

File: X/22/4/1

**Report 98.368**

## **Policy and Finance Committee**

Minute extract from meeting held on 22 September 1998

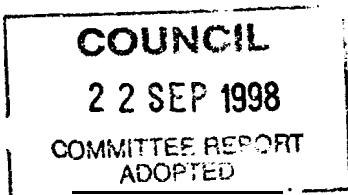
### **Withdrawal of the Proposed Regional Landscape Plan**

#### **Recommendation**

- (1) *That the Council withdraw the Proposed Regional Landscape Plan in accordance with clause 8D of the First Schedule of the Resource Management Act 1991.*
- (2) *That the Council give the following reasons for the withdrawal of the Proposed Regional Landscape Plan:*

*The Council is not satisfied at this time, that the Plan:*

- (a) *is necessary in achieving the purpose of the Act; and*
- (b) *is the most appropriate means of exercising the function under section 30(1)(b) of the Act;*
- (c) *the statutory plans prepared by local authorities under the Act will enable the Council to promote the sustainable management of regionally significant landscapes; and*
- (d) *a further tier of statutory plans addressing land use matters relating to Section 6 of the Act is not justified; and*
- (e) *the implementation of non-statutory guidelines, based on the contents of the Proposed Plan, will enable the Council to promote the sustainable management of regionally significant landscapes.*



*D.J. Darroch*  
D.J. DARROCH  
COMMITTEE SERVICES

*because:*

*Dr Bradbury*

- (3) *That the public notice **of** the withdrawal **of** the Proposed Regional Landscape Plan, including the reasons **for** the withdrawal, is advertised in daily newspapers in the Region on Saturday 26 September 1998.*
- (4) *That, in accordance with methods 2 to 6, and 18 and 19 **of** the Regional Policy Statement, the Council shall prepare non-statutory guidelines **for** the sustainable management **of** regionally **significant** landscapes and implement these guidelines through targeted regional forums, education programmes, information dissemination, statutory advocacy and other associated initiatives.*
- (5) *That the Council shall review the **need for** statutory provisions relating to regionally **significant** landscapes when the Regional Policy Statement and regional plans are reviewed*



*caring about you & your environment*

**Report 98.368**

27 August 1998

File X/22/4/ 1

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Report to the Policy and Finance Committee  
from Ian Buchanan, Chairperson, Regional Landscape Plan Hearing Committee

## **Withdrawal of the Proposed Regional Landscape Plan**

### **1. Purpose**

To recommend that the Council withdraw the Proposed Regional Landscape Plan in accordance with clause 8D of the First Schedule of the Resource Management Act 1991.

### **2. Background**

The Regional Policy Statement (RPS) provided the starting point for the Regional Landscape Plan (the Plan). The Proposed RPS contained criteria for, and identification of, regionally outstanding landscapes. It also contained policies and methods for the consideration of adverse effects on outstanding landscapes. The hearing on the RPS identified significant problems with the depth of analysis and the application of criteria in identifying outstanding landscapes. As a consequence, the RPS Hearing Committee recommended removal of specific landscapes from the RPS and a specific method was included which states that the Council would prepare a regional plan for the outstanding landscapes and natural features of the Region. This approach was approved by the Council when decisions were made on the RPS in October 1994.

After public consultation, Council officers prepared a non-statutory draft of the Plan. It was released for public comment in June 1996. Officers then held meetings with landowners; undertook a general consultation programme called the "Landscape Roadshow"; and met with a range of interested groups such as environmental groups, Federated Farmers, residents associations, iwi and local and central government agencies.

Following consultation with the public, a statutory plan was prepared. It was notified in June 1997 **after** a Councillors' workshop. One hundred and fifty one submitters made submissions and further submissions on the Plan.

