

The Effectiveness of the Auckland Metropolitan Urban Limit – Ring-fencing Urban Development:

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Note – the views expressed in this paper are those of the author and not necessarily those of the Auckland Regional Council.

Introduction and Context

This paper discusses the Auckland region's Metropolitan Urban Limits (MULs), its history, use and attempts to discuss its effectiveness. MUL's, as a containment or growth management technique (to define the area where "urban" development can and can't occur), is fairly common. However the whole issue of urban systems and urban growth management from a social, cultural, economic and environmental perspective is incredibly complex. The MUL is one tool. In the Auckland context, how effective has it been?

As stated, urban growth boundaries are a relatively common mechanism for growth management. Many cities around the world make use of them to varying extents. In the U.S., Oregon, Washington, and Tennessee mandate their use, Florida encourages them, and Maryland, Kentucky and California have had them for decades. In Auckland, MULs have been used for more than fifty years.

Internationally, the use of urban growth boundaries is associated with greater urban connectivity and increasing urban densities in a range of forms.¹

MULs are not a planning outcome in their own right. They are a mechanism to influence spatial growth and/or urban form. In Auckland, the MUL has been used to either contain growth in order to prevent urban sprawl or encourage intensification. The reasons for doing this have varied over time. Accordingly, understanding the MUL and its success or effectiveness must be done in the context of its purpose over time, changing attitudes towards notions of sprawl, urban consolidation, intensification and environmental protection.

Considerations of MUL use also often leads to discussions about the desirability of limiting growth per se. Whether growth is a phenomenon that should be accepted and simply planned for, or whether it is something that should be controlled (by an optimum regional population?), is a debate that has been ongoing in Auckland since at least the 1950s.

The usefulness of the MUL has been perceived differently by its protagonists and antagonists (depending upon which side of the debate they are on and their political and philosophic persuasion). In fact, MULs have been discussed in the context of the whole gamut of possible approaches to growth in the last 50 years: promoting growth, limiting growth, diverting growth to other regions, and managing the effects of growth.

Purpose and Need

The policy of controlling the outward spread of Auckland through MUL type mechanisms has been a policy in regional planning documents for more than fifty years. The reasons for its use have changed over time however. Initially, the reason for limiting the spread of Auckland was to avoid inefficient and

¹ Yan Song, Impacts of Urban Growth Management on Urban Form: A comparative Study of Portland, Oregon, Orange Country, Florida and Montgomery County, Maryland, 2003

uneconomic provision of urban structures, but in more recent times the emphasis has switched to protection of the environment in the area outside the MUL.

The method by which MULs have been determined has also changed over time, related to shifts in the roles of regional and local governance (and legislation). Initially the decisions were largely made at a local level, but under the RMA the Auckland Regional Council (ARC) has defined its location in the Regional Policy Statement. Its location has been the subject to challenges in the Court, although more recently (since the mid/late 90's) a more co-operative, inter-council approach has been pursued.

One of MUL's frequently cited benefits is avoiding the high cost of services for peripheral growth. The first in-depth study in the Auckland region in 1975 attempted to price the cost of service provision for two population scenarios (1.1 and 1.5 million people) and two urban form scenarios (consolidated and peripheral growth). Its main findings were:

- there was a 10% cost margin in favour of the 1.5 million consolidated scenario over the 1.5 million peripheral scenario;
- transport contributed the most to the margin and was also the most sensitive variable;
- telecommunications was the second highest contributor;
- postal and electricity services were the least affected;
- conservation and/or pricing strategies could be used to avoid major works.

Environmental costs such as increased air or water pollution were not specifically addressed in the 1975 study. These would form a fundamental part of any assessment today.

One of the frequently cited concerns about the costs of containment policies is that the "price of real estate would inevitably increase with the growing scarcity of land and houses...to the particular detriment of low-income groups."² The ARC then noted that a containment policy for the 'West' would only provide for urban growth for another six to ten years. It is noted that the current evidence on this is not well understood or conclusive. This debate is on-going and will no doubt be an issue of contention in the forthcoming review of the Regional Policy Statement.

In 1995 it was noted that because the supply of relatively low-cost flat land for mass housing projects within the metropolitan limits was now almost used up, "it can be anticipated that there will be greater interest in redeveloping the existing urban area as well as ongoing pressures to expand the metropolitan limits to accommodate more urban sprawl."³

A 2000 report by McDermott Fairgray Group noted that MULs have been presented as:

- "A key method for attaining the environmental objectives of the Regional Policy Statement;
- One of several related means of ensuring integrated urban management;
- Part of the land use-transport strategy through which it is anticipated that the Region's traffic and congestion-related externalities associated with Auckland's development might be reduced."⁴

The report went on to note that "at the same time, urban limits comprise a generalised and somewhat insensitive instrument. They shape and constrain urban form with reference to aggregate regional growth without necessarily reflecting local environmental issues. Nor do they provide a transparent

² Auckland Regional Council, *Regional Development Study*, 1990

³ Auckland Regional Council, *Proposed Auckland Regional Policy Statement*, 1995, p.2-4

⁴ McDermott Fairgray Group, *Moving the Metropolitan Urban Limits: Requirements Under Section 32*, 2000, p.14

basis for reconciling any economic or social costs or benefits with environmental objectives as a result of the configuration of the MULs in an area.”⁵

History

The policy of limiting urban expansion first appeared in the 1951 “Outline Development Plan for Auckland”. “Urban Fence” was the name given to the demarcation between rural land and future urban land. Its purpose was to contain urban expansion on the grounds that sprawling development could lead to inefficient and uneconomic urban structures. The key objective of the policy originally was, therefore, to achieve the efficient development of infrastructure.

