninsula, a council planning officer could not recall turning down an application for consent to subdivide rural land for lifestyle blocks over the past six years. Countrywide, the MfE's 2001/02 survey of local authorities indicated that the large majority of resource consent applications are approved. Only 274 (0.56 %) of the 49,012 resource consent applications processed nationwide that year were declined by local authorities (MfE 2003: 17). However, these figures do not take into account the number of consents withdrawn during the process, or those that did not get as far as a formal application because they were turned away at the front counter as not being acceptable to councils.

Monitoring

The case studies indicated that little monitoring is regularly carried out on the impact of development on important landscapes. As a result, councils and the Environment Court can have little idea of the impacts of their decision-making. Information on approved resource consents is often not kept by councils in a manner which enables a spatial analysis of development patterns to be easily carried out. A notable exception to this is the recent monitoring report prepared by the Whangarei District Council (Whangarei District Council 2003) This was prepared for the first time in 2003 and provides a spatial breakdown of where land use, subdivision and building consents had been granted for the previous year. Plan effectiveness monitoring also recently commenced in the Queenstown-Lakes District, after the district plan rules were largely settled in late 2003.

Summary of key points

- Cumulative impacts have a major negative effect on important landscapes, but these can receive the least consideration when assessing resource consent applications. This is due to a lack of high quality information and difficulty in establishing an environmental 'bottom line'. More recently, efforts are being made to improve the assessment of cumulative impacts.
- The processing of resource consent applications that impact on important landscapes is highly discretionary and quality is dependent on retaining a high level of skill and commitment amongst decision makers and their advisors. Councils can end up being responsible for implementing district plans which they had no hand in developing and which they do not particularly support. A prevailing 'approval culture' means that most resource consent applications obtain consent.
- Little monitoring is carried out on the impact of development on important landscapes, and councils and the Environment Court may have little idea of the impacts of their decision-making. Monitoring systems are improving as plan provisions are being finalised.

9 WEAKNESSES IN THE LANDSCAPE PROTECTION SYSTEM

The breakdown in the landscape protection system is a result of multiple weaknesses at many levels

This study has identified many weaknesses in the landscape protection system currently operating in New Zealand as well as initiatives evolving at local government level to address some of these issues. The weaknesses are grouped and summarised in Figure 8 and are described in more detail below.

Landscape assessment practices

Landscape assessment practices applied to the identification of important landscapes under the RMA have proved problematic. Assumptions underlying landscape assessment methodology may not be made explicit, and public perceptions have been infrequently incorporated into assessments. This has been in part due to the limited budgets available to carry out landscape assessments and an expectation that the plan submission process under the RMA would enable local values to be incorporated into the assessment results. This practice is changing and both councils and landscape architects appear to be more aware of the need to incorporate public input at an early stage.

Cultural and historic landscape values are rarely assessed, as they do not fit readily within the predominant methodology adopted which focuses primarily on visual aspects of landscape. A methodology more appropriate to cultural and historic landscapes is being developed, but this effort is currently being focused on publicly owned land, and is a long way from being adopted at a district level.

There has generally been poor acceptance by the community of the results of landscape assessment exercises. As a result, there can often be little relationship between the results of landscape assessments and the identification of important landscapes in district plans.

Identification of important landscapes in policy and plans

Important landscapes are in general poorly identified in policy statements and plans. Landscapes which are important from a national perspective have yet to be identified, and regionally important landscapes are infrequently identified in regional policy statements. The case studies indicated that local councils struggle to identify important landscapes. The Thames-Coromandel District Council has yet to identify important landscapes within its district. The Queenstown-Lakes District Council identified important landscapes largely by reference to a contour line, subsequently removed them as a result of submissions, and the Environment Court then largely reinstated them albeit over a smaller areas of land. The Banks Peninsula District Council used an old visual assessment report to help identify extensive areas as important landscapes and, after facing considerable opposition, substantially reduced the area identified. The Whangarei District Council specifically commissioned a landscape assessment for the purposes of preparing the district plan, but then downgraded the landscape ratings before incorporating them into the district plan. The Waitakere City Council appears to have had the least trouble with this issue. It was able to largely adopt the area identified in the regional policy statement as an outstanding landscape, redefining some of the boundaries as a result of further technical assessment. Only one of the case study areas (Waitakere Ranges) comprehensively identified cultural landscapes.

Landscape provisions in policies and plans

Landscape policy remains generally weak. There is no national policy statement on landscape protection despite the importance of landscape to the country as described earlier in this report. Case law on the RMA indicates that regional councils should identify outstanding landscapes in the region and provide for their protection, but few have done so. In relation to the case study areas, the Otago and Waikato Regional Councils had no policy on landscape protection. Canterbury Regional Council had weak policy provisions, which were dismissed as having little relevance by the Environment Court when assessing the landscape impacts of a resource consent application in Akaroa Harbour. Landscape policy adopted by the Northland Regional Council focuses on promoting the adoption of a consistent methodology for landscape assessment by the three local councils within its jurisdiction, rather than any specific outcomes. Only in the case of the Auckland regional policy statement were there substantive provisions on landscape protection.

At a local level, the process of developing provisions in district plans relating to landscape can be politicised and ultimately represent the interests of mobilised groups or a compromise between polarised viewpoints, rather than reflecting broader public values and robust technical assessment. The case studies indicated the extent to which district plan provisions for important landscapes can change through the lengthy process of finalising the district plan. The lack of effective checks and balances, in many cases, magnifies the impact of politics on decision-making at a local level.

A range of policy approaches have been adopted to protect important landscapes. However, many of these are weak at addressing cumulative effects, the very effects which are of greatest threat to important landscapes.

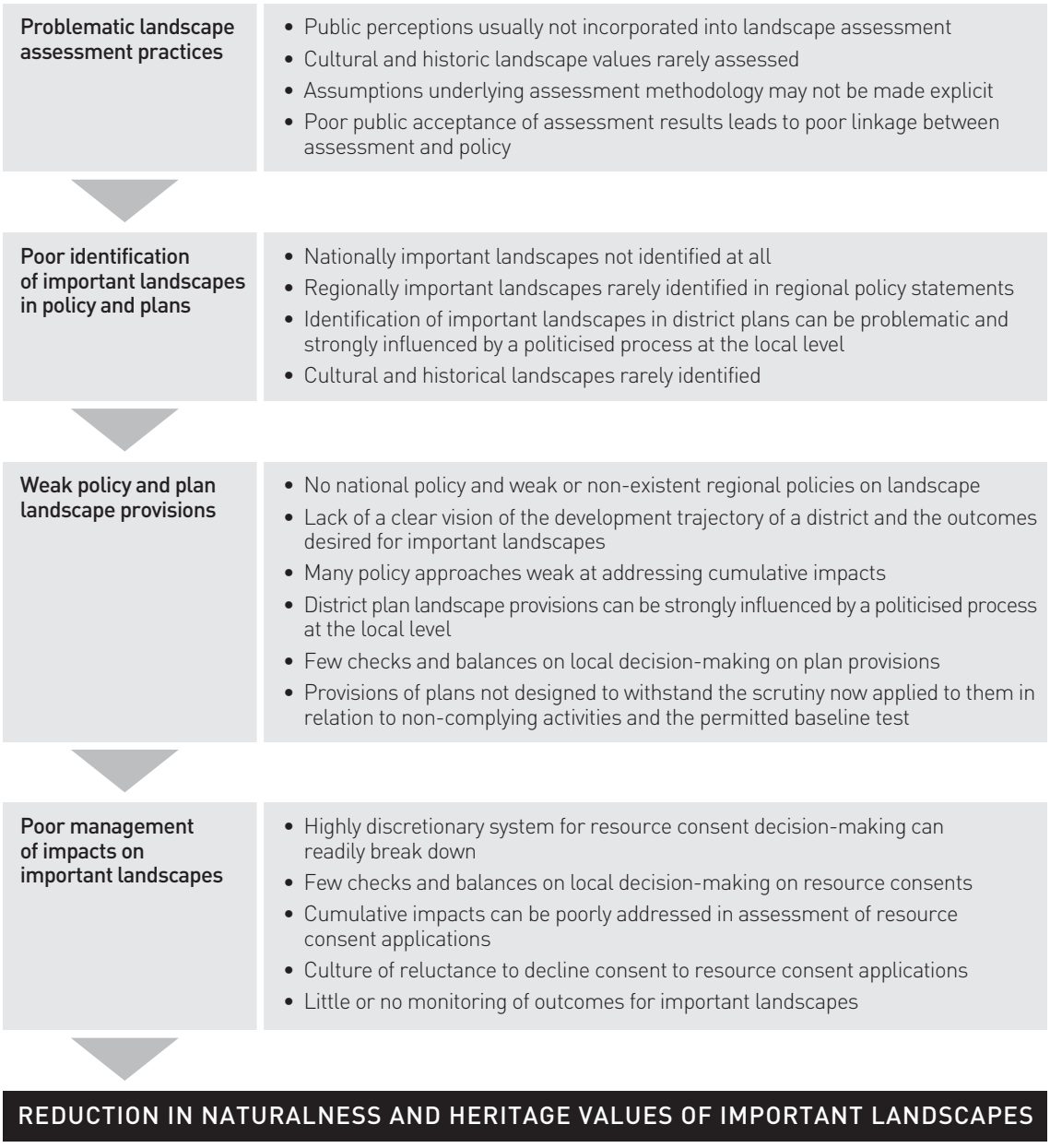
Management of impacts on important landscapes

There is little information available to quantify what happens when resource consent applications impacting on important landscapes are processed. We do know, however, that almost all resource consent applications are approved. This may be a result of an 'approval culture' where the permissive nature of the RMA, coupled with strong development pressures and the political nature of local decision-making, results in few developments being refused consent. Further research is required to reach a more definitive answer.

Outcomes

The result of the weaknesses identified in the landscape protection system is likely to be a reduction in the naturalness and heritage values of important landscapes. Information is not available to document or quantify these outcomes in any more than an ad hoc or anecdotal manner. This is largely because statutory bodies have not yet monitored outcomes for important landscapes, although more monitoring systems are in the process of being developed.

Figure 8: Weaknesses in the landscape protection system



Local initiatives

In several of the case study areas, initiatives are in place that seek to address the deficiencies of past landscape management efforts. For example, in the Whangarei District, the council is putting into place a comprehensive strategic management framework which will help guide future landscape management. This council is also looking to review its district landscape assessment and develop new district plan provisions during 2004. In the Waitakere Ranges, the council is undergoing a public consultation process to identify the way forward for ensuring the future protection of the Ranges. It has also commissioned an independent review of the structure plan process. In the Wakatipu Basin, the council is busy developing and implementing a monitoring system for the comprehensive assessment approach to landscape management now incorporated into the district plan.

Summary of key points

- Weaknesses in the landscape protection system include problems with landscape assessment practices, the identification of important landscapes in policy and plans, the development of provisions in plans to protect important landscapes, and the processing of resource consent applications impacting on such landscapes.
- The result of these weaknesses appears to be a reduction in the naturalness and heritage values of important landscapes, although the extent of this has yet to be quantified.

10 STRENGTHENING THE LANDSCAPE PROTECTION SYSTEM

An effective solution is likely to include the promotion of better practice, the promulgation of a strong landscape national policy statement and new legislation which supports the piloting of protected landscape models

This report, and the research on which it is based, has focused on investigating the weaknesses in the current landscape protection system rather than on exploring possible solutions in detail. This section identifies some of these potential remedies, but they will require more investigation and debate before the most appropriate mix of solutions can be identified. Some solutions are, however, self-evident and could be implemented without delay.

What we need to have in place

Drawing on the international review and lessons from the case studies, the following elements of a more effective landscape protection system for New Zealand could include:

- The nationwide identification and mapping of important natural and cultural landscapes
- The establishment of clear management objectives for important landscapes, to ensure the preservation of their values
- Some insulation from local politics of management decisions regarding nationally and regionally important landscapes
- The provision of central government funding, in the form of a *Heritage Landscapes Fund,* to incentivise local authorities to undertake proactive management
- The preparation of strategic plans for nationally important landscape areas, detailing clear responsibilities and funding sources for their implementation
- The implementation of a stewardship programme to promote sustainable land management and appropriate local economic development opportunities within important landscapes

In terms of implementing these elements, there are four main options which are not mutually exclusive: promoting better practice, implementing a national policy statement on landscape, amending the RMA and preparing new protected landscapes legislation.

Better practice

This approach seeks to support and build on positive efforts being undertaken locally to improve landscape management outcomes. Actions to promote better practice within the current national legislative and policy environment could include:

- The production of a series of 'best practice' landscape management guides, including guides documenting good and bad practices applying to landscape management, how to carry out landscape assessments and how to incorporate the results of assessments into robust policy.
- The identification and mapping of nationally outstanding landscapes on a nation-wide basis.
- Ensuring that regional and district councils similarly identify important landscapes at their respective levels and provide appropriate protection. Initial efforts could focus on providing technical and/or financial support.
- Ongoing advocacy to ensure regional policy statements and plans and district plans identify and protect important landscapes, and that decisions on resource consent applications do likewise. This would require DoC to more vigorously carry out its advocacy function in respect of landscape. Efforts could be primarily targeted at the protection of nationally outstanding landscapes, rather than those of regional and local significance which could more appropriately be left to regional and local management.
- Financial support provided to local authorities for the development and implementation of strategic plans in respect of the management of nationally outstanding landscapes (Heritage Landscapes Fund).

If such a programme were implemented vigorously, it could make a significant difference to landscape protection. It would require a far more proactive role by central government agencies, without changing their current powers and functions. It would have budgetary implications for central government, and would also require a substantial shift in the nature of the relationship between MfE and DoC on one hand and local authorities on the other.

However, this option on its own would still result in a lack of consistent policy nationally on landscape protection, and landscape protection efforts could still be undermined by the weak framework provided by the RMA.

National Policy Statement

This approach focuses on increasing the protection for important landscapes through the promulgation of a national policy statement under the RMA. Such a national policy statement could provide for the following:

- A clear statement of the purpose of managing outstanding landscapes and the outcomes to be achieved.

- The identification of outstanding landscapes of national importance. This could include maps showing the boundaries of each area and a description of the important landscape values to be protected in each area.
- A clear requirement that regional policy statements and district plans identify important landscapes on a regional and district level, and describe the values to be protected for each area, under sections 6 and 7 of the RMA.
- Identification of the types of activities which are 'inappropriate' in outstanding landscapes in terms of section 6(b) of the RMA. This could include a requirement that such activities are prohibited in regional and/or district plans.

The Environmental Defence Society (EDS) commissioned Buddle Findlay to prepare an opinion on the potential scope of a national policy statement under the RMA (see Appendix 7). The opinion examined the powers of the Minister for the Environment in relation to national policy statements and refers in detail to the decisions of the Environment Court and the Court of Appeal in respect of the urban limits prescribed in the Auckland regional policy statement (*Auckland Regional Council v North Shore City Council* [1995] NZRMA 424). The urban limits were upheld by the Court of Appeal which found that a regional policy statement (and therefore a national policy statement) may contain highly specific provisions, including what may be considered rules in the ordinary sense of the term, even if they are not rules within the special statutory definition of being binding on individual citizens.

The opinion concluded that, provided there is adequate factual justification for the policies adopted and that the provisions are appropriate with regard to the requirements of section 32 of the RMA, there is no legal constraint on a national policy statement containing the above or similar provisions. The preparation of a national policy statement would require a significant amount of technical and policy work to ensure that the provisions of the statement were well justified and supported.

The effectiveness of this approach would be largely dependent on how specific and directive the policy statement was. If well designed, it would provide a clearer legal framework for local authorities within which they could carry out their obligations regarding the protection of important landscapes. It could help promote nationwide consistency on the manner in which landscape protection is addressed. It could also narrow down the range of issues which need to be resolved by each council at a local level. It could map outstanding landscapes. It would not require any legislative changes.

Amendments to RMA

To strengthen the protection of important landscapes, a number of amendments could usefully be made to the RMA. These need more in-depth investigation but could include:

- Incorporating a new section on protected landscapes, similar to the one providing for water conservation orders in Part 9 of the RMA, and making provision for protected landscapes through landscape protection orders or similar.
- Enlarging the definition of landscape in section 6(b) to include cultural as well as natural landscapes, thus providing clearer protection for cultural landscapes.
- Including a statement that the purpose of the management of outstanding landscapes under section 6(b) is their protection, notwithstanding anything contrary in part II of the Act (similar to the statement in section 199(1)).
- Strengthening the ability of the Act to enable strategic planning imperatives to dominate over effects-based, site specific decision-making.

New special purpose legislation

New national legislation could be prepared, which either provided an overlay to the RMA management system, or replaced the system entirely with a new regime for protected landscapes. Such framework legislation could enable local areas to opt into a stronger protective regime. Interest has been expressed in the Waitakere Ranges and Whangarei Heads areas for a stronger legal framework which could be applied to the management of these areas.

As an alternative approach to national framework legislation, separate legislation could be prepared for each protected landscape area in the form of a local Act. This could provide a useful opportunity to pilot different options for protected landscapes which represent a third way between publicly owned national parks and reserves and private land management under the RMA. To indicate how this might work, a possible local bill for the Waitakere Ranges is attached as Appendix 8. This includes the following elements:

- A map delineating the boundaries of the Waitakere Ranges Heritage Area
- A set of principles, emphasising the long term protection of the Ranges, to guide statutory authorities exercising powers within the Heritage Area
- Ensuring that only those activities provided for in the district plan can take place within the

Heritage Area by deeming non-complying activities to be prohibited

- An exemption for the district council from the mandatory obligation to review plans under the RMA, in respect of the Heritage Area
- A requirement that the district prepare a management plan for the Heritage Area and carry out monitoring

10.6 Summary of key points

- There are several options available to strengthen the landscape protection system. Some can be implemented immediately and some will take longer.
- An effective solution is likely to include the promotion of better practice, the promulgation of a strong national policy statement on landscape and new special purpose legislation which supports the piloting of protected landscape models.

11 CONCLUSIONS

As New Zealanders, we have been endowed with extraordinarily beautiful and diverse natural and cultural landscapes. They help define who we are as a nation and contribute significantly to our economic and social well-being. Millions of visitors come to see our landscapes and many are drawn by them to live here. There is much at stake.

So how are we managing this special heritage? This study has revealed that the present quality of our management is not up to the task. Our important landscapes have been largely ignored by national and regional governments and have often become a contested battleground at the local government level.

This is a critical time for New Zealand's landscapes. With population growth, increasing wealth and changing lifestyle preferences, negative impacts on our landscapes are escalating. How we address this issue now will have implications for many generations to come.

It is time to put in place an effective system to manage our important landscapes, which provides certainty of protection as well as equitably balancing rights of landowners and the broader public.

This report has identified possible ways forward to achieve this goal. The next step is to identify the most appropriate package of interventions which will ensure the protection of our heritage into the future.

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Rutherford Family Trust V Christchurch City Council C26/2003

Wakatipu Environment Society Inc & Ors v Queenstown-Lakes District Council C180/99

Wilkinson & Or v Hurunui District Council C50/2000

APPENDIX 1: INTERNATIONAL MODELS OF LANDSCAPE PROTECTION

INTRODUCTION

When considering an improved landscape protection regime for New Zealand, it is instructive to look at models that have been applied in other countries around the world. This paper investigates approaches to landscape protection which have been applied in the United Kingdom, Canada and the United States of America. The objective of this paper is to provide an understanding of the key elements of the different overseas models investigated and to draw out lessons relevant to the New Zealand context.

The models investigated have been categorized according to seven types as shown in Figure 1. This typology has been broadly ordered from those with a heavy emphasis on regulation through to those using more voluntary approaches. Many of the actual examples, however, draw from a range of approaches including the provision of some regulation, financial incentives and education.

SEPARATE PLAN AND REGULATORY AUTHORITY

English and Welsh National Parks [1]

The national park system was established in England and Wales in the early 1950s under the National Parks and Access to Countryside Act 1949. This legislation now applies to seven national parks in England, covering 9,631m^2 or 7.4 per cent of the national territory, and three national parks in Wales. The large majority of land in these national parks is privately owned, with national park authorities owning, on average, about four per cent of the park area (Dower, 1999).

What is being protected?

In England and Wales, the protection of landscape is equated with the concept of 'natural beauty'. This concept does not, however, refer to unmodified areas, as landscape in these areas is almost entirely a product of human interaction with nature over long timescales.

The national parks were established through a process led by central government. Candidate areas for national parks were proposed after surveying the whole country and identifying extensive areas of beautiful and relatively wild country. A formal process of consultation with local authorities and the public was completed before the designation of each Park.

Most of the land in English and Welsh national parks is privately owned and is used for farming, grazing or forestry. It is the continuation of these activities, and reconstruction of farming relics such as stone walls, barns and houses, which maintains the protected landscapes. They have been described as 'living landscapes'.

Who is protecting it?

Independent national park authorities, established under the Environment Act 1995, manage the national parks. County councils or district councils appoint nearly two-thirds of their members with the remainder appointed by the Secretary of State for the Environment. Prior to the 1995 Act, many national parks were managed by county councils.