### 3. Officers' Recommendations

In response to the submissions seeking withdrawal of the Plan, officers provided the Hearing Committee with strong and comprehensive reasons for retaining the Plan on matters relating to:

- the legal mandate
- integrated management
- private property rights
- consultation
- mapping
- methodology
- certainty, and
- use and development

On Section 32 matters relevant to the need for the Plan, the officers relied on the Council's position outlined in the Background (Section 32) Report on the Plan. The Background Report was approved by the Council at the same time the Proposed Plan was approved for notification. The position can best be summarised by the following statement from the Officers' Reports:

*"The Council is satisfied that preparation of this Plan is the most appropriate means of achieving its function described in section 30 (1)(b) of the Act, and is necessary to achieve the purpose of the Act in this Region."* [Officers' Reports May 1998, Part 1, p37]

The Hearing Committee considers that this position is no longer appropriate for the reasons described in Section 5 of this report *Deliberations of the Hearing Committee*.

### 4. The Hearing

A formal Hearing on the Plan was conducted in June/July 1998 by the Regional Landscape Plan Hearing Committee comprising Councillors Buchanan, Shields, and Yardley. Fifty five submitters attended the Hearing. These submitters were made up of landowners, territorial local authorities, environmental and recreation groups, business and corporate interests, and community groups,

A brief summary of some of the key issues raised in submissions at the Hearing is included in Attachment 1.

## 5. Deliberations of the Hearing Committee

At the outset of our deliberations, the Hearing Committee decided to examine whether or not the Council should proceed with the Plan. We took this approach because of the weight of submissions asking for the Plan to be withdrawn. The Hearing Committee wanted to be able to put to rest the fundamental decision of whether or not there should be a plan before considering the contents of the Plan in detail.

A number of key questions arose during the Hearing that had to be considered in establishing whether or not the Council should proceed with the Plan. These can be summarised as follows:

- does the Council have a legal mandate to prepare the Plan?
- is the Council satisfied that a statutory Plan is necessary and appropriate?
- does the Plan contain sufficient certainty and clarity for it to be useful and effective?

In relation to the first bullet point (does the Council have *a* legal mandate to prepare the Plan?) a number of submitters questioned the legal basis for the Plan. Based on legal advice which the Council obtained prior to the Hearing, the Hearing Committee was satisfied with the Council's legal mandate for the Plan.

The second bullet point (is the Council satisfied that a statutory Plan is appropriate and necessary?) is a requirement of Section 32 of the Resource Management Act 1991 (the Act). The Council must be satisfied that the provisions of the Plan are necessary in achieving the purpose of the Act and are the most appropriate means of achieving its **functions**. As a result of the submissions on the Plan and the evidence given at the Hearing, the Hearing Committee concluded that the provisions of the Plan are not necessary. We came to this conclusion for the following reasons:

- (i) As discussed in section 1 of this report *Background to the Plan*, the need for the Plan arose from the provisions of the RPS. At the time the Council made its decisions on the RPS, there was little guidance in statutory documents on the management of landscapes in the Region. Only two district plans prepared under the Act had been notified in the Region. The RPS responded to the lack of guidance on landscape by providing an overview of landscape issues in the Region to assist territorial authorities in preparing district plan provisions and considering landscape issues in resource consent decisions. It also provided for the integrated management of landscapes in the Region by requiring the preparation of a Regional Landscape Plan so that regional interests could be incorporated in territorial local authority decision making.

Since the decisions on the RPS, all the territorial authorities in the Region have notified their district plans. These district plans are either operative or well advanced through the statutory process. A number of submitters

on the Plan, including some territorial authorities, argued strongly that the contents of proposed and operative district plans eliminate the need for a separate regional plan on landscape. The Hearing Committee considers that the way landscapes are treated in district plans reduces the need for the Plan. We concluded that regional landscape interests can be **successfully** advocated within the context of district plans, provided the Council is proactive in its statutory advocacy on resource consents **and** in the promotion of non-statutory alternatives to the Plan.

