



Office of the
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

10 July 2000

LAND SUBDIVISION IN THE WAITAKERE RANGES

This letter constitutes my response to the Waitakere groups and individuals (of which you were one) interested in, concerned about and responsible for land subdivision and related matters in the Waitakere Ranges and whom I met with during a visit on 14-15 March 2000.

The following organisations and individuals were involved:

- Laingholm District Citizens' Association Inc..
- Titirangi Ratepayers and Residents Association
- Waitakere City Council Planning and Regulatory Committee
- Waitakere Ranges Protection Society
- Mr Harry Bhana
- Mr Steve Fitt
- Mr Bob Harvey, Mayor of Waitakere City
- Hon Ralph Maxwell

In addition, a copy of the letter is also being sent to the Chief Executive, Waitakere City Council and to individuals whom I did not meet but corresponded with on the subdivision issue.

This letter is not an investigation report with "findings" for any particular party – the matters of concern are too important and require the collective effort and will of most if not all parties, if cherished values are to be protected into the distant future. The focus of my interest in this study has been on the issues arising from actions taken by the Waitakere City Council to implement the Resource Management Act 1991 (RMA) with respect to the subdivision of land in the Waitakere Ranges. I acknowledge the considerable efforts of the past and current council to give effect to the RMA through the district plan. Innovative approaches have been taken and will, I hope, continue to be taken. Ultimately, however, RMA regulation alone will be insufficient to achieve the objectives I believe all parties want. I outline a few ideas for addressing this reality later in the letter

My visit, accompanied by my Director Citizens' Concerns, Bob McClymont, was initiated by representations received from two interest groups. They expressed concern about decisions of the Waitakere City Council Planning and Regulatory Committee taken since the 1998 local government elections. The decisions were aimed at the implementation of new policy on the subdivision of land in areas that the Proposed Waitakere District Plan classifies as "Bush Living Environment", "Foothills Environment" or "Waitakere Ranges Environment". The outcome sought with the new policy was a more permissive approach to subdivision than that

proposed in the District Plan. Interest groups perceived the Committee decisions were not in accord with the RMA – in spirit if not in law – and would result in significant adverse effects on the environment.

As noted above I will not be formally investigating these matters and providing an assessment of whether or not the concerns expressed in the representations I received had substance. It became clear before and during the visit that over the past 5-6 years the Waitakere City Council had developed, implemented and reviewed a number of measures for controlling subdivision, each of which had caused concern either to landowners or environmental interest groups. An investigation into one or more of the concerns, but not into all of them, runs the risk of hardening rather than healing divisions between landowners, interest groups and the Waitakere City Council. My aim is to advance rather than impede more effective environmental planning and management in the Waitakere Ranges.

However, I do have the advantage of having met separately with the principal parties in the current debate over subdivision controls. From these meetings I have not only obtained an understanding of the full range of concerns but I have explored with representatives of the various points of view, ways in which their concerns might be addressed. This letter accordingly provides my observations on the range of subdivision policy concerns, comments on linkages between the concerns and describes a possible path towards achieving agreement on a strategy for managing the Waitakere Ranges.

Citizens' Concerns about Subdivision Policy

It is evident that there is a diverse range of concerns about the various subdivision policies adopted by the Waitakere City Council since the RMA was enacted. These concerns are as much about the way subdivision policy has been developed as about perceived environmental outcomes.

The following is my summary of the main concerns registered with me. They represent the collective concerns of all the parties we spoke with. **I stress that they are not my concerns but those of the parties. By recording them in a complete fashion below, I make no comment on their accuracy or otherwise.**

Environmental Outcome Concerns

- The Proposed District Plan appears to draw an arbitrary line between lands classified 'Bush Living Environment' and 'Waitakere Ranges Environment' (where a less permissive subdivision control regime will apply). Adjoining properties in the sewered areas of Titirangi and Laingholm are cited as examples of this concern, where the only perceived difference between the properties is that the property given a 'Waitakere Ranges Environment' classification is larger than its neighbour.
- The Proposed District Plan provisions for controlling subdivision: -
 - do not appear to recognise that past subdivision, together with the stewardship exercised by the new landowners, has contributed significantly to the enhancement of environmental quality and have been the main agents responsible for re-establishing forest on land that had been cleared for farming.