National parks are primarily funded by central government, with a quarter of these funds channeled through local authorities. They also

Figure 1: Categorisation of overseas approaches to landscape protection

Category	Examples
Separate plan and regulatory authority	National Parks (England and Wales) Niagara Escarpment (Ontario, Canada)
Overlay regulatory authority	California Coastal Commission (California, USA) Adirondack Park (New York State, USA)
Overlay plan	Oak Ridges Moraine (Ontario, Canada) Adirondack Park (New York State, USA)
Overlay policy	Areas of Outstanding Natural Beauty (England)
Co-operative management	Hudson River Valley Greenway (New York State, USA)
Financial incentives	Countryside Stewardship Scheme (England) Hudson River Valley Greenway (New York State, USA)
Purchase	Land Trusts (USA) National Trust (England) California Coastal Conservancy (California, USA) Oaks Ridge Moraine Foundation (Ontario, Canada)

[1] Unless otherwise referenced, the material in this section was drawn from Dower (1999) and Daya-Winterbottom (2002).

obtain income from rents, trading activities and other sources.

How is it being protected?

The national park authorities are responsible for the preparation of a development plan for the park and for the determination of planning applications. The development plan is similar to a combined regional policy statement, regional plan and district plan in the New Zealand context. National park authorities also prepare a management plan for the park which establishes policies and sets out, in general terms, how the park is to be managed.

A recent review of the operation of national park authorities confirmed the desirability of the authorities being responsible for planning and development control within parks. This helps to promote effective environmental protection and consistency of decisions, particularly where a park covers several local authority areas (DEFRA, 2002, 19-20).

Small-scale developments are controlled through planning regulation with particular attention paid to standards of design, use of local materials and the like. There are strong restrictions on urban sprawl within national parks and urban development outside existing settlements is generally not permitted. This is supported by a strong planning tradition within England of restricting urban sprawl throughout the country. In Snowdonia National Park, all consents for new housing are limited to local people who can demonstrate a genuine housing need, and are generally only permitted in larger existing settlements. New houses are limited in small dispersed villages and are not permitted in the open countryside unless required for agricultural workers.

Major new developments such as a quarry, mine, forestry development or road are only permitted on clear proof that they are required in the public interest, that no satisfactory site or alignment could be found outside the protected landscape area, and that they would not have unacceptable impact on the landscape or local communities. There is a mixed record of avoiding these types of developments in national parks. For example, a nuclear power station was built in the Snowdonia National Park after the park was established. Although the power station has since been decommissioned there is currently a proposal to store nuclear waste on the site.

Landowners are encouraged to proactively protect the landscape through financial support and technical help. In some cases, formal management agreements are negotiated with landowners where the park authority provides funding to landowners in exchange for good countryside management. This may include restoring stone walls and buildings and protecting specific wildlife habitats.

National park authorities have limited powers and finances, so they must mainly pursue their goals through influencing the actions of others. Their success in this is dependent on the relationships they are able to build with government agencies, local authorities, non-government organisations, private landowners and volunteers.

The outbreak of foot and mouth disease in 2001 highlighted the linkages between national parks and the economic prosperity of regions. Many farmers within the parks have diversified into tourism to supplement falling farm incomes. During the height of the foot and mouth outbreak, when many areas of the countryside were closed to visitors, business turnover from tourism within the national park areas fell substantially (Association of National Park Authorities 2002: 2).

How effective is the protection?

The national park model was controversial when it was first introduced in the early 1950s. A current proposal to designate the New Forest as a national park has received strong opposition from landowners, who perceive the national park model as placing heavy restrictions on the use of their land. Tourism and small business operators tend to see much greater benefits from the designation.

This national park model has faced difficulties in conserving the characteristics of the protected areas in the face of strong development pressures. One of the main problems in successfully implementing the model has been the lack of tools available to national park administrators to achieve the parks' objectives. Difficulties include:

- A lack of development control over agricultural and forestry activities which are largely excluded from the planning system but have the greatest impact on the parks' natural environment.
- Agricultural subsidy schemes, which have the major impact on agricultural activities and development, being outside the control of the park authority. These subsidy schemes, while promoting increased farm production, have resulted in negative environmental impacts through removal of hedgerows, drainage of wetlands and overstocking.
- Numerous government and local authorities that carry out activities within national parks, but are not required to take the park designation into account.
- Insufficient funding directly available to national park authorities to provide meaningful

incentives schemes to achieve the parks' objectives.

- Large infrastructural projects of national importance overriding national park objectives (such as the nuclear power station in Snowdonia National Park).

In response to these management difficulties, national park authorities have more recently moved away from depending on planning controls to achieve policy aims, and have placed more emphasis on building partnerships with the farming community, improving public access, and developing environmental education.

Visitor pressures are a key concern with the eight national parks in England receiving 54 million visitors during 1994 (Holdaway and Smart 2001: 55). In order to manage the impacts of increasing car traffic within Snowdonia National Park, the park authority attempted to introduced a scheme which involved reducing car parking within the park and implementing a park and ride scheme in association with improved public transport. The proposal resulted in strong objections from the local community, who saw it adversely impacting on tourism revenues, and it has not proceeded (Association of National Park Authorities 2002 :15).

Despite the evident difficulties, the national park model has shown considerable success in retaining areas of natural beauty, notwithstanding significant population and development pressures. For example, the Peak District National Park, which was established in 1951, still retains remote wild areas in spite of being the most visited national park in the United Kingdom and being within one hour's drive of 15.7 million people (Parliamentary Commissioner for the Environment 2003: 42).

Niagara Escarpment[2]

The Niagara Escarpment in Ontario, Canada is a geological feature 725 kilometres long, and 183,694 hectares along the Escarpment are protected by special legislation. The area was declared a World Biosphere Reserve in 1990. About 80 per cent of the land within the protected area is privately owned with 120,000 permanent residents. Seven million people live within 100 kilometres of the Escarpment.

What is being protected?

The Niagara Escarpment is the most prominent topographical feature of southern Ontario and is ecologically diverse, containing white cedar trees over 1000 years old and many endangered bird species. As a result of political pressure by private landowners and the local council, the land area covered by special legislation was 63 per cent smaller than that shown in preliminary proposals.

Who is protecting it?

The Niagara Escarpment Commission, established in 1973, is charged with developing and implementing the Niagara Escarpment Plan. It is a provincial agency consisting of 17 people appointed by the Ontario Cabinet. Eight of these must be elected representatives or employees from municipalities within the protected area. The remaining nine commissioners are citizens representing the public at large. The Commission determines applications for development consent and amendments to the Escarpment Plan. It also comments on proposals which may affect the Escarpment and works with other agencies in respect of the acquisition and management of lands within the Escarpment. The Commission currently has 22 staff, processes about 600 development applications a year, and has a budget of Can$1.7 million.

The Escarpment crosses 37 local authorities. The Commission has largely taken over their development control function in rural areas, but some councils administer development control in urban areas within the Escarpment through a delegation of the Commission's functions.

The Coalition on the Niagara Escarpment, a non-governmental organization established in 1978, has been a strong advocate for the Escarpment's protection and a watchdog over the Commission's decision-making processes.

How is it being protected?

A Land Use Plan prepared under the Niagara Escarpment Planning and Development Act 1973 governs development within the Escarpment area. All provincial projects and municipal projects and bylaws must not conflict with the Plan. In areas where there is conflict, the Plan takes precedence. The Plan has been in place since 1985 and is reviewed every five years.

The primary purpose of the Plan is to maintain the Escarpment as a continuous natural environment. The Plan provides for seven different land use classifications – Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area, Minor Urban Centre, Urban Area, Escarpment Recreation Area and Mineral Resource Extraction Area. Permitted activities are identified for each area. About 93 per cent of the Plan Area has been designated as one of the first three categories, which are the most protective under the Plan. Development can only be undertaken, in most cases, if a development permit is obtained from the Commission. The Plan

[2] Material sourced from Coalition on the Niagara Escarpment (1998) and (2003) and Niagara Escarpment Commission (2000).

contains development criteria which state how permitted development should be undertaken. Anyone can request a change to the plan and about 140 amendments have been made to the plan since 1985.

A land acquisition programme was established alongside the regulatory system. Between 1985 and 1997 the Niagara Land Acquisition and Stewardship Programme provided around Can$24 million for land acquisition on the Escarpment. There are now over 100 parks, totalling nearly 35,000 hectares connected by a trail of 1100 kilometres, which comprise the Niagara Escarpment Parks and Open Space System.

How effective is the protection?

The model appears to have had considerable success, with the quality of habitat within the protected area increasing over the thirty year period. This success has probably been due to a combination of factors: a Commission which has, until recently, remained largely apolitical and focused on protecting the natural values of the Escarpment; a core of highly skilled and dedicated staff within the Commission, many of whom have been there since the organisation's establishment; the ability to apply 'big picture' thinking to the assessment of individual development applications; and the presence of a strong public watchdog to support the Commission's work and keep it honest. Recent research indicates that property values inside the protected area are higher than those for similar properties outside.

Since 1995, there has been a concerted political attack on the Commission and the Escarpment Land Use Plan. Attempts to disestablish the Commission and remove the restrictive planning legislation were apparently only abandoned due to the international recognition the area receives as a World Biosphere Reserve. However, the Commission's budget was reduced by 30 per cent resulting in a 43 per cent reduction in staff numbers and the virtual axing of the public education programme. In addition, the state government has appointed Commission members who are more favourably disposed towards development, thereby influencing Commission decision-making.

OVERLAY REGULATORY AUTHORITY

California Coastal Commission[3]

What is being protected?

The California Coastal Commission protects the coastal area of California which extends from a few hundred metres to up to five miles inland and three miles offshore. The coastal zone encompasses some 1.5 million acres of land.

Who is protecting it?

The California Coastal Commission, created in 1972, is responsible for the management of California's coast. Its 12 members are appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. Six are locally elected officials and six are appointed from the public at large. Four ex officio members represent relevant state government departments. The Commission has some 140 staff and an annual budget of around US$10 million. It approves Local Coastal Programs (LCPs) prepared by local government bodies and also coastal development permits, where this power has not been delegated to a local authority.

The Commission was created as a result of concern that local governments lacked the will and the muscle to prevent the coast from being despoiled. Large gated communities were springing up along the coast effectively preventing public access to the coastline. Other controversial developments included offshore drilling, nuclear power plants and proposed desalination plants. The proposal to establish the Commission was so controversial that initial attempts to have legislation passed by the state government failed. Legislation was subsequently forced through by a 'public initiative' similar in nature to a referendum.

The California Coastal Conservancy is a state agency which uses entrepreneurial techniques to protect coastal resources and provide public access to the seashore. It carries out a wide range of activities including purchasing environmentally valuable coastal lands, building public walkways, supporting coastal agriculture and supporting the establishment of low cost accommodation along the coast, including hostels and camping grounds. The Conservancy does not manage land in the long term but passes it on to other agencies after purchase. The Conservancy is funded primarily through the issue of state bonds and has spent around US$400 million over the past six years.

How is it being protected?

Protection of the coast is primarily achieved through the development and implementation of LCPs by local governments. These specify the appropriate locations, type and scale of new or changed uses in the coastal area. Each LCP contains a land use plan and measures to implement the plan, such as zoning ordinances. LCPs must comply with the goals and policies in the Coastal Act, which include protection of the scenic beauty of coastal landscapes and

[3] Unless otherwise referenced, the information in this section has been sourced from http://www.coastal.ca.gov and http://www.coastalconservancy.ca.gov.

seascapes. Similar to the Resource Management Act in New Zealand, this delegation of planning enables LCPs to reflect local conditions while adhering to statewide goals.

The Coastal Commission works with local government during the preparation of the LCPs and then formally reviews them to ensure consistency with the Coastal Act. There are currently 126 separate LCPs, of which 70 per cent have been certified, covering 90 per cent of the geographic area of the coastal zone. When an LCP has been certified, the responsibility for issuing most coastal permits is transferred to the local authority, with the Commission becoming an appeal body. The Commission also approves changes to LCPs.

How effective is the protection?

The Coastal Commission has not carried out any comprehensive monitoring, so there is little quantitative information about how effective this model has been. The Commission argues that it has been very effective because development within the coastal zone has been better managed than development outside the zone.

However, concerns have been raised about[4]:

- The difficulty of turning down development projects because of the constitutional protection against taking private property for public use without compensation. This has been interpreted to mean that the Commission cannot interfere with reasonable investment-backed development expectations although it can prevent subdivision. As a result, very few applications are turned down, although many are modified.
- LCPs being out of date, with some over twenty years old. Although the legislation requires LCPs to be reviewed every five years by the Commission, these reviews have not been carried out and there is no penalty in the legislation for this lack of compliance.
- Failure to deal with cumulative impacts of development on the coast, with applications being dealt with largely on a case by case basis.
- The reactive nature of the Commission's work. Because of a lack of funding and staff resources it does not get involved in strategic planning or proactive measures. Recent budget cuts are necessitating a reduction of 29 staff which will further limit the ability of the Commission to play any proactive role.
- The politicized process for the appointment of Commission members which impacts on the quality of decision-making.

Adirondack Park

The Adirondack Park in New York State, USA, covers six million acres of land of which about 60 per cent is in private ownership. About 130,000 people live in the Park. The publicly owned land in the park, known as the Adirondack Forest Preserve, is protected under the New York State Constitution[5] . The Adirondack Park Agency Act regulates the use of privately owned land within the park.

What is being protected?

The Adirondack Park encompasses a wild, mountainous, forested natural environment. The legislation governing its management seeks to preserve its unique scenic, historic, ecological and natural resources. The main industries within the park are forestry, paper, tourism and mining.

Who is protecting it?

The Park is managed by the Adirondack Park Agency. The Agency has 11 members, eight of whom are New York State residents (5 must reside within the Park), appointed by the Governor and approved by the State Senate. There are 3 ex-officio members: the Commissioners of the Departments of Environmental Conservation and Economic Development and the Secretary of State[6].

The Adirondack Park Local Government Review Board oversees the work of the Park Agency. The local government body for each county within the Park appoints one member to the Board. The Board's role is to monitor the administration and enforcement of the Adirondack Park Land Use and Development Plan[7].

How is it being protected?

The Park Agency prepares and administers the Adirondack Park State Land Master Plan for state owned land and the Adirondack Park Land Use and Development Plan which regulates land use and development on privately owned land.

The Land Use and Development Plan identifies different land use areas including hamlet areas, moderate intensity use areas, low intensity use areas, rural use areas, resource management

[4] Information obtained on September 15, 2003, from interviews with Charles Damm, Senior Deputy Director of the California Coastal Commission and Sara Wan, California Coastal Commissioner.

[5] http:/www.dec.state.ny.us/website/dlf/publands/adk.

[6] Section 803, Adirondack Park Agency Act.

[7] Section 803(a), Adirondack Park Agency Act.

areas and industrial use areas. Uses which are considered compatible with the characteristics of each area are identified. The Park Agency considers and approves development applications.

Local government bodies can prepare local land use programmes which are reviewed and authorized by the Park Agency. These plans must be supportive of, and compatible with, the Land Use and Development Plan, and are enforced by the local government body.

Activities which potentially could have significant adverse effects on the Park are classified as class A regional projects and the Park Agency has the sole jurisdiction to review and approve applications for such activities. Activities with less impact have been classified as class B regional projects and local authorities with local land use programmes can approve applications for these activities.

As an interim measure, before the Land Use Plan was operational, the Park Agency was given the power to make rules and regulations for the review of development proposals which may have an adverse effect on the park. The Park Agency could prohibit the commencement or continuation of the project if it found, after a public hearing, that the project was not in substantial conformity with the policies in the Act and would have a substantial and lasting adverse impact upon the resources of the Park[8].

How effective is the protection?

The management of private land, largely through planning regulation, has been successful in protecting the land and controlling urban sprawl. However, it has created an adversarial relationship between the Park Authority and people living inside the park, who would like greater economic development and a more direct say in how the area is managed. This has generated a move towards a more collaborative and less regulatory approach to landscape management through establishing Greenways (Robinson, 2000, 48-49) such as the Hudson River Greenway (see section 6).

OVERLAY PLAN

Oak Ridges Moraine[9]

The Oak Ridges Moraine in Ontario, Canada, is an area of 190,000 hectares of which about 28 per cent is forested. The area subject to special protection follows the geological boundaries of the moraine. About 100,000 residents live in the area with 90 per cent of the land being privately owned. The Moraine is located on the outskirts of Toronto and is threatened by urban sprawl and visitor pressures.

What is being protected?

The values associated with the Moraine include significant ecological functions performed by its wetlands, lakes and aquifers, biodiversity and distinct landscapes.

Who is protecting it?

No specific agency has been established for the management of the Oak Ridges Moraine Area. The state government prepares the Conservation Plan which guides local government planning and decision-making for the area. Thirty-two municipalities are effectively responsible for the implementation of the Plan on the ground.

The Oaks Ridges Moraine Foundation has been recently established to fund land acquisition, the promotion of landowner stewardship, public education, research, monitoring and the provision of a recreational trail. It has been provided with a Can$15 million establishment grant from the state government which it will spend over the next three to five years. The Foundation is a charitable entity and will also seek funds from all levels of government, the private sector and industry.

How is it being protected?

The Oak Ridges Moraine Conservation Act 2001 provides for the preparation of a Conservation Plan for the area which has been adopted as a regulation. The objectives for the plan include ensuring that only land and resource uses that maintain, improve or restore ecological and hydrological functions of the Oak Ridges Moraine Area are permitted. All municipal official plans and decisions on development applications must conform to this Plan. The Plan was prepared after an extensive public consultation process and the work of an advisory panel which made recommendations to the Minister.

No development can take place except as permitted by the Plan. Land is designated into four categories: natural core areas, natural linkage areas, countryside areas and settlement areas. No urban residential development is permitted in almost 92 per cent of the Moraine.

Important landscape areas are designated on maps as 'Landform Conservation Areas' and classified as either Category 1 or 2. Any application for development within a landform conservation area must minimize disturbance to the landform character. Major developments need a landform conservation plan.

The Conservation Plan is reviewed every ten years. During this review, land cannot be removed from Natural Core Areas or Natural Linkage Areas.

[8] Section 815, Adirondack Park Agency Act.

[9] Unless otherwise referenced, the material for this section has been drawn from Parliamentary Commissioner for the Environment (2003).

As an interim measure, the Oaks Ridges Moraine Protection Act 2001 froze all development applications on the Moraine and stopped decisions being made on existing applications. This was to provide a six-month moratorium on development while the government consulted on protection options for the Moraine.

How effective is the protection?

As the Conservation Plan has only recently been prepared and local authorities have a year to bring their plans into conformity with the Conservation Plan, it is too early to identify how effective this approach will be. Concerns have been raised about the ability of local governments with limited resources and expertise to effectively implement the plan.

OVERLAY POLICY

Areas of Outstanding Natural Beauty[10]

Areas of Outstanding Natural Beauty (AONBs) were established under the National Parks and Access to Countryside Act 1949. These were areas whose outstanding quality of landscape merited national protection, but which did not have the geographic extent or relative wildness to justify designation as national parks. They were identified through the same national process which identified national parks. There are 37 AONBs in England covering 15.6 per cent of the total land area. The large majority of land is privately owned.

What is being protected?

The primary objective of the designation of AONBs is the conservation of the areas' natural beauty, which includes wildlife and cultural heritage as well as scenery.

Who is protecting it?

The Countryside Agency is responsible for designating AONBs and advising the government on policies for their protection. However, AONBs largely remain the responsibility of local authorities and do not generally have their own separate authorities, although this is changing. Local authorities often set up joint advisory committees to bring together local authorities, farmers, conservation groups and other interested parties to jointly manage AONBs. Larger AONBs can now also apply to the Secretary of State to become Conservation Boards. Conservation Board members are comprised of local authority members (40 per cent), parish council members (20 per cent) and Secretary of State appointees (40 per cent), reflecting the local and national interests in the area. There is provision to delegate the functions of the local authority in respect of the AONB to the Board.

How is it being protected?

The administration of planning and development control within AONBs remains the responsibility of local authorities and is carried out via structure and local plans. Land within AONBs is subject to stricter planning controls in relation to permitted development rights. The national government planning policy guideline makes it clear that conservation is to be given priority over development, when it states: 'In general policies and development control decisions affecting AONBs should favour conservation of the natural beauty of the landscape ...'. This planning policy guidance has statutory force, in that local authorities must take account of it when preparing structure, local, mineral and waste plans. In addition, public bodies, when performing any function that affects land within an AONB, must have regard to the purpose of conserving and enhancing the natural beauty of the area.

Under the Countryside and Rights of Way Act 2000, the local authority, joint committee responsible for the AONB, or Conservation Board is required to prepare a management plan for the area. This plan must be reviewed every five years. It sets out an integrated vision of the future of the AONB as a whole, agreed policies and objectives and what needs to be done by whom to achieve the objectives. The management plan does not override local development plans. In practice most management is done by encouragement and incentive rather than regulation.

The Countryside Agency provides funding for the development and implementation of management plans. It also funds up to 75 per cent of the cost of employing core staff and carrying out core functions. Local authorities normally fund the balance of the costs. The Agency also provides technical support and acts as a strategic partner to local authorities in the development of management plans.

How effective is the protection?

No monitoring has been carried out on the effectiveness of AONB protection. Such efforts are hampered by the failure to prepare a 'state of the landscape' assessment when they were established or to describe the character of the landscape and why it was of national importance (Holdaway and Smart 2001: 47). However, available evidence indicates that AONBs have been changing for the worse. The model appears to have been reasonably effective in terms of development control, even though some 30,000 planning applications a year affect AONBs as a

[10] Unless otherwise referenced, material for this section has been sourced from Dower (1999), Daya-Winterbottom (2002), Countryside Agency (2001) and http://www.defra.gov.uk/wildlife-countryside/issues/landscap/index.htm.

whole. However, the model has been less effective in changing poor agricultural practices or promoting positive conservation actions. Agricultural practices have had the most negative impacts within AONBS (Holdaway and Smart 2001: 56 & 67). Problems with implementation of the model have included lack of funding, the low priority given to the management of AONBs by local authorities, and the lack of dedicated staff and management plans.

