

THE PLACE OF FORESTRY IN THE WAIROA DISTRICT SCHEME

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INTRODUCTION

The Town and Country Planning Act 1977 replaced the older 1953 Act, and put a much greater emphasis on control of activities by regions and districts rather than by central government.

The Act requires regional or united councils to prepare regional schemes which must give the objectives and policies for the further development of the region, and for their implementation having regard to national, regional and local interests, and to the resources available.

Regional schemes which bind the Crown after their adoption are expected to provide a link between central and local government by way of the regional planning committees which are advisory to the regional (or united) council. The committees include members from local government (*e.g.*, the regional council and catchment boards), and from central government (*e.g.*, Ministry of Works and Development). It is worthy of note that, although provision is made for Maori representation, if there are significant Maori land holdings in the region, no similar provision is made for forestry representation.

At the next level down, districts (usually counties) are required to prepare district schemes which must fit within the framework and provisions of regional schemes, and which must be reviewed at five-year intervals. District schemes must be prepared even where no regions have yet been established (and hence where there are no regional schemes) and must provide for much closer control of the districts or counties than is the case in regional plans.

In particular, district schemes must provide for the establishment or carrying on of land-use activities appropriate to the objectives of the scheme, for the preservation or conservation of plants and landscape of scientific interest or visual appeal, and for the avoidance of damage by landslip, erosion or flooding.

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WAIROA COUNTY

Wairoa County is generally steep, hilly land with soils derived from recent mudstones and siltstones. Except in the higher and still more rugged land to the west, most land has been cleared of indigenous forest and converted to pastoral farms. Widespread sheet erosion has followed intense rain from cyclonic storms and in 1977 two such storms caused severe damage in some areas. Erosion control work by Hawke's Bay Catchment Board is extensive — in many cases by way of subsidies on work done by farmers.

Major exotic forests are Mohaka, Patunamu, part of Wharerata, Ngatapa and Nuhaka. Even so, production forest comprises less than 2% of the county area, while pastoral farming comprises more than 70%.

WAIROA DISTRICT SCHEME

Wairoa County has a district scheme within which forestry and farming were both predominant uses in rural land, that is to say, they were both permitted as of right.

The first five-yearly review was prepared in 1977 for Wairoa County Council by a firm of town planning consultants. The review objectives recognised that land should be used according to principles of best land use, but followed it up by noting that pastoral farming was the dominant use, that servicing industries and social infrastructure were based on this and that land should not be used other than for farming unless it was clearly unsuitable for farming. This seemed to establish that farming is *per se* the best use that the land could have.

The scheme zoned the rural land in three zones:

Rural A — The fertile alluvial river flats

Rural B — Hill country with some erosion problems

Rural C — Hill country with considerable erosion problems

Ordinances set out the land uses for the zones. Rural A was designated for cash crops, and forestry was prohibited. For Rural B and C forestry was to be a "conditional" use requiring publicly notified application to the Council.

Pastoral farming was to be a conditional use on Rural C land but permitted as of right (a predominant use) on Rural B land.

Farm afforestation lots (farm woodlots) were to be predominant uses for Rural B and C land, but were required to be less than 4 ha in area and were required to be used for supplying the timber, etc., requirements of the farm only.

OBJECTIONS

Objections to the review district scheme were heard in August 1978. The Ministry of Works and Development, under the Town and Country Planning Act, speaks for other government departments including N.Z. Forest Service. It is known that Forest Service officers advised the Ministry that on erodable land such as is common in Wairoa, and bearing in mind the high priority given to forestry in Hawke's Bay by the Government following the 1969 National Development Conference, forestry should be a predominant use on Rural B and C land.

At the public hearing the Ministry did argue that forestry should have equal status with farming and not be discriminated against, but followed by saying this was legally and administratively impracticable since for a use to be predominant all controls, restrictions and conditions must be specified and this would not be possible. So, except for arguing for an increase in the size of woodlots to 80 ha (or 10% of farms over 800 ha) and for their predominant use status in Rural B (not Rural C), the Ministry continued to recommend that forestry should be a conditional use in Rural B and C.