The 1951 Plan also directed its concern towards integrated regional planning and urban efficiency, and it promoted neighbourhood development within the urban fence whilst at the same time favouring a predominantly car-based transport infrastructure because of the city’s already dispersed form.

The 1951 Plan came with the qualification that “in delineating an urban fence...considerations of existing development and local interest had to take precedence over the purely theoretical planning considerations.”⁶

For example, although intended as a planning tool to stage growth so that infrastructure could be provided efficiently, it was accepted at the time that the limit would be moved ahead of development with a lead-in time of at least 20 years. The development capacity within the fence was intended to cater for 600,000 people by the year 2000. Furthermore, it was considered necessary to zone land 20-25 years in advance of use, and the policy was applied in a light-handed manner that was responsive to development and local interest.⁷

The objective of intensifying housing, to make transport and infrastructure operate more efficiently gained momentum in the 1967 “Regional Master Plan” which advocated the consolidation of partly developed areas that were already serviced, “thus avoiding the unnecessary and premature opening up of land”.⁸ This Plan, however, recognised that practical and economic considerations relating to the redevelopment of inner areas meant there would always be a requirement for peripheral land. Although it also listed criteria for identifying sites for higher density housing, it went on to say it was neither economically feasible nor practicable to redevelop inner areas to such an extent as to significantly relieve demand for peripheral land.

This 1967 Plan also indicates anxiety about the rate of Auckland’s growth and options for its accommodation, which envisaged the development of Orewa, Okura, Long Bay, Waimauku, Kumeu, Whitford and Beachlands within a 20-30 year timeframe. Concern about the efficient accommodation of future population growth has been a consistent theme for much of the second half of the twentieth century.

In 1968, the Auckland Regional Authority (formed in 1963) (ARA) reinforced the theme of urban consolidation in its planning report *Development in the Auckland Region*. Environmental issues were not predominant in this however, for planning considerations at the time were heavily influenced by engineering considerations. Questions of cost-effective infrastructure development were again important in the report’s interest in urban consolidation.

A growing theme at this time was the increasing emphasis placed upon the need for ongoing planning. This was reflected in the ARA’s *First Regional Planning Scheme* that became operative in 1974. The Scheme proposed higher density housing around commercial centres, transport routes and major open space or coastline, but did not promote housing intensification per se. Amongst many other things, it moved away from the notion of planning as an outcome towards planning as a

⁵ McDermott Fairgray Group, *Moving the Metropolitan Urban Limits: Requirements Under Section 32*, 2000, p.14-15

⁶ Auckland Metropolitan Planning Organisation, *Outline Development Plan for Auckland*, 1951

⁷ Auckland Metropolitan Planning Organisation, *Outline Development Plan for Auckland*, 1951, p.35

⁸ Auckland Regional Authority, *Regional Master Plan*, 1967

process. This paved the way for the urban fence concept to ultimately be considered more a growth management tool rather than a specific objective in its own right.

Consolidated urban form was again promoted in the ARA's 1975 report *Auckland: Alternatives for Future Regional Growth*, which also expressed concerns about Auckland's rate of growth. It promoted a lower rate of population growth and retained the urban fence concept to assist the city's development. It also continues the changes occurring in planning generally by placing a higher importance on public involvement in the planning process.

Just one year later, in 1976, the ARA's Regional Growth Strategy recognised that urban consolidation, whilst a desirable objective, needs to be balanced with a certain level of peripheral development, taking the concept of MULs as a management tool one step further. It also concluded that decisions on future growth needed to be made immediately because only 12 years of urban capacity remained, with an estimated eight-year lead-in time for infrastructure development for greenfields areas. The remaining capacity was estimated at 160,000 people in greenfields sites in the west and south and 90,000 from infill on the isthmus.

Containing metropolitan growth by defining metropolitan limits and managing urban expansion within these limits was a key urban development objective of the 1988 Auckland Regional Planning Scheme.

In this Scheme, containing "the growth of the metropolitan area by defining the metropolitan limits, and managing urban expansion within these limits" was the key urban development objective. In the explanation it was stated;

Earlier studies, such as *Auckland Growth Alternatives Study* (1975), *Comprehensive Transportation Study Review* (1976) and *Auckland: The Costs of Growth* (1977), have all indicated a need to limit the peripheral expansion of metropolitan Auckland in order to ensure growth occurs in a planned and efficient manner.⁹

It promoted three main strategies: urban consolidation, maximising primary production potential, and improving travel relationship between jobs, homes and facilities. It stated that existing residential accommodation in sub-regional centres such as Takapuna and in particular the central area tended to be costly and conversion or new construction was not economically attractive.

The decision about the actual location of the line was very responsive to the zonings established by the TAs in the 1988 scheme:

The decision to initiate the zoning of land for industrial, commercial or residential purposes (including the rezoning of areas zoned for Future Urban Development) rests primarily with the territorial local authority concerned.¹⁰

Furthermore, the location of the line in the Regional Planning Scheme depended upon, at times, a rather vague narrative, references to the zones in district schemes and a large scaled cross-hatched map with no defined edge. For example, Policy 3.17 stated that:

"The Metropolitan Limits in South Auckland shall be the boundary as defined by the urban (and future urban) zoning in the Papakura and Manukau District Schemes in accordance with the criteria set out in paragraph 36 ..."