Concerns with poor AONB management led to reforms encapsulated in the Countryside and Rights of Way Act 2000. This legislation requires management plans to be prepared, provides for the establishment of conservation boards and requires public bodies to have regard to the purpose of AONBs. In addition, central government, through the Countryside Agency, provided funding for the development and implementation of management plans. These initiatives have breathed new life into the model.

CO-OPERATIVE MANAGEMENT

Hudson River Valley Greenway[11]

The Greenway approach was adopted due to concerns that inconsistent land use laws adopted by municipalities were failing to protect the unique landscape.

What is being protected?

The Hudson River Valley is rich in culture and history, being a natural watershed with abundant fish species and bounded by spectacular mountains. The Greenway programme seeks to preserve scenic, natural, historic, cultural and recreational resources. The area includes farms, resorts, universities, parklands and hunting and fishing grounds.

Who is protecting it?

The Hudson River Valley Greenway Act 1991 created a process for voluntary regional cooperation between 242 communities in the Valley. It established the Hudson River Valley Greenway Communities Council which is a body representing local governments and farmers in the Valley. The Council prepares regional plans and studies, to provide a technical advisory context within which municipalities can adopt comparable land use laws and protect the same values and themes throughout the Valley. It also provides technical assistance and funding for local planning and project implementation.

The Hudson River Valley Greenway Heritage Conservancy is a development authority funded from public and private sources. It seeks to promote the protection of the Valley through establishing a trail system, promoting the Valley as a single tourism destination and supporting agriculture.

How is it being protected?

The Act sets out the 'Greenway Criteria' which provide an overall vision for voluntary local Greenway plans and projects. These include natural and cultural resource protection, regional planning, economic development, public access and heritage and environmental education.

Technical assistance and funding are provided for local authorities to develop local land use plans and programmes related to the Greenway criteria. Typical grants range from US$5,000 to $10,000.

Hudson River Valley Compacts are formal agreements between local governments in a region of the Valley, specifying a common management system for the entire region. These compacts address the Greenway criteria as well as identifying areas of regional concern and necessary public facilities and infrastructure. Communities which participate in the compact are provided with an incentive package, which includes preferential access to state funding programmes.

How effective is the protection?

No evidence has been identified of the environmental outcomes of implementing the Greenways model. However, the concept has expanded throughout the USA, mainly because it is consensual and links recreational use of nature with management systems. There are now over 500 Greenways across the USA and Canada. The States of Minnesota, Indianapolis, Indiana, Delaware and Oregon have enacted statutes for the implementation of the Greenways concept.

FINANCIAL INCENTIVES

Countryside Stewardship Scheme[12]

What is being protected?

The aim of the Countryside Stewardship Scheme it to improve the natural beauty and diversity of the countryside; enhance, restore and recreate targeted landscapes, their wildlife habitats and historical features; and to improve opportunities for public access.

Who is protecting it?

The Scheme is managed by the English Department for Environment, Food and Rural Affairs.

[11] The material for this section has been drawn from Robinson (2000) and http://www.hudsongreenway.state.ny.us

[12] Unless otherwise referenced, the material in this section has been sourced from Dower (1999) and http://www.defra.gov.uk

How is it being protected?

The Scheme makes payments to farmers and other land managers to enhance and conserve English landscapes. These farmers and land managers enter into ten-year agreements to manage land in an environmentally beneficial way in return for annual payments. Grants are also available towards capital works, such as hedge planting and repairing stone walls. Payment levels depend on the type and quantity of work carried out, with each type of work attracting a set payment. Payments vary from 4 to 525 pounds per hectare.

The Scheme is discretionary and not all applications are accepted. They are evaluated in terms of specific targets for landscape types, and the features which are identified as important in each area[13].

How effective is the protection?

A recent evaluation of the Scheme (Carey et al, 2000) over a three year period (1996-1998) found that the great majority of agreements (94 per cent) had objectives for landscape. In terms of environmental outcomes, the evaluation found generally positive outcomes although this varied between different types of landscapes, with countryside around towns having one of the lowest scores. There was a steady improvement in the environmental effectiveness of the agreements over the three years studied, potentially indicating a positive learning process.

PURCHASE

Land Trusts[14]

What is being protected?

Land trusts protect a wide variety of land types including wetlands, river corridors, watersheds, farmland, nature preserves, open spaces, endangered species habitats, scenic views, recreational trails, historic areas, coastal resources, forests and urban open space.

Who is protecting it?

Land Trusts are non-profit organizations that actively work to conserve land by undertaking or assisting direct land transactions. In 2000, there were 1,263 local and regional land trusts operating in the USA.

How is it being protected?

The most common methods used by land trusts to protect land are the purchase or donation of land and conservation easements. These easements permanently restrict the development and use of the land to ensure the protection of its conservation values. Other mechanisms used by land trusts to protect land are funding other groups to acquire land, persuading conservation-minded individuals to acquire land and facilitating negotiations by other non-profit organizations or public agencies to acquire land. In 1990, 42 per cent of the land protected by land trusts was subject to conservation easements, 20 per cent was owned by land trusts and 38 per cent was transferred to other organisations. Land trusts also often provide programmes in environmental education and participate in local planning initiatives.

How effective is the protection?

The Land Trust movement has been continually growing, with the number of land trusts increasing by 42 per cent between 1990 and 2000 and the amount of land protected increasing by 226 per cent. In 2000, 6.2 million acres of land had been protected, up from 1.9 million acres in 1990.

National Trust[15]

What is being protected?

The National Trust was established for the purpose of promoting the permanent preservation of lands and buildings of beauty or historic interest, including the preservation of their natural features and animal and plant life (Section 4, National Trust Act 1907).

Who is protecting it?

The National Trust is a registered charity which operates under special legislation - the National Trust Acts 1907 to 1971. It has 3.5 million members, employs 4,000 full-time staff and a similar number of seasonal staff, and is assisted by 38,000 volunteers. The Trust spends 250 million pounds a year.

How is it being protected?

The National Trust either owns land through donation or purchase or seeks restrictive covenants over land. As well as purchasing land from its own funds, the Trust initiates campaigns to purchase land through public subscription. By virtue of its legislation, the Trust can declare land to be inalienable, which means that it cannot be voluntarily sold or mortgaged or compulsorily purchased against the Trust's wishes, without a special parliamentary procedure.

More recently the Trust has established the National Trust Enterprises which operate shops,

[13] See http:www.defra.gov.uk/erdp/schemes/landbased/css/default.htm.

[14] The material for this section has been source from http://www.lta.org.

[15] Material sourced from www.nationaltrust.org.uk.

restaurants, holiday cottages and farming projects. Funds raised from these trading enterprises are used to support the work of the Trust. The Trust uses some of its farming operations to showcase sustainable farming practices.

How effective is the protection?

The National Trust owns more than 248,000 hectares of countryside, 600 miles of outstanding coast, 200 historic houses and gardens and 49 industrial monuments and mills. It is one of the largest landowners in the country and provides effective protection for large areas of countryside and coastline.

CONCLUSIONS

Several common themes, which run though the review of international models, are instructive for the New Zealand situation. It is evident that, for many decades, other countries have been facing very strong development pressures on their special landscapes. Large and growing urban populations have created demand both for urban development on the outskirts of cities and for wild, tranquil and scenic places in which to escape the pressures of urban living. In many of the cases reviewed, where areas of regional or national importance were under heavy pressure, the normal planning and development control system managed by local authorities was found wanting. This was because local authorities were seen as too susceptible to the influence of local developers and they were generally unable or unwilling to devote the resources required to effectively manage the areas. Often the boundaries of the special area crossed many local authorities making cohesive management difficult.

Many different models have been applied in an attempt to increase the effectiveness of the management of special areas. These models typically contain a range of mechanisms including stronger development control; a public purchase programme for key parcels of land and sensitive areas; improved public access to the area through the provision of walkways, camping sites and low cost accommodation; and the promotion of land stewardship through landowner incentives and education programmes. In many cases a dedicated management body has been established and a management plan for the area prepared.

Most initiatives were funded from outside the local area. In England and Wales, the national park authorities are funded almost solely by central government and AONBs have only really taken off since central government funding was made available to pay local authorities for dedicated staff and the preparation of a management plan. The Niagara Escarpment Commission and California Coastal Commission are primarily funded by their respective state governments.

The models with a strong regulatory element were introduced against heavy opposition from landowners, who resisted more restrictive control over their land, and local councils which resisted losing development control powers for their areas. The extra protection was provided in the context of public concern about the degradation of important landscapes and restrictions on public access. These protected areas survive due to ongoing public support and there is evidence that in some areas land values are positively affected by special protection.

Regulation has proved very effective in stopping urban development encroaching on special areas. However, it does not assist with the proactive management of rural land to protect landscape and biodiversity values. As a result, emphasis has also been put on stakeholder relationships, the provision of financial incentives for landowners and the promotion of local economic development, often through the increased tourism the areas attract.

Lack of public access has been a strong element in public concern about the development of private land within special areas. Ensuring public access to the coast and providing systems of walkways have been seen as important in securing public support for the protection of the areas.

Although no two countries are the same, and it is not appropriate to transplant any one model to another country, there is much to be learnt from experiences overseas which would be of value to New Zealand.

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APPENDIX 2: WAITAKERE RANGES CASE STUDY

Introduction

The Waitakere Ranges are located on the western edge of the Auckland region (see Figure 1). They contain one of New Zealand's last areas of northern coastal forest and are home to around 542 species of higher plants and 150 endangered animals and plants (Waitakere City Council (WCC) 2002a). On the western side lie rugged windswept beaches. On the east, rolling pastoral foothills frame the bush-covered mountains.

The Ranges have enormous environmental, aesthetic, historical and recreational significance for the region (McAlister, 1991: I). They provide an iconic visual backdrop to the growing metropolis of Auckland and an escape from suburban Auckland to an accessible 'wilderness' area (Woodward Clyde (NZ) Limited 1997: 3-6). The Ranges are identified as a heritage area for Te Kawerau A Maki and have significance for Ngati Whatua (WCC 2003a: 37). The bush-covered areas of the Ranges are identified in the Auckland Regional Policy Statement as outstanding landscapes of national and international importance.

Of the 25,870 hectares of land within the Ranges, 65.8 per cent is in public ownership, being primarily owned and administered by the Auckland Regional Council (ARC), with the balance being privately owned (WCC 2002a: 7). Much of the privately owned parts of the Ranges are used for urban and rural-residential living. The Ranges fall within the jurisdictions of the Waitakere City Council and the Auckland Regional Council.

Pressures on landscapes

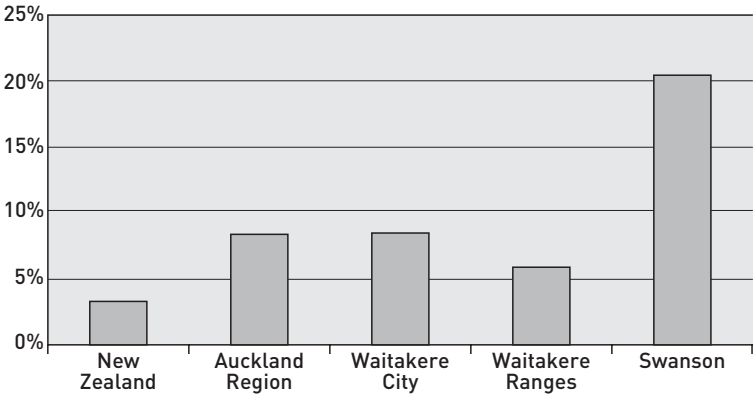
The main pressures on the landscape in the Waitakere Ranges are the increasing number of houses and associated infrastructure driven by regional population growth, increasing visitor numbers and the spread of weeds. The development pressures are greatest in the eastern foothills, which partly form the area of the Ranges seen from the metropolitan area.

In 2001, 17,658 people lived in the Ranges, an increase of 5.9 per cent since 1996. As shown in Figure 2, this was less than the 8.5 per cent growth for Waitakere City and 8.4 per cent for the Auckland region, but almost double the national increase of 3.3 per cent. The number of dwellings increased 9 per cent during the same period, from 5,724 to 6,237, an increase of 513 dwellings (WCC, 2002a: 6). The population is relatively affluent, with a median personal annual income in 1991 of $26,251, compared with the national average of $18,500.

The population growth has been particularly high in Swanson which is located in the foothills. The area experienced a 20.5 per cent population growth between 1996 and 2001 mirrored by a similar growth (21 per cent) in occupied dwellings. This indicates that growth in Waitakere City has

Figure 1: Location of Waitakere Ranges

Figure 2: Percentage population change 1996-2001



been occurring in areas within the foothills, thereby concentrating the impacts on a smaller area that is highly visible.

Although population growth along the west coast of the Ranges has been relatively low, this is probably more due to district plan provisions restricting further subdivision than lack of demand. Continuing strong demand for properties on the west coast is illustrated by the almost doubling of average house prices at popular Piha Beach between 1996 and 2002, from just over $200,000 to almost $400,000 (Piha Property Brokers Limited 2003).

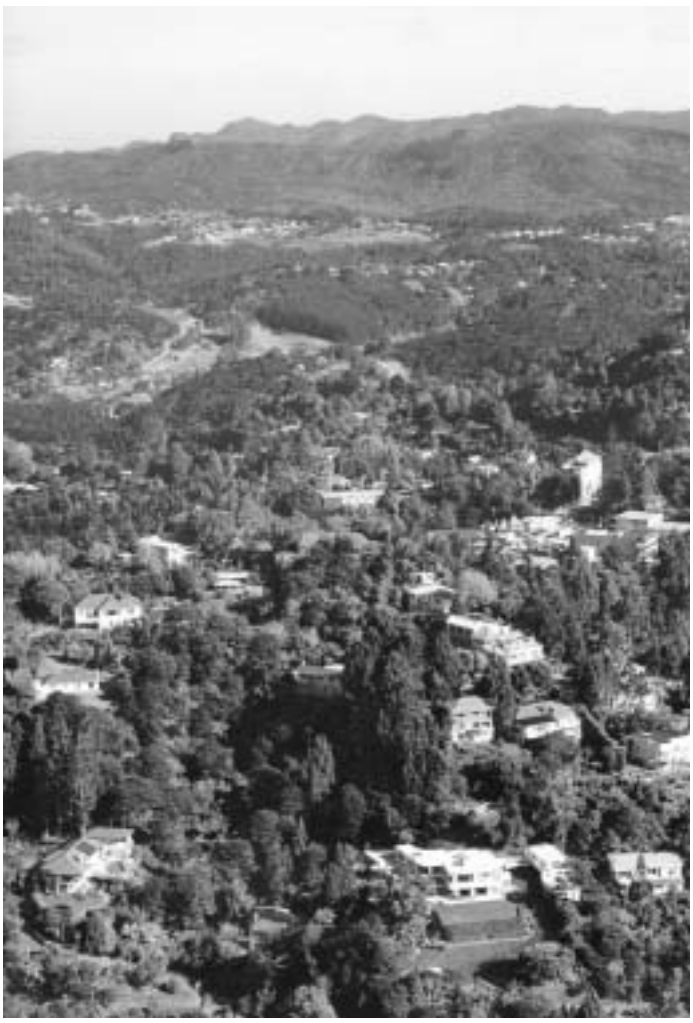
The population of Waitakere City, which in 2001 was 176,200, is predicted to increase by around 61,000 people by 2021, a similar growth rate as that predicted for the Auckland region as a whole. This is likely to increase pressure for development within the Waitakere Ranges. A major threat to the landscape values of the Ranges is the potential relocation of the metropolitan urban limits for the Auckland region (MUL). The bulk of the Ranges is currently outside the MUL but, as residential capacity within the MUL is used up, there is likely to be increasing political pressure to move the MUL westwards into the foothills.

Increasing numbers of dwellings as a result of population growth can cumulatively have a negative impact on the landscape values of the Ranges (see Figure 3). This is particularly the case if they are poorly sited and designed.

As well as accommodating a growing number of residents, the Ranges is experiencing high visitor numbers. It is estimated that the Ranges attracts about 2.6 million visits each year, with Piha receiving up to 10,000 visitors daily during the height of summer. Most of these visits are from people living within the Auckland region, illustrating the important role the Ranges play in the quality of life of people within the region (WCC 2003b: 3). Large visitor numbers can in turn generate increased infrastructure provision such as more roads, carparks, tracks and facilities for rubbish collection and sewage treatment. Such infrastructure itself can have a significant negative impact on landscape values.

The spread of weeds, which compete with indigenous flora, is also a major threat to the landscapes of the Waitakere Ranges. Many of these weeds have been introduced to the area from plantings in residential gardens. Between

Figure 3: Residential development in the Waitakere Ranges



Source: John Edgar, 2003

1994 and 1998, a survey of residential gardens found a five per cent average increase in the abundance of weed species (WCC, 2002a:12). The problem is increasing as more land is subdivided and more houses are built.

Identification of important landscapes

There have been several landscape assessments of the Waitakere Ranges. These include:

- Wainamu - Te Henga Study (1978) which records the outstanding landscape qualities, archeological significance and biological diversity of the Wainamu - Te Henga area.
- Auckland Regional Landscape Assessment (1984) which assesses and rates landscapes in the region for their quality, based on public preferences.
- Proposed Ranges Authority Landscape Study (1988) prepared by Boffa Miskell Partners to assess the visual and ecological contribution that Bethells Road, Te Henga, Piha and South Titirangi would make to a proposed Waitakere Ranges Authority.
- Landscape Assessment of Waitakere City (1994) prepared by Boffa Miskell Ltd in association with DJ Scott and Associates.
- Landscape Assessment (1997) LA4 Landscape Architects.

The Auckland Regional Policy Statement (1999) assigns a Landscape Quality Value of either 6 or 7 (on a scale of 1 to 7) to the majority of the bush-clad areas of the Ranges and the west coast beaches and classifies them as outstanding landscapes. The foothills area is assigned a rating of 5 and is identified as a regionally significant landscape. The ARC is currently in the process of redoing its landscape assessment, but it is unlikely to significantly change this classification.

The Waitakere City District Plan identifies three outstanding landscapes: the coastal landscapes between Bethells/Te Henga and Whatipu; the coastal estuarine areas between Whatipu and Green Bay; and the Waitakere Ranges proper, including the fingers of bush in the upper areas of the foothills catchments. The district plan acknowledges that key landscape areas for iwi are the coastal areas and Ranges, both in terms of natural features and in terms of the particular way iwi have occupied them in the past. This significance of landscape to iwi was seen as a further major factor in identifying these landscapes as outstanding.

Outstanding landscapes are identified on a separate map within the district plan, but not specifically on the planning maps where they are integrated into the Natural Area layer of the plan. Natural landscape elements, local character areas and iwi heritage areas are also identified on separate maps. The areas adjacent to the outstanding landscapes are recognised in the plan as a buffer area, with their own distinctive landscapes which have value in their own right.

District plan landscape provisions

Unlike the other case study areas, the Waitakere Ranges has a long history of landscape protection measures. The transitional district plan, which became operative in 1984, provided for landscape protection zones. Landscape Protection 1 Zone, which applied to large properties on the West Coast, had a minimum lot size of 20 hectares. The Landscape Protection 2 Zone, which applied to the non-urban bush-covered ranges area and part of the foothills, had a minimum lot size of 4 hectares. Non-urban residential zones also applied to parts of the Ranges. The non-urban residential 1 Zone, which applied to more heavily occupied areas including Titirangi, Waima and Laingholm, provided for a minimum lot size of 2,000 m^2 for sewered areas, except Laingholm, and 4,000 m^2 for unsewered areas and Laingholm.

In 1992, the council was dominated by councillors sympathetic to conservation objectives. Preparation of the proposed district plan commenced in-house during 1993 and the plan was notified in October 1995. The notified plan rationalised the previous regime and provided for four main 'Living Environments' with the Ranges:

- *Bush Living Environment* which includes bush-covered areas with intensive urban development
- *Waitakere Ranges Environment* which includes bush-covered areas with less intensive development
- *Foothills Environment* which includes the lower elevation land on the east of the Ranges, where large areas have been cleared of bush
- *Coastal Villages* which include the small settlements located on the west coast and Manukau Harbour.

The proposed plan provided for a 4 hectare minimum lot size in the Waitakere Ranges Environment as a restricted discretionary activity, if certain requirements for the location of the building platform were met including avoiding highly sensitive natural areas. The Waitakere Ranges Environment included some areas of land which had previously been given non-urban residential zonings, and thereby significantly reduced development rights in some areas. In the Foothills Environment, subdivision was a controlled activity down to a minimum lot size of 4 hectares or where the density of the subdivision was in compliance with a structure plan. A structure plan for Oratia was included in the notified plan which provided 346 lots compared to 126 lots permissible under the transitional plan.

Smaller lot sizes were provided for in the Bush Living Environment as a restricted discretionary activity (ranging between a minimum of 4,000 and 8,000 square metres). One dwelling per lot was generally a permitted use in these areas if it was not located on a sensitive ridge, headland, cliff or scarp as identified on the planning maps.

A similarly orientated council was re-elected in 1995. Decisions on submissions in respect of the proposed plan were released during 1996 and 1997 and the landscape provisions of the plan were essentially confirmed, with subdivision control in the Waitakere Ranges Environment slightly loosened to an average 4 hectare minimum site area and a minimum net site area of 2 hectares. Provisions to protect sensitive ridgelines were reduced. The Waitakere Ranges Protection Society (WRPS) lodged references to the Environment Court on a range of issues including the Oratia Structure Plan. In August 1998, the Environment Court hearing on the Oratia Structure Plan commenced and was adjourned part heard, after the council gave evidence, until July 1999.

