



LOCAL GOVERNMENT COMMISSION

**Report on the proposal
of Watercare Services Limited
to alter the Inner Area
of the
Auckland Metropolitan Drainage District**

May 2002

INTRODUCTION

- 1 On 17 January 2002, Her Excellency the Governor-General wrote to the Chairman of the Local Government Commission, directing the Commission under section 8(3) of the Auckland Metropolitan Drainage Act 1960 (“the Act”) to inquire into and report on the proposal of Watercare Services Limited (“WSL”) to alter the Inner Area of the Auckland Metropolitan Drainage District (“the Inner Area”).
- 2 This report recommends that the Governor-General proceed to issue an Order in Council altering the boundaries of the Inner Area as proposed by WSL in its petition.

BACKGROUND

- 3 On 4 October 2001 WSL publicly notified, in accordance with section 8 of the Act, its proposal to extend the Inner Area to include certain parcels of land located in the districts of Manukau City and Waitakere City. The public notice notified interested persons of the right to make an objection to the proposal by 5 November 2001.
- 4 On 2 November 2001, Mr Peter Mawhinney, on behalf of a number of companies and trusts, forwarded to the Minister of Internal Affairs an objection to the WSL proposal. The objection sought the inclusion of 6.7987 hectares of land at Swanson (“the Mawhinney block”) within the Inner Area.
- 5 The Commission received its direction from the Governor-General on 18 January 2002.
- 6 On receipt of the Governor-General’s direction, the Commission decided to invite the following persons and organisations to make written submissions on the WSL proposal and the objection received from Mr Peter Mawhinney:
 - WSL
 - Mr Peter Mawhinney
 - Waitakere City Council
 - Manukau City Council
 - Auckland Regional Council.Submissions were received from WSL and the local authorities. Mr Mawhinney did not make a submission. The submissions are attached as Appendix A.

THE PURPOSE OF THE INNER AREA

- 7 The division of the Auckland Metropolitan Drainage District into an Inner Area and an Outer Area enables WSL to manage the capacity of its wastewater treatment system on a regional basis. The Inner Area operates to limit the number of users that can connect to WSL’s wastewater treatment system. Within the Inner Area territorial authorities may connect to any main sewer operated by

- WSL. In the Outer Area territorial authorities may only connect to the WSL system with the consent of WSL and on such conditions as may be agreed with WSL.
- 8 A map showing the existing boundary of the Inner Area, the land which is the subject of the WSL proposal, and the Mawhinney block is attached as Appendix B.
- 9 The map also shows the position of the Metropolitan Urban Limits. The boundaries of the Inner Area and the Metropolitan Urban Limits are for the most part coterminous. In a small number of areas the two boundaries are not coterminous – this is principally due to planning changes instituted by local authorities over time. The Metropolitan Urban Limits are established by the Auckland Regional Policy Statement, and they set the limits of future urban growth in greater Auckland. District plans are required to be consistent with the Auckland Regional Policy Statement and may only zone land within the Metropolitan Urban Limits for urban development.

PRELIMINARY CONSIDERATION

- 10 After an initial consideration of the WSL proposal, Mr Mawhinney's objection and the submissions received, the Commission came to a preliminary view that it had no jurisdiction to consider Mr Mawhinney's request for the inclusion of the Mawhinney block within the Inner Area. On 28 March 2002, the Commission's Chief Executive Officer, at the behest of the Commission, wrote to Mr Mawhinney informing him of the Commission's preliminary view regarding jurisdiction and inviting him to comment on two specific issues by 12 April 2002. A copy of the letter is attached as Appendix C. Relevant paragraphs of that letter follow:

The Commission's preliminary view is that any objection to a publicly notified proposal must relate directly to that proposal. An objection to a notified proposal can only seek a different boundary alteration (in other words the addition or removal of other land) if it is related to the proposal itself. It appears to the Commission that there is no relationship between the land you wish to have added to the Inner Area and the land which is the subject of the Watercare Services proposal. Without such a relationship, the Commission's view is that it has no jurisdiction to consider your request.

I accordingly invite your comment on these issues as follows:

- 1 Do you object to the inclusion of any of the land listed in the Watercare Services application within the Inner Area? To the extent that you do not object to the inclusion of this land within the Inner Area, the Commission will proceed to make a recommendation to the Governor-General on the material before it, without a hearing on the application. (If you do object to the inclusion of the land listed in the Watercare Services Limited*

application then you will have the opportunity to speak to your objection at the hearing scheduled for 29 April 2002.)

2 Is there any relationship between the land described in section 3 of your objection and the land referred to in the Watercare Services application? If so, what is that relationship? If not, on what basis do you say that the Commission has jurisdiction to consider the addition of the land in your objection? (At the hearing scheduled for 29 April you will have the opportunity to outline your views on the nature of any relationship and the issue of the Commission's jurisdiction to consider the addition of the land to the Inner Area.)

