

Report

4 October 2011

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Subject: Review of regulatory incentives for waivers on restrictions of rural land subdivision

Draft (4)

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1.0 Introduction

This report examines the nature and effectiveness of regulatory incentives for waivers on restrictions of rural land subdivision as permitted by the Resource Management Act 1991 (RMA). The Auckland Council is a unitary authority that promotes sustainable management which includes, protection of important vegetation and fauna as set out in section 6(c) of the Resource Management Act 1991 (RMA). Acting as both a regional council and a territorial authority/district council, Auckland Council has the function under sections 30 and 31 of the RMA to maintain indigenous biodiversity. This maintenance role includes controlling the actual or potential effects of use and development upon indigenous biodiversity. Incentives are established to promote joint management of natural heritage between regulatory authorities (Councils) and property owners with the goal of maintaining indigenous biodiversity

2.0 Regulatory and non-regulatory incentives

Incentives can be either voluntary (non-regulatory incentive) such as QE II Trust, Department of Conservation Act 1987, Reserves Act 1977 covenants or offered by a regulatory authority such as the Auckland Council (regulatory incentive), for example bushlot covenants administered under the Resource Management Act 1999.

2.1 Regulatory incentives

A regulatory incentive is one where a regulation is waived or reduced in exchange for something from the person to whom the regulation applies. For example with bushlot covenants, the regulation is a restriction on subdivision. The rationale in waiving the subdivision restriction to create bushlot covenants is to maintain some of the biodiversity values in areas undergoing changing land use. Regulatory incentives can take various forms with the most commonly being covenants; whereby land is set aside, usually in perpetuity, to conserve a site of cultural or natural (biodiversity) significance.

2.2 Non-regulatory incentives

2.2.1 QEII National Trust protected open space covenants

New Zealand's Queen Elizabeth the Second National Trust (QEII) protected open space covenants are a widely adopted mechanism used for land conservation, outside the Department of Conservation (DOC) estate. As at 30th June 2010, there were 3,866 registered QEII covenants; encompassing 108,932 hectares throughout the terrestrial area of New Zealand. The covenants range in size from less than 10 hectares to large areas reaching over 6,000. The average covenant

size for New Zealand is 28 hectares. Compared to the rest of New Zealand, the Auckland region is a small area but has a high number (232) of QEII covenants.

Covenants established under the Queen Elizabeth the Second National Trust Act 1977

are usually voluntary agreements between the QE II Trust Board of Directors and land owners. The covenants are a legal encumbrance (Part 2 (22)(1-8) of Queen Elizabeth the Second National Trust Act 1977) on the land title and the covenanted area is protected in perpetuity.

Some Auckland district councils use QE II covenants as a regulatory incentive for the protection of areas with high natural heritage values. With regards to this application, the use of the QE II covenant is as a regulatory instrument and the covenant is operative in perpetuity with any owner of the title (conditions imposed via a consent notice) unable to annul the covenant.

2.2.2 Non-governmental organisation covenants

There is strong advocacy by non-governmental organisations (NGOs) such as the Royal Forest and Bird Protection Society (F&B) and the Ornithological Society of New Zealand (OSNZ) for the creation of protected conservation areas. These NGOs create their own covenants either through the QE II Trust or purchase their own properties with protection caveats attached to the consent notices of land titles. With a nationwide network of regional offices and volunteer organisations, NGOs such as F&B and OSNZ provide a lot of the baseline data on the condition of New Zealand's natural heritage and provide a comprehensive list of sites suitable for covenanting.

2.3 Examples of regulatory incentives from New Zealand

Regulatory incentives are used by district councils throughout New Zealand. In this report, three examples are given; Thames Coromandel, Canterbury and Banks Peninsula.

2.3.1 Thames Coromandel District Council

Under Section 2 (Biodiversity (211.5, 2) of the Thames Coromandel District Plan, a waiver on the restrictions of land subdivision is provided to property owners who agree to the establishment of protective covenants. Described as...."*Enable subdivision or development in return for indigenous vegetation or natural feature protection, re-generation, re-planting or restoration with species sourced from, or endemic to, the Coromandel Ecological Region*". Since 2006, 237 protective covenants have been created, encompassing 1,385 hectares of land. These protective covenants differ from bushlot covenants (Rodney & Franklin Districts) in allowing greater flexibility as to what natural heritage values can be protected. There is the option to covenant land that has natural features other than vegetation and wetlands.

2.3.2 Banks Peninsula District Council

Under Chapter 31 of subdivision rules, rural subdivision in the Banks Peninsula District Council area is a controlled activity with a waiver on some restrictions. New titles on rural land can be created with controls on land clearance and the protection of natural heritage values.

Subdivision is permitted under rule 1(a), (b) with sites described as Conservation Reserves or Heritage Items being protected in covenants. An instrument is registered on the title of the permitted site which protects the Conservation Reserves or Heritage Item in perpetuity.