In 1998 the development controls in the district plan became an election issue and a council dominated by more development friendly councillors was elected. The council resolved to adopt a more flexible approach to subdivision and to move away from the 4 hectare minimum lot size within the Ranges. It undertook several studies of mechanisms to achieve this, but failed to notify a variation to the plan prior to the 2001 election, when it lost power. The WRPS adopted a largely successful strategy of delaying action on district plan matters until this 2001 election, in the hope that a 'greener' council would be elected.

In respect of references on the Oratia Structure Plan, the 1998 council reversed the position which the previous council had taken at the Environment Court hearing and, mid-hearing, reached an agreement with the property owners in the area (*Mitchell & Ors v Waitakere City Council* A21/2000, paragraph 33). This provided for an average minimum lot size of 8,000 square metres, the downgrading of the structure plan to a guideline document and an extension of the boundaries of the Oratia Catchment. The WRPS and the ARC opposed the council's position. The Environment Court released a decision on the references in 2000, essentially confirming the approach taken in the notified plan, with some changes. This was a middle position between the more restrictive approach proposed by the WRPS and the very permissive approach proposed by the council and landowners.

In 2001 a council dominated by councillors with a stronger conservation orientation was elected. Structure plans for Birdwood and Swanson were prepared and notified as variations to the district plan. The WRPS lodged references to the Environment Court in relation to both structure plans, along with numerous other parties, and these have yet to be heard. By March 2003 the bulk of the plan was operative with ongoing negotiations to resolve outstanding matters.

The structure plan approach adopted by the council is based on the concept of identifying the maximum carrying capacity of the natural character of the area. This involves demarcating areas of high value, such as vegetation and fauna habitat and landscape areas, and identifying potential development locations that avoid these. It is intended to improve the overall resilience, biodiversity integrity and extent of existing native vegetation and fauna habitat within the foothills (Waitakere City District Plan, policy 2.2).

Interviewees expressed differing views about how appropriate this planning approach is to the area. Proponents of the structure plan approach argued that it applies the effects-based approach of the RMA better than the imposition of minimum lot sizes. Secondly, it enables specific environmental benefits to be obtained through requiring environmental protection measures to be adopted as part of the development consent process.

Opponents of the structure plan process argued that:

- it started from the wrong perspective. Instead of developing a future vision for the whole foothills area, it focused on identifying the maximum development capacity for one catchment at a time, without first addressing the question of whether or not the foothills should be further subdivided.
- the cumulative impacts of the structure plans are not assessed.
- when the maximum capacity for the area is released all at once, areas can change their nature very quickly with negative impacts on the community.
- the approach raises subdivision expectations which may not have previously existed.
- the approach can fail to adopt a precautionary approach and the assessment of development capacity may therefore prove over-optimistic.
- the subdivision approved under the structure plan may simply fuel further demands for more subdivision in the future.

In practice, council officers report some difficulties in obtaining the hoped-for environmental benefits from the structure plan approach, as landowners have sought to change the rules specified in the structure plan when applying for resource consents. This problem was exacerbated by the conceptual nature of the first structure plan for Oratia. This structure plan failed to include roads or house sites, and open space areas were only incorporated at the end of the development process. There are also concerns that landowners may seek more intensive development later down the track and that the flexibility of development control under the RMA may allow this to happen. In order to address concerns about the approach, a review was commenced by council. The reviewers' report contained 17 recommendations,

including one to withdraw the Swanson Structure Plan (WCC 2003d:11).

There have been many players involved in setting the district plan landscape rules in the Waitakere Ranges. The Department of Conservation has not become involved in landscape issues on private land. The regional council has been active in landscape issues, although primarily at a policy level. The regional council, however, has no landscape expertise in-house and infrequently becomes involved in resource consent applications solely in relation to landscape issues.

The WRPS, which is well resourced with legal and other resource management professionals, has been very active in district plan and resource consent matters. The Society was established in 1973 and now has over 600 members.

Landowners have not been significantly mobilised in relation to landscape issues over the entire Ranges, although there has been local landowner activism in the Titirangi, Laingholm, Swanson and Oratia areas. This may be because many private landowners are lifestyle dwellers and consequently support the ongoing protection of the area. to preserve the values that drew them to live in the Ranges.

The Environment Court has played only a small role in establishing landscape protection rules, as the council and other players have actively sought to negotiate settlements over district plan issues rather than resort to a court determination.

Resource consent processing

A significant amount of subdivision within the Ranges is obtaining approval. For example, between 1995 when the plan was notified and December 2003, there were 145 subdivisions approved in the four Living Environments in the Ranges. Of these, 55 were either for boundary adjustments or to create right of ways. The remaining 90 subdivisions created an additional 283 properties, of which 199 were in the Foothills Environment (WCC 2003d: 26).

Assessing the cumulative impacts of resource consent applications is reportedly difficult. It is only relatively recently that resource consent processing staff have had information about approved development on surrounding sites and there is little information on development over a broader geographical area. It can be difficult to turn down resource consent applications on the basis of cumulative effects or the basis that the development is out of character for the area.

The Council collects statistics on the processing time for resource consent applications but not on the environmental outcomes of the consents granted. As a result, staff can feel pressured to meet the processing deadlines, rather than take additional time to ensure a good environmental outcome. There has been a very high turnover in the consent-processing team within the Council, with about a third of the staff turning over during the past year. Waitakere City Council does very well on the timing of resource consent processing, reporting that 100 per cent of notified and 97 per cent of non-notified land use resource consent applications were processed within the statutory time frames. However, it has a low notification record, notifying only 0.6 per cent of resource consent applications compared to the national average of 6 per cent (Ministry for the Environment 2003).

Non-Statutory approaches to landscape protection

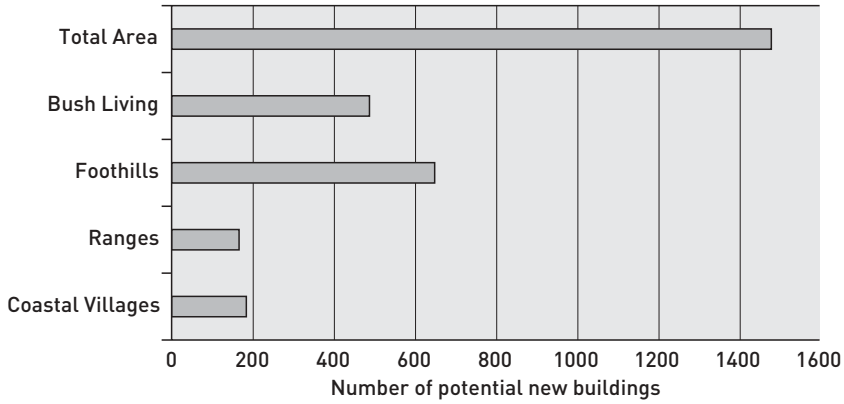
The Council has implemented a range of non-statutory measures to promote landscape protection, within the framework of broader strategic planning. Preparation of a strategic plan for the Waitakere Ranges, titled 'The West Coast Plan', was commenced in 1996. A wide range of community organisations participated in the preparation of the plan whose purpose is to guide responsible authorities in their policymaking and planning for the area. The plan contains a vision, a set of guiding principles, targets and specific actions. A broadly based West Coast Liaison Group has been established to advocate for the adoption of the plan by relevant public agencies (WCC, 2001).

The Long Term Council Community Plan incorporates the Green Network Programme, of which the permanent protection of the Waitakere Ranges is a part. Actions planned for the Ranges over the next ten years include undertaking a study and implementation programme for the protection of the Ranges, raising landowners' awareness about Ranges issues, developing a visitor strategy for the Ranges, preparing and implementing action plans and monitoring programmes for lake and wetland areas, supporting the establishment of a West Coast Marine Park and developing design guidelines for infrastructure works (WCC 2003c: 72).

Outcomes

Although the district plan incorporates strong landscape protection provisions, a considerable amount of further residential development may happen in the Waitakere Ranges under the current provisions. Potentially over 1400 new houses could be built in the area, as a result of previously subdivided lots which have not yet been built on, and new subdivision consents. This is an additional 24 per cent on top of the total number of dwellings existing in 2001 (see Figure 4). This does not take into account potential successful resource consent applications for non-complying activities which could add to this number.

Figure 4: Potential new buildings in the Waitakere Ranges



Source: Waitakere City Council (2003d: 55)

The district plan appears to have been moderately successful in controlling subdivision in the coastal villages. Very little new subdivision is happening in these areas and, under current district plan rules, only about 30 additional lots can be created. However, considerable impacts are likely from the building of houses on vacant properties, with 153 of these being currently available (WCC 2003d: 55). In addition, much larger houses are being built as villages transform from bach settlements to permanent living areas. In response to concerns about changes to the character of Piha, the council is considering a plan change to strengthen district plan provisions.

Much more development is likely on the bush-clad hills and foothills. In the Waitakere Ranges Environment, there are currently 119 vacant lots which could be built on and an estimated 40 additional lots could be created through subdivision. In the Bush Living Environments there are currently 312 vacant lots which could be built on and an estimated 175 additional lots which could be created through subdivision.

The greatest impact is likely to occur in the Foothills, where there are currently 86 vacant lots, but where 562 potential additional lots could be created through subdivision, including provisions in structure plans. (WCC 2003d: 55).

Strict control on the location and design of buildings and associated bush clearance is reducing the potential impact of this development, but there may still be negative cumulative effects if such a large number of new houses are built within the Ranges.

The Future

Several people interviewed for the case study indicated that the community appears generally happy with the district plan, with the major exception of controversy over the structure approach adopted for the foothills areas. However, both the Council and the WRPS expressed concern that, after a decade of negotiating the content of the district plan to most parties' satisfaction, it can still be changed at any time through the plan change and review procedures under the RMA. There was also concern that the MUL may ultimately be moved westwards, thereby opening up areas of the foothills to more intensive development.

In early 2003, the Council initiated a project to investigate whether or not the Ranges are well enough protected now and for the future and if not what could be done. The project has involved research and information gathering, community workshops and community focus groups. An action plan is scheduled to be developed by the end of July 2004, with a range of options being canvassed (WCC 2003b: 3).

Conclusions

The Waitakere Ranges is under considerable pressure for further residential development as a result of being located on the fringes of New Zealand's largest urban area. The area has been recognised as being of regional and national significance and has a long history of landscape protection measures. Under current district plan provisions, considerable further development is provided for in the area. Concern has been expressed about the ability of the district plan to protect the Ranges in the long term and the council is exploring options to strengthen protection.

People interviewed

Interviews were carried out during June 2003

Name	Position	Organisation
John Edgar	Chairman	Waitakere Ranges Protection Society
Gordon Griffin	Resource Planner/Landscape Architect	Waitakere City Council
Penny Hulse	Chair of Environmental Management Committee	Waitakere City Council
Graeme McCarrison	Manager of Resource Consents	Waitakere City Council
Jenny McDonald	Strategic Leader	Waitakere City Council
Neil Olsen	Senior Recreation Advisor	Auckland Regional Council
Gary Taylor	Consultant	
Pamela Wells	Service Planner	Waitakere City Council

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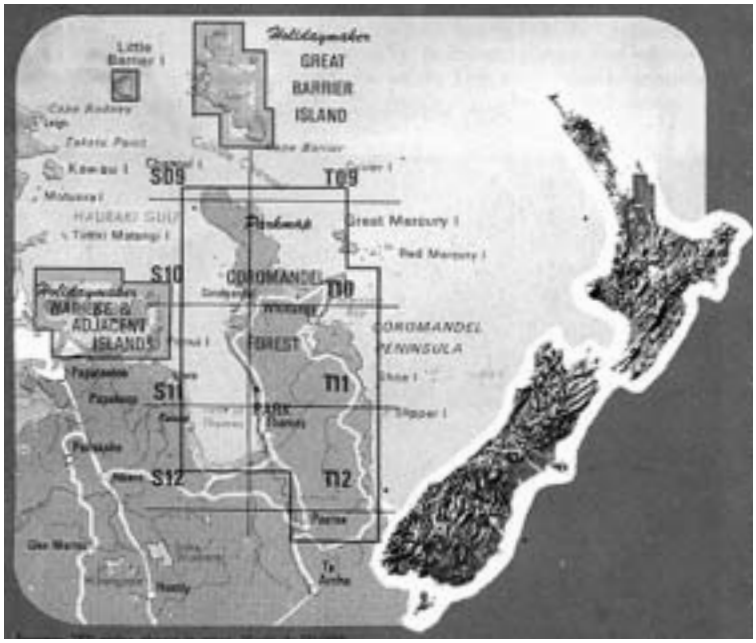
APPENDIX 4: COROMANDEL PENINSULA CASE STUDY

Introduction

Figure 1: Location of Coromandel Peninsula



The Coromandel Peninsula is located on the east coast of the North Island east of Auckland and to the north east of Hamilton (see Figure 1). The spine of the Coromandel Peninsula consists of a range of steep-sided mountains rising to almost 900 metres at their highest point. These fall steeply to the sea on the west and provide a backdrop to broad valleys, flatlands, estuaries and sandy beaches on the east. The Peninsula has 395 kilometres of coastline. 'Nowhere else in New Zealand is there a coastline or forest of such diversity, from relatively accessible and developed areas to relatively inaccessible and remote all within such close proximity' (Boffa Miskell Limited 1997: 4). A 1997 landscape assessment study identified the entire coastal environment, excluding settlement areas and some inland areas, as constituting outstanding features or landscapes under section 6(b)) of the RMA (Boffa Miskell Limited 1997: 73). The Coromandel Peninsula falls within the jurisdictions of the Thames-Coromandel District Council and the Waikato Regional Council.

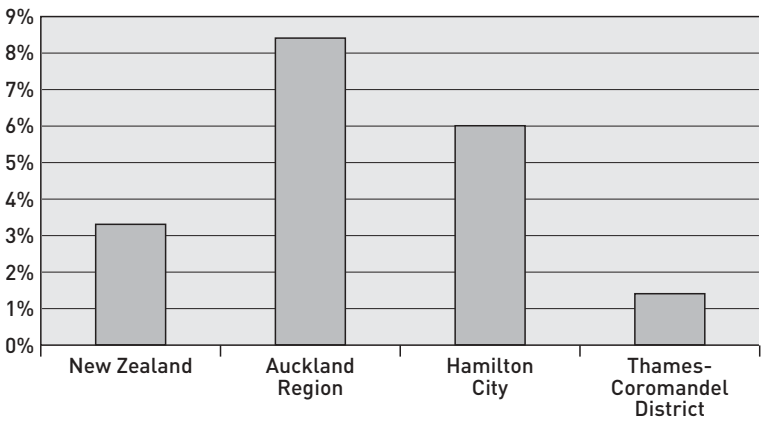
Pressures on landscapes

The main pressure on landscapes in the Coromandel Peninsula is the increasing number of visitors and holiday makers, resulting in the construction of holiday homes and associated infrastructure.

The Thames-Coromandel District has experienced only a modest growth in the number of residents (1.4 per cent between 1996 and 2001), less than half of the national percentage increase of 3.3 per cent (see Figure 2). This is in stark contrast to a 14 per cent growth rate for the previous five year census period from 1991 to 1996. The population is predicted to increase from 25,800 in 1991 to about 31,000 in 2021 based on Statistics New Zealand medium growth projections, an increase of 20 per cent and just over the predicted percentage growth for the country as a whole of 16 per cent.

Many residents of the Thames-Coromandel District have low incomes, with the district having a median annual personal income of $14,700, compared to the national average of $18,500. This low income may be related to the disproportionate number of older people in the district. The district has 20.5 per cent of its population aged 65 years and over, compared to the national average of 12.1 per cent, reflecting the attractiveness of the Peninsula to retirees.

Figure 2: Percentage population growth 1996-2001



Being located within a ninety-minute drive of the Auckland region and Hamilton City, there has been strong pressure for holiday homes. On the 2001 census night, 44.5 per cent of dwellings were unoccupied, the highest rate of all districts, compared to a national average of 9.7 per cent. This indicates the large proportion of holiday homes within the district. The growth in the populations of Auckland and Hamilton, where the owners of many holiday homes reside, is

therefore likely to be a greater predictor of pressure on the Coromandel Ranges than population increase within the area itself.

The major geographical concentration of unoccupied dwellings is in the Te Rerenga, Whangamata and Pauanui Beach census area units (see Figure 3). Whangamata and Pauanui Beach are both well-established formal beach settlements. Te Rerenga includes smaller coastal villages and a large rural area. It has the largest number of dwellings of all the census area units (4,257) and the second largest proportion of unoccupied dwellings (58.6 per cent) after Pauanui Beach (80.5 per cent). This indicates that many holiday homes are located outside the larger formal beach settlements.

Prices for coastal property on the Peninsula have been sharply increasing, with beachfront properties with baches or modest homes selling for over a million dollars (Bayleys Research 2002), indicating continuing strong demand. Coastal holiday homes can have a significant negative effect on landscape values if not well designed and sited (see Figure 4).

Tourism is another major pressure on the landscape. In summertime, the population of the district can increase from 25,000 to 200,000 (Thames-Coromandel District Council 2002). The population of the Tairua-Pauanui area increases more than ten times during this period and the Whangamata and Whitianga-Cooks Beach areas experience an eight-fold population increase (Waikato Regional Policy Statement 2000, para 3.5.3). This has major implications for the capacity of the infrastructure that needs to be provided for these beach settlements, the level of rates required to fund it, and how the burden of such rates fall.

Identification of important landscapes

A visual assessment of the landscapes of the Peninsula was carried out in 1997. The study identified and categorized the different kinds of landscapes within the district but did not go so far as to ascribe a value to them. Cultural or heritage landscapes were not identified and there was no public input into the assessment. The study identified the entire coastal environment, excluding settlement areas and some inland areas, as constituting outstanding features or landscapes under section 6(b)] of the RMA (Boffa Miskell Limited 1997: 73). Descriptions of the different landscape units drawn from the study were included in the proposed district plan and the plan states that 'The District's landscape contains substantial areas of significant landscape including a coastal environment which is of national significance and has been determined to be of outstanding value' (Issue 212.2). However, the locations of outstanding landscapes are not identified on the planning maps or elsewhere in the plan.

Development of district plan provisions

Planning controls over subdivision and development in the rural and coastal areas have changed significantly over the twelve years since the RMA came into force. The transitional district plan prepared under the Town and Country Planning Act 1977 became operative in 1990, just before the new planning regime under the RMA came into play. This plan identified a coastal zone which generally extended from mean high water springs up to the coastal ridgeline, excluding settlement areas. Minimum lot sizes of 20 hectares for agriculture and 6 hectares for horticulture were provided for in the rural and coastal zones, in order to maintain the productive use of the land. In addition, the coastal zone restricted non-farming activities and incorporated design controls on buildings. Bush conservation lots were provided for, with a minimum of 10 hectares of bush to be covenanted for each lot. There were no specific landscape protection provisions.

Figure 3: Number of occupied and unoccupied dwellings on census night 2001

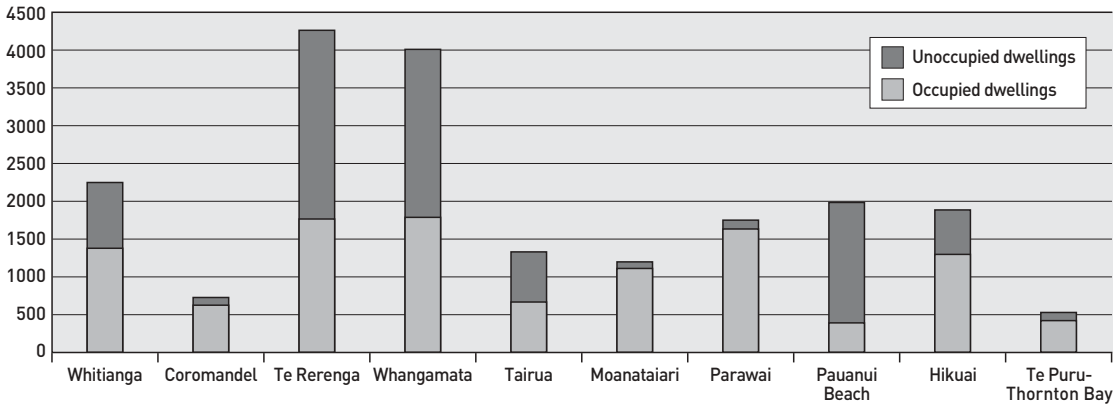


Figure 4: Residential development on a headland at Tairua

Source: Brown 2003

In 1992, a council dominated by 'progressive green' councillors was elected. The council attempted to put in place a strong environmental management framework for the Peninsula, within the broader neo-liberal framework of reducing council spending. In 1995, council planners began work on preparing a proposed district plan under the RMA. A similarly orientated council was elected for another term in 1995 and the proposed plan was notified in March 1997.

The plan as notified was significantly more restrictive on rural and coastal development than the transitional plan. The minimum lot size for subdivision in the rural and coastal zones as a discretionary activity was increased from 6 or 20 hectares to 60 hectares. One building per lot was provided for in the rural zone as a permitted activity, and within the coastal zone as a controlled activity. Assessment criteria included the design of the building and the location and detailed planning of landscaped areas. Production forestry was a controlled activity in the coastal zone and industrial and mining activities were prohibited activities.