The limits to metropolitan development were based on the following criteria:

- (a) *Ensuring that the amount of land available within the limits reflects the projected demand for urban growth while providing flexibility to respond to changing circumstances e.g. a sudden increase in net inward migration.*
- (b) *ensuring the economic provision of utility services and the better use of existing services and infrastructure.*

⁹ Auckland Regional Council, *Auckland Regional Planning Scheme*, 1988, p.34

¹⁰ Auckland Regional Council, *Auckland Regional Planning Scheme*, 1988, p.26

- (c) *Ensuring the planned provision of jobs, community facilities and the services appropriate to meet the needs of the community.*
- (d) *Protecting land having high actual or potential value for primary production.*
- (e) *Protecting areas sensitive to environmental degradation and areas with unique features, such as native forest, volcanic cones, wildlife habitats and areas of cultural, historical and landscape significance.*
- (f) *Avoiding developing in areas prone to soil instability, flooding or other phenomena which could represent a hazard to life or property.¹¹*

This 1988 Scheme marked the end of the emphasis on the use of MULs as a mechanism for achieving “efficient” development and the transition to a more environmentally focussed objective as applied under the RMA in the Regional Policy Statement. Also, the issue as to who determines the precise location of the MUL became less responsive to the district level of decision making and far more contestable between the regional planning agency (the ARC) and the district or local planning agencies.

In 1990, the ARA’s *Regional Development Strategy* recommended urban containment and consolidation, but with provision of a south-eastern Growth Corridor towards Beachlands to accommodate some growth.

In 1991, the *Progress Report* on the above Strategy, in emphasising urban containment and consolidation, maintained the Metropolitan Urban Limit but excluded the south-eastern Growth Corridor.

There were two main trends to emerge under the *Auckland Regional Policy Statement* (1994), which was developed under the Resource Management Act 1991. First, the principal purpose of the mechanism shifted from the efficient provision of infrastructure to environmental protection. Second, the regional planning body assumed a significantly greater role in determining the actual location of the MUL.

1994 was also an important date in the argument over the use of the MUL, for the Planning Tribunal rules that regional policy statements can direct where urban growth can go by specifying lines on a map. This validated the use of the MUL in the Regional Policy Statement.

In the Auckland region, the location of the MULs is currently defined in the 1999 Auckland Regional Policy Statement, within which containment and consolidation by the MUL is a fundamental strategy. The primary objective of this strategy is to avoid the environmental degradation traditionally associated with peripheral expansion.

The following quotes from the Regional Policy Statement offer the main reasons for “Policy 2.6.1: Urban Containment and Consolidation:”

These limits have been defined to minimise the adverse effects of urban development on regionally significant resources, including:

- areas of high amenity value;
- natural heritage and cultural heritage features and areas;
- prime land;
- vulnerable ecosystems;
- areas where the quality of the environment is already degraded and requires improvement;
- areas prone to the impact of natural hazards such as flooding or land instability, and areas which if urbanised are likely to induce flooding or instability elsewhere;

¹¹ Auckland Regional Council, *Auckland Regional Planning Scheme*, 1988, p.35

- strategic infrastructural facilities such as airports/airfields.

The definition of the metropolitan urban limits also takes account of:

- historical commitments to urbanise certain areas such as east Tamaki in the south, and Albany and Greenhithe in the north;
- the amount of land available for peripheral expansion having regard to the strategic direction of urban containment and intensification. Currently, this represents capacity for 15 to 20 years' urban growth;
- the need to promote efficient use of existing urban infrastructure and where necessary to encourage the provision of new infrastructure;
- the incompatibility of urban uses with activities such as airports, intensive horticulture or activities storing or processing hazardous substances.¹²

This establishment, in 1997, of the Auckland Regional Growth Forum, supported the Regional Policy Statement, adopting a cooperative but interventionist approach to encouraging intensification. In the Auckland Regional Growth Strategy, released in 1999, the MULs were a key part of focusing urban development, including population, employment and infrastructure, in nodal centres whilst at the same time accepting that a degree of greenfield land was necessary. Balancing urban containment, growth management, provision of greenfield land and encouraging intensification becomes a balancing act that fuels considerable controversy.

Owen McShane's *Land use control under the Resource Management Act: a think piece*, written in 1998 for the Ministry for the Environment became a flashpoint in the debate over local government intervention in urban development. The *Think Piece* argued that the MUL artificially and unnecessarily restricts the supply of land, forcing the price of housing up. In response, the ARC countered that it assisted the provision of the conditions necessary for comprehensive redevelopment of the urban area, and that the Regional Growth Strategy 1999 was specifically trying to increase capacity which would have the effect of relieving housing cost pressure.

The history of the use of MULs in Auckland reveals three key themes:

Firstly, the key objectives for the policy have changed over the last 40 years. Originally the objective was mainly to sequence growth so that infrastructure could be provided more efficiently. More recently the main objective of the MUL has been to protect rural and coastal environments (not necessarily rural and coastal settlements as these are subject to a different 'set' of policies in the RPS) from peripheral growth and achieve containment and intensification.

Secondly, the determination of the MUL was initially largely up to governing bodies at the local level. The Regional Scheme (1988) provided criteria to guide the selection of future urban areas, but still adopted the decisions made at the local level. Under the RMA and the RPS the determination of the MUL had become a more contestable process.

Third, despite the predications of these early reports and rapid population growth, the metropolitan urban limit has moved little since the 1950s and 60s. The region has absorbed over 300,000 more people in the past 20 years without significantly extending the urban limits.