- 11 At the time of writing to Mr Mawhinney the Commission also decided to hold a hearing on the WSL proposal, Mr Mawhinney's objection and the submissions from the interested local authorities. The hearing was scheduled for 29 April 2002 in Auckland.
- 12 Mr Mawhinney did not respond to the Commission's request for his comments by 12 April 2002. He did, however, address the issues at the hearing on 29 April 2002.

THE HEARING

- 13 On 29 April 2002, prior to the hearing commencing, Commissioners Constable and Marshall, accompanied by the Commission's Senior Advisor, travelled to Swanson and viewed the Mawhinney block.
- 14 At the hearing WSL, the Auckland Regional Council, and the Waitakere and Manukau City Councils spoke to their written submissions in support of the proposal proceeding. The relevant aspects of their submissions may be briefly summarised as follows:

WSL

- The Inner Area operates to limit the number of users that can connect to WSL's wastewater treatment system – it also serves a function of managing urban growth through roughly encompassing areas set aside in relevant district plans or the Auckland Regional Policy Statement for urban development.
- The matters raised in the objection would be more appropriately considered in a plan change process under the Resource Management Act 1991.
- The Inner Area is important because it provides the basis for allocating charges to the territorial authorities and a mechanism for managing the capacity of WSL's infrastructure on a regional basis.
- The boundary of the Inner Area has not been altered since 1990.

- The urban population of the Manukau City district has grown significantly in recent years - the Auckland Regional Policy Statement and the Proposed Manukau District Plan have opened up new areas of land for residential development, and WSL and the Auckland Regional Council have agreed that it would be more appropriate for these areas to be included in the Inner Area.
- In the case of Waitakere City, the Waitakere City Council has rezoned a number of discreet properties for residential development, and both WSL and the Auckland Regional Council have agreed that it would be more appropriate for these areas to be included in the Inner Area.
- Mr Mawhinney's objection is not directed against the extensions to the Inner Area as detailed in WSL's petition but rather seeks to have the Inner Area further extended to cover an additional area of land located in Waitakere City.
- The Mawhinney block is outside the Metropolitan Urban Limits and is not zoned for residential purposes.
- An extension to the Inner Area to encompass the Mawhinney block would be inconsistent with both the Auckland Regional Growth Strategy and the Auckland Regional Policy Statement which has identified the Mawhinney block as being outside the MUL for future growth.
- WSL considers that the Commission does not have the jurisdiction to consider the alterations to the Inner Area proposed by the objection – WSL considers that the Governor-General's discretion under section 8 of the Act is limited to an extension to "any area" proposed by WSL in its petition.
- WSL considers that the Commission can only "inquire into and report upon the said proposals", the "said proposals" being the extension to the Inner Area proposed by WSL in its petition.
- WSL would seek to change the Inner Area boundary to encompass the Mawhinney block if that land were zoned for urban development.

Auckland Regional Council

- Council is opposed to the extension of the Inner Area at Swanson to include the Mawhinney block.
- The Mawhinney block is outside the Metropolitan Urban Limits as defined in the Auckland Regional Policy Statement prepared under the Resource Management Act – all urban development is to be contained inside the Metropolitan Urban Limits, and expansion of urban activities outside the Metropolitan Urban limits is not permitted in terms of the strategic objectives and policies of the Auckland Regional Policy Statement.
- The Mawhinney block is rural land and there is no need to bring the land inside the Inner Area and supply a drainage service.
- Inclusion of the Mawhinney block within the Inner Area when the land is outside the Metropolitan Urban Limits would inevitably add to the pressures for inappropriate urban growth on the edge of the Auckland metropolitan urban area at Swanson.

Waitakere City Council

- Council supports the WSL proposal, which is entirely consistent with the Council's planning for urban growth in the Swanson area.
- Council is opposed to the Inner Area being extended to include the additional area identified in the objection.
- Detailed planning recently carried out for the Swanson area has not identified the land referred to in the objection for possible urban development.
- The inclusion of the Mawhinney block within the Inner Area would be inconsistent with the Council's District Plan and with the Auckland Regional Policy Statement.
- Extensions of the Inner Area should only be contemplated where land is intended to be urbanised in the near future.
- The Variation or Plan Change process provides the appropriate mechanism through which changes to the extent of the urban area can be made.

Manukau City Council

- The availability of land within the City boundaries and also within the Inner Area is now significantly reduced.
- With the expansion of residential subdivision to the outer borders connection to the public wastewater system is recommended in order to minimise any adverse effects.
- Due to the proposed growth of the City additional land for urban development must be made available in accordance with the Auckland Regional Growth Strategy.
- The extension of the Inner Area within Manukau City is urgent, as there are a number of developments that have resource consents waiting on this extension.
- The Mawhinney objection should be declined because the Act is not the appropriate piece of legislation to determine that a piece of land is suitable for development.