A rural conservation lot could be created as a discretionary activity if 5 hectares of existing bush were covenanted, or 5 hectares of land planted in indigenous vegetation and managed according to an approved plan on the parent title. A maximum of two such lots per title was provided for, but two lots could only be created if at least 20 hectares of land was subject to legal protection. A 4,000 square metre minimum lot size was imposed on the conservation lots, but they were not required to be contiguous with the covenanted areas.

There was no identification of outstanding landscapes or specific rules for their protection.

These provisions generated much controversy. Around 1,200 submissions and 18,000 submission points were lodged in respect of the proposed plan. The Coromandel Resource Users Association (CRUA) was formed in 1997, representing land owners and resource users, to oppose the proposed plan and the re-election of councillors. The CRUA developed an alternative district plan, less than a tenth the size of the proposed plan, which it presented to the council (The Independent 1998). In 1998, the council began restructuring its planning department, resulting in the loss of three senior policy planners.

Hearings of submissions to the plan were held between September 1997 and June 1998. The council released its decisions on submissions on the proposed plan in October 1998, just before the elections. They had the effect of reducing the minimum lot size in rural and coastal areas from 60 hectares to a 20 hectare average, as a discretionary activity. The rural conservation lots were retained but the minimum lot size was removed. Production forestry in the coastal zone

remained a controlled activity. A section of the plan identifying objectives, policies, methods and results relating to the coastal zone was removed.

Objectives and policies relating to landscape protection were weakened. For example, the proposed plan as notified contained the following policies related to landscape and natural character:

1. To ensure key landscape elements are identified and given a *highly protected status*
2. To ensure the landscape character of different areas throughout the District is identified, and enhanced
3. To *avoid activities or development* which have a significant adverse effect on key landscape elements or cause dramatic landscape change
4. To ensure activities or development reflect or enhance the landscape character of an area
5. To protect and enhance natural vegetation, within the District's settlement. [emphasis added]

Several of these policies were deleted or reorientated after council decisions to place more emphasis on promoting development to achieve restoration of the coastline. For example, revised policies included:

'To protect existing landscape values within the coastal environment and to *encourage* and provide for *appropriate development,* which will remedy the adverse effects of past land uses and enhance the natural character and amenity values of the coastal environment' (Policy 212.4.2). [emphasis added]

'To promote the restoration and enhancement of existing degraded landscapes and ecosystems' (Policy 212.4.3).

'*Enable subdivision and development* where significant landscape protection and enhancement, including the retirement of land with active revegetation of indigenous species and the restoration of indigenous ecological systems, are to be achieved' (Method 212.5.3.4). [emphasis added]

One house per lot in the coastal zone continued to be a controlled activity but much more stringent assessment criteria were incorporated into the plan. These included colour, reflectivity, bulk, vegetation clearance, location in relation to headlands and ridgelines and prominence when viewed from the sea, public roads and cultural or heritage sites.

The effect of these provisions is that large undeveloped coastal rural blocks of land on the Peninsula, such as those at Wainuototo (New Chums) Beach and Waikawau Bay, can be subdivided into lots averaging 20 hectares, as discretionary activities, with further rural conservation lots able to be created. In addition, the changed policies facilitate the granting of non-complying consent for subdivision in the coastal zone on the basis of revegetation proposals. Although buildings on new lots are subject to design and location criteria, they are a controlled activity and therefore consent cannot be withheld. The subdivision and development potential of land at Waikawau Bay, under these district plan provisions, prompted the government to purchase the land to protect it from unsympathetic development.

The proposed plan became a key issue in the 1998 election, along with infrastructure provision, and many progressive green councillors failed to be re-elected. The level of opposition to the plan was, in part, due to the lack of consultation as the plan was being prepared and the suspicion that this bred. It was also criticized for a lack of vision and a clear description of what it sought to achieve, as well as for containing too many petty rules.

The new council which came into office was dominated by more 'centrist' councillors. The council considered abandoning the proposed plan and starting again. However, because of the amount of money already expended on the plan by that time, the fact that it had been through a public process, and the presence of other more urgent issues relating to infrastructure provision, the council decided to retain the plan, endeavour to get it operative and then change it.

Fifty-one references were lodged in relation to the proposed plan. The CRUA lodged a broad reference against the plan. Carter Holt Harvey opposed the forestry provisions in the coastal zone. However, in general, the references related to site-specific issues or urban areas rather than challenging the broader provisions impacting on the coastal zone. Significantly, no one challenged the weakening of the protection of landscapes in the district. The council proceeded to negotiate settlement of references. By June 2003, over six years after the proposed plan was notified, it was not yet operative, 17 references were outstanding and major references by the CRUA, the forestry industry and the mining industry had yet to be resolved. Interviewees indicated that the community remains very divided over district plan issues.

Few parties have been involved in establishing the landscape protection provisions of the district plan. The Department of Conservation has not engaged in landscape issues on the Peninsula. The regional council has not identified regionally significant landscapes in its regional policy statement or coastal plan. The regional council is,

Figure 5: Residential development at Otama Beach, Coromandel Peninsula

Source: Brown 2003

however, developing an innovative approach to establishing regional parks through natural heritage partnerships. It is currently exploring ways of permanently protecting land that does not require outright public purchase, and is seeking to apply this approach to a farm at Te Kouma on the northern end of the Peninsula.

In terms of environmental pressure groups, there are some locally based active groups such as the Opoutere Resident and Ratepayers Association and the Whangapoua Beach Ratepayers Association. However, there is a notable absence of any environmental pressure group engaging in district plan landscape and coastal issues on a Peninsula-wide basis. In contrast, landowners and other development interests within the Peninsula have been well mobilized in the form of the CRUA.

There are strong tangata whenua associations with the land on the Coromandel Peninsula. However, there has been little incorporation of a Maori perspective of landscape into district plan provisions. Local iwi have not had the resources to proactively identify places important to them and there is currently a mismatch between what is valued by tangata whenua on the Peninsula and what is protected under the current resource management system (Ngamane 2003).

The Environment Court has yet to become involved in the landscape provisions of the district plan and looks unlikely to do so in the near future, as no current references raise general landscape issues.

The current plan seems unlikely to be up to the task of managing the strong development pressures on the Coromandel Peninsula's landscapes, with important landscape areas still to be identified. The current council has inherited a plan it does not particularly like and has had no hand in developing. It does not yet have a well-defined policy on landscape protection, with other more urgent issues, such as infrastructure provision to cater for the area's increasing population and visitors, taking priority.

Resource Consent process

Little quantitative information was available about the processing of resource consent applications affecting the Peninsula. In the 2001/02 year, the council notified 3 per cent of resource consent applications processed, being half the national average of 6 per cent and substantially down on the 6.8 per cent notified two years previously (Ministry for the Environment 2003: 48).

It seems unlikely that the cumulative effects of resource consent applications on landscape values are being comprehensively assessed, because the council appears to lack an overall vision of what is sought to be achieved in terms of management of landscape and the coastal areas. A comprehensive picture of what subdivision and development has already been approved in sensitive areas also seems to be lacking.

The resource management system was seen by some interviewees as unfair because it was thought that a large developer with money to engage experts was more likely to get consent than a smaller landowner proposing a modest development. Several interviewees expressed the view that developers were shaping the future development trajectory of the Peninsula, rather than the local community.

Outcomes

In terms of the outcomes, opinions differed. Some interviewees expressed the view that development had already gone so far as to effectively destroy the special values of the Peninsula that had drawn them there in the first place, including the feeling of wilderness. Others considered that there were still many undeveloped areas left and development was providing important ecological benefits through revegetation initiatives. Some poorly located and designed development has had a negative impact on landscapes, as can be seen in Figure 5.

The future

Suggestions from interviewees for improved protection of the Peninsula in the future included:

- Covenanting the title of land on subdivision to prevent further subdivision

- Initiating a community consultation process, building on the landscape assessment carried out by Boffa Miskell Limited, to identify areas of high landscape value within the district.
- Using the long term council community planning process to develop a future vision for driving changes to the district plan
- Negotiating one-on-one with property owners to achieve better protection of significant areas
- Better harnessing the development impetus for environmental gain, through revegetation initiatives.

Conclusions

The coastal areas of the Coromandel Peninsula are under high pressure for the development of holiday homes. The increasing number of dwellings in the area does not appear to have benefited the local community, which has generally low incomes and population growth. Landscape protection has not been a high priority for the council, which has struggled to provide sufficient infrastructure to meet the needs of large numbers of visitors over the summer holiday period. Important landscapes have yet to be identified and are not well protected.

People interviewed

Interviews were carried out during June 2003

Name	Position	Organisation
Bruce Baker	Principal Policy Planner	Thames Coromandel District Council
Philippa Barriball	Deputy Mayor	Thames Coromandel District Council
Anne Elliot	Whitianga resident	Environmental activist
Joan Gaskill	Whitianga resident	Ex-chair of Mercury Bay Community Board
Leigh Hopper	Director	Hopper Developments
Graeme Lawrence	Planner	Lawrence Cross and Chapman
Liane Ngamane	Resource management consultant	Ngati Maru
Chris Lux	Mayor	Thames Coromandel District Council
Evan Penny	Councillor	Environment Waikato
Brain Sharp	Councillor	Thames Coromandel District Council
Mark Tugendhaft	Kuaotunu resident	Environmental activist, Coromandel Watchdog
Peter Wishart	Forward Planning Manager	Thames Coromandel District Council

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APPENDIX 5: BANKS PENINSULA CASE STUDY

Introduction

Banks Peninsula, located to the east of Christchurch, is largely comprised of two extinct volcanoes and the associated lava flows (see Figure 1). It has two large harbours, Lyttleton and Akaroa, and a long coastline consisting of rocky cliffs and headlands interspersed with sheltered sandy bays. In prehuman times the Peninsula was almost completely covered in forest. By 1900 this had been reduced to approximately 1 per cent of the original cover, but has since regenerated to about 15 per cent. Small forest remnants support a diverse range of native fauna. Virtually every bay on the Peninsula was settled by Maori, and Akaroa was the first and most significant French settlement in New Zealand. A large majority of the Peninsula is currently in private ownership, with much land being used for extensive pastoral farming. The entire Banks Peninsula was recognized as a regionally outstanding landscape in a Canterbury regional landscape study (Parliamentary Commissioner for the Environment (PCE) 2001:44). The Banks Peninsula falls within the jurisdictions of the Banks Peninsula District Council (BPDC) and the Canterbury Regional Council.

Figure 1: Location of Banks Peninsula

Source:http://www.bankspeninsula.com

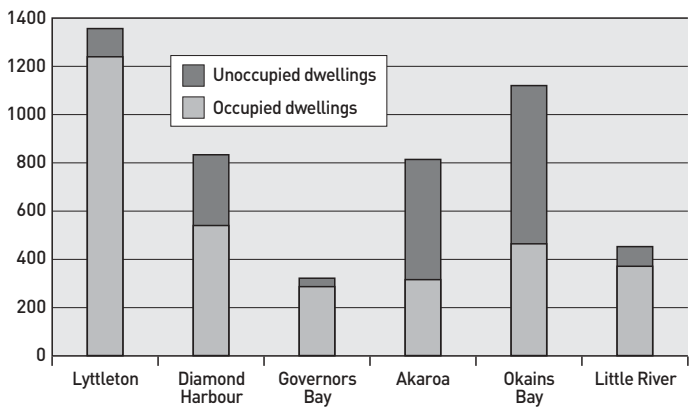
Pressures on landscapes

The main pressures on the landscape in Banks Peninsula are the erection of dwellings, plantation forestry and marine farming. The Banks Peninsula population was 7,833 in 2001, an increase of only 3.3 per cent since 1996, and equivalent to the national population change over the same period. Nearly half the population work in Christchurch (BPDC 2002: 4). The median personal income of $18,600 is very close to the national median of $18,500. The medium population increase by 2021 is predicted by Statistics New Zealand to be 7 percent, providing an extra 600 people. This is much lower than the 16 per cent growth predicted for the country as a whole.

Settlement patterns vary significantly in different parts of the Peninsula (see Figure 2). Lyttleton and Governors Bay are largely residential suburbs within commuting distance of Christchurch and have a low proportion of unoccupied dwellings. In striking contrast, Akaroa and Okains Bay census area units have a large proportion of unoccupied dwellings comprising 61.3 per cent and 58.6 per cent of total dwellings respectively. This indicates a large number of holiday homes in the area. Several interviewees indicated that it was becoming increasingly difficult for residents to find accommodation in Akaroa due to the high price of buying and renting houses and the large number of holiday homes.

Several marine farms are currently established along the coast of the Peninsula. Akaroa Harbour and many of the northern bays have been identified by marine farmers as desirable for aquaculture marine areas (Environment Canterbury 2002).

Figure 2: Number of occupied and unoccupied dwellings 1991



Identification of important landscapes

A Canterbury regional landscape study, carried out by Boffa Miskell Limited and Lucas Associates in 1993, identified the entire Banks Peninsula as a regionally outstanding landscape. However, this finding was neither formally adopted by the Canterbury Regional Council nor incorporated into the regional policy statement. The Environment Court has, nevertheless, stated that 'Banks Peninsula as a whole may well be an outstanding natural feature and landscape', when considering an application for a marine farm in Pigeon Bay (*Pigeon Bay Aquaculture Ltd & Ors v Canterbury Regional Council* C32/99, paragraph 55).

The regional policy statement does not identify any regionally outstanding landscapes. When considering the landscape impacts of a proposed large house on a peninsula in Akaroa Harbour, the Environment Court found the regional policy statement of 'limited significance', because it was seen as relating in the main to the coastal marine area rather than the coastal environment (*Pacific Investment Trust v Banks Peninsula District Council* C86/2000, paragraph 22).

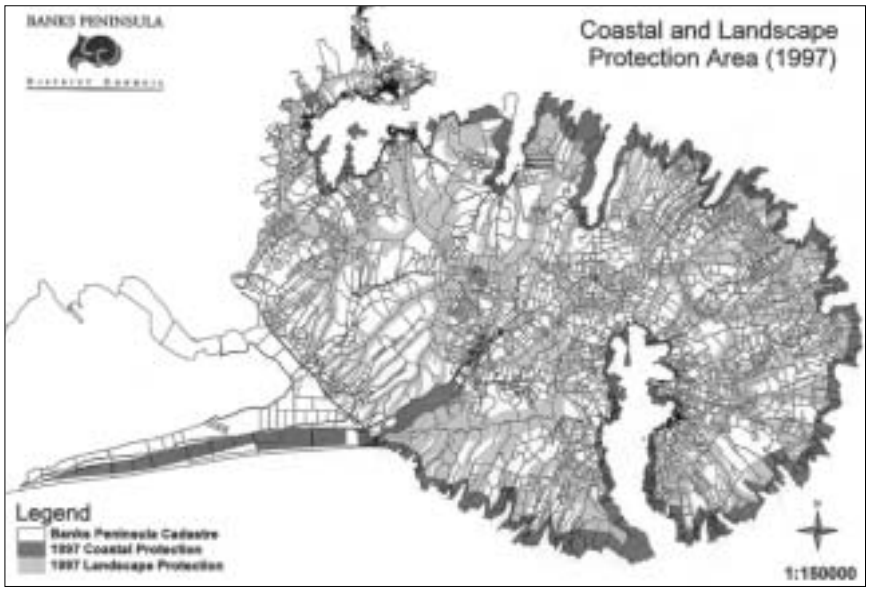
No landscape assessment of the Banks Peninsula District was carried out for the purposes of the preparing the district plan under the RMA. A visual assessment of Banks Peninsula was carried out in 1991 (Glasson 1991) and its findings, after some reanalysis, were used as a basis for identifying important landscapes on district plan maps. This assessment did not incorporate any information on public perceptions or involve any public consultation process.

District plan landscape provisions

The transitional district plan, which was an amalgam of four plans prepared under the Town and Country Planning Act 1977, did not identify important landscapes. It primarily managed rural subdivision on the basis of maintaining economically self-sustaining land units. In some areas, a 40 hectare minimum lot size was applied to subdivision in rural zones.

Preparation of a proposed district plan commenced in the early 1990s and the plan was notified in early 1997. This plan identified extensive coastal and landscape protection areas throughout the district, which were subject to stricter controls on buildings and production forestry (see Figure 3). Two different landscape protection zones were provided for. For high sensitivity landscape areas, which incorporated the highest ridgelines, all new buildings were a discretionary activity and production forestry was a non-complying activity. For moderate sensitivity landscape areas, which incorporated the lower ridgelines, all new buildings were a controlled activity and production forestry became a discretionary activity. The plan also provided for a coastal protection area which extended right around the coast and, in some places, included land up to 1.8 kilometres inland. New buildings in this area and production forestry were discretionary activities.

Figure 3: Coastal and Landscape Protection Areas as in the proposed plan as notified



In the rural zone, including the landscape and coastal protection areas, a minimum lot size of 20 hectares was provided for as a controlled activity, and a minimum lot size of 4 hectares for a discretionary activity. Building platforms were required to be identified at the time of subdivision, or a consent notice could be placed on the title precluding the erection of a building on the site. Building and forestry design guidelines were included in the plan.

The proposed plan did not address cultural landscapes. It did, however, provide for the protection of sites and features of significance to tangata whenua through the identification of 'silent

file' areas. Any activity involving earthworks, planting or the removal of trees, or the establishment of any building or structure within a silent file area, became a restricted discretionary activity.

A residential conservation area was applied to the inner residential areas of Lyttleton and Akaroa, to retain their unique heritage. External alterations or demolition of existing buildings and erection of new dwellings within this area became restricted discretionary activities. The council has more recently notified Variation 5, which provides a set of guidelines against which applications for consent to modify existing buildings or to erect new buildings in the residential conservation area will be assessed. A design advisory committee advises the council on the application of the guidelines to individual applications.

The proposed plan provisions for coastal and landscape protection areas were heavily criticised, particularly by the farming community mobilized under the umbrella of the North Canterbury Branch of the Federated Farmers of New Zealand (Federated Farmers). Federated Farmers threatened the council with high court action if it continued processing these sections of the proposed plan. In response, the council did not hear submissions on the rural chapter of the proposed plan, but established a task force to investigate a way forward which would resolve the conflict.

The Banks Peninsula Rural Task Force (BPRTF) held its first meeting on 20 November 1997. Its members included representatives of the main submitters on the rural provisions of the proposed plan. Excluding those who resigned from membership, were replaced or did not regularly attend meetings, the following groups were represented on the task force (BPRTF 1999):

District Council	1 member
Regional Council	1 member
Department of Conservation	1 member
Ministry for the Environment	1 member
Federated Farmers	5 members
Wairewa Landcare Group	2 members
Environmental organisations	3 members
Planning consultant	1 member
Convenor	1 member

A range of other people attended various meetings of the task force. Several affected sectors were not represented, including the tourism industry and residents of Lyttleton and Akaroa harbours. Representatives from four runanga were invited but did not attend meetings. Significantly, there were no landscape architects included on the task force, even though it was addressing landscape protection issues for the majority of the district. Farmers, although not comprising a majority of members, had a dominating position in terms of their numbers. Surprisingly, given that preparation of the district plan is a responsibility of the district council, it had only one member out of sixteen on the task force, after two councillors resigned from its membership. This perhaps indicates the low priority councillors gave landscape, coastal and rural management issues at the time.

Interviews with participants on the task force drew varying responses as to how successful it had been. Some expressed the view that the task force had not proved an effective forum for mediating agreement, that the meetings were at times tense and intimidating and that the final outcome represented the view of a dominant majority rather than a consensus outcome. Other participants expressed the view that the task force was a good example of local people jointly working through difficult issues and that the recommendations reflected what the community wanted to see in the district plan.

The report of the task force primarily consisted of redrafted sections of the district plan including:

- The entire Chapter 12: Coastal environment
- The entire Chapter 13: Outstanding natural features and landscape
- The entire Chapter 19: The rural management area
- Amendments to Chapter 30: Subdivision.

The report also included a plan showing considerably reduced landscape and coastal protection areas. The protected landscape areas were collapsed into one category and this was restricted to an area extending 50 metres on each side of the summit roads, with the inclusion of some additional areas above 500 metres elevation surrounding prominent peaks. The coastal protection area was reduced in the main to a 10 metre setback from the landward side of a coastal road reserve. These recommendations reduced the total size of proposed landscape protection areas from 31,150 hectares to 7,900 hectares and reduced the proposed coastal protection area from 15,350 hectares to 360 hectares (Andrew 2001:5).

The redrafted proposed plan provisions in the report indicated that this severely reduced protection was an interim measure only and would, in the most part, be replaced by a non-regulatory method of site identification and protection administered by a Rural Resource Management Trust.

The draft also contained the concept of 'environmental credits' where the council would be able to take into account, when considering a resource consent application, whether or not the community had benefited by the applicant having less than five years previously taken effective steps to preserve in perpetuity significant indigenous vegetation.

Comments by several of the task force members who disagreed with provisions of the redrafted chapters were appended to the report. Comments were made by the Friends of Banks Peninsula, Department of Conservation (DoC), Federated Farmers of New Zealand (North Canterbury Branch) and the Ministry for the Environment. DoC appeared the unhappiest with the recommendations of the task force, expressing concern about the limited protection of important landscapes and coastal areas.