Compared to other areas in New Zealand such as Auckland and Thames Coromandel, waivers on regulating subdivision in the Banks Peninsula area is more restrictive. Subdivision in areas described as Rural Amenity Landscape is as follows....*"the new site which will be contained in a separate certificate of title is no less than 1ha in area and is for the purpose of erecting a dwelling and; a balance area which is legally defined and which in combination with the new site achieves a minimum area of 40ha and; both the new site and the balance area are subject to covenants preventing the erection of any further dwellings on the total land area in perpetuity."*

The Banks Peninsula District Plan restricts subdivision where the accumulative impact of subdivision may cause further fragmentation of areas of Outstanding Natural Landscapes. Rule 3.1 describes this restriction....*"There is a commitment that there shall be no dwellings established on that part of the new site located within the Coastal Natural Character or Outstanding Natural Landscapes which is further than 100m from an Existing Building Cluster. This commitment shall be implemented through a consent notice on the title."*

2.3.3 Environment Canterbury Regional Council

The Canterbury Regional Policy Statement 2011 under Policy 9.3.1 sets out objectives and methods to provide for the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna including water bodies, wetlands, coastal marine areas, and in river and lake beds. When setting rules for rural subdivision, compared to other territorial authorities, the Canterbury Regional Council clearly identifies significant natural areas (SNAs) for both vegetation and fauna. Also, the Canterbury Regional Council has a dual approach to the protection of SNAs where both provisions and incentives are used for managing subdivision. The provisions and incentives impose controls in the district plan which require landowners to.....*"fence areas of significant indigenous vegetation and significant habitats of indigenous fauna and the control or exclusion of animal and plant pests when subdivision occurs."* Overriding landowners rights to subdivision are the objectives of policy 9.3.4 to....

promote the enhancement and restoration of Canterbury's ecosystems and indigenous biodiversity where this will improve the functioning and long term sustainability of these ecosystems." As with Thames Coromandel, Canterbury promotes the covenanting of areas where subdivision will impact on the habitat of threatened species.

2.4 Examples of regulatory incentives from Auckland

All legacy councils of the Auckland Council represented areas that had a mix of urban and rural areas. All legacy district councils had rules directing rural subdivision. From a review of regulatory incentives of the previous district councils, there is a range of interpretations of the waiver on subdivision restrictions and the type of conservation lot (covenant) to establish.

2.4.1 Rodney and Franklin District Councils

Bushlot and wetland covenants are regulatory incentives that have been established in the Rodney and Franklin districts of the Auckland Council. The incentive used is a waiver of regulations to allow subdivision and to encourage landowners to conserve forested and wetland areas. These waivers are implemented under directives of the Resource Management Act 1991 (RMA).

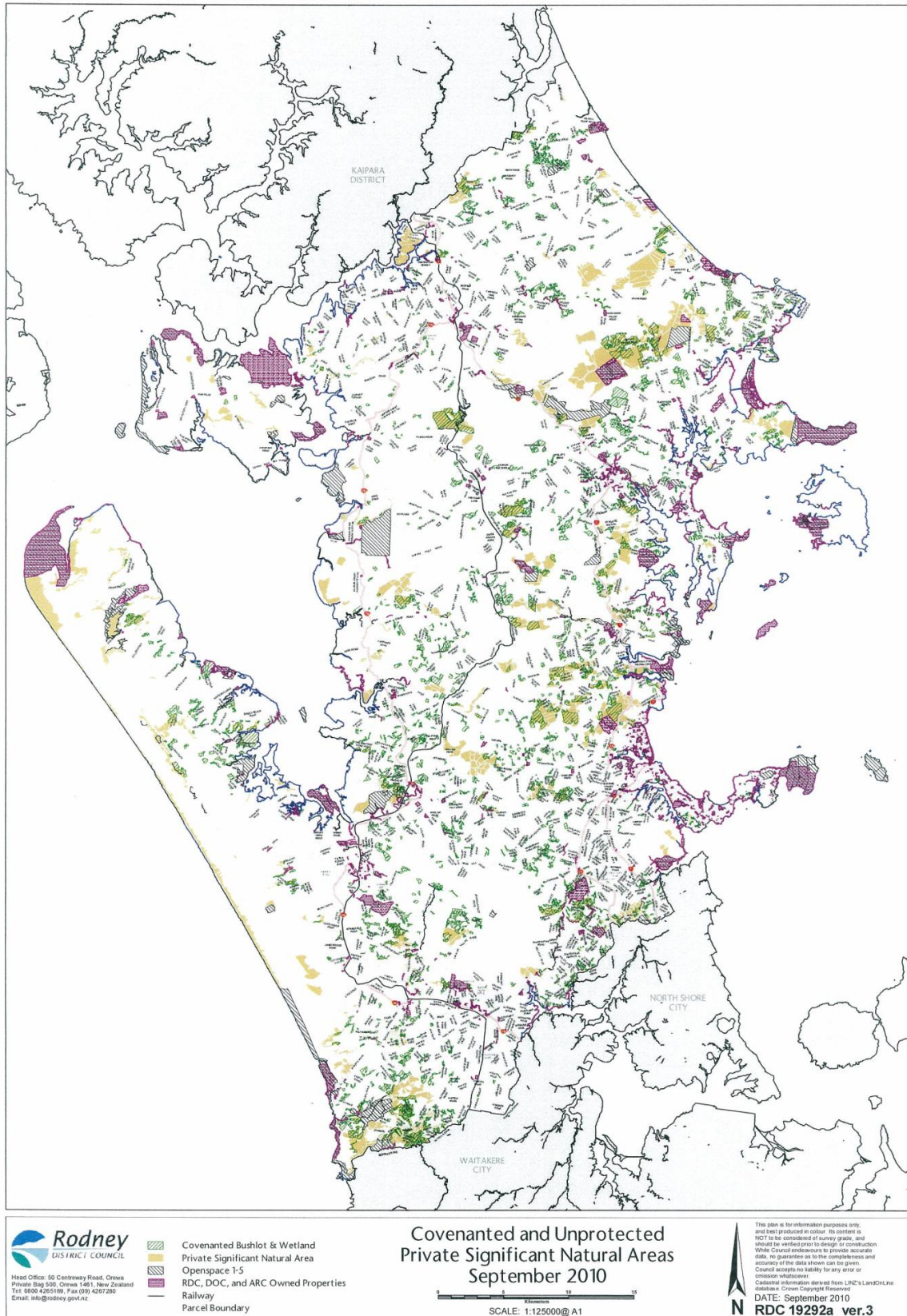
Bushlot covenants: Referring to the Rodney section of the Auckland Council District Plan (Appendix 7B), bushlot covenants are described as"*provision is made for the subdivision of sites for the protection of significant stands of native bush or significant natural features. At the time of subdivision, the bush covered part of such lots, having a minimum area of two hectares, are covenanted for their future protection.*"