- appear to potentially discourage private sector investment in employment-generating economic development in Waitakere City, through limiting the availability of residential properties preferred by prospective investors.
 - will result in the appropriation of presumed development rights in private land, without compensation to landowners.
 - will reduce the value of investments made for retirement income and other purposes.
- The policy changes proposed by the current Planning and Regulatory Committee (PRC) that would give the committee greater discretion in decisions on subdivision consent applications, will result in the removal of minimum lot “bottom lines” required for assessing the cumulative effects of subdivision.
 - The proposed policy revisions may encourage increased applications for subdivision consent applications, even if they fail to get through the hearings and appeal process .
 - The council’s decision to remove controls on development on sensitive ridgelines and on the colour of buildings will weaken protection of the landscape and amenity values of the Waitakere Ranges.
 - The Oratia Structure Plan is too prescriptive. It appears to provide landowners with no scope for developing their properties other than in accordance with the detailed directions of the plan and properties in the area have lost significant real estate value as a consequence.

Policy Development Process Concerns

- The intention of the current PRC to negotiate agreements for the settlement of references made to the Environment Court will result in incremental change to the Proposed District Plan. The plan will be changed without the public consultation and review opportunities that are provided by the more robust Resource Management Act plan variation process.
- The PRC does not appear to be following recognised “good practice” procedures in changing subdivision policy. There is a perception that the PRC disregarded WCC staff advice, did not consult adequately with all parties affected by the change and did not consider other options (as required under s.32 RMA).
- Those who are critical of the actions taken by the council to change policy on land subdivision appear to overlook that seven councillors (just one short of a majority) were elected on the ‘Go Waitakere’ ticket at the last election. These councillors perceive that electors gave them a mandate to change the policy. Those who criticise the councillors appear to not appreciate that the RMA enables the council to vary the Proposed District Plan, in order to give effect to the new policy.
- Some members of the PRC appear to be unaware that there is a process laid down under the RMA for changing the District Plan and this process requires the council to consult with the public and to give full and proper consideration to submissions received on proposed variations, before final decisions are taken.

- The PRC appears to have a predetermined view on the outcome of a review of subdivision policy. Evidence cited for this perception is the resolution passed at the committee meeting on 10 August 1999 (Resolution 2516/99) which is understood to have been prepared by a committee member before reports were presented by council officers and adopted without change.
- The PRC does not appear to fully understand the extent of the council's monitoring and enforcement obligations under the RMA. Evidence cited for this concern is the part of Resolution 2516/99 directing that the council's approach to subdivision is to require a minimum of monitoring and intervention by the council.
- The PRC appears to have a preference for dealing with subdivision on a case-by-case basis, which suggests committee members do not have an adequate appreciation, of the RMA requirement for an integrated approach to resource management and particularly the management of cumulative effects.
- The council's decision to remove controls on development on sensitive ridgelines and the colour of buildings does not appear to have involved an adequate assessment of potential environmental impacts resulting from the removal of controls.
- The process the previous council used to change the Transitional District Plan in 1995 (which resulted in the minimum subdivision lot size being increased) was rushed, did not involve sufficient consultation with affected landowners, and appears to have been designed for the purpose of holding the line on subdivision until the Proposed District Plan was notified.
- When the PRC resolved to change the district plan rules governing subdivision it also resolved to not consult affected communities.

Other concerns

- Misinformation on the views and actions of 'Go Waitakere' councillors is perceived to have been disseminated at public forums.
- Misinformation on the views and actions of the Waitakere Ranges Protection Society is perceived to have been disseminated at public forums.
- Misinformation on actions taken by the council to control subdivision and on the supposed advocacy of some councillors is perceived to have been disseminated at public forums during the 1998 local government elections.

I must emphasise that this list of concerns are not mine but simply represent my understanding of the concerns held by yourself and organisations I met with during my visit in March. I also note that some of the concerns will be examined in proceedings that are now before the Environment Court.

Tensions

The usefulness of the various concerns is that they reflect the wide diversity of understanding of the Waitakere Ranges (including constituent ecosystems and human communities) and the

wide diversity of values individuals and groups place on this environment. This diversity creates a number of “tensions” which need to be recognised by all parties if consensus is to be reached on a way forward. Examples of these tensions are: -