The council considered the task force recommendations and undertook further professional analysis and deliberations before notifying Variation 2 in August 2002. This variation largely adopted the task force recommendations with the following changes reflected in Figure 4 (Hofmans 2003):

- The council identified the need to reinstate the landscape protection areas surrounding Lyttleton Harbour in the proposed plan
- Council staff recommended that landscape protection areas in several small valleys surrounding Lake Ellesmere be reinstated
- Boffa Miskell Limited was commissioned to assess the inner areas of the Lyttleton and Akaroa Harbours and recommended that the coastal protection areas identified in the proposed plan be reinstated
- Council officers recommended that coastal protection areas in the outer areas of the Lyttleton and Akaroa Harbours be reinstated.

Variation 2 identified a single landscape protection zone, but two types of coastal protection areas: a high sensitivity area and a moderate sensitivity area. It retained the 20 hectare controlled activity and 4 hectare discretionary activity minimum lot sizes for the rural zone, including the coastal and landscape protection zones. However, it introduced an environmental credit provision, with subdivision down to a one hectare lot being a discretionary activity if a 4 hectare lot was being created for conservation purposes and would not be built on. In the moderate sensitivity coastal protection area, erecting a building is a restricted discretionary activity and the erection of a building in a high sensitivity coastal protection area or a landscape protection area is a discretionary activity.

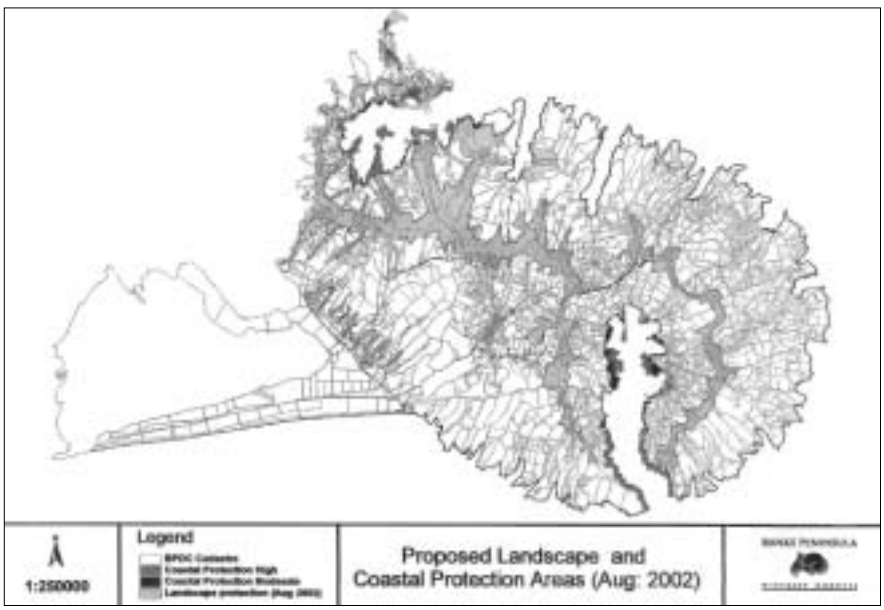
Submissions raising 1700 decision points and cross-submissions raising 500 decision points have been lodged in relation to Variation 2. These submissions are unlikely to be heard before 2004.

Twelve years after the RMA came into force, and six years after the proposed district plan was first notified, the council has yet to make a decision on submissions on the rural chapters of the plan. It is not yet clear whether or not the landscape provisions will reach the Environment Court.

A range of parties have been involved in formulating the landscape provisions of the district plan. The regional council is not very engaged in landscape issues, although regional council officers did participate in the task force. The regional policy statement is weak on landscape protection and does not provide officers with a robust framework within which to engage district councils.

The Canterbury Conservancy of DoC has engaged in landscape issues at a district level, particularly

Figure 4: Coastal and Landscape Protection Areas as notified in Variation 2



where the landscape is part of the coastal environment. Coastal issues are seen as a legitimate focus area for DoC, under the RMA, as they are related to its statutory functions of preparing a New Zealand coastal policy statement and approving regional coastal plans.

There is not a strong level of activism from environmental groups on the Peninsula. The Friends of Banks Peninsula, established in 1990, had a member on the task force and does become involved in some RMA issues. However, the organisation is suffering from a shortage of skilled and active members. The Akaroa Civic Trust was formed in 1969 as a watchdog body for Akaroa Township. It was successful in obtaining registration of the historic portion of Akaroa as a heritage area under the Historic Places Act, and in persuading the Council to incorporate design guidelines as part of the district plan. However, the work of the Trust has been dependent on the voluntary energies of a small group of people who are in danger of burnout.

Farmers are well mobilized by the activities of the Federated Farmers, which took a leading role in challenging the council on the proposed district plan, promoting the establishment of a task force and setting up the Banks Peninsula Conservation Trust. Farmers are also growing tired of devoting significant time and energy to ongoing consultative processes.

Runanga did not participate in the task force and have not become involved in landscape protection issues in the district plan. Ngai Tahu are intending to develop an iwi management plan for the Banks Peninsula and, as part of that process, to identify highly valued cultural landscapes. They hope that the key elements of the iwi management plan will be incorporated into the district plan, after consultation with landowners, through a variation or plan change (Edwards 2003).

Resource consent processing

Council officers reported receiving many applications for subdivision based on the environmental credit provisions and these were geographically widespread. Planners normally undertake the assessment of subdivision applications, although sometimes a second opinion from a landscape architect is sought. In terms of addressing cumulative effects, the planners assess how the proposal will fit into the receiving environment. The council planning officer interviewed could not recall declining any application for consent to subdivide rural land for lifestyle blocks over the past six years and could recall only one resource consent which had gone to the Environment Court. Where other parties are involved in opposing such applications they are usually adjoining landowners rather than environmental groups.

In terms of the historic area of Akaroa Township, the Akaroa Civic Trust representative interviewed expressed concern about the increasing pressure to remove or expand historic buildings and the difficulty of maintaining the historical character of the area in the face of such pressure.

The difficulty that activist groups can encounter when operating within a small community is illustrated by the conflict which arose over the council's removal of protected trees in order to make way for a waterfront development in Akaroa. Some interviewees criticized the proposed waterfront development for being out of character with the historic precinct. On the other hand, the Akaroa Civic Trust was blamed for delaying the development and escalating costs. The trust had lodged a submission against the removal of protected trees along the waterfront precinct which was proposed as part of the waterfront development. The council removed the trees prior to a written decision of the commissioner being served on submitters and the appeal period expiring. This was followed by the illegal removal of two further protected waterfront trees by the chair of the Akaroa/Waiwera community board. The reason given for the act was that 'almost all projects ... have been held up and made much more expensive by complaints from 'splinter groups' (Akaroa Mail 2003).

Non-statutory approaches to landscape protection

The Banks Peninsula Conservation Trust was established in 2001 with the purpose of working with landowners to achieve voluntary protection of important landscape and coastal areas. The trust has four trustees and is run by a committee of about ten people, all of whom are residents of Banks Peninsula. About half of those involved are farmers and half are 'lifestylers'. Council provided the trust with a $5,000 seeding grant followed by a further $15,000. The trust has been successful in raising additional funds from a range of parties. Although the council is invited to trust meetings, representatives have not regularly attended due to a lack of resources.

Over the two years it has been in operation, the trust has primarily focused on biodiversity conservation and the promotion of sustainable farm management. It has succeeded in developing a positive relationship with landowners and has more recently adopted a role of facilitating interactions between landowners and other statutory agencies. The trust provides funding to landowners to fence areas of indigenous vegetation in exchange for an agreement to covenant the land, and has recently been

authorized as a covenanting authority. It also promotes awareness of conservation issues and is researching sustainable farming practices. The trust has not yet become involved in landscape protection work, although this is something it will consider in the future.

In terms of protection of cultural landscapes, the Akaroa Civic Trust is seeking to protect the landscape at Takapuneke – Green's Point. It has been argued that, collectively, these sites may be as important as Waitangi. Takapuneke was the site of a massacre in 1830 when Te Rauparaha sacked the village, slaughtering or capturing all its inhabitants and burning the village to the ground. Te Rauparaha was assisted in this bloody deed by a British ship's captain, Captain Stewart. It was this act of complicity by a British subject which helped prompt the British government to send James Busby to the Bay of Islands in 1833 and which culminated in the signing of the Treaty of Waitangi in 1840. At nearby Onuku, two Ngai Tahu chiefs, Isikau and Tokao, signed the Treaty on 28 May 1840. On Green's Point, Governor Hobson made the first effective demonstration of British sovereignty over the South Island on 11 August 1840 (Wilson 2002).

In 1898, a monument was erected on Green's Point and land around it was acquired by the government and gazetted as land of historic interest. However, until very recently no protection was provided to the rest of the area and it has been used for local government infrastructure. In 1965, Akaroa's sewage treatment works were built on the southern side of the bay and in 1978 the council purchased all the remaining land at Takapuneke, establishing a waste disposal facility on the site a year later. In 2002, the council advertised plans to sell much of the balance of the land for residential development. In the same year, the New Zealand Historic Places Trust registered the entire area as wahi tapu (Wilson 2002). The future of the land has not yet been resolved and it seems likely that it will only be protected as a cultural landscape if central government purchases it outright.

Outcomes

There is little available information on the outcomes of landscape management in the Banks Peninsula. The council does not currently undertake any monitoring of outcomes. Some interviewees expressed concern about the level of development occurring in the Akaroa and Lyttleton harbours and unsympathetic development in the Akaroa Historic Area (see Figures 5 and 6).

Figure 5: Residential development in Lyttleton Harbour

Figure 6: Residential development in Akaroa Harbour

The future

The Mayor was elected on a ticket of amalgamating Banks Peninsula District Council with Christchurch City Council and he is expending much energy to achieve this end. If the amalgamation goes ahead, landscape protection on the Peninsula is likely to be approached within the broader context of a larger urban entity, and this may help diffuse the intensity of dealing with controversial issues on a very local level.

Conclusions

Development pressures for lifestyle living and holiday homes on the Banks Peninsula are fairly low compared to other case study areas. The council has struggled to address landscape protection issues which have proved contentious in a largely rural area. The lack of a technically defensible landscape assessment to support the landscape provisions of the proposed district plan, and any public consultation on the proposals, resulted in strong opposition once the plan was notified.

Faced with such opposition, the council adopted an innovative mechanism to work through contentious issues, with the establishment of a task force on which a range of interested parties were represented. Unfortunately, some key sectors with a stake in landscape protection were not participants. The recommendations of the task force, which were largely adopted by the council, favoured significantly reduced regulatory control and greater support for voluntary measures. However, such voluntary measures have to date focused on biodiversity conservation, and have yet to grapple with landscape protection issues which may prove more complex. In the absence of restrictive district plan provisions or effective voluntary measures, the district's landscapes are vulnerable to increasing development pressures. If amalgamation of the district with Christchurch City proceeds, the protection of landscapes on the Banks Peninsula may be addressed within a wider perspective.

People interviewed

Interviews were carried out during October 2003

Name	Position	Organisation
Victoria Andrews	Board Member	Akaroa Civic Trust
Hamish Barrell	Resource Management Planner	Environment Canterbury
Liz Briggs	Planner	Lyttleton resident
Jan Cook	Member	Friends of Banks Peninsula
Robin Delamore	Senior Resource Management Planner	Department of Conservation
Kara Edwards	Natural Resource Officer	Ngai Tahu Development Corporation
Bert Hofmans	Policy Planner	Banks Peninsula District Council
Steve Lowndes	Councillor	Banks Peninsula District Council
Laurie McCallum	Energy, Transport and the Built Environment Policy Manager	Environment Canterbury
Rick Menzies	Chair	Banks Peninsula Conservation Trust
Bob Parker	Mayor	Banks Peninsula District Council
Pam Richardson	President	Federated Farmers (North Canterbury)
Peter Ross	Senior Resource Management Planner	Environment Canterbury
Alison Undorf-Lay	Senior Policy Analyst	Federated Farmers (North Canterbury)
Lynda Wallace	Director	Akaroa Museum
Kate Whyte	Vice Chair	Banks Peninsula Conservation Trust
Kent Wilson	Planning Officer	Banks Peninsula District Council

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APPENDIX 6: WHANGAREI DISTRICT CASE STUDY

Introduction

Whangarei District includes an area of approximately 270,000 hectares bordered to the east by 270 kilometres of coastline. Almost 90 per cent of the district is rural with two-thirds being used for pastoral farming (LA4 1995: 1). Surrounding the outskirts of Whangarei city are numerous scoria cones clothed with nationally unique volcanic broadleaf forest. Whangarei harbour, a major shallow estuarine habitat, supports a rich diversity of international and resident coastal and wading birds (Department of Conservation (DoC) 2001: 3). The coastline 'has a dramatic mix of significant natural, cultural, recreation, economic and heritage values, contributing to the District's and Region's sense of place and their social and economic wellbeing' (Beca Planning 2002a: 1). Early Polynesian communities densely populated the Whangarei coastline, and Northland was the first area in New Zealand to be widely affected by European contact (Beca Planning 2002c: 10). The district is under the jurisdictions of the Whangarei District Council and Northland Regional Council.

Figure 1: Location of Whangarei District

Source: http://www.wdc.govt.nz

Pressures on landscapes

The main pressure on Whangarei District's landscapes is residential development driven by the demand for baches and holiday homes. The district has experienced a steady growth rate in population over the last 25 years. In 2001, there was a resident population of 68,091 compared with 66,747 in 1996. This was a change of 2 per cent over the five-year period, lower than the national increase of 3.3 per cent. Approximately 80 per cent of the district's population increase is occurring in the rural and coastal areas (WDC 2003b: 3). Statistics New Zealand's medium projection shows Whangarei District's population increasing to 75,900 in 2021, an increase of 8 per cent but only half the predicted growth for the whole country of 16 per cent. Incomes in the district are generally low, with a median personal income of $16,400 per annum compared with $18,500 for the country as a whole.

The number of unoccupied dwellings in the district increased from 1,875 in 1996 to 2,388 in 2001, an increase of 24 per cent. This can be compared with an increase of 10 per cent in occupied dwellings over the same period. In the coastal environment there are estimated to be some 5,500 to 5,800 dwellings, of which 36 per cent are considered to be baches or holiday homes (Beca Planning 2002d: 6).

Over half (59 per cent) of the baches and holiday homes in the Whangarei coastal environment are owned by people from Auckland with a further 36 per cent owned by Whangarei residents. As travel times and ease of access improve, the activity and preferences of Aucklanders are likely to have a significant and increasing impact on the Whangarei coast (Beca Planning 2002d: 13).

Beca Planning estimates a demand for new dwellings in the coastal environment of between 70 and 150 per annum for the next 20 years. Between half and three quarters of these are likely to be baches and holiday homes (Beca Planning 2002d: 24).

Identification of important landscapes

In 1995 the council commissioned LA4 Landscape Architects (LA4) to undertake a district-wide landscape assessment. The assessment adopted a methodology developed by LA4 which included (LA4, 1995: 2-3):

- Identification of landscape units which display a homogenous and consistent landscape character
- Landscape assessment utilising worksheets and scoring of landscapes from 1 (low) to 7 (high) for 12 key assessment criteria. The

criteria included aesthetic value, heritage value, visual absorption capacity and exposure/visibility. These scores were then (subjectively) combined to establish an overall landscape sensitivity score for each landscape unit

- A recommendation that landscape units with an overall sensitivity rating of 6 or 7 be classified as outstanding landscapes, and those with a rating of 5 be considered as significant landscapes with slightly less stringent management or control.

Areas rated highly included most of the coast and inland areas with the highest degree of naturalness, particularly those areas covered with indigenous forest. Areas of plantation forest were given some of the lowest ratings. Overall, almost one fifth of the district was identified as outstanding and a further seventh identified as being significant (LA4, 1995: 4-5). The study identified three heritage landscapes, which included Maori pa on prominent volcanic cones and historic drystone walls, hedgerows and buildings. The 1995 study was followed in 1997 by a more detailed assessment of fourteen pressure areas in the coastal environment (LA4, 1997), but this did not incorporate public perception or community participation information.

The Northland Regional Council undertook an outstanding landscapes survey in February 2000. Although the response rate to the survey was very low (2.4 per cent) and the respondents were not representative of Northland's population, the results did indicate substantial agreement with the findings of the LA4 study (Sovka 2000).

The Northland regional policy statement does not identify any important landscapes. However, it places emphasis on the adoption of a consistent methodology to create a list of outstanding features and landscapes which is accepted by the community.

The revised proposed regional coastal plan for Northland identifies landscapes and landforms considered to be of 'outstanding' value and these include, within Whangarei District, (Beca Planning 2002b: 17):

- Bream Head and Mount Manaia
- The Poor Knights Islands
- Ngunguru Spit
- The Hen and Chicken Islands.

District plan landscape provisions

In the transitional district plan (county section), which became operative in September 1991, the criteria for subdivision of coastal and scenic rural land were largely based on the need to maintain independent economic agricultural units. The plan provided for a Rural AC zone, which consisted of rural land in the coastal environment, where dwellings were a discretionary activity. The plan also provided for a Rural Scenic Protection zone, which covered small areas primarily associated with estuaries, and where control was exercised over the location and design of buildings. A Residential Protection zone covered the hilly and partially bushed residential areas within Whangarei city which could not be easily serviced. Houses were a controlled activity within the zone and applicants were required to prepare a landscaping plan.

In the beginning of 1989 the council introduced scheme change 21, which proposed to change the economic unit requirement in the Rural A and AC zones and the Rural Scenic Protection zone to a minimum area of 4 hectares. Following submissions, the minimum lot size was revised to 4,000 square metres with a remainder of 4 hectares for the Rural A and AC zones, and 8 hectares for the Rural Scenic Protection zone. The Minister of Conservation appealed this decision to the Planning Tribunal and the provisions were found to be inappropriate in the coastal environment (LA4 1995: 8).

In 1994 the council notified plan change 87. This amended the inland boundary of the Rural AC zone and incorporated the use of covenanting provisions. A large number of submissions were received in response to the change, most seeking to have it withdrawn. A planning commissioner recommended that the major part of the change be withdrawn, on the basis that the blanket approach to subdivision was inappropriate owing to the diverse nature of the district's coastline. It was also found to be inconsistent with the New Zealand Coastal Policy Statement, the proposed regional coastal plan and the proposed regional policy statement. The council subsequently withdrew the change (LA4 1995: 8).

In 1995 a council dominated by 'progressive' councillors was elected. The council started preparing the proposed district plan and a council committee closely monitored its preparation. The council commissioned LA4 to carry out a comprehensive landscape assessment of the district to assist with formulating the provisions of the proposed district plan (see section 3). LA4 carried out the assessment but was not involved in translating its recommendations into plan provisions.

After the 1998 elections the council was more dominated by 'centrist' councillors. The new council notified the proposed district plan in September 1998. The proposed plan provided for subdivision to a minimum lot size of 1 hectare in

the Countryside Environment and 3 hectares in the Coastal Countryside Environment as a controlled activity. This was reduced to a minimum lot size of 2,000 square metres as a discretionary activity in both Environments. There was also provision for 'close subdivision' as a controlled activity, to allow clustering of houses, where the land being subdivided was at least 17.5 hectares and contained at least 3.5 hectares for each residential allotment.

Outstanding Landscape Areas (OLAs) and Notable Landscape Areas (NLAs) were identified on the planning maps. These were not consistent with the recommendations of LA4. OLAs included landscape units with a sensitivity rating of 7, all of the coastal landscape units irrespective of their ratings, and some natural features. NLAs included all remaining landscape units with a rating of 6 and excluded those with a rating of 5 or less (WDC 2001: 4).

The three heritage landscapes identified in the LA4 study were given an overall sensitivity rating of 5 and therefore were not protected in the proposed plan. Landscape values of importance to Maori were not included in the assessment or the proposed plan. This led Ngatiwai to make a submission on the proposed plan in respect of the landscape provisions that '... the Council's process of assessing landscape values has bypassed them entirely and is based on non-Maori values.' (WDC 2001: 15).

Construction of buildings was a permitted activity in the OLAs if they did not exceed 6.5m in height, there was only one residential building per site and no part of the building protruded more than 2 metres above a prominent ridgeline (amongst other requirements). Exotic plantation forestry was a restricted discretionary activity in OLAs. The height of permitted buildings increased to 7.7m in NLAs and a similar ridgeline control was imposed.

The Hearings committee report on submissions on these provisions found that they had significant legislative and technical shortcomings, including:

- The methodology of the LA4 study did not include natural science and community factors
- Highly modified areas were included in OLAs which, under the RMA, should consist of 'natural' landscapes
- Problems were encountered with accurately determining the boundaries of the OLAs and NLAs based on the LA4 maps
- Council was unable to adequately justify the reasons for changing the findings of the LA4 study (WDC 2001: 8-9)

The council's decisions on the proposed plan reduced OLAs to landscapes given a sensitivity rating of 7 in the LA4 assessment and excluded coastal areas with a lower rating. This reduced the area covered by OLAs from 78 square kilometers to 14.6 square kilometers so that they were mainly located on land in public ownership. NLAs were expanded to include all landscapes with a sensitivity rating of 6 including some which have previously been OLAs and this increased the area covered from 328 square kilometers to 421 square kilometers (WDC 2001: 9). The council also resolved, once the plan became operative, to introduce a plan change to incorporate defendable OLAs and NLAs into the district plan.

Consultation undertaken in 2002 for the preparation of the coastal management strategy found that a number of valued landscapes in the coastal environment were not afforded protection under the district plan (Beca Planning 2002b: 18).

