

Landowners, Resource Management Act district plans, and biodiversity protection: What is happening?

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A B S T R A C T

In 1997, approximately half (36) of all territorial authorities in New Zealand were surveyed to ascertain how they were implementing the biodiversity protection provisions in the Resource Management Act 1991. The biodiversity protection provisions in their district plans were highly variable, ranging from minimalist to comprehensive. About two thirds of the authorities reviewed had included (or proposed to include) in their district plans, schedules of ecologically significant sites, usually with rules restricting new land-use activities in these sites. Many landowners objected to having part of their property identified as an ecologically significant site, and their use of the identified site restricted.

A number of problems with schedules of ecologically significant sites are identified, including the use of poor quality information, and inadequate landowner consultation and negotiation.

Alternative and complimentary tools that can be used for promoting biodiversity protection are outlined. Effective and early landowner consultation is important for successful biodiversity protection. Components of effective landowner consultation are suggested.

Observations about improving better biodiversity outcomes cover areas such as: improving council and community understanding of biodiversity values and threats, using appropriate biodiversity protection techniques that address each district's circumstances, and undertaking effective landowner-consultation and negotiation.

1. SCOPE AND OUTLINE

This paper reports on some of the administrative tools which territorial local authorities (district and city councils) use to implement the biodiversity protection requirements of the Resource Management Act 1991. Questions that will be addressed include:

- What is happening with schedules of ecologically significant sites and related mechanisms for promoting biodiversity protection through district plans?
- What problems are associated with schedules of ecologically significant sites (including those resulting from inadequate landowner consultation and negotiation processes)?
- Are there alternative approaches and techniques for promoting terrestrial biodiversity protection?
- What lessons have been learned concerning consultation about biodiversity protection?

2. TERRITORIAL AUTHORITY DISTRICT PLAN STATUS

Thirty-six territorial authorities were reviewed—approximately half of all territorial authorities in New Zealand. The status of these 36 district plans (as at 25 February 1997) was as follows:

- Two plans were operative
- Ten plans were at the stage where the council had made decisions on submissions on the proposed plan
- Seventeen plans were at the proposed stage
- Seven plans had yet to be formally notified under the Resource Management Act

The biodiversity protection provisions in the plans were highly variable, ranging from minimalist to comprehensive (for example, Waitakere City). Figure 1 (from Froude 1997) shows the range of approaches used by territorial authorities to promote biodiversity protection for terrestrial ecosystems.

3. BIODIVERSITY PROTECTION PROVISIONS IN THE RESOURCE MANAGEMENT ACT

The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. **Sustainable management** is defined in section 5(2) of the Act to be as much about managing the protection of natural and physical resources as it is about managing their use and development. The protection priorities of national importance are expressed in section 6 of the Act:

No additional provisions (e.g. Central Otago)	Plan Objectives and Policies			Designations	
General vegetation clearance rules <ul style="list-style-type: none"> General rule regulating indigenous tree removal/partial removal (provided certain criteria are met, e.g. Gore, Auckland City-Isthmus Section) General rule regulating indigenous forest clearance in all or most of district (minimum area, forest height varies) (e.g. Thames-Coromandel, Otorohanga) General rule regulating indigenous forest clearance in all or most of district, but with different standards in different locations, depending in the extent of native forest remaining in those locations (e.g. Stratford) General rule regulating indigenous vegetation clearance (and wetland drainage/infilling in some cases) in all or most of district (minimum area, definition native vegetation varies (e.g. Rotorua) General rule regulating indigenous forest/vegetation clearance for all or most of district plus a schedule of identified significant natural areas—the latter being for information purposes (e.g. Waipa). 	Screening criteria <ul style="list-style-type: none"> Use of screening criteria to determine whether an activity is permitted, discretionary or non-complying with respect to indigenous vegetation/habitat modification and clearance (e.g. Ruapehu uses Fauna and Flora Screening Procedures) 	Schedule of significant trees <ul style="list-style-type: none"> Rules regulate damaging activities (e.g. Nelson City) 	Schedule of identified significant natural areas <ul style="list-style-type: none"> Schedule primarily public land (e.g. Dunedin City) Schedule relatively limited areas of private land (e.g. Waitaki) Schedule relatively comprehensive (e.g. Far North) Rules relating to identified sites range from regulating any damaging activity, to controls on specific activities such as indigenous vegetation/forest clearance. In some cases clearance of more than a minimum area is required before the activity is regulated (e.g. Waitaki, Queenstown-Lakes, MacKenzie). Two schedules. One contains more ecologically significant sites, and is accompanied by rules regulating damaging activities. The other contains the less ecologically significant (but still significant) sites. This schedule is for information purposes and used in assessing any resource consent applications (e.g. Horowhenua, Western Bay of Plenty) 	Corridors and ecological linkage areas <ul style="list-style-type: none"> Rules regulate activities in ecological corridors (not identified). Rules regulate activities in identified ecological linkages and corridors (e.g. Waitakere City) 	Rules on subdivision and development <ul style="list-style-type: none"> Little use made of this opportunity Environment protection, including protection of ecologically valuable areas, addressed as financial contributions Financial contributions set at a high level for reserves (e.g. Auckland City 10% for reserves) Subdivision/development rules require protection of ecologically valuable areas/environmental mitigation (e.g. Kapiti, Waitakere City) Subdivision related incentives—an entitlement for an extra lot in exchange for protection of an ecologically valuable area (e.g. Western Bay of Plenty, Rodney, Rotorua) Development related incentives—an entitlement to extra development opportunities (e.g. decreased setbacks, increased intensity of activity) in return for legal protection and fencing of an area of ecological value (e.g. Far North)
		General rules plus schedule <ul style="list-style-type: none"> General rule regulating indigenous forest/indigenous vegetation clearance plus a schedule with a limited range of ecologically significant sites whose modification is regulated (e.g. Tauranga) General rule(s) regulating indigenous vegetation clearance (and possible other damaging activities, e.g. stock grazing) plus a relatively comprehensive schedule of ecologically significant sites whose modification is regulated (e.g. Waitakere City) 			

Figure 1. Terrestrial biodiversity protection (excluding riparian/coastal margins and landscape provisions): general regulatory approaches adopted or proposed by territorial authorities, as at 25 February 1997. (Reproduced from Froude 1997)

Section 6 Matters of national importance

'In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna . . .'

Natural character in section 6(a) includes the 'protection of ecosystems and ecological processes and the extent to which these are modified by any development' (Gill v. Rotorua District Council 1993 2NZRMA 604(PT))

The Act does not define **significant** in terms of section 6(c). As there is no relevant case law or national policy, the decision on what is 'significant' is made at the individual council level. To date councils (especially territorial authorities) have used a wide range of criteria and approaches when determining significance. It should be noted that the Act does not qualify the term 'significant' to only refer to ecological significance. This means that areas of indigenous vegetation and wildlife habitat can be significant for a range of reasons including their ecological values, water and soil conservation values and cultural values.

Section 7 of the Act requires all persons exercising functions and powers under the Act to have particular regard to a number of matters including '(d) Intrinsic values of ecosystems'.

Intrinsic values are defined in section 2 of the Act as meaning:

'those aspects of ecosystems and their constituent parts which have value in their own right, including:

- (a) their biological and genetic diversity;
- (b) the essential characteristics that determine an ecosystem's integrity, form, functioning and resilience.'

4. SOME DISTRICT PLAN TOOLS FOR PROMOTING PROTECTION

A schedule of ecologically significant sites is a list of sites which a council decides are ecologically significant for the purpose of its plan. The sites are usually identified on the council's planning maps. There are usually rules restricting activities in the identified sites. The comprehensiveness of schedules is highly variable across the country.