- Land valued by landowners as private property v The same land valued by the community as natural heritage and a public asset.
- Private landowner expectations of compensation from the community for conserving community-valued natural heritage and amenity values and foregoing development rights. v Community and environmental groups’ expectations of landowners to pay the majority of costs of protecting the environment from the adverse effects of subdivision and development.
- Landowner expectations of maximising the value of asset; i.e. subdivide it. v The carrying capacity of community infrastructures and the value of ecosystem services to the whole community
- Landowner expectations for the council to minimise rates. v Landowner expectations for the council to provide infrastructure services and maintain landscapes, amenity values etc.
- Expectations of some environmental groups and of landowners for natural heritage conservation to be carried out on public land. v Council and community expectations that natural heritage conservation is carried out without adversely affecting the provision of other public services.
- Home occupiers’ desires to develop gardens using introduced plants and to keep domestic pets. v Council and community aspirations to minimise costs involved in protecting indigenous flora and fauna from the adverse effects of weeds and pests.
- Council’s need to interpret and discharge RMA functions efficiently. v Landowner expectations that the council will discharge its functions in a fair and reasonable manner.
- Councillors’ perceptions of having received authority to implement election policy commitments. v The same councillors’ obligation to comply with RMA processes, before deciding new policy.
- Community expectations for management of the natural environment. v Community lack of knowledge about ecosystems and the value of ecosystem services provided to the community.

The challenge before the Waitakere City Council, the Waitakere Ranges Protection Society, residents and ratepayers, and, indeed, for the people of Greater Auckland, is to find a way of managing these tensions while advancing the maintenance and improvement of environmental quality in the Waitakere Ranges. The first tasks, therefore, now appear to be to develop an agreed:

1. understanding of the extent of the Waitakere Ranges; i.e. what is included – where, for example does the perimeter lie in the areas that, until recently, were orchards?
2. understanding of the ecosystem, community and heritage values of the Waitakere Ranges and how these have evolved since the beginning of human settlement; i.e. what is it that everyone wishes to sustain, what is actually to be protected?
3. 30-50 year future vision for the Waitakere Ranges.

A Way Forward

What is the Extent of the Waitakere Ranges?

The impression I have gained from my discussions during the March 2000 visit to Waitakere City is that the majority of people perceive the Waitakere Ranges “natural environment” as embracing a much wider area than the land set aside for regional park and water catchment protection. It is seen to include the eastern foothills and valleys which display remnants of vegetative cover not too dissimilar from that of the forest covered ranges. In ecological terms this wider area is a coherent unified entity providing a range of ecosystem services and amenities, not just of value to the communities of people living within the area but also to all the communities of Waitakere City and Greater Auckland¹.

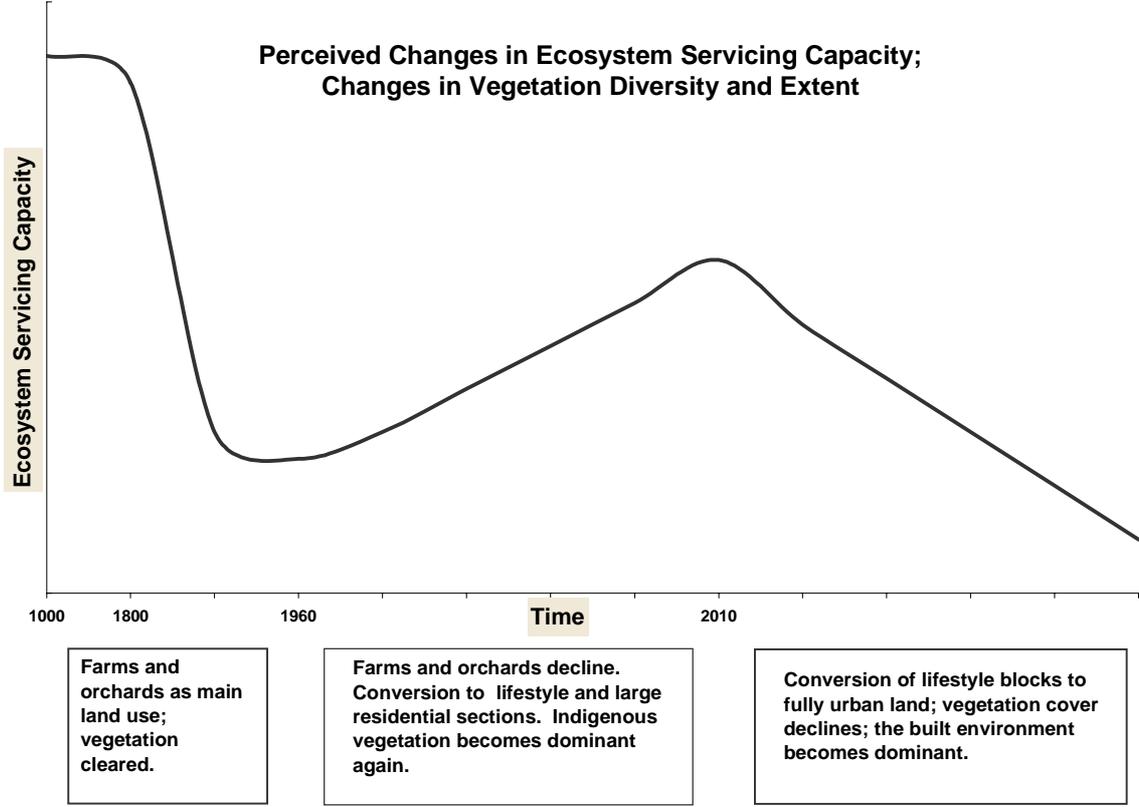
The unique quality of the wider Waitakere Ranges area is that it is a people-inhabited forest area of substantial size within Greater Auckland - New Zealand’s largest and fastest growing urban region. Greater Auckland attracts people of diverse cultural backgrounds. Initially it was tangata whenua, next came settlers from Great Britain and Europe and then from the middle of the 20th century, came migrants from the Pacific islands who added an additional Polynesian dimension to the region’s character. More recently Greater Auckland has provided residential, employment and leisure opportunities for increasing numbers of migrants from Asia. The diversity of cultural perspectives and aspirations is further compounded by changes between the generations with the lifestyle preferences of the younger evolving and differing from those of their parents. Some of the new generation may choose, like their parents, to live in suburban environments but others opt for inner city living while others want to enjoy a semi-rural lifestyle.