Construction of buildings in the OLAs became a restricted discretionary activity rather than a permitted one, with discretion restricted to a range of issues including visual intrusion, colour and design, and effects on landscape values, the character of the coastal environment and the appearance of skylines and ridgelines. Forestry remained a restricted discretionary activity in OLAs. In NLAs, the ridgeline control was removed and the height of permitted buildings increased to 8.5m. Buildings exceeding this height became a restricted discretionary activity with discretion restricted to visual intrusion, colour and design.

Subdivision with a minimum average lot size of 4 hectares in the Countryside Environment and 6 hectares in the Coastal Countryside Environment was provided for as a controlled activity subject to conditions. Provision was made for one additional allotment to be created where an environmental benefit through the permanent protection of significant ecological areas was obtained. Subdivision became a discretionary activity in the Countryside Environment where the parent site had a minimum site area of 8 hectares, an average lot size of 1.5 hectares and a minimum lot size of 2000m^2; and in the Coastal Countryside Environment where the parent site had a minimum site area of 12 hectares, an average lot size of 3 hectares and a minimum lot size of 2000m^2.

The Department of Conservation (DoC) lodged an appeal seeking to reinstate the OLAs and NLAs recommended by the LA4 report. It also sought more restrictive subdivision provisions. The other major appellants to the landscape provisions of the plan were two forestry companies, which sought to remove areas of production forestry from landscape protection areas. There was little involvement of environmental non-governmental organisations in the landscape provisions and some involvement by the Federated Farmers. The

parties are currently negotiating a consent order which would settle the landscape appeals, on the basis that further assessment work will be carried out to revisit the landscape provisions and guide a subsequent plan change.

Variation 5 to the proposed plan was notified in 2002, to simplify the subdivision provisions which had proved technically difficult to apply. Submissions on the variation were heard in December 2003 and a decision will be released in early 2004.

The review of district plan provisions carried out by Beca Planning in 2002 for the preparation of the coastal management strategy found that '... the rules for the Coastal Countryside Environment are disappointing and appear to provide only limited additional protection (compared to the general Countryside Environment) ... These rules will have little overall impact in terms of retaining or enhancing sense of place' (Beca Planning 2002b: 24).

In terms of parties involved in developing the landscape provisions of the proposed plan, DoC has been actively involved in making submissions, lodging a reference to the Environment Court and negotiating a way forward on landscape issues. In the absence of activist environmental groups, DoC has been the main party arguing for improved landscape protection under the RMA.

The Northland Regional Council has lodged submissions in relation to the proposed plan, but has not gone as far as to identify regionally significant landscapes in its regional policy statement.

The Ngatiwai Trust Board is active in RMA issues and made submissions in relation to the proposed district plan. The Trust Board is generally happy with the negotiated outcome of these submissions. The council is currently investigating mechanisms to identify heritage areas of significance to Maori in the district plan so that they act as a trigger for a cultural assessment to be undertaken before development proceeds.

Forestry companies have been active in making submissions and lodging references in relation to landscape issues in the proposed plan, where they potentially impact on production forestry activities.

Landscape provisions in the district plan have yet to reach the Environment Court and seem unlikely to do so, as a settlement of the appeals is currently being negotiated.

Resource consent processing

During the 2001/02 financial year, the council processed 666 resource consents of which 657 were granted and 9 (1.5 per cent) declined. Almost two thirds (64 per cent) of resource consents granted were subdivision consents, indicating the high level of subdivision occurring in the district (WDC 2003a: 21-22).

Of the 1,855 new lots created during the 2001/02 financial year, 1,460 (79 per cent) were in the rural area, the vast majority (1,335) being in the Countryside Environment, with only 125 in the Coastal Countryside Environment. The average lot size was around 6 hectares in the Coastal Environment and 7.5 hectares in the Countryside Environment, below the densities provided for in the proposed plan. Just under 10 per cent of the lots created contained a conservation covenant (WDC 2003a: 21-22).

The large number of new lots created, compared to 642 building consents issued for new dwellings in the same year, suggests that this high level of subdivision is not meeting current demand and lots are being 'landbanked' for future sale.

In respect of subdivision consents, 45 per cent were for controlled activities, 15 per cent for restricted discretionary activities, 25 per cent for discretionary activities and 10 per cent for non-complying activities. This indicates that most applications are formulated to comply with the district plan provisions. However, of the 39 applications for non-complying activities processed, only one was declined, indicating that non-complying proposals are usually approved (WDC 2003a: 24-25).

Council officers interviewed reported that many applications for subdivision consents were prepared by surveyors and only considered on-site effects. Applicants frequently argued that council should not be concerning itself with less easily defined cumulative effects. Processing of resource consent applications by council is becoming more robust, particularly as the subdivision rules have tightened. However, current district plan provisions still provide little protection for landscapes and it is difficult to insist that a visually inappropriate proposal be amended based on current plan policies.

A case study of a subdivision consented to at the southern end of Whangamu Bay, at Tutukaka, indicated that insufficient control has been exercised to protect important landscape values. Consent was granted for the subdivision of a 27.5 hectare portion of a headland into 20 lots, ranging in size from 166 square metres to just under two hectares. The site was predominantly covered in remnant bush and shrubland and a small proportion of the site was located within the outstanding landscape zone. The application was non-notified (McLaughlin, 2002).

An assessment of the consequent development, carried out by a University of Auckland planning

student, concluded that the design was weak on mitigating adverse effects on landscape; the access road climbing 70 metres above sea level was a dominant visual feature; the layout resulted in sporadic development throughout the whole area; prominent ridgelines were being built on at a height of three metres above the ridge; and rehabilitation, revegetation and enhancement planting, which was a condition of the consent, had not occurred (McLaughlin, 2002: 50-52).

Non-statutory approaches to landscape protection

The council has been progressively developing a comprehensive strategic planning framework for the district. This framework includes a coastal management strategy (Beca Planning 2002a), an urban growth strategy for Whangarei City (WDC 2003b), and a proposed rural strategy yet to be developed. The council intends to use these strategic plans to guide infrastructure planning and changes to provisions in the district plan.

The preparation of the coastal management strategy included a comprehensive consultation process which involved around 5,000 people. The strategy sets out a vision for the coastal environment and strategic policies and objectives on a range of topics including sense of place, heritage, rural development and subdivision and biodiversity. It then identifies a range of regulatory, advocacy, information and monitoring actions which are required to implement the strategy. These actions include, amongst many other things, plan changes to:

- Clearly signal long-term urban 'fences'
- Implement controls and performance standards to manage the effects of development in coastal margins
- Address any gaps in controls protecting outstanding landscapes from development impacts
- Direct coastal lifestyle and rural-residential demand to appropriate locations adjacent to existing centres and to restrict sporadic development throughout the coastal countryside

The strategy also identifies the need to prepare a design guide to encourage good urban form in coastal margins, and development compatible with the sense of place in coastal settlements. The

Figure 2: Urquharts Bay, Whangarei Heads

Figure 3: Residential development at Langs Beach

preparation of the overall strategy has been followed by the development of structure plans for local areas, which focus on achieving local outcomes.

An example of a locally driven initiative to protect landscapes is the Manaia Vision Project (MVP) at Whangarei Heads (see Figure 2). This project was initiated at a meeting convened by a local councillor to discuss participation of Whangarei Heads residents in the coastal management strategy. Subsequently, in September 2001, MVP organised a display of potential futures for the Heads, in order to generate public interest and comment in relation to the coastal management project. People attending the display were asked to fill out a questionnaire which explored views on how Whangarei Heads should develop in the future. Of the 115 responses gathered, 80 agreed that they would like to see the Whangarei Heads area as a live-in park (MVP 2001: 6). A follow-up survey by Manaia Vision Project is currently being undertaken, to prioritise the community issues identified in the local structure plan prepared as part of the coastal management strategy.

The MVP is primarily driven by lifestyle residents on the Heads and has yet to effectively engage local farmers. However, farmers and lifestyle residents are becoming jointly active in landcare groups, with around eight being established on the Heads. This large number of individual landcare

Figure 4: Rural-residential development in Parau Bay, Whangarei Heads

groups prompted the establishment of the Whangarei Landcare Forum which brings landcare groups together on larger issues and which initiated the preparation of a Whangarei Heads Resource Assessment Report (Pierce et al 2002).

Outcomes

A large amount of subdivision has taken place in the rural and coastal areas of the Whangarei district and much of this has yet to be built upon. The number of vacant lots indicates the extent of 'landbanking' which has occurred. Around 23 per cent of all properties within the district are vacant, equivalent to 1,490 lots. Most of these are located in the northern coastal rating area units of Bream Head (350 vacant lots), Ngunguru (340 lots) and Punaruku-Kiripaka (310 lots). There is, theoretically, enough land already subdivided to meet housing demands in the coastal environment for the next 20 years (Beca Planning 2002d: 29 & 32). This means that the impacts of resource consents already granted are likely to be felt for the next two decades.

In terms of impacts on landscape, LA4 expressed concern in 1995 about areas of indigenous shrubland which continued to be cleared; the high negative impact generated by housing located on ridgelines, sensitive hill flanks and coastal headlands or cliff tops; and urban margins creeping out into adjoining rural landscapes resulting in a loss of distinction (LA4 1995: 5). These negative impacts seem likely to increase as vacant lots are progressively built on (see Figures 3 and 4).

The future

The council is hoping to review its district landscape assessment and develop new district plan landscape provisions during 2004. The intention is to develop provisions which are technically robust and which have a large measure of community support. This will provide the opportunity to revisit and improve landscape protection within the district.

Members of the MVP expressed interest in new national legislation which would provide for local areas, such as Whangarei Heads, to opt into a stronger management framework for their landscapes.

Conclusions

The landscapes of Whangarei District are under considerable pressure from increasing demand for rural-residential living, holiday homes and baches. A considerable amount of subdivision has already occurred in rural areas. The impact on important landscapes of buildings which are erected on these new lots will depend to a large extent on how sensitively they are located and designed.

The council is putting in place a comprehensive strategic planning framework which will help guide future landscape management. In addition, the proposed 2004 review of the district's landscape assessment and the district plan's landscape provisions will enable landscape protection to be revisited.

People interviewed

Interviews were carried out during October 2003

Name	Position	Organisation
Glenda Bostwick	Parks Manager	Whangarei District Council
Graeme Broughton	Councillor	Whangarei District Council
John Christie	Chairman	Manaia Vision Project
Simon Cocker	Landscape Architect	Whangarei District Council
Vaughan Cooper	Regional Policy Planner	Northland Regional Council
Fiona Davidson	Policy adviser and planner	Ngatiwai Trust Board
Mike Farrow	Landscape Architect	Littoralis
Robin Leiffering	Councillor	Whangarei District Council
Katie Martin	Team Leader (Consents)	Whangarei District Council
Helen Moodie	Northland Coordinator	New Zealand Landcare Trust
Pamela Peters	Deputy Mayor	Whangarei District Council
Andrew Riddell	Community Relations Supervisor, Resource & Statutory Planning	Department of Conservation
Keir Volkerling	Consultant	Ngatiwai Trust Board
Paul Waanders	Senior Policy Planner (District Plan)	Whangarei District Council

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APPENDIX 7: Legal Opinion on Scope of National Policy Statement on Landscape

BUDDLEFINDLAY

To
Environmental Defence Society
PO Box 95 152
Swanson

For
Ms Raewyn Peart

From
Gerard van Bohemen

By
Email: rpeart@xtra.co.nz

Date
20 November 2003

Dear Raewyn

Scope of National Policy Statement on Landscape

Instructions and summary

1. We refer to your letter of 1 September 2003 seeking my opinion on how prescriptive a national policy statement (NPS) on landscape might be and, in particular, whether an NPS could include:

   - A map showing the boundaries of areas of outstanding natural landscape (ONLs);
   - A requirement that regional councils and territorial authorities identify the boundaries of ONLs that are significant in the region and district;
   - A description of types of development that are "inappropriate" in terms of s6(b) of the Resource Management Act 1991 (RMA);
   - A requirement that activities with specified effects within ONLs be classified as prohibited or non complying activities in district plans.

2. In summary:

   (a) We consider that there is no legal constraint on any of the above provisions being included in an NPS. That is to say, such provisions are not of themselves outside the scope of the Minister's functions and powers under the RMA.

   (b) However, while there may be no jurisdictional bar to the Minister including such provisions in an NPS, it is another matter as to whether such provisions are appropriate, having regard to the requirements of s32 of the RMA. The Minister must be satisfied that the provisions meet the requirements of that section before including them in the NPS and again when issuing the NPS.

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The appropriateness of such provisions will also be tested though the submission, hearing and appeal processes.

(c) Particular provisions might also be challenged through the Courts as being substantively unreasonable. However, provided there is adequate factual justification for the policies, the chances of such a challenge succeeding are not high.

Powers of Minister for the Environment in relation to national policy statements

3. The answers to the questions you have raised all turn on the scope of the powers of the Minister for the Environment under the RMA in relation to the preparation of NPSs, and the extent to which those powers are limited by the powers and responsibilities of other decision makers under the RMA, in particular regional councils and territorial authorities.

4. The Minister's powers are set out in s45 of the RMA. The key provision is subsection (1) which provides that:

> *The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.*

5. Subsection (2) goes on to provide:

> *In determining whether it is desirable to prepare a national policy statement, the Minister may have regard to:*
>
> *(a) The actual or potential effects of the use, development, or protection of natural or physical resources;*
>
> *(c) Anything which affects or potentially affects any structure, feature, place, or area of national significance;*
>
> *(f) Anything which, because of its scale or the nature or degree of change to a community or to natural or physical resources, may have an impact on, or is of significance to New Zealand;*
>
> *(g) Anything which, because of its uniqueness, or the irreversibility or potential magnitude or risk of its actual or potential effects, is of significance to the environment of New Zealand; ..*

6. Potentially, each of these paragraphs would be relevant to the inclusion of provisions on ONLs in an NPS on landscape and would provide a basis for the kinds of provisions you have posited. However, whether such provisions could be as specific as you have suggested depends on the interpretation of subsection (1), which sets out purpose of NPSs and thus the broad parameters of the Minister's powers, in the context of the rest of the related provisions of the RMA.

Relevant functions, powers and responsibilities of Minister, regional councils and territorial authorities

7. As you know, the RMA envisages a cascade of responsibilities in the implementation of the RMA. Thus, in relation to the formulation and implementation of what are variously called objectives, policies, methods and rules:

(a) The Minister:

(i) Has the function of the recommendation of NPSs (s24(a));

(ii) Must exercise that function for the purpose of stating **objectives** and **policies** on matters of national significance relevant to achieving the purpose of the RMA (s45(1));

(b) Regional councils:

(i) Have the functions of:

- The establishment, implementation, and review of **objectives**, **policies**, and **methods** to achieve integrated management of the natural and physical resources of their regions (s30(1)(a));
- The preparation of **objectives** and **policies** in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance (s30(**1**)(b));
- The control of:
  - The use of land for the purpose of soil conservation, maintenance and enhancement of water quality, maintenance of water quantity, avoidance of natural hazards, etc (s30(1)(c);
  - The taking, use, damming etc of water (s30(**1**)(e));
  - Discharges of contaminants (s30(1)(f));

(ii) Must each prepare a regional policy statement (RPS) in accordance with the above functions (s60)), the purpose of which statement is to achieve the purpose of the RMA by providing an **overview** of the resource management issues of their respective regions and policies and methods to achieve integrated management of the natural and physical resources of the whole of their regions (s59));

(iii) Must, in their RPSs:

- State:
  - The **significant resource management issues** for their region;
  - The **objectives** to be sought to be achieved;
  - The **policies** for those issues and objectives;
  - The **methods (excluding rules)** used or to be used to implement the policies (s62(**1**));

(iv) Must give effect to an NPS (s62(3));

(v) Must prepare, implement and administer regional plans:

- The purpose of which are to assist the councils to carry out their functions in order to achieve the purpose of the RMA (s63);
- Which must state:
  - The **issues** to be addressed in the plans;
  - The **objectives** to be achieved;
  - The **policies** for those issues and objectives;
  - The **methods (including rules, if any)** to implement the policies (s67(1)),
- Which must give effect to any NPS and must not be inconsistent with the RPS or any other regional plan for the region (s67(2));
- Which may contain rules which have the force and effect of regulations under the RMA (s68).

(c) Territorial authorities:

(i) For the purpose of giving effect to the RMA in their respective districts, have the functions of:

- The establishment, implementation, and review of **objectives**, **policies**, and **methods** to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district (s31(1)(a));
- The control of any actual or potential effects of the use, development, or protection of land; (s31(1)(b));
- The control of the emission of noise (s31(1)(d));
- The control of the effects of activities in relation to the surface of water in rivers and lakes;

(ii) Must prepare, implement and administer district plans:

- The purpose of which are to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA (s72(1));
- Which must be prepared having regard to any proposed RPS, or to any regional plan of its region in regard to any matter or regional significance or for which the regional council has primary responsibility under s30 (s72(2));
- Which must state:

- The **significant resource management issues** for the district;
- The **objectives** to be achieved;
- The **policies** for those issues and objectives;
- The **methods (including rules, if any)** to implement the policies (s75(1)),

- Which must give effect to any NPS and must not be inconsistent with the RPS or a regional plan for any matter specified in s30(1) (s75(2));
- Which may contain rules which have the force and effect of regulations under the RMA (s76).

8. Regional councils and territorial authorities must also amend any existing regional policy statement or regional or district plan as soon as practicable or within the timeframe specified in an NPS to give effect to an NPS (s55).

9. The Minister, regional councils and territorial authorities are each required to undertake an evaluation in accordance with s32 of the RMA examining:

   (a) The extent to which each "objective" is the most appropriate way to achieve the purpose of the RMA; and

   (b) Whether, having regard to their efficiency, the proposed policies, rules, and other methods are the most appropriate for achieving the objectives.

   As a result of a changes made by the Resource Management Amendment Act 2003, the Minister is obliged to undertake this evaluation twice in relation to an NPS; once when preparing the draft NPS and again before issuing it in accordance with s52(3)(A).

10. It is apparent from the above that there are important conceptual overlaps and distinctions in the responsibilities of the Minister, regional councils and territorial authorities. All three decision makers can make "policies" and "objectives"; regional councils may also make "methods" that are not rules in the context of preparing RPSs; and both regional councils and territorial authorities may also make methods that include rules in the context of regional and district plans. The Minister, however, has no express power to prescribe methods and, in particular, has no express power to prescribe rules.

11. It is arguable, therefore, that distinct and separate roles are envisaged for the three categories of decision maker with the Minster at one end operating at a high level of general policy, and territorial authorities at the other end having responsibility for setting and implementing specific rules regulating particular activities and/or effects. Regional councils would occupy an intermediate position having both a general policy role in respect of matters of regional significance and an activity/effects -

specific regulatory role in respect of those matters over which they have direct responsibility.

12. Some support for this distinction in roles and responsibilities might also be drawn from s85 which provides a mechanism for land owners to object to provisions of plans and proposed plans on the basis that the provisions in question would render their interest in the land incapable of reasonable use. If such an objection is upheld by the Environment Court, the provisions in question may be deleted. The section does not apply to policy statements which, it might be argued, suggests that it was not envisaged that policy statements would prescribe specific controls for particular areas of land.

13. However, while this distinction may have been intended when the RMA was enacted, the case law shows that the roles and responsibilities of the three sets of decision makers are interrelated and overlapping and, in particular, that it cannot be assumed that the policy making function is necessarily a general one. To the contrary, the case law demonstrates that policies can be quite detailed and prescriptive.

Relevant case law

14. There has been no judicial consideration of the scope of the Minister's powers under s45. The Planning Tribunal and Court of Appeal, however, have considered the scope of regional councils' functions and powers in relation to the preparation of RPSs in *Application by North Shore City* [1995] NZRMA 74 and in the appeal to the Court of Appeal from that decision, *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424. Those decisions, which deal with the decision by the ARC to require the territorial authorities in the Auckland region not to allow urban development beyond the urban limits prescribed in the RPS, provide the best guidance on how section 45 should be interpreted.

15. The *North Shore City* case was unusual in that the Minister of Conservation and the ARC and were on one side of the argument and the Minister for the Environment and the North Shore, Auckland and Manukau City Councils were on the other.

16. The issue in the case was whether directions in the proposed RPS defining the urban limits of metropolitan Auckland and requiring that:

    (a) Urban development should be permitted only in the defined urban areas, being the areas within the defined metropolitan urban limits;

    (b) Rural areas were to be managed so that:

        (i) Activities in the rural areas were limited to activities functionally dependent on the rural resource base

        (ii) No provision was made for urban uses,

    were within the scope of the functions and powers of the ARC or whether they trespassed on the functions and powers of the territorial authorities of the region.

The case is especially relevant to the issue you have raised because it dealt with the very issue of whether a policy statement could include lines on a map.

17. The Court of Appeal decided the issue in favour of the ARC on a relatively straightforward basis. Before considering that decision, it is instructive to consider the decision of the Planning Tribunal (Judge Sheppard), which analysed the scope of the regional council's powers in the context of the sections summarised above.

Planning Tribunal analysis

18. Judge Sheppard noted the respective functions of regional councils and territorial authorities under the RMA and their different responsibilities in relation to the management of land use activities. However, he noted that regional councils have a broader responsibility for achieving integrated management of the natural and physical resources of the region and observed that integrated management would be difficult to achieve if every territorial authority within the region was free to make whatever decisions it chose in carrying out its functions. Accordingly, he considered that the exercise of the regional council function must be able to impose some restraint on management decisions made in the exercise of the territorial authority function.