The Regional Policy Statement and Appeals

Opposition to the MUL as a mechanism and the location of the line itself has been contested for almost the MUL's entire existence.

Much opposition to consolidation developed from the 1970s experience of infill, the predominance of cheap and poorly designed sausage flats and houses squashed on cross leased sections, as well as concerns of monotony, lack of privacy, space and parking, noise, the loss of trees and urban amenity.

¹² Auckland Regional Council, *Auckland Regional Policy Statement*, 1999

Infill housing as a means of urban consolidation dates back to at least the 1970s when Ian Reynolds lamented the loss of trees and misfit houses it caused.¹³

In 1990 the ARC stated in its *Regional Development Strategy* that “while, theoretically, there is considerable potential in the established areas to absorb new growth by way of urban consolidation, the economic and social reality is that more intensive living is not possible or not desired by many people. People’s attitudes, the building industry and the property market have not been conducive to widespread urban consolidation to date.”¹⁴

However, circumstances have rapidly changed since then and the market has been very active in developing apartments, terraces and town houses, in the city centre and on the city fringe. Some of the factors that contributed to this trend include:

- a post-crash abundance of relatively cheap commercial space that could be converted into apartments;
- more examples of better designs;
- new immigrants used to apartment living;
- changed local attitudes to apartment living;
- increasing disposable income, making the attractions of city life more affordable;
- growth of the ‘café’ scene, more flexible shopping hours and licensing laws;
- regional and city policies promoting the CBD, with more people creating vitality and making the city safer;
- increasing congestion making commuting more difficult, encouraging inner city living.

Whereas in most of the previous plans and strategies, the MUL was a somewhat indistinct objective, the Regional Policy Statement, first released in 1994, placed a greater emphasis on a specific line on a map, and also gave a greater decision making role to the Regional Council. Thus, the position of the MULs was largely defined at the local government level until the RPS made the definition of the line more contestable.

This garnered considerable institutional opposition, and the original submission from the Ministry for the Environment (5-05-94) to the RPS, for example, claimed that the way in which the RPS identified a “strategic direction” was inappropriate for such a document. They also submitted that the MUL policy was a “de facto rule”, was overly regulatory and reduced the flexibility of TAs, and could lead to “non-effects based decision making.”¹⁵ Therefore the Purpose of the Resource Management Act had been misinterpreted.

The respective roles of regional councils and territorial authorities, with regard to MULs, was clarified by the Court of Appeal (case between the ARC and North Shore City Council -CA29/95). This was from an appeal to a Planning Tribunal in which it was argued that the proposed MULs in the Regional Policy Statement meant that the ARC had gone beyond its policy-making role and was establishing a rule. In its judgment, the Tribunal effectively confirmed the power of a regional council to include provisions limiting urban growth in its Regional Policy Statement (NZRMA 74). Following this ruling, the ARC sought a declaration to further clarify legal issues about roles, and policies and rules.

The Appeal Court acknowledged that provisions such as MULs had a significant constraining effect on TAs, but such provisions fell within the term “policies”, which ss. 59 and 62 empower in an RPS.

“[A] policy may be either flexible or inflexible, either broad or narrow ... the defendants are on unsound ground in suggesting that ... policy cannot include something highly specific.”

¹³ Ian Reynolds, ‘Housing in Auckland – Fits and Misfits’, in Bush and Scott (eds), *Auckland at Full Stretch*, Auckland City Council and University of Auckland, 1977

¹⁴ Auckland Regional Council, *Regional Development Strategy: Progress Report*, 1991, p.7

¹⁵ Ministry for the Environment, Submission to the Auckland Regional Policy Statement, 1994, p.2

Concerning the argument that RMA does not authorise "rules" in an RPS, the Court explained that an RPS *"may contain rules in the ordinary sense ... but they are not rules within the special statutory definition"* i.e. not directly binding on individuals.

The Appeal Court declared that;

1. A regional council does have power under the Resource Management Act 1991 to include in its Regional Policy Statement ("the Statement") provisions to the effect that:
 - (i) urban development shall be permitted only in urban areas defined in the Statement; or, in the case of rural towns or coastal settlement areas, by the extent of existing urban zones in district plans (as at the date of notification of the statement) or in accordance with a change to a District Plan prepared in accordance with policies referred to in the Statement;
 - (ii) territorial local authorities will incorporate limits to urban development in their district plans, in conformity with the objectives and policies of the Statement and a Regional Development Plan;
 - (iii) rural areas shall be managed so that only activities which are functionally dependent on the rural resource base are permitted;
 - (iv) rural areas shall be managed so that no provision is made for urban or urban-related uses except in accordance with policies in the Statement and except for those activities that service the rural community or are ancillary to permitted rural activities;
 - (v) countryside living shall only be provided in defined locations and in ways that comply with policies in the Statement;
 - (vi) territorial local authorities must give effect to the objectives and policies contained in the Statement concerning the management of rural areas.

We add a declaration that nothing in the above is to exclude or limit consideration of whether the particular proposals in the proposed Auckland Regional Policy Statement are appropriate in the Auckland region.

The Court stressed that the case did not concern the provisions' merits, or its "reasonableness" in an administrative law sense. They also stated that: "conceivably an ultimate challenge could theoretically be mounted in the Courts on the ground that a reasonable [regional council] could not include a certain provision" in a RPS.

This case established that regional councils could include policies that defined limits to urban growth. However, these limits are contestable through normal legal processes involving submissions and appeals to the courts, and they were contested on the North Shore.