The population is not only diverse in composition, but its evolution is complex. Although some might see Waitakere City as having a static population, the growing population of nearby areas is having an impact on the environments, ecosystems, natural and physical resources and the cultural and historic heritage of the city. In addition, family structure has changed resulting in an increase in the number of family units and hence more housing is needed to accommodate a given population.

The Waitakere Ranges is therefore being called upon to accommodate a diversity of pressures. Its environments and ecosystems, however, have ‘bottom lines’ i.e. a finite carrying and service delivery capacity. While subdivision and residential development may have resulted in the re-establishment of vegetation on formerly open farmland, this pattern of land use change will, if left unchecked, once more lead to a net loss of environmental quality and ecosystem service delivery capacity. Subdivision has the potential to continue through

¹ “Ecosystem services” are the functions performed by ecosystems that ensure natural cycles (of water, oxygen, carbon, soil etc) continue to provide an environment that is conducive to quality of life, including human life.

recurring phases over time until the landscape is predominantly urban/suburban. One way of picturing this process is shown below.



The decline in soil retention, stormwater retention, and other environmental values as a result of the accumulated effects of individual subdivision and development decisions can occur without there necessarily being any loss in “green” appearance. Trees may be retained and established and buildings may be given unobtrusive designs and location but if there is not adequate consideration given to the maintenance and enhancement of ecosystem service capacity and the wider aspects of environmental planning and management, a decline in net environmental quality is likely.

The Need for a Vision

As we are all aware there are a large number of organisations, groups and people having an interest in the resources of the Waitakere Ranges. Their separate needs, aspirations and concerns result in considerable competition for access to the resources; the landscape values, recreational values, heritage values, etc. Without some overarching strategic vision there is a danger of the parties getting locked into arguments over resource allocation, use and protection and over-reliance on RMA and other statutory processes. Meanwhile the quality of the environment and of ecosystem services may diminish.

To put the protection and ongoing development of the Waitakere Ranges onto a more secure footing requires wide “buy-in” to a long-term strategic vision. The RMA does not, on its

own, enable this.² Because having a longer-term vision for an area such as the Waitakere Ranges is essential, a programme should be developed outside RMA processes to generate such a vision. This is, of course, what the Auckland Growth Strategy is; a non-RMA process to create a strategic vision.

Waitakere City Council has previously embarked on such a non-statutory process with the West Coast Plan³. As I understand it, this exercise sought to build a consensus about the long-term future of the coastal communities and demonstrated a surprising degree of agreement amongst those consulted. What I suggest is an extension of that concept.

All parties will need to lift their sights to focus on just what they want collectively from the Waitakere Ranges; first in the long term and secondly in the short to medium term. Because the shorter term will often have more to do with individual aspirations for development and protection, and be site specific, all involved constantly need to be projecting forward the cumulative effects of their short-term goals with a longer-term vision. The question is “will the many short term actions have cumulative negative effects which mean the long term goals are not achieved?” I dwell on the tension between the short and longer term because I am not convinced the RMA will, on its own, deliver environmental qualities that depend on preventing cumulative degradation. Many of the environmental attributes important to most I spoke with are at risk in the longer term; it will be death by a thousand cuts. It will not be the intent of all involved; the legislation and district plan will be adhered to; the aspirations of individual families and developers will be accommodated in a fair and just way – but the end result will not satisfy the majority!