Another common tool is the use of general vegetation clearance controls. These are rules that specify a maximum area that can be cleared before council

consent is required. Such rules can apply throughout the district or in a particular zone or vegetation type. There is considerable variation across the country. The definition of native forest or vegetation affected by any rule is also highly variable. Appendix 1 contains an example of vegetation clearance controls from Rotorua District Council.

5. SCHEDULES OF ECOLOGICALLY SIGNIFICANT SITES

Nearly two thirds of councils reviewed used or proposed to use a schedule. Schedules ranged from those that only contained already protected sites, to those that included a large number of sites on private land.

The schedules of ecologically significant sites were based on ecological databases of varying comprehensiveness. At the most basic end, the databases used a single old report (for example a former Wildlife Service report identifying Sites of Special Wildlife Interest) without any updating. Many schedules were based on databases compiled by collating a variety of existing reports and surveys. The information so collected was of variable age, quality, and comprehensiveness. Only a few councils had collected new information for their schedule of ecologically significant sites.

Relatively few councils listed in their plan the criteria used to compile their schedule of ecologically significant sites. Although not often specified, it is clear that the criteria used were highly variable.

Relatively few councils with schedules of ecologically significant sites had consulted, or intended to consult comprehensively with landowners before the notification of their proposed district plan. Some councils consulted landowners after the plan had been formally notified. Council expertise and commitment to landowner-consultation and negotiation varied considerably. Some councils reported that landowners who objected to inclusion in a schedule were automatically deleted regardless of the ecological values of the site. Often no alternative mechanisms were developed to address biodiversity protection for the deleted sites. Some councils retained at least some sites objected to by landowners, excluding those of poor quality. In some cases site boundaries were adjusted.

There were some situations where consultation was not able to address the deep suspicion of the landowners, especially where there were other complicating processes, for example, the high country pastoral lease tenure review.

6. PROBLEMS WITH SCHEDULES OF ECOLOGICALLY SIGNIFICANT SITES

Some of the main problems associated with using a schedule of ecologically significant sites are:

- The use of poor quality, old, and incomplete information about a district's biodiversity values results in incomplete schedules, with important areas omitted and inappropriate areas included. The latter leads to landowner-antagonism.
- A number of council representatives reported that they did not have the training or experience to adequately address the biodiversity protection provisions in the Resource Management Act. They felt that they did not understand ecological databases and their limitations.
- The criteria used by some councils for compiling schedules of ecologically significant sites were so restrictive that only a few outstanding sites were included. Often these sites were already protected under other legislation.
- Poorer rural councils often have less funds available to collect biodiversity information, and to develop appropriate plan provisions, especially incentives. (Schedules tend to be a relatively expensive tool, when done properly.)
- Some councils reported a reluctance by councillors to spend money on biodiversity protection, especially where protection involved financial assistance to landowners. This often included the provision of rate relief.
- Many councils do not consult landowners about sites identified in schedules because of costs, time, not recognising the values of landowner consultation, other priorities, and uncertainty about how to consult, especially for Maori land.
- Inadequate consultation with landowners can result in much landowner opposition.
- Identified sites can be viewed by landowners as *de facto* reserves.
- Schedules can bring forward debates on future land uses/development options for the identified sites.
- The problems of poor consultation are increased where the site information is outdated, inaccurate, or the property was visited without permission.

7. OTHER BIODIVERSITY PROTECTION METHODS USED

Observations about some other methods used by territorial authorities to address the biodiversity protection provisions in the Resource Management Act include:

- General vegetation clearance controls (see Appendix 1) were used, or proposed for use by about half the councils reviewed.
- Some councils used both a schedule of ecologically significant sites, and general vegetation clearance controls. Often this was because one or both techniques were used in a limited way.

- Approximately 50% of the councils reviewed used, or intended to use, some form of coastal or aquatic riparian zone or overlay, where certain activities were more strictly regulated.
- Of the 36 territorial authorities reviewed, 6 had used a landscape zone or overlay. These zones or overlays included landscapes dominated by indigenous ecosystems.
- Few councils implemented, or proposed to implement, ecological rehabilitation projects.
- Some plans provided for councils to require the protection of areas of ecological value when subdivision occurs.
- Most councils had not developed a package of incentives. Approximately one third of councils intended to offer rate relief for legally protected areas.
- Some councils used extra development privileges (for example, bush or protection lot subdivision) as incentives to promote the protection of ecologically valuable areas.

