"Loss of Landscape"

by Gary Taylor

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We are losing our landscape. The Auckland region's countryside is suffering unprecedented subdivision and urban sprawl. Its consequence, if left unchecked, will be the complete urbanisation of the entire Auckland region. The city and the countryside will blur and our quality of life, so dependent on our outstanding landscapes, will diminish. Built structures will dominate and the rural hinterland will disappear. All this is happening because the Resource Management Act is not up to the task. And on top of that, the Courts are failing us.

European cities, in spite of their larger size, have a clear greenbelt around them. The theory is that we should too - though we don't use the term greenbelt. The Auckland Regional Council has plans that seek to concentrate growth within the metro limits and protect the countryside and undeveloped coastline from intensive development. Areas like the Gulf Islands, the Waitakere Ranges, the rolling hills and valleys of rural Rodney and the undeveloped coasts of Pakiri, Muriwai and Mahurangi are examples of areas that the ARC would protect.

These plans are supposed to ensure a proper balance between development and conservation. A lot of effort goes into them. The public is consulted and they are our plans, the community's vision of the future. They are supposed to create certainty as to which areas are available for development and which are not.

Since the enactment of the Resource Management Act in 1991, there has been a massive growth in the numbers of resource management professionals. Many of them work in local and regional councils, preparing these plans that are supposed to guide development. Still others spend their professional lives working for developers. They try to find ways around the plans.

There is an ideological tussle between those who want the certainty that the strategic overview of plans provide and those who take an *ad hoc* approach to development. It is a struggle between private rights and public interest.

The *ad hoc* approach manifests itself in what are called non-complying resource consent applications for subdivision and subsequent building development. Non-complying applications are for things that are not provided for in plans. For example, if the plan says that to protect the rural character of an area, lot sizes should be no smaller than say 20 hectares, you can still apply for consent to subdivide to 1 hectare lots by way of a non-complying application.

The test for them has been a reasonably tough one - up to now. But as a result of two Court of Appeal decisions last month, the test has been weakened. And unless something is done about it, the countryside will suffer a fresh development spasm of considerable magnitude.

The key battleground over the two approaches to planning has been the south head of Pakiri Beach. Arrigato Investments wanted to subdivide it. The Environment Court allowed the development, influenced by an offer of restoration planting. The ARC appealed the decision to the High Court, which cancelled the consents. Arrigato then appealed to the Court of Appeal and it overturned the High Court decision and reinstated the Environment Court's approval.

Essentially, the Court of Appeal decisions in Arrigato and in a related decision called Dye, mean that each non-complying application can now be assessed purely on its own environmental effects. There is no guarantee that cumulative and precedent effects will be considered. So if an area is completely undeveloped, an application for consent to develop a property within that area does not require an evaluation of the wider implications of allowing that consent. The likelihood of one approval leading to a plethora of like approvals may not be relevant. Neither are the offsite environmental effects, such as the anticipated population growth in a new area subject to like applications, relevant.

The *ad hoc* approach is to prevail and plans are largely worthless. An era of unprecedented, unplanned development is beginning. We are going from bad to worse.

It's important to note that there are several additional highly unsatisfactory features to the Environment Court's original decision in Arrigato. It seems to establish that only bush-covered New Zealand coastline warrants protection from subdivision. Pastoral coastline, the court infers, does not warrant protection because it is ecologically degraded through forest clearance.

Since most of our country's coast is pastoral, huge areas that we thought were protected now may not be. Indeed, most remnants of bush covered coastline are in national parks and reserves. We've cleared most remaining coastal forest.

Because of this finding, the significance of the case goes far beyond the particular situation at Pakiri and has implications for our country's entire coastline.

Pakiri itself still has a natural character and outstanding landscape values even though it has been ecologically modified from its original forested status. The Environment Court found that it did not consist of outstanding landscape, even though there was evidence to the contrary: headlands are critical elements in the visual environment. They are what you see at the end of a beach. They determine the nature of the landscape experience and on a wild coast, they should be free of built structures and wild themselves.

The south head of Pakiri Beach can now be developed. That is in spite of plans, including the New Zealand Coastal Policy Statement and the Auckland Regional Council's plans, saying it should not be developed.