The location of the line in the Okura/Long Bay area was challenged in another case. The Environment Court determining that the line should be along the boundary between the Okura and Long Bay catchments. This was based on environmental grounds relating to the protection of the Okura estuary. This case was significant in that it helped define the type of criteria that should be used in determining the location of the MULs.

The Environment Court decision was appealed to the High Court and the appeal established that:

- the use of MULs by the ARC assisted it to achieve the integrated management of the natural and physical resources of the region;
- defining the line of limits assisted the ARC to avoid adverse effects on the estuary environment;
- it was appropriate to establish the line on the catchment boundary between Okura and Long Bay (A86/96 p48).

This case endorsed the use of MULs as a tool to manage environmental effects from a legal perspective. The criteria used to establish the position of the line by the courts were largely based on the merits of the bio-physical evidence presented. The court found that the evidence in favour of protecting the Okura Estuary was compelling, but that the evidence presented to protect the Long Bay catchment did not warrant its protection from urbanisation.

However, the above reference to “appropriate” in Okura decision related to the location of the line in this particular location. As found earlier, the court ruling did not establish that MULs were necessarily the most appropriate growth management technique under the tests normally associated with a Section 32 analysis (consideration of alternatives and the assessment of the benefits and costs of those alternatives).

This decision has provided some certainty about the use of MULs in the Region, and some certainty for developers, infrastructure providers and the community about the location of growth in this area. However, in many respects the key issue is the actual nature of the growth that takes place from an urban form and urban design perspective.

The Okura case was also very significant because the ARC demonstrated that it was no longer prepared to be completely responsive to a TA about the determination of the MUL. The ARC argued, based predominantly on its environmental mandate and the Court determined the location of the line. However, there was considerable dissatisfaction by several parties with the costly legal process to achieve an outcome, and the nature of the outcome itself. This was one of the key motivations to establish the Auckland Regional Growth Forum in 1997.

The cases referred to above established that under the RMA MULs can be legally used by a regional council to manage the environmental effects of urban growth. TAs are required to incorporate these limits into their district plans. The actual placement of the line, as determined by the Court, was based on the relative merits of the evidence presented.

However, the courts have not passed judgement on whether or not MULs are necessarily the most effective, or efficient (in terms of benefits and costs) technique to manage the effects of urban growth in the Auckland Region. This is in essence the question – but as this paper goes on to say, in the absence of other more ‘directive’ growth management tools, the MUL may be as ‘good as it gets for now’.

Moving the MULs

There have been no significant increases in the MULs for the past forty years, and most of this growth has been accommodated within those limits. However, as much of the greenfield ‘capacity’ has been used up, how much more is needed or is appropriate becomes a major issue. This is the situation the region is facing now, and will be a significant issue for the forthcoming review of the Regional Policy Statement.

What movement there has been in the MUL has been relatively small-scale. Since 1999, the MUL has been extended eight times to add nearly 2000 hectares of land. These have included:

- Flat Bush
- Takanini Stage 1
- Takanini Stage 2
- Hingaia
- Point View Drive/Mill Rd
- Westgate / Hobsonville (under the LGAAA)
- Mangere / Airport, and
- The Babich land.

Regional communities are now more knowledgeable about the “costs” of growth (economic, social and environmental) than in the past and are more inclined to oppose peripheral expansion. However, “anti-growth” sentiments need to be balanced against the economic realities of supply and demand

whereby a scarcity of development opportunities can provide upward pressure on prices. This in part has fuelled the debate about the MULs and housing affordability. This is very complex issue, and supply side issues while relevant are only one part of that debate. Clearly, continued urban sprawl, can have huge costs, environmentally, socially, culturally and economically.

As covered earlier the principal document providing for setting MULs is the Regional Policy Statement. It is the over-arching statutory document and provides the rationale for MULs in terms of environmental and resource management (especially integrated management) objectives. It therefore contains the matters that must be considered when adjusting them. However, because it is essentially a land-use based tool, and particularly because they set limits to urban development, MULs also play an important role in how local councils might fulfil their resource management responsibilities.

While MULs limit the options available to district councils in terms of outward growth (especially those at the edge of the region), and are designed to do so in terms of 'sound integrated regional resource management/planning', care needs to be taken that they do not unreasonably constrain the local councils in fulfilling their commitments under the RMA and Local Government Act. In part in response to the conflict to which this situation gave rise, the Regional Growth Forum was convened to provide a strategic context within which the MULs (and other components of the Regional Policy Statement and district plans) might be debated and some direction achieved. The Regional Growth Forum has been successful in this respect, and the Regional Growth Strategy identifies areas for which there is broad regional consensus for greenfield expansion and hence extension of the MULs.

In general, by moving from strategic direction, through strategic policy (including urban growth management policy) to methods, the Regional Policy Statement established the MULs as an instrument of urban growth management that is intended to contribute to avoiding the adverse effects of urbanisation and to achieving integrated development. However, it also allows that the MULs can be moved (as already set out earlier). This is an obvious but important point. The MULs can and are moved, and this supports the approach that the MUL is a growth management tool, rather than a 'Berlin Wall' beyond which nothing can pass.

The process of establishing the MUL involves a full policy consideration of its impacts, and the available alternatives. Although the legislative requirements are largely the same, moving the MUL, however, is a change to a method (in this case a line on a map) and not to an objective or policy. Thus, a change to the MULs does not require a comprehensive analysis that tests the objectives and policies of the Regional Policy Statement on the MULs.