8. LESSONS LEARNED ABOUT LANDOWNER CONSULTATION

Early and effective consultation and negotiation about proposed provisions to promote biodiversity protection can significantly reduce landowner concerns particularly by the time the plan has been notified. **Landowner consultation takes time. It needs to be planned in advance.**

Effective consultation can include:

- Working in small groups and then on a ‘one to one’ basis to address specific concerns. The latter normally would occur on the landowner’s property.
- Informing landowners about the natural values in the general area and specifically for their property.
- Helping landowners see how their activities impact on natural ecosystems on and outside of their property.
- Working through the proposed plan provisions, including any incentive mechanisms, with individual landowners. This includes clarifying that the site boundaries are appropriate.

This process was successfully followed in the pre-formal stages of the proposed Estuarine Protection Zone for the predominantly natural margins of that part of Ohiwa Harbour that lies within Whakatane District.

9 . C O N C L U S I O N

Territorial authorities are highly variable in how they address biodiversity protection. Better biodiversity outcomes will occur when the problems identified in this survey are addressed. This will involve:

- Improved council and community understanding of biodiversity values, threats and ecosystem processes
- The use of appropriate biodiversity protection techniques that are suited to each district's circumstances
- The use of effective landowner consultation and negotiation techniques

A schedule of ecologically significant sites is not the most appropriate tool for all situations. Where a schedule is the chosen approach, the essential features should be that:

- Quality information is used
- Criteria are clear and appropriate
- There is effective consultation and negotiation with landowners
- Incentives promoting biodiversity protection are available
- The limits of the technique for promoting biodiversity protection are recognised

10 . A C K N O W L E D G E M E N T S

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11 . R E F E R E N C E S

Froude, V.A. 1997. Implementing the biodiversity protection provisions in the Resource Management Act—a review of council progress to date. Pacific Ecologic Resource Management Associates, Wellington. 116 p.

A P P E N D I X 1

An example of a general rule controlling indigenous vegetation/forest clearance from Rotorua District Council Proposed District Plan as amended by council decisions

Definition of indigenous vegetation

‘a plant community (including geothermal) in which indigenous species naturally occurring in that part of New Zealand is important in terms of site coverage, structure and/or species diversity. This includes regenerating secondary vegetation which has the reasonable potential to become vegetation of the kind that originally gave that part of New Zealand its distinctive character.’

Definition of an indigenous tree

‘an indigenous woody plant which ultimately forms part of the canopy or tallest stratum of a naturally occurring forest in that part of New Zealand.’

Discussion of the rule controlling indigenous vegetation clearance

There are a variety of ways that general rules relating to indigenous vegetation clearance/logging can be written. Rotorua District specifies a maximum area that can be cleared as a permitted activity. In the rural zones it is a permitted activity to clear or modify an area of indigenous vegetation that is less than 500 m² over any 2 year period where 500 m² is either the total for an individual site or for an individual remnant where that remnant covers more than one site. The felling of any indigenous tree (including the taking of firewood) to produce up to 100 m³/yr on any one site is also a permitted activity. Discretionary activities are those which involve the clearance or modification of indigenous vegetation or the felling or destruction of any remnant indigenous tree, other than that provided for as a permitted activity. In the residential and tourist zones the maximum area that can be cleared as a permitted activity is 100 m². Similarly only the felling or destruction of any (remnant) indigenous tree with a height of less than 6 m and a trunk circumference of less than 90 cm at a height of 1.4 m above ground level is a permitted activity.

Often plans containing general rules relating to indigenous vegetation/forest clearance include specific assessment criteria to be used when council considers applications for indigenous forest/vegetation clearance and logging. These criteria are additional to those which council uses to assess other activities requiring consent.