The Forest Owners' Association, the Institute of Foresters and Carter Holt Ltd all argued for predominant use status for forestry in Rural B and C, and the Forest Owners' Association also sought predominant use status for nurseries and seed orchards on Rural A land.

The Wairoa County Council also formally objected to its own scheme; herein lay some of the cause for a confused and badly ordered set of hearings at which some of the objectors were having to deal not only with their objections to the published review scheme, but also to the changes which would result from the County's objections.

In its objections the County contended that the review scheme gave insufficient protection from afforestation to land which was better suited to farming. It also contended that there was a need for special conditions to control the harvesting of forests.

DECISION ON OBJECTIONS

The County adjudicated on the objections, including its own. The County:

- (1) Recognised a difference between protection and production forestry and made both conditional uses on both Rural B and C.

- (2) Also made harvesting of both protection and production forest a conditional use.
- (3) Made forest management plans mandatory for all afforestation, and forest harvesting plans mandatory for all felling and extraction.
- (4) Recognised farm woodlots as a predominant use but with a maximum area limitation of 4 ha (or 2% of farm area) and with the stipulation that farm woodlots were "to provide the timber requirements of that farm".
- (5) Provided for plant (not tree) nurseries as a predominant use on rural A.

The basic logic of the County decisions is probably best given in part of the statement of objectives which the County decided to adopt, thus,

It is the policy of the County to ensure that land in good pasture should not be converted to other uses such as afforestation and that such conversion should be permitted only where it can be conclusively shown that the land is predominantly more suitable for afforestation or has no potential for long term primary production.

Between notification and objection stages the County had reacted strongly to favour farming interests, and its objections and decisions clearly reflected the fears expressed by local farmers that forestry would overrun the County, that the countryside would be depopulated, that farmers would not be able to compete with land-hungry, money-loaded afforestation companies and the belief that there was no real erosion problem.

APPEALS

Appeals against the County decision were heard before the Planning Tribunal (Number Two Division) under the chairmanship of W. J. M. Treadwell, S.M., in May 1979. The hearing occupied 5 days and one estimate of the direct cost of salaries and travel expenses for those who attended was \$60 000.

One consequence of the confusion prevailing at the objection stage was that the Institute of Foresters was not recognised as an objector and therefore had no standing to appeal. Instead it gave its support to the Forest Owners' Association.

All the appellants were represented by counsel and numerous witnesses were called, some under subpoena. Witnesses were open to cross-examination and the "adversary" atmosphere of the legal system prevailed.

The County Council as respondent gave evidence first, through its counsel, to explain its decisions. Evidence was also given by a principal of the Council's town planning consultant firm, the County chairman, a Rural Bank manager, local farmers, and a senior lecturer in geography from Victoria University.

Some of the points made by witnesses for the Council were:

- (1) Rural A land should continue to be used for agricultural and pastoral farming and horticulture with increasing emphasis on cash crops and vineyards (and racing stables). Intensive forestry, such as tree nurseries, do not benefit the County and should be prohibited.
- (2) The County is predominantly a pastoral County. Its policy is to encourage the best possible land use which does not upset the present pastoral industry and thus it is policy to favour pastoral farming above all other uses.
- (3) Land should only be afforested if there is no possibility of pastoral farming. Forestry should definitely be a secondary use.
- (4) Pastoral farming should be a predominant use in every zone except Rural C (which the Council had rejected as a zone except for that part forming a portion of Urewera National Park).
- (5) There is no real erosion problem in the County. Areas which have slipped are quite as productive, or more so, within a season.
- (6) Only 4 to 6% of New Zealand's land surface is arable, but there are large areas of marginal land, some reverted to scrub, which are likely to be productive for forestry. There is more land in the East Cape region than can be planted. The farms of Wairoa were created from their virgin state, much of it virgin forest, by the labour of the first settlers. (Rhetorically) should this land, which has a permanent future in good pasture, be converted to forests for private gain?
- (7) Protection forestry should be a conditional use to thwart commercial companies from establishing production forest by subterfuge.
- (8) Protection forestry should be a conditional use to prevent it being used as an erosion cure where improved pasture techniques might suffice.