15 At the hearing Mr Mawhinney tabled and spoke to a submission, which is attached as Appendix D. The relevant aspects of the submission may be briefly summarised as follows:

- The objector companies subdivide land and sell, lease or rent the resultant allotments to people who wish to build their own homes.
- The objectors consider that a proposal to change the location of the single Inner Area boundary brings on the right of any person to make objections on any part of the boundary.
- The objectors submit that the Governor-General is not limited to considering areas that may have been listed in the originating WSL petition.
- The exercise of the boundary change under section 8 of the Act is to get the whole of the boundary right, not just parts of it – it is intended to be a fresh look at the location of the whole of the Inner Area.

- It is the Governor-General who decides the extent of the changes to the boundary, not the originating petitioner - the Governor-General may include or exclude areas of land by changing the boundary on an area by area basis, as the Governor-General sees fit.
- Because the Governor-General can include or exclude “any land”, it follows that the Commission has the jurisdiction to hear objections on a change to the Inner Area boundary outside of the specific locations referred to in the public notice.
- The Auckland Regional Council has imposed restrictions as to where people may build their homes on urban sized allotments, which is to within a certain line (the Metropolitan Urban Limits) around the metropolitan area.
- There is a large deficit in the supply of allotments in which to accommodate the population growth.
- The subdivision of the Mawhinney block would be easier bureaucratically if the Mawhinney block was included in the Metropolitan Urban Limits – to make the change to the Metropolitan Urban Limits bureaucratically easier, the Mawhinney block needs to be included in the boundary of the Inner Area.
- The inclusion of the Mawhinney block in the Inner Area would be of great assistance in fighting through a discretionary or non-complying subdivision consent application.
- The only reasons that WSL can give for not including the Mawhinney block in the Inner Area relate to bureaucratic obstacles that have no statutory basis.
- There are three primary relationships between the Mawhinney block and the land referred to in the WSL petition – both kinds of land are desperately needed for subdivision into residential allotments; both kinds of land provide urgently needed opportunities to increase the number of allotments on which homes can be built to stop the New Zealand economy from being wrecked by artificially high real estate values; both kinds of land are linked by the single boundary of the Inner Area of the drainage district to which they are adjacent, and both kinds of land should be included within the boundary.

16 Mr Mawhinney and WSL each exercised a right of reply in respect of the submissions made by each party to the hearing.

COMMISSION’S DELIBERATION

Jurisdiction

17 Following the hearing of the submissions of the interested parties the Commission decided that the first matter that it had to consider was whether it had the jurisdiction to consider Mr Mawhinney’s request that the Mawhinney block be included in the Inner Area.

18 The Commission notes that Mr Mawhinney sought to have a parcel of land which is quite unrelated to any areas sought to be included in the Inner Area by the WSL proposal. In the view of the Commission Mr Mawhinney was seeking to advance

a proposal which is quite separate from the WSL proposal. Mr Mawhinney acknowledged to the Commission that his motivation was to have the land included in the Inner Area to facilitate its subdivision. Unlike the land which is the subject of the WSL petition, the Mawhinney land is currently rural land which is not zoned for urban development.

- 19 At the hearing, in response to a question posed by the Chairman, Mr Mawhinney acknowledged that he had no objection to the specific parcels of land listed in the WSL petition being included in the Inner Area.
- 20 Given the lack of relationship between Mr Mawhinney's request and the WSL proposal, and the fact that he has no concerns regarding the inclusion of the parcels of land identified by WSL for inclusion in the Inner Area from proceeding to be included in the Inner Area, the Commission is satisfied that there is no substantive objection to the WSL proposal.
- 21 The Commission is of the view that the scheme of the Act does not permit an entirely separate and unrelated proposed alteration to be advanced by way of an objection to a petition from WSL or one of the relevant territorial authorities. That, in its view, must apply to the objection lodged by the companies and trusts represented by Mr Mawhinney. The Commission, therefore, is of the view that it does not have jurisdiction to consider Mr Mawhinney's request.

The WSL Proposal

- 22 While the Commission is of the view that it does not have jurisdiction to consider Mr Mawhinney's request, it is satisfied that the WSL proposal is appropriate in order to provide the necessary wastewater reticulation to identified growth areas in the greater Auckland area. It recommends that the Governor-General proceed to issue an Order in Council to alter the Inner Area of the Auckland Metropolitan Drainage District as proposed by WSL in its petition.

RECOMMENDATION

- 23 The Commission recommends that the Governor-General:
 - a. **note** that there is no substantive objection to the specific parcels of land identified in the WSL petition for inclusion in the Inner Area;
 - b. **note** that the Commission considers that it does not have jurisdiction to consider Mr Mawhinney's request that the Mawhinney block be included within the Inner Area of the Auckland Metropolitan Drainage District;
 - c. **note** that the WSL proposal is appropriate in order to provide the necessary wastewater reticulation to identified growth areas in the greater Auckland region; and

- d. **agree** to issue an Order in Council to alter the Inner Area of the Auckland Metropolitan Drainage District as proposed by WSL in its petition.

THE LOCAL GOVERNMENT COMMISSION

Grant Kirby (Chairman)

Linda Constable (Member)

Kerry Marshall (Member)

22 May 2002