19. The Judge considered and rejected a submission from counsel for North Shore City that the fact that territorial authorities must undertake their own s32 evaluations when preparing their district plans demonstrates that district councils must be free to make their own assessment as to the matters within the functions of territorial authorities to be included in the plans and cannot be constrained by provisions in an RPS circumscribing those functions. Rather, he preferred the submissions made on behalf of the ARC and the Minister of Conservation that every functionary on whom duties are imposed by s32 can only perform those functions within the constraints imposed by law, including constraints that may be imposed through a RPS, provided, of course, that the RPS itself is limited to matters within the scope of the functions of regional councils.

20. Judge Sheppard accepted that there are limits on how far a regional council can go in establishing and implementing objectives, policies, and methods to achieve integrated management of land and he accepted that the regional council's function does not extend to controlling the use of land by rules. But he considered that the function includes establishing and implementing methods that are not rules to achieve that integrated management.

21. The Judge considered whether the provisions complained of amounted to "rules", which are not permitted in an RPS. He noted that the use of the term "rules" is defined in s2(1) as meaning a "district rule" or a "regional rule" which terms are themselves defined as meaning a rule made in a district plan or in a regional plan in accordance with sections 76 and 68 respectively. Those sections, in turn, referred to "rules which prohibit, regulate, or allow activities".* The Judge then found that none

* Sections 76 and 68 have since been amended to delete the specific reference to rules which prohibit, regulate or allow activities. However, that amendment has no direct bearing on the questions you have raised.

of the provisions complained about in the proposed RPS in themselves prohibited, regulated, or controlled activities. Rather, the provisions would be effective only in so far as district plans within the region – which may contain rules - would not be able to be inconsistent with such provisions.. Accordingly, he held that the provisions of the RPS were not themselves rules as that term is used in the RMA.

22. Judge Sheppard analysed the meanings of the terms "policies" or "methods" bearing in mind the definitions of those words in the *Shorter Oxford Dictionary*:

> *Policy: prudent, expedient, or advantageous procedure, prudent or politic course of action; any course of action adopted as advantageous or expedient;*
>
> *Method: procedure for attaining an object … a special form of procedure adopted in any branch of mental activity, whether for exposition or for investigation … a way of doing anything, especially according to a regular plan.*

He noted that the ordinary meanings of the two words overlapped but considered that they had to be understood as having restricted meanings to fit their use in the RMA as standing for distinct categories of measures. Noting that the term "method may include "rules" in the RMA, he inferred that "method" ' *… is intended to convey a sense of a measure by which something is to be done to give effect to a policy; leaving the term policy to the intermediate and more general description of the way in which an objective is to be obtained.*' However, as the Judge went on to note:

> *Those understandings of the meanings intended for those words may be incomplete, as they could still leave some difficult classifications near the boundary between them; but they may serve as an adequate working understanding for the present purpose.*

23. Judge Sheppard also considered a submission made on behalf of the Minister for the Environment that directions to territorial authorities were not included in the concept of "policy" but were more like rules. The Judge agreed that such directions would not be policies but considered that they were "methods" which could justifiably be included in an RPS provided that they were not rules which themselves prohibited, regulated or allowed activities. The Judge analysed the provisions in the RPS that were at issue and considered that they were each either policies or methods, depending on the degree of direction in the individual provisions. The more directive provisions he categorised as methods. These included provisions that stated:

- Urban development shall be permitted only in urban areas defined in the statement;
- Territorial local authorities will incorporate limits to urban development in their district plans.

The less directive provisions he classified as policies. These included provisions that stated:

- Rural areas shall be managed so that only activities which are functionally dependent on the rural resource base shall be permitted;

- Rural areas shall be managed so that no provision is made for urban or urban-related activities except in accordance with policies in the Statement ...

24. You will see from these examples that the distinction is a fine one and somewhat artificial. For instance, the first of the above policies would, on Judge Sheppard's analysis, be a method rather than a policy if it had been written "Only activities that are functionally dependent on the rural resource base shall be permitted in rural areas." Nonetheless, the distinction between "policies" and "methods" could be very important in the case of NPSs given the fact that the Minister has the power to make objectives and policies but no express power to specify "methods" for giving effect to such policies. However, the Court of Appeal's decision in the *North Shore City* case has made it unnecessary to draw such fine distinctions.

Court of Appeal decision

25. With the agreement of all sides, the case was referred directly from the Planning Tribunal to the Court of Appeal without a hearing or decision by the High Court. Befitting the importance of the case, it was heard by a panel of bench of 5 judges. The judgment of the Court was delivered by Cooke P.

26. The Court received comprehensive submissions on the legal issues canvassed before the Planning Tribunal but made its decision on reasonably short and simple points. It rejected the submissions made by the City Councils and the Minister for the Environment that:

    (a) Regional councils have no coercive power to interfere with the responsibilities of territorial authorities with regard to the control of land use planning;

    (b) The ARC in that case was going beyond the policy making role envisaged for it under the RMA and trespassing into the area of rule making.

    The Court pointed out that a number of the provisions in the proposed RPS to which no objection had been taken also had some coercive or prohibitive effect in that the discretions which they left could be exercised only within the criteria and conditions they prescribed. This, the Court observed, demonstrated that the difference from the challenged provisions was one of degree not kind.

27. More fundamentally, however, the Court found that the argument made by the parties challenging the RPS provisions rested on "a deeper fallacy", namely the limited meaning it would place on the scope of "policy" and "policies". The Court noted that these terms are not defined in the RMA and must bear their ordinary and natural meaning in the context of the Act. It referred to various definitions of "policy" in the Oxford English and elsewhere and accepted that "a course of action" was appropriate in the context. It observed that in ordinary present day speech "a policy may be either flexible or inflexible, either broad or narrow". It rejected the submission that "policy" cannot include "something highly specific".

28. The Court also rejected as a "well-meant sophistry" the argument that because "rules" as that term is defined in the RMA means rules in regional and district plans it is not open to include rules in an RPS. It acknowledged that the RMA does not provide for direct enforcement of RPSs against members of the public. However, it stated that RPSs "may contain rules in the ordinary sense of that term" even if they are not rules within the special statutory definition binding on individual citizens.

29. The Court stated (with some degree of curial licence) that the reasoning of the Planning Tribunal had followed "broadly similar lines" to its own but was founded principally on the word "methods" rather than "policies". The Court went on to state that the point was largely semantic but it seemed to the appeal judges that the permissible scope of "policies" was the "more natural focus of consideration.

30. It is important to note that the Court emphasised that the appeal and arguments before it had related only to issues of vires, that is, "the kinds of statements that are permissible in policy statements" and were not concerned with the substantive merits of the particular provisions challenged in the proposed Auckland RPS. It noted that the proposed RPS had still at that time to go through the process of submissions, references to the Planning Tribunal and, potentially, appeals on points of law to the High Court and Court of Appeal and observed that "conceivably an ultimate challenge could theoretically be mounted in the Courts on the grounds that a reasonable regional council could not include a certain provision in a regional policy statement" – provided the rights of reference and appeal had first been exercised.

31. The Court did not address in detail the argument considered and rejected by Judge Sheppard about the need for regional councils to avoid limiting the ability of territorial authorities to undertake their s32 evaluations. However, it did refer to the arguments based on the functions and responsibilities of territorial authorities under s32 in the course of rejecting the argument that regional councils cannot direct territorial authorities through an RPS. In addition, the ultimate decision, the broad basis on which it was made, the injunction that "policy" should be given its natural meaning, and the Court's general endorsement of the Planning Tribunal's decision, make it clear that it did not accept the argument based on an alleged need not to fetter the exercise of their s32 responsibilities by territorial authorities.

32. It is interesting that no reference was made to s85 in either the Planning Tribunal's decision or the Court of Appeal's decision. However, we do not consider that the section would have had any influence even if it had been raised in argument (and, for all we know, it may have been). While the section does not provide a means for challenging a policy statement on the basis that it renders an interest in land incapable of unreasonable use, that can be explained by the fact that policy statements are not themselves directly binding on individuals. They have effect only when incorporated in regional or district plans. In theory, it would still be open for someone to challenge a rule in a regional or district plan as rendering his or her land incapable of reasonable use even if the rule was implementing a directive in a policy statement. (Although, that could result in a curious situation if no objection were taken to a provision of a policy statement during the consideration of the statement

but a rule giving effect to that provision was subsequently held to place an unfair and unreasonable burden on a landowner.)

Implications of Court of Appeal decision

33. We have taken you through this detailed analysis to demonstrate that the very technical arguments that can be made (and were made in the *North Shore City* case), to limit the scope of the powers of the Minister in relation to an NPS and those of a regional council in relation to an RPS, ultimately do not hold water. That is, the Court of Appeal has directed that the word "policy" can and should be given its usual wide interpretation. The clear import of the Court of Appeals' decision is that "policies" in a policy statement can be wide or narrow and can be prescriptive as well as indicative, and that the policy making powers should not be read down by reference to the other functions and powers of regional councils or territorial authorities.

34. While the case was about the scope of the policy making powers of regional councils in relation to an RPS, there can be no doubt that the same analysis applies with as much if not more force to the policy making powers of the Minister in relation to an NPS. That is, the Minister's power to set out objectives and policies in an NPS is not limited by the fact that regional councils are required to set out objectives, policies, and methods (not including rules) in an RPS or by the fact that regional councils and territorial authorities are required to set out objectives, policies and methods, including rules, in regional and district plans.

35. Nor is the power of the Minister to set out policies limited by the fact that regional councils and territorial authorities are required to undertake s32 evaluations when exercising their functions and powers in relation to RPSs and regional and district plans. Both the Planning Tribunal and the Court of Appeal specifically rejected the argument that the ability of a regional council to set policies was limited by the need to ensure that district councils within the region had enough scope to carry out their s32 responsibilities. The same must hold for the powers of the Minister in relation to an NPS. Accordingly, an NPS containing lines on maps would not, in our view, be vulnerable to challenge on the basis that it limited or precluded the s32 responsibilities of regional or district councils and therefore, overrode the RMA.

Appropriateness of including prescriptive provisions in an NPS

36. For the reasons set out above, we consider there is no jurisdictional bar to the Minister issuing an NPS with prescriptive provisions of the kind set out in your letter. The more difficult issue is whether such provisions are appropriate and can be justified in terms of the Minister's obligations under s32.

37. As the Court of Appeal pointed out in *North Shore City*, any policy statement must itself comply with the requirements of s32 and must itself go through the process of submissions, public hearings, and appeals. As also noted above, the Minister is obliged to undertake two s32 evaluations in relation to an NPS, once when notifying it and once when issuing it following the public hearings process. The Minister must

be satisfied, therefore, that there is an adequate factual basis for including such provisions in an NPS and that such provisions are the most appropriate for achieving the desired objectives.

38. This is the important lesson of the *North Shore City* decision. It established that there is no jurisdictional bar to the inclusion of detailed and prescriptive provisions in a policy statement. However, it did not establish that such provisions are necessarily appropriate. Indeed, following that decision there was further litigation over the appropriateness of including specific areas of land within the limits prescribed in the proposed Auckland RPS: *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59 (Environment Court) and *Green and McCahill Properties Limited v Auckland Regional Council* [1997] NZRMA 519 (High Court). While the challenge mounted to the proposed RPS in those cases did not succeed, they demonstrate that while there is no jurisdictional bar to a prescriptive policy statement, there does not mean that a prescriptive statement will necessarily be accepted as appropriate. Fundamentally, however, that is a policy rather than a legal matter.

39. We do not underestimate the difficulty of satisfying the s32 test in the context of an NPS that sought itself to identify outstanding natural landscapes. There would have to be substantial research and analysis to justify why particular landscapes were chosen for protection and why others were not. There would also be major issues about the appropriate boundaries of the areas that were chosen for protection. The battles that have taken place over landscape issues in the Queenstown Lakes District Plan (see *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 and subsequent decisions) show how difficult those issues can be even at a district level. The problems would be magnified if the exercise were undertaken at a national level.

Judicial review of an NPS

40. Finally, we should note that the Court of Appeal did allude to the possibility of particular provisions in a policy statement being set aside on the grounds that no reasonable council would include such provisions in a policy statement. Such a challenge could be made in an appeal on a point of law or by way of separate judicial review proceedings. That allusion in the Court of Appeal's judgment may have reflected the fact that the Court of Appeal under the Presidency of Lord Cooke was prepared in appropriate cases to set aside decisions of policy makers on the grounds of *Wednesbury* unreasonableness, i.e. on the grounds set out by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, namely where a decision is held to have been so unreasonable that it can fairly be said that no reasonable decision maker would have come to it.

41. Following Lord Cooke's departure, the Court of Appeal has adopted a more restrictive approach to the application of the *Wednesbury* principle, holding, in *Wellington City Council v Woolworths (New Zealand) Ltd (No 2)* [1996] 2 NZLR 537 and *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 that courts should overturn administrative decisions on the grounds of unreasonableness only in very limited circumstances - where there is "something overwhelming", "a decision .. so

outrageous in its defiance of logic .. that no sensible person who had applied his mind to the question … could have arrived at it", or something perverse, absurd or irrational". That thinking continues to predominate, although there has been some softening of that approach in human rights cases.

42. Accordingly, while it is possible that particular provisions in an NPS could be challenged as being unreasonable, in the sense of perverse or grossly unfair, if it could be established that the provisions had been evaluated properly in terms of the requirements of s32 and they had survived the submission and reference process, then it is unlikely that they would be set aside by the courts on the grounds of unreasonableness.

43. Please call if you would like to discuss this opinion.

Yours sincerely

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Partner

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APPENDIX 8: WAITAKERE RANGES HERITAGE AREA BILL

Explanatory Note

General policy statement

This Bill provides stronger protection for the Waitakere Ranges through the following mechanisms:

- Identifying a geographical area of the Waitakere Ranges as the Waitakere Ranges Heritage Area
- Establishing a set of principles which apply to the management of the Heritage Area including the preparation of provisions in district plans which apply to the Area and the consideration of resource consent applications for activities within the Area
- Deeming this Act to be a national policy statement under the Resource Management Act 1991 so that regional policy statements, regional plans and district plans are required to give effect to its provisions
- Ensuring that only those activities provided for in the district plan can take place within the Heritage Area by deeming non-complying activities to be prohibited activities
- Removing the requirement to review the provisions of the district plan which apply to the Heritage Area so that the current district plan provisions do not need to be revisited
- Requiring the Waitakere City Council to prepare a management plan for the Heritage Area and to carry out monitoring in order to promote proactive and integrated management.

Clause by clause analysis

Clause 1 sets out the name of the Act.

Clause 2 provides that the Act comes into force 28 days after it receives Royal assent to provide the council with sufficient time to apply its provisions.

Clause 3 sets out the purpose of the Act which incorporates management and protection of the landscape, ecological, cultural and recreational values of the Waitakere Ranges Heritage Area.

Clause 4 makes it clear that the Crown is bound by the Act.

Clause 5 defines a range of terms used in the Act. The term 'consent authority' has the same meaning as in the Resource Management Act 1991. The definition of 'district plan' makes it clear that the provisions of the Act only affect the portion of the district plan that applies to the Waitakere Ranges Heritage Area, the boundaries of which are shown in the First Schedule.

Clause 6 deems the Act to be a national policy statement under the Resource Management Act 1991. This means that regional policy statements, regional plans and district plans must give effect to the provisions of the Act and consent authorities must have regard to it when considering an application for a resource consent or water conservation order and a requirement for a designation or heritage order.

Clause 7 sets out the principles that are to apply to the management of the Waitakere Ranges Heritage Area. These provide for the protection of its landscape, ecological and cultural values and the avoidance of key threats to these values. The principles also include the provision for public access and recreational use of the Heritage Area but only where this does not conflict with the protection of its landscape, ecological and cultural values. These principles take precedence over the matters in Part II of the Resource Management Act in respect of the Heritage Area, and in particular, the overriding purpose of 'sustainable management' in section 5 of that Act.

Clause 8 has the effect of preventing the grant of resource consents for non-complying activities within the Heritage Area by deeming them to be prohibited activities. This ensures that activities can only be consented to if they are provided for in the district plan.

Clause 9 ensures that the principles for the management of the Heritage Area, set out in section 7, are given effect to when resource consent applications are considered by consent authorities under the Resource Management Act 1991.

Clause 10 provides that district plan provisions applying the Heritage Area do not need to be reviewed although such a review can be undertaken. If district plan provisions are changed for any reason, such changes need to give effect to the principles in section 7.

Clause 11 requires the Waitakere City Council to prepare a management plan for the Heritage Area which will provide for its integrated management. The plan must be prepared in accordance with the special consultative procedures of the Local Government Act 2002 to ensure that all parties have the opportunity to participate. The Council is also required to monitor progress in relation to the section 7 principles and to report on results in the management plan. The requirement to prepare a management plan is designed to support proactive management of the Heritage Area to complement the stronger regulatory control in earlier sections of the Bill.

Clause 12 enables the provisions in the Act to be enforced under the enforcement provisions of the Resource Management Act 1991.

The First Schedule shows the geographical boundaries to which the provisions of the Act apply.

Waitakere Ranges Heritage Area Bill

Contents

Preamble

(1) The Waitakere Ranges has a quality and diversity of biology, landscapes and historic heritage that makes it outstanding within the Auckland region and New Zealand. The Ranges has one of only two large continuous tracts of indigenous vegetation remaining in the mainland Auckland region and contains distinctive plant communities, landforms and fauna. It provides a dramatic backdrop to the Auckland region and is central to the identity of Waitakere City and the wider Auckland metropolitan area.

(2) The Waitakere Ranges has long been home to human activity and there are many sites of cultural significance remaining. Both Te Kawerau a Maki and Ngati Whatua claim mana whenua status in the Waitakere Ranges and have identified key waahi tapu. Many areas along the Manukau and Tasman coasts contain middens and pa related to Maori occupation. There are also many archeological sites and features related to European history.

(3) In 2004 just over 1.3 million people live in the Auckland region on the doorstep of the Waitakere Ranges and over 17,000 people currently live within the Ranges. The Auckland region is projected to be home to over 1.6 million people within 20 years. The Ranges are becoming more popular to visit and live in. Increasing numbers of people and structures are threatening to undermine the Ranges' unique natural, cultural and landscape values. Much of the Waitakere Ranges is managed as regional parkland, but a significant proportion is in private ownership and not fully protected. The landscape, ecological, cultural and recreational values of the Waitakere Ranges require additional protection.

The Parliament of New Zealand therefore enacts as follows:

1 Title
This Act is the Waitakere Ranges Heritage Area Act 2004

2 Commencement
This Act shall come into force 28 days after it has received the Royal assent.

3 Purpose
The purpose of this Act is to provide for the management and protection of the landscape, ecological, cultural and recreational values of the Waitakere Ranges Heritage Area in perpetuity.

4 Act to bind the Crown
This Act binds the Crown.

5 Interpretation
In this Act, unless the context otherwise requires, --

consent authority has the same meaning as in section 2 of the Resource Management Act 1991

district plan means the operative provisions of any district plan prepared under the Resource Management Act 1991 which apply to the Waitakere Ranges Heritage Area.

Waitakere Ranges Heritage Area means the geographical area shown on the map in the First Schedule to this Act.

6 Deemed national policy statement
This Act is deemed to be a national policy statement under the Resource Management Act 1991.

7 Principles
Notwithstanding anything to the contrary in any other Act, all persons exercising statutory functions or powers within the Waitakere Ranges Heritage Area, shall give effect to the following matters within the Waitakere Ranges Heritage Area --

(a) The protection and enhancement of natural features and landscapes:

(b) The protection and enhancement of indigenous vegetation and habitats of indigenous fauna:

(c) The protection of historic heritage:

(d) The protection of places of importance to tangata whenua:

(e) The avoidance of visually intrusive structures:

(f) The avoidance of the spread of animal pests and invasive non-indigenous plants:

(g) The avoidance of adverse cumulative impacts of development:

(h) Provision for public access and public recreational use where this does not conflict with the matters in paragraphs (a) to (g).

8 Deemed prohibited activities

Any activity within the Waitakere Ranges Heritage Area which is not provided for in the district plan as a permitted, controlled, restricted discretionary or discretionary activity is deemed to be a prohibited activity under the Resource Management Act 1991.

9 Grant of resource consents

When determining a resource consent application under the Resource Management Act 1991 for any activity partially or wholly within the Waitakere Ranges Heritage Area, the consent authority must give effect to the principles of section 7 of this Act, notwithstanding anything to the contrary in any other Act.

10 Review and change of district plan

(1) Any territorial authority with jurisdiction over all or part of the Waitakere Ranges Heritage Area is not required to review provisions of a district plan which apply to the Waitakere Ranges Heritage Area notwithstanding any such requirement under the Resource Management Act 1991.

(2) Any changes made to the provisions of a district plan which apply to the Waitakere Ranges Heritage Area after this Act comes into force must give effect to the principles in section 7 of this Act.

11 Preparation of management plan

(1) The Waitakere City Council shall prepare a management plan for the Waitakere Ranges Heritage Area within two years of this Act coming into force.

(2) The management plan shall provide for the integrated management of the Waitakere Ranges Heritage Area in accordance with the principles set out in section 7 of this Act.

(3) The Waitakere City Council shall monitor the matters in section 7 and report on the results of the monitoring in the management plan.

(4) The management plan shall be prepared in accordance with the special consultative procedure under section 83 of the Local Government Act 2002.

(5) The Waitakere City Council shall review the management plan at least once every three years.

12 Enforcement

The provisions of this Act may be enforced by any person in accordance with the provisions of Part XII of the Resource Management Act 1991.

First Schedule

[Map of the geographical area of the Waitakere Ranges Heritage Area]