Because MULs are a generalised and relatively blunt planning instrument, MUL changes at the local level ideally need to be dealt with on a sector basis and refined on the basis of local structure and catchment plans. McDermott Fairgray (2000) considered that "*it is in large part through dealing with trade-offs at this level that the precise location of MULs can be most reasonably be determined and justified.*" From this, it can be concluded that moving the MULs is a process that should involve both RPS and District Plan provisions, and, therefore, that each MUL change may follow a different specific process.

The aim of the Regional Policy Statement requirements in establishing and making adjustments to the MULs (and, indeed, to other Regional Policy Statement provisions) is not necessarily to be definitive, but to ensure that the environmental outcomes justify the cost of the policy. Policies where the costs outweigh the benefits are to be avoided.

Calculating costs and benefits is not easy, and is all the more difficult because the public sector typically has a broader concept of benefits and costs than the private sector, and will include environmental and other non-market benefits and costs. They also tend to take a 'net sum' approach and incorporate equity issues associated with the distribution of costs and benefits.

The passing of the Local Government (Auckland) Amendment Act 2004 (LGAAA), which amongst other things, mandated integrated land use and transport planning and giving effect to the growth concept in the Regional Growth Strategy, set a 'new standard'. Now, any proposal to move the MUL, as was proposed at Massey North (Westgate) in Waitakere City, must address both the regional (strategic) and local land use planning matters (land use and transport). This will require the simultaneous consideration of the regional issues as well as detailed structure planning and district

plan changes. It also gave much greater power to the ARC, in that it retains a 'veto' power over any movement of the MUL, even after the Environment Court has ruled on any appeals to it.

Effectiveness of the MUL's?

This is a very difficult question to answer. And the answer is – it depends. It depends on what the MULs are trying to achieve (and this has changed over time), what are/were the alternatives, what would Auckland be like if those different alternatives had been used, and what are the current governance and legislative provisions that policy and decision makers have to work under? Also, non-quantified containment policies make it difficult to monitor the outcomes of past urban containment strategies.

However at the macro level, it appears that the containment has met strategic objectives – i.e. Auckland's urban area has largely been contained inside the MUL's. However as the actual rate of urban expansion has consistently undershot predictions, and the MULs enabled significant greenfields expansion, this may not be surprising.

This is changing as 'easy' capacity (greenfields) has been used up, but in what has been created is largely continued urban sprawl, with little in the way of centres development or the creation of communities. It has also resulted in considerable environmental degradation, particularly in terms of water quality (sedimentation and stormwater), air quality and quality 'open space'.

The issue is - will the lack of greenfields land 'trigger' greater urban redevelopment, particularly in centres? It is these areas that the recent review of the Regional Growth Strategy has found has significant capacity, and would certainly be consistent with the Regional Growth Strategy. Or, will Aucklanders' 'hankering' for individual houses (albeit it on smaller sections) at the margins prevail, with considerable pressure being put on the ARC to 'release' more land by extending the MULs.

This is discussed further below in the context does Auckland have the right governance and planning tools (legislation) to enable appropriate metropolitan urban planning. However before discussing this it is necessary to briefly address growth outside of the MULs.

Growth outside of the MULs

From an environmental perspective, some commentators have opined that the MUL's have been an ineffectual tool, as urban development has 'burst' out in the form of countryside living (rural residential), coastal development and the growth of rural and coastal settlements. And that this has had a significant adverse effect on the environment (again from an environmental, social and economic perspective).

There is no issue that development has occurred outside of the MULs (it was envisaged that 30% of Auckland's growth would occur outside of the MULs), and no issue that this has had adverse environmental effects. However most of this cannot be attributable to the policy of the MUL.

Countryside living and zones for this have purpose have been a clear policy position in the RPS (i.e. enabling it), as well as a 'preference' for growing some of the rural and coastal settlements. The other major issue is that there is considerable 'latent' potential in the rural areas of the region. This is due to the underlying title pattern and that District Plans essentially enable at least one dwelling per title. It is estimated by the ARC that there is something like 40 plus years capacity for rural residential sites.

Change 6 to the Regional Policy Statement (LGAAA) has sought to address some of these matters. It has sought to halt further countryside living opportunities and attempting to 'soak' up some of the latent capacity with respect to how to either grow some of the rural and coastal settlements or create new ones.

This report has not gone into detail about these issues (outside of its scope). However it was necessary to raise this as the MUL is often sited as failing due to the amount and type of growth outside of it. Much of this 'other growth' is provided for.

Governance and Legislation - Delivery and Implementation

The MULs as a growth management tool cannot be particularly effective on its own. All it can do is identify where urbanisation can and can't occur (inside MULs essentially yes and outside no). Other provisions are needed to determine where and how (including type, scale and quality) development should and should not occur.

A fundamental question then is - do we have the right governance framework and statutory tools to manage our environment?

The Royal Commission on Auckland's governance is considering this matter now. With respect to the RMA, in its current form, combined with our current governance arrangements, is unlikely to deliver on its sustainable management purpose, especially in terms of urban systems (which directly impacts on rural areas and management issues).

In the context of urban form and urban development, there are considerable barriers and obstacles to creating sustainable environments and sustainable communities. It is accepted by the regions councils that Auckland needs to change to address social, economic, cultural and environmental challenges over the next 100 years. This is clearly articulated in the agreed Auckland Sustainability Framework (ASF). The challenges, shifts and goals are set out in the ASF – but of particular significance to this issue is the goal - "A quality, compact urban form".