- (ii) Territorial authorities have the primary responsibility for controlling the effects of land use. They are largely responsible for implementing the policies in the Plan through the requirements for resource consents contained in their district plans. The Hearing Committee **recognised** that the Plan would result in the need for applicants and consent authorities to refer to an additional statutory document in the resource consent process. We considered that the imposition of an additional tier of statutory plans addressing land use matters relating to Section 6 of the Act is not justified at the present time.
- (iii) The Hearing Committee agreed with many submitters who supported non-statutory approaches to promoting the sustainable management of regionally significant landscapes. The question for the Hearing Committee was whether such non-statutory approaches would be **successful** without the backing of a statutory plan.

We consider that appropriate guidance on the management of regionally significant landscapes can be achieved by re-casting the Proposed Plan into non-statutory guidelines. The guidelines would have no statutory basis but could be widely used as an advocacy, education, and advisory tool by the Regional Council. Additional flexibility, compared to a statutory plan, would be achieved by the ability to include additional regional landscapes, justified by professional analysis, as our knowledge base increases.

implementation of the guidelines can be via targeted regional forums, education programmes, information dissemination, statutory advocacy and other associated initiatives.

The Hearing Committee also believes that replacing the statutory Plan with non-statutory guidelines must be complemented by further consideration of regional landscapes when the RPS is reviewed.

Having come to the conclusion that the Plan is not necessary and appropriate, for the reasons given above, the Hearing Committee has little option but to recommend that the Plan be withdrawn

We make this recommendation in the knowledge that our conclusion on the need for the Plan differs from the view expressed on the same matter in the Council's Background (Section 32) Report on the Proposed Plan. The Background

Report was approved by the Council at the time the Proposed Plan was approved for notification. We also noted the Background Report outlines the following approach of the Council to the Section 32 process:

*“We (the Council) view section 32 as a process which is integral to good policy development and planning practice, rather than a single report. **This** process includes preparing discussion documents, **draft** plans, meeting interested groups, and considering written and oral submissions. At all of these stages alternatives are considered and the costs and benefits of different approaches which are suggested are weighed up. This process of constant evaluation will continue as we analyse the submissions on the Plan, take account of any evidence presented at a Hearing, and make decisions on the final provisions to be included in the Plan.*

*While the Council is satisfied **at this stage** that the provisions in the Plan are the most appropriate means to carry out its **functions** under the Act, new information on the advantages and disadvantages of alternative means may result in alternative approaches being adopted at the end of the process of considering submissions on the Plan.”* [Background Report on the Proposed Regional Landscape Plan June 1997, p2]

Because of the decisions already reached, examination of the third bullet point (does the Plan contain sufficient certainty and clarity for it to be useful and effective?) became unnecessary. However, the Hearing Committee did give some consideration to this question. We noted that a number of submitters had significant concerns about the clarity of the Plan and the certainty it could provide, hence, the way it would be interpreted.

It remains an option in the future to incorporate regional landscape provisions in a regional plan when the Council reviews and integrates all its regional plans within the next 3-5 years. This review will have the benefit of monitoring landscape outcomes from the implementation of the non-statutory methods recommended below. For provisions about regionally significant landscapes to be included in a statutory plan in the future, the concerns of submitters at the Hearing about the clarity and certainty of such provisions would need to be addressed.

## 6. **Withdrawing the Proposed Regional Landscape Plan**

The Hearing Committee also gave consideration to the process for withdrawing the Plan. There are two options. The Plan can be withdrawn in terms of clause 8D of the First Schedule of the Act. This clause provides for the Council to withdraw the Plan at any time, with reasons, but does not provide the opportunity for submitters to appeal to the Environment Court. Alternatively, the Plan could be withdrawn in terms of clause 10 of the First Schedule of the Act. This clause provides for the Council to make a decision on the Plan which is subject to appeal to the Environment Court.

Our recommendation to withdraw the Plan is made on the fundamental issue of whether the Council is satisfied with the need for the Plan, according to Section 32 of the Act. Therefore, the Hearing Committee consider that the Plan should be withdrawn in the context of clause **8D** of the First Schedule of the Act. This option requires public notice of the withdrawal of the Proposed Plan, including the reasons for the withdrawal.