- (9) Production forestry and harvesting should be conditional because not enough is known of their requirements to be able to define "necessary" constraints in the district scheme (whereas one ordinance provides all the constraint needed for pastoral farming).
- (10) Because land resource inventory sheets* are too broad in scale to identify precisely those areas which are specially suited to forestry, all forestry should be conditional in Rural C land.
- (11) Forestry users should contribute directly to the maintenance costs of County roads. Counties do not receive road user taxes directly.
- (12) If uncontrolled, forestry interests would not plant erosion prone areas but would concentrate on more profitable land easier to plant and harvest and closer to mills.
- (13) Production forest may generate three times as many jobs as pastoral farming, but its people are wage workers rather than land owners (and by implication of lesser desirability).
- (14) Forest workers live in towns and hence forestry development leads to rural depopulation, closed schools and problems for country children who have to transfer to an urban environment.
- (15) A 4 ha farm woodlot is more than ample to provide for the timber needs of any farm.

The Crown was in an awkward position, for Forest Service senior staff were known to be strongly opposed to the decisions of the County to make forestry and harvesting conditional uses, and to limit severely the scope of farm woodlots.

The Ministry of Works and Development, however, must represent all interests of the Crown, and some of those interests were not in favour of forestry as a predominant use. Indeed, it seems that, because control of the district scheme's provisions would be more certain and "tidier", the Ministry's expert witness was disposed toward conditional use.

For a time it seemed that the Forest Service might give evidence in its own right, relying on the authority of the Minister of Forests to "co-ordinate the policies and activities of the Forest Service

* Land Resource Inventory, carried out by Ministry of Works & Development and published at a scale of 1 : 63 360.

and other Government departments, local authorities and Government bodies in relation to the establishment, protection, management and utilisation of forests" (Forests Act 1949, sec. 15 (1) (d)). But the Forest Service had not been an original objector and therefore did not have status at the appeal.

The major evidence in favour of forestry was given by the Forest Owners' Association which was able to call evidence from a planning consultant, a forestry consultant, forest managers, members of the Institute of Foresters, and a Conservator of Forests under subpoena.

It is not proposed to give here the arguments in rebuttal of claims made by the witnesses for the Council but it is noteworthy that possibly the most positive good for the forestry interest came toward the end of the hearings when the Forest Owners' planning consultant, with some assistance, drafted sections of a statement of objectives and ordinances for a revised scheme which would:

- (1) Recognise that land in pasture which is demonstrably more suitable for sustained pastoral production should not be converted to other uses.
- (2) Recognise the policy of the Council to encourage the establishment, maintenance and harvesting of forests.
- (3) Recognise the need, in the national interest, to establish up to some 40 000 ha of exotic forest in the County for both production and protection purposes.
- (4) Recognise as a predominant use protection and production forests on land which is not demonstrably more suitable for sustained pastoral production, provided that more than 50% of the land subject to any forestry purpose is denoted as class V, VI or VII on the N.Z. Land Resource Inventory sheets.

THE DECISIONS

The Tribunal ruled on the appeals in September 1979 and its decisions are likely to have a considerable influence on the many counties which are even now in the process of producing new district schemes or which are reviewing existing schemes.

It is noteworthy that the Tribunal, having reviewed the stages leading to the appeal and the appeal evidence but before considering the appeals, was critical of the fact that much of the substance of the appeals had never been put to the Council or its

planning consultant. Even during the appeal hearing, cross-examination failed to deal with far-reaching and important suggestions as to the scheme statement and ordinances.

Clearly, effective communication had been too little and too late.

The Tribunal made it clear that it was neither its function nor intention to write the detail of the district scheme, and accordingly it declined to make detailed final decisions. Instead, it decided to refer all matters back to the parties by way of interim decision for the formulation of ordinances and scheme statement policies which should reflect the Tribunal's general comments. Notwithstanding this, it then set out quite specific guidelines which could reasonably be expected to be carried forward into the operative District Scheme. In practical terms, the decision would then have the effect of a final decision.

First, it considered whether forestry should be a predominant or conditional use in the Rural B zone (virtually all the rural land excepting the fertile valley flats and Urewera National Park). The comments of the Tribunal which follow have been quoted in their entirety because they are important in themselves and for their implications for future actions.