The ASF, as well as the Regional Growth Strategy (RGS) and its review (2007), recognised, amongst other things that Auckland is a low-density, sprawling suburban city/region. This form of development has resulted in the unsustainable use of natural and physical resources (e.g. land and energy), as well as making it more difficult to create and sustain 'communities' and particularly difficult to redevelop areas.

It is also accepted that more people need to be accommodated within the existing urban areas, and this means greater densities of dwellings. To ensure that 'good' urban development (or redevelopment) occurs, greater emphasis on, as well as new tools, are needed to ensure: good urban design, good quality construction, provision of (and easy access to) public transport and other services, and good physical and social infrastructure.

Current planning under the RMA and community involvement under the LGA and RMA will not of themselves 'deliver' sustainable environments and communities. This is due to a number of matters including:

- The RMA is enabling and the planning documents will not actually deliver change (they can only provide the framework for any change to occur).
- The RMA is largely silent on 'urban issues' which has meant most 'urban policy' has been relatively weak and under developed.
- The Regional Policy Statement, in its current form, is not directive in terms of what areas/centres should be developed. That is - there is little regional direction on prioritising centres or areas. This has required each territorial authority to 'test' these at the local level.
- The RMA focuses on the effects of subdivision, use and development – and has limited control over the actual types of activity that can occur - i.e. issues of quality. The philosophy being that the 'market' would deliver appropriate outcomes.
- The RMA and LGA are very 'participatory' - i.e. significant consultation processes; submission rights and recourse to the Environment Court almost as a matter of right exist.

- That there is currently multiple consultation processes (RMA and LGA), which are time consuming, confusing for communities, and allow proposals to be 're-litigated' at each successive step. There are multiple opportunities for proposals to be 'watered-down' as the community and council 'navigate' the planning process to get an 'agreed' outcome. These outcomes are often a compromise and sub-optimal.
- That consultation is usually focused on those directly affected which is usually the current generation (current landowners and residents). Without direction from central or regional government, the views of future generations, as well as the 'bigger picture', are not considered or articulated. It is difficult for a territorial authority to 'ignore' or override the wishes of current landowners and residents.

The matters outlined above are all matters relating to 'current' legislation and governance arrangements. They are relevant to why it is difficult to get agreement on how area should be re-developed, let alone redeveloped. While 'fixing' these issues would give greater or more directive powers to local government to plan and implement for urban developments, it is only part of the 'picture'. The following are other (and in many respects more fundamental) barriers/obstacles to appropriate metropolitan or urban planning.

- No one public agency is responsible for its delivery/outcome. Having multiple agencies, with different drivers, functions, funding arrangements and political masters make it almost impossible to 'deliver' a 'good' urban form.
- Development in NZ is mostly delivered by the private sector within the RMA planning framework. Infrastructure is provided by both the public and private sector. In this environment it is often difficult to secure public good outcomes, as these are usually a cost to the developer. This includes good urban design, quality construction and quality public open space and amenity considerations. Also the private sector may not be prepared to take 'risks' on innovative projects, and will follow a formula they know will return a profit.
- Public Sector agencies are traditionally not developers, and generally do not take on significant risk (public money). Also local government agencies are mainly policy and regulatory focused, and do not necessarily have the capability/resources to take on large development / redevelopment projects. There are exceptions to this, such as Manukau City Council and Flatbush – the major issue here being that much of the land is in public ownership.
- That there is little 'history' in New Zealand of master planning, and particularly so with the passing of the RMA. The prevailing philosophy being that intervention should be minimised to avoid, remedy or mitigate adverse effects, and that the market is best placed to deliver development.
- That land holdings in urban Auckland tend to be held in small parcels (both residential and commercial in the smaller suburban centres), and this makes comprehensive redevelopment difficult.
- That there are other major government 'players' that need to be 'tied into' any master planning/redevelopment process. This includes central government agencies such as transport, education (schools), social policy, as well as major employers such as MSD and IRD as their locational decisions make a big impact on the viability of centres. Regional agencies such as ARTA and Watercare Services are also significant.

Resource Management Act

The RMA does not, in the writer's opinion, address urban systems and urban planning well; the Act being more concerned with 'biophysical' matters. However the Regional Policy Statement has addressed urban growth management as one of its significant resource management issues, and the

MUL is one of the policy responses. How effective this has been needs to be considered in light of the 'short-comings' of the Act. These are outlined below.

The first issue is that the Regional Policy Statement, until a recent amendment to the Act, is a relatively weak planning instrument, as district plans only had to be "not inconsistent" with it, but now must "give effect" to it. Secondly, regional policy, such as the Regional Policy Statement, is not ultimately made by the regional council (ARC) and its community, but by the Environment Court (or higher courts). The third issue is the regional council (ARC) has no greater mechanism than any other party to ensure that regional policy is implemented in district plans.

These are addressed below.

"Give Effect To"

A relatively recent and significant amendment to the RMA is that planning documents must now "give effect to" the higher order documents in terms of the Act's hierarchy. Accordingly, district plans must now give effect to the Regional Policy Statement, rather than the "not inconsistent with" provision that existed previously. This considerably strengthens the Regional Policy Statement, and provides a much stronger mandate for regional planning.

This more 'directive' provision will provide greater scope for the Regional Policy Statement to determine an appropriate urban form. It will be interesting to see how far the ARC goes in using this provision in the forthcoming review of the Regional Policy Statement.