Reading the Court of Appeal decision, one cannot avoid the conclusion that the court is right wing. In my opinion, ideology prevailed. The idea of plans determining what landowners can do with their land is anathema to the right. It subscribes to the view that landowners have entitlements that are more important than those of the wider community. The Court of Appeal has made a determination that is impracticable in its consequences, is disconnected from the interests of the community in good environmental outcomes, and puts private rights above public good.

The idea of courts having a broad political bias is new to us. It's not in the USA, where the US Supreme Court is demonstrably right wing. Retiring Court of Appeal judge Ted Thomas just recently said, "This court at the present time is a very conservative court." The government appoints its members and most of the present Judges were appointed by the National Government. It takes time to change the tenor of the court since governments have to wait for retirements to occur.

I accept that the idea that where a court sits on the political spectrum can affect the way the Auckland region develops is challenging. But the courts now determine so much of resource management practice, by lawyers and by precedent. There are direct connections between what the courts decide in a particular case and the outcomes in the broader region. This decision is a landmark one in every sense of the term.

Stepping back a moment from these recent decisions, it was always a big ask for the Resource Management Act processes to hold back the inexorable drive of market forces in any case. Even before Arrigato, a lot of planning simply reflected what the market wanted rather than guiding it towards environmentally sustainable ends. In areas where there is no pressure, plans stand the test of time. But in areas like the Auckland region, where the pressures are relentless, plans buckle and simply reflect the accumulation of private interests in development rather than any long-term strategy that is in the wider public interest.

For example, in the Waitakere Ranges, succeeding generations of landowners seek subdivision entitlements to fund their retirement. Every twenty years, there is another round of reducing lot sizes, building more houses and over time the built environment dominates the natural one. It is a slow but inexorable process that over time will lead to the urbanisation of the entire Waitakere Ranges.

Other countries use better tools to protect outstanding landscapes that are under pressure from such development forces. They do not just rely on regulation. Their outstanding landscapes are first of all properly defined so there is clarity around where they are. They are then given special status as protected landscapes. They are not public lands like our reserves but private lands - living, working parks.

These outstanding landscapes are described as Category V Protected Landscapes under the World Conservation Union's classification. Their purpose is:-

"..to maintain significant areas which are characteristic of the harmonious interaction of nature and culture, while providing opportunities for public enjoyment through recreation and tourism, and supporting the normal life-style and economic activity of these areas. These areas also serve scientific and educational purposes, as well as maintaining biological and cultural diversity".

Protected landscapes (which in different countries have different names such as National Parks or Regional Parks) are essentially based on voluntary agreements with landowners. Landowners are incentivised to become conservation managers while still carrying on with traditional land uses to the extent those are compatible with the overall vision for the area.

They almost invariably have special administrative arrangements, not least because intensive and specialist visitor management is normally required. The special purpose agency will normally have planning (regulatory) responsibilities as well as access to an incentives fund. Protected landscapes will encompass large areas and may have importance for natural, scenic or cultural values or for combinations of those factors.

Put simply, we should develop a protected landscapes model for New Zealand. We could call them New Zealand Heritage Areas. They can be seen as a third way, between private land and reserve land. They would create a large area of virtual reserve, with land continuing in private ownership but being subject to special administrative arrangements which will ensure better protection of both biodiversity and landscape. It would create an approach in which a sense of collective conservation purpose could be created across a valued area.

Unless New Zealand moves in this direction, we are going to see the special landscapes in our country lost over time. The first place it will happen will be the Auckland region - the Waitakere Ranges, the balance of the east coast, and rural Rodney - because that's where the population pressures are greatest.

The brakes that we thought were there by virtue of the RMA that were at best slowing down that process, have failed completely as a result of the Court of Appeal decisions. It's imperative that we move quickly to save what's left. We have to put some robust measures in place that define our outstanding landscapes and then create an effective set of tools and incentives that will ensure their long tern survival.

The Auckland region is a wonderful place to live and work. It has a hinterland that adds value to the region because it provides a contrast to the built environment in which most of live. We have great scenery. We have to protect it and we must be willing to pay our share. Other places in the world with much larger populations than us have succeeded in protecting their landscape. So must we.