## 7. Recommendations

(1) *That the Council withdraw the Proposed Regional Landscape Plan in accordance with clause **8D** of the First **Schedule** of the Resource Management Act 1991.*

(2) *That the Council give the following reasons for the withdrawal of the Proposed Regional **Landscape** Plan:*

*The Council is not satisfied, at this time, that the Plan:*

(a) *is necessary in achieving the purpose of the Act; and*

(b) *is the most appropriate means of exercising the function under section **30(1)(b)** of the Act:*

*because:*

(c) *the statutory plans prepared by local authorities under the Act will enable the Council to promote the sustainable management of regionally **significant** landscapes; and*

(d) *a further tier of statutory plans addressing land use matters relating to Section 6 of the Act is not **justified**; and*

(e) *the implementation of non-statutory guidelines, based on the contents of the Proposed Plan, will enable the Council to promote the sustainable management of regionally significant landscapes.*

(3) *That the public notice of the withdrawal of the Proposed Regional **Landscape** Plan, including the reasons for the withdrawal, is advertised in **daily** newspapers in the Region on **Saturday** 26 September 1998.*

(4) *That, in accordance with **methods** 2 to 6, and 18 and 19 of the Regional Policy Statement, the Council shall prepare non-statutory guidelines for the sustainable management of regionally significant landscapes and implement these guidelines through targeted regional forums, education programmes, information dissemination, statutory advocacy and other associated initiatives.*



- (5) *That the Council shall review the need for statutory provisions relating to regionally significant **landscapes** when the Regional Policy Statement and regional plans are reviewed.*

Report prepared by:



CR IAN BUCHANAN

Chairperson, Proposed Regional Landscape Plan Hearing Committee

## Summary of Some Key Issues Raised by Submitters at the Regional Landscape Plan Hearing

### **Landowners**

In brief summary, the focus of submissions on the Plan from landowners included:

- adverse impacts on potential future uses of their land;
- uncertainty over how individual territorial local authorities would interpret provisions of the Plan;
- unnecessary additional costs for land use consents;
- difficulties in identifying the regionally significant characteristics of landscapes on individual properties;
- unclear boundaries on maps; and
- strong opposition to the inclusion of properties in *backdrop* to the central components of landscapes.

### **City and District Councils**

The response of territorial local authorities to the Plan varied. Both the Kapiti Coast district Council and the Hutt City Council supported the Plan at the Hearings. They saw the Plan as an additional tool for the statutory management of landscapes. The Kapiti Coast District Council requested that a number of additional areas be added to the Plan.

The South Wairarapa District Council and the Porirua District Council opposed the Plan. Both considered the Plan an unnecessary addition to the way their district plans address landscapes. Among other matters, they identified problems related to duplication, additional costs, inconsistent interpretation by territorial local authorities, and unclear boundaries on maps.

The other territorial local authorities in the Region were neutral or equivocal on the Plan (Wellington City Council did not attend the hearings and Carter-ton District Council did not make a submission).

### **Environmental and Recreational Groups**

Environmental and recreation groups and the Minister of Conservation were strongly supportive of the Plan. They gave particular emphasis to natural values and sought the inclusion of a lot more areas.

## **Business and Corporate Interests**

In brief summary, the focus of submissions on the Plan from business and corporate interests included:

- lack of legal basis for the Plan;
- the potential for unnecessary constraints on development;
- an additional statutory layer;
- the complexity and scope of the Plan;
- unclear and uncertain provisions; and
- policies are *de facto* rules through the link with specific outcomes to *maintain and enhance*.

## **Community Groups**

A community group, the Makara Guardians, were supportive of the Plan. They made a strong case for the inclusion of Quartz Hill and its surrounds in the Plan. The Makara Guardians saw this inclusion as potentially powerful in backing their opposition to the siting of the wind farm.