This is why a strong, self-reinforcing vision of how the community wants the Waitakere Ranges to be in the future is critical. The key attributes that are important must be identified and measures to maintain them, developed.

The impression I get from my discussions with the various parties, is that there appears to be general agreement that a vision is likely to include two major components:

1. a desire to retain the “natural heritage character” of the area; and
2. recognition that people living in the area are a component of the heritage (i.e. they will be part of the landscape but not in conflict with its character and ecological health).

In practical terms this could mean characterising the ranges as the **Waitakere Ranges Living Natural Heritage Area**. Within this area it could then be acknowledged that:

- people and communities are an integral part of the environment;
- the environment includes natural, historic and cultural heritage;
- the concept needs to be supported by a strategy with clearly stated goals;

² The Environment Court found in 1994 that the incorporation of a broad vision statement into a regional plan would create ambiguity and the potential for arguments before the Courts. *St Columba's Environmental House Group v Hawkes Bay RC [1994] 12 NZRMA 560*

³ Refer to the December 1999 Waitakere City Council report *The Draft West Coast Plan: A plan for the future management of the West Coast and Waitakere Ranges*.

- the area is managed by a wide array of mechanisms for implementation (including economic instruments, community funded education programmes, RMA rules and regulations) and communally developed indicators of the key attributes to be protected in the long term.

A vision is not a detailed prescription but a shared view of how an area such as the Waitakere Ranges might evolve during the lifetime of the current community and future generations. However there needs to be a commitment to the retention of key natural characteristics; the establishment of some clear “bottom lines”. Without this the area will be some version of suburbia by the end of the 21st century; the result of many little decisions adding up to changes that were not desired.

Any vision will need to be regularly reassessed as people’s needs and aspirations change and new information on ecological systems becomes known, but the fundamental values and limitations of the landscape (in geological and terrain characteristics) will remain.

The task of developing the vision will require genuine and extensive consultation. Consultation requires time for mutual learning and understanding and although there is a financial cost, an enduring vision and some consensus on how to proceed have great value to communities and their servants; elected councillors. An open-hearted willingness for everyone to put behind them some issues from the past, to support research and to share information is essential.⁴ The process employed by the Waitakere City Council for the future management of the West Coast and Waitakere Ranges is an example of the kind of consultation I am advocating.

I believe the Waitakere City community has the capacity to develop some very innovative approaches to the future evolution of the ranges. There are some useful models of heritage areas in Europe, Australia and the USA that are people rich but where landscape, heritage and ecological values are sustained. New Zealand does not currently have any such living heritage areas – and the Waitakere Ranges is where it could and should start. To proceed, however, some individual goals will need to be adjusted and, most importantly, some agreement reached on what the key values needing to be sustained are before debate continues on how to develop a vision. At present most involved in the debate are bogged down in the detail of plans, rights, consents, etc. A lifting of the “sights” is needed by all.

I am happy to discuss any points further and even visit again (or have members of my team visit) if this would be helpful. I acknowledge that by approaching your individual and collective concerns in the way I have, I may have not satisfied those who sought to find “who

⁴ The nature of consultation was clarified in *Wellington International Airport Ltd v Air New Zealand Ltd* [1993] 1 NZLR 671 (CA). The essential points are:

- Consultation must be allowed sufficient time, and genuine effort must be made;
- It is to be a reality, not a charade – the party consulting may have a plan in mind, but must have an open mind and be ready to change;
- To “consult” is not merely to tell or present, nor is it to agree;
- Consultation does not necessarily involve negotiation toward an agreement, although it may do so, as the tendency in consultation is to seek consensus;
- “Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done”;
- The party consulted should be adequately informed so as to be able to respond intelligently; and
- There are no universal requirements as to form nor as to duration – what is appropriate will vary according to the context.

was at fault". As I said at the beginning of my letter – there is little value in that approach given the size of the task in front of all parties. A new way of thinking about the ranges is needed, it must be considered as a whole and key attributes to be sustained must be identified.

I look forward to monitoring your progress.

Yours sincerely

Dr J Morgan Williams
Parliamentary Commissioner for the Environment