The evidence disclosed that on a regional basis and in the national interest, forestry should be encouraged in the Wairoa County, it being of prime importance for the purpose of providing future raw materials for the pulp and paper mill at present operating north of Napier city. We do not consider that the alleged upset to the social and commercial structure of the Wairoa County will follow the establishment of forestry, provided forestry is not permitted to spread in an uncontrolled fashion over the whole of the County. The evidence in fact leads us to the conclusion that forestry may give an added impetus to the future development of the district by providing more job opportunities, and by adding a diversity of output which may cushion the district against short term fluctuations in pastoral marketing. We consider that the suggestions of the New Zealand Forest Owners Association Inc more or less reflect our thinking and that the suggested scheme statement and ordinance read as follows:

Scheme statement — it is the policy of the Council to ensure that land in pasture which is demonstrably more suitable for sustained pastoral production should not be converted to other uses. It is also the policy of Council to encourage the establishment, maintenance and harvesting of forests. In considering proposals for forestry, Council shall have regard to the need in the national interest to establish in the County up to approximately 40 000 hectares of exotic forest for both production and protection purposes.

Council will continue to encourage the establishment of forest, particularly on land classified as class V, VI, VII as shown on the New Zealand Land Resource Inventory worksheets. This policy will be reviewed if or when the land area occupied by exotic forests reaches 10% of the total land area of the County.

Code of Ordinances — Rural B — predominant uses shall include:

Protection and production forests on land which is not demonstrably more suitable for sustained pastoral production, provided that more than 50% of the land subject to any forestry proposal is denoted as class V, VI or VII on the New Zealand Land Resource inventory worksheets. Where there is insufficient information on the said worksheets or there is reason to believe the information may not accurately reflect the position in a particular situation, the Council may request that an on-site capability survey be prepared by the New Zealand Forest Service on behalf of both local authority and land owners.

(Note: This requires some tidying up and it should perhaps be better if the proviso simply included after the expression 'N.Z. Land Resource Inventory worksheets' the words:

'Where there is insufficient information on the said worksheets or there is reason to believe the information may not accurately reflect the position in a particular situation the Council may request a further on-site capability survey at a scale of 1 inch to 500 metres for the purpose of assessing whether 50% of the land is in fact class V, VI or VII'.)

Conditional uses shall include:

Forests that do not comply with requirements for a predominant use.

It should be noted here that land-use capability classes are used in the N.Z. Land Resource Inventory worksheets.

Classes I to IV comprise land suitable for cultivation for cropping, classes V to VII are reckoned as generally being unsuitable for cropping but suitable for pastoral or forestry use with increasing limitations, while class VIII is reckoned suitable only for protection purposes.

It is significant and important that the Tribunal has confirmed the requirement for a district to recognise not only its own interests but also to comply with the regional and national interest, and that the ultimate decision as to the suitability of land for a specific use does not lie with the Council.

A further important point to emerge is that the Tribunal recognises that it is both proper and practicable to give predominant use status to a land use which requires a substantial period to come to maturity or full production and for which all the desirable constraints might not be immediately known and described.

HARVESTING

The Tribunal then turned its attention to timber harvesting and clearly was sympathetic to the arguments put forward for the Forest Owners' Association:

On the question of timber harvesting we consider that this should be deleted as a conditional use. The Catchment Board by use of section 34 of the Soil Conservation and Rivers Control Act 1941 or by the exercise of bylaw powers can adequately control such harvesting. It is also incompatible with the objectives of the district scheme to say, on the one hand, that forestry will be encouraged and, on the other hand, to say that its harvesting may be discouraged. It must be accepted that if an area is to be subject to afforestation the harvesting of that forest is an integral part of the whole development. No forestry project would ever be commenced if the developers had the faintest premonition that their harvesting activities may be thwarted by conditional use procedures. It is indeed doubtful whether such an ordinance would be *intra vires*.