As an example would this enable the ARC to specify average target densities of housing in areas that need to be intensified? Regional 'schemes' have consistently failed to specify this or the quantitative goals they were trying to achieve. However, expectations of what containment can achieve have increased over the last 20 years. If optimum densities can be defined for different areas on the basis of criteria such as infrastructure thresholds or maintenance/creation of urban amenity, they could become expected environmental outcomes in future plans/schemes.

Who makes Regional Policy?

The RMA sets out a 'hierarchy' of planning/statutory instruments including:

- National Policy Statements (NPS) - central government prepares.
- Regional Policy Statements (RPS) - regional council prepares.
- Regional and District Plans (RPs and DPs) - regional, district and city council prepares)

Each preceding layer is required to 'give effect' to the higher order documents (recent amendment to the RMA).

With respect to NPS's, central government is the final decision maker (i.e. no appeal rights to the Environment Court exist). This is not the case of RPS's, which are required to follow the First Schedule of the RMA. That process enables appeals to the Environment Court.

In summary, the process for establishing NPSs is set out in the RMA (sections 45 to 55 –and for the NZ Coastal Policy Statement 56 -58A) and includes:

- The NPS is developed.
- Minister appoints a Board of Inquiry (of suitably qualified people).
- Board of Inquiry publicly notified NPS for submissions.
- Board of Inquiry hears any submissions and makes recommendations to the Minister.

- Minister then considers the Board of Inquiry's recommendations and then approves/amends the NPS.

There are no appeals rights to the Environment Court provided for in this process.

Unlike the NPS process, Regional Policy Statement and Regional and District Plans must follow the First Schedule process. This includes:

- Develop the document (contents specified required in the Act).
- Publicly notified for submissions.
- Summarise submissions and publicly notified further submissions – can only support or oppose original submission.
- Hearings and decisions.
- Any submitter can appeal any decision to the Environment Court. ARC and TAs may also become involved in appeals even if they were not submitters.

The key point here is that the ARC in developing regional policy (to give effect to the Auckland Sustainability Framework, the Regional Growth Strategy, the Regional Land Transport Strategy) is not the final decision maker on that regional policy – the Environment Court (or higher courts) is. The question is – should regional policy (like national RMA policy) be made by the regional government/council?

No greater mechanism than any other party to ensure that regional policy is implemented in district plans.

District Plans (DPs) must give effect to the RPS. However the only way the ARC can ensure this occurs is by lodging a submission to the DP. Equally the ARC needs to lodge further submissions to those submissions that would, if allowed by the TA, not give effect to the RPS. In this respect the ARC has no greater status than any other submitter; despite the fact the DPs must give effect to the RPS.

In terms of the First Schedule, the TA hears the ARC submissions and further submissions and makes a decision on them. If the ARC is not satisfied with the decision (i.e. if it would not give effect to the RPS), the only option it has is to appeal that decision to the Environment Court.

The RMA requires district plans to 'give effect' to the RPS. The only formal way the ARC can determine if in fact they will give effect to the RPS is by submitting to it.

Having to submit to district plans is time consuming, expensive and often does little for relationships between TAs and the ARC. Furthermore, due to the further submission process, the ARC also has to consider all further submissions and submit to these if it does not support (see below).

An option is that prior to notification of any district plan (or change/variation including private plan changes), the ARC must approve or sign off the plan for notification in terms of it giving effect to the RPS.

If approval was given by the ARC, the ARC would not be able to submit to the plan – but would be able to present evidence on any submissions that it considered would not give effect to the RPS.

Prior to the TA's release of decisions on submissions (and therefore any amended plan), the ARC would need to consider the 'revised' plan and determine if it still 'gives effect' the RPS. Once the decisions on submission are finally released, the ARC would be able to become involved in any appeal by other submitters.

Conclusion

The use of MULs has been a major policy position for over 50 years. The history of its use in Auckland reveals three key themes:

Firstly, the key objectives for the policy have changed over the last 40 years. Originally the objective was mainly to sequence growth so that infrastructure could be provided more efficiently. More recently the main objective of the MUL has been to protect rural and coastal environments. Secondly, the determination of the MUL was initially largely up to governing bodies at the local level. The Regional Scheme (1988) provided criteria to guide the selection of future urban areas, but still adopted the decisions made at the local level. Under the RMA and the Regional Policy Statement the determination of the MUL had become a more contestable process.

Third, despite the predications of these early reports and rapid population growth, the metropolitan urban limit has moved little since the 1950s and 60s. The region has absorbed over 300,000 more people in the past 20 years without significantly extending the urban limits. To this extent the MULs have been effective in containing urban expansion. But they are now under considerable pressure as development has 'move out' to meet the MUL. This will be a key issue of the forthcoming review of the Regional Policy Statement.

The MULs have not contained all development – they are not designed to do so. The 1999 Regional Policy Statement has a number of policies that enable countryside living and the growth of some of the rural and coastal settlements outside of the MULs. This has clearly had effects on the rural and coastal environments (both positive and negative). However, a recent change to the Regional Policy Statement (change 6) has sought to constrain further countryside living opportunities. The purposes for doing this are multiple, but will help protect rural and coastal amenity values.

The MUL is only one tool. It is insufficient on its own to address urban and rural growth management issues, and to determine appropriate social, cultural, economic and environmental outcomes.

Growth management and understanding urban systems is very complex. However Auckland needs to understand and address this if it is to meet the 'challenges, shifts and goals' of the Auckland Sustainability Framework. To become truly sustainable over time will require different governance arrangements as well as different planning tools. Some form of containment policy, such as MUL's, is likely to be part of that mix.

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