In respect of forest management plans, we consider the ordinances at the moment to be unnecessarily restrictive. We prefer the approach adopted by Mr Davies who was called as a planner on behalf of the N.Z. Forest Owners Association Incorporated. We gather that his approach (basically) has the approval of the Consultant Planner, Mr Porter. The general approach was to make a forest, including the planting, maintenance, thinning and harvesting of trees, a predominant use with the following proviso:

Provided that notification of an intention to establish a forest shall be given to Council and shall be accompanied by a forest management plan (FMP). Such FMP shall be prepared by a full member of the N.Z. Institute of Foresters and shall:

- (a) Provide for the management of the land for a period not exceeding 20 years.
- (b) Indicate the forest-tending strategy to be carried out.
- (c) (Show) The approximate areas of the forest from which forest produce may be disposed of, and/or the approximate volume of forest produce that may be disposed of.
- (d) (Demonstrate) Compliance with any requirements of the Catchment Authority made under the provisions of the Water and Soil Conservation Act 1967 and the Soil Conservation and Rivers Control Act 1941.

The purpose of the FMP is to advise Council of the intention, scale and timing of forest development, so that Council is able to make its own plans accordingly.

We consider that this proposed ordinance should be slightly expanded to require that a copy of such plan be also lodged with the local Catchment Board. This would enable that Board to take any steps it thought fit if the proposal caused any concern in respect of soil erosion.

It is of interest to note that the Tribunal saw the whole gamut of operations — planting, maintenance, thinning and harvesting

— as constituting a complete use which must be justified and controlled as a whole and not piece by piece. It is a useful declaration which might well be adopted as a matter of principle.

Of interest, too, is the proposal that forest management plans should be prepared by a full member of the N.Z. Institute of Foresters. It is believed this suggestion was put forward with the intention of ensuring that the management plans were prepared with impartiality by people of recognised competence. It could well be a burden which the Institute must consider carefully.

A third point to make is that the purpose of the detail of the management plan is not to list the constraints on forestry but to advise the Council of operations well beforehand so that the Council can prepare to fit them into the development of the County. The Council does not have the power to approve or disapprove of the management plan, which operates only on a notice to Council. Provided that the minimum requirements as set out in the decision are covered, the Council cannot prevent the establishment of a forest.

FARM WOODLOTS

The Tribunal dealt with appeals relating to farm woodlots briefly and positively, thus:

Predominant use — farm woodlots

Provided that the woodlot shall at the time of establishment and up to the time of harvesting be ancillary to the main use of the land for pastoral farming purposes.

The Tribunal did not think land owners would use the flexibility of the wording to circumvent the other ordinances relating to forestry.

This decision means that farm woodlots have not been restricted to Rural B (and C) and could conceivably be grown on suitable areas of Rural A land, and the Tribunal has removed any limitation on area.

TREE NURSERIES AND TREE (SEED) ORCHARDS

The Tribunal saw no reason why tree nurseries and seed orchards should not be allowed as predominant uses on Rural A land, and left it to the County to develop an appropriate ordinance. In doing so it recognised these uses as wise use of a class of land which is admittedly of special value for food production.

FORESTRY AS A WISE LAND USE, OR FORESTRY FOR EROSION CONTROL?

In its conclusions the Tribunal made an important statement which should be remembered carefully by advocates of forestry. In discussing the genuine endeavour of the Council to deal with the vexed question of erosion control it said:

We do not, however, consider that a use such as forestry should be forced onto poorer land merely because forestry activities achieve the secondary objective of erosion control. Such an approach seems to overlook the suitability of the land for the use proposed and places forestry interests in an erosion control category rather than a wise land use category.

CONCLUSION

This account might be concluded with expressions of satisfaction that forestry has been upheld as a legitimate and wise use of land, not to be dismissed lightly as the "poor relation" of farming.

It might be a matter of satisfaction, too, that the decisions should set an important precedent for many future district schemes.

Such satisfactions should be tempered by the knowledge that the decision is an interim one which invites the County to formulate the actual ordinances and scheme statement policies to reflect the general comments made by the Tribunal.

It remains for those whose interest is the wise use of land to ensure the reflections are true and bright, not only in Wairoa but in all regions where the potential of forestry to complement agricultural land use is not yet recognized.