Wetland covenants: Wetland covenants are established for areas of sufficient quality to justify a subdivision described as follows by the Rodney section of the Auckland Council District Plan (Appendix 7C)...."*provision is made for the subdivision of sites for the protection of significant native wetlands. At the time of subdivision, the wetland part of such lots, which must have a minimum area of 5,000 m, are covenanted for their future protection*"

Current number of Bushlot covenants in Rodney and Franklin districts

The Rodney District Council (RDC) has been the most active in using regulatory incentives with the establishment of 4,161 covenanted forest and wetland areas resulting from 2,662 subdivided property titles (as at 30 August 2010), refer figure (6). On average, 23 extra Bushlot covenants are being established in the RDC each month. Since 1998, The Franklin District Council has approved 1,444 bushlot covenants.

Figure (1) Distribution covenanted areas in the Rodney District



2.4.2 Papakura District Council

The 1999 Operative District Plan and the 2009 Rural Plan Change/District Plan of the Papakura District Council allow for waivers of restrictions on subdivision through incentives described as “economic instruments”. The 1999 Operative Plan identifies economic Instruments or incentives (Papakura District Plan - Section One, General 9.15 - Association Plans/Rules)...”*such as the creation of bushlots to preserve important elements of the natural environment.*” The updated Rural Plan Change of the Papakura District Plan allows for waivers of subdivision restrictions in areas that have been identified as significant natural areas (Papakura District Plan - Plan Change No.13, Section Two, Part 1 - Policy section, 9.2)...”*Significant Natural Areas are those areas of native bush and wetlands within the District which are considered to be significant for their ecological values. Provisions in the Plan provide incentives for the protection of these areas through the provision of additional development rights where these areas are protected by way of encumbrances or covenants on the title, and are appropriately fenced and managed.*” There have been 31 areas in Papakura scheduled as significant natural areas totally 1180 hectares that have been covenanted with associated subdivision waivers. Most of these covenants are small in size, ranging from 0.2 to 7 hectares (84%). The remaining 16% of covenants range in size from 8 to 560 hectares.

There is a difference between Papakura and other legacy councils (Rodney, Franklin) in how it selects areas that are appropriate for protection via an incentive. The incentives in Papakura differ in two respects. First, Papakura allows for waivers on restrictions for subdivision in areas described as significant natural areas and second, the covenant or encumbrance is to be registered under the provisions of either, the Reserves Act 1997, the QE II Trust or The Conservation Act 1987. Methods for setting aside of protection lots are described as follows (Papakura District Plan - Plan Change No.13, Section Two, Part 4 - Subdivision, 14.1(1))...”*In order to protect identified ecological features, a memorandum of encumbrance or covenant in perpetuity shall be registered against the title of the protected area under the provisions of the Reserves Act 1997, the QE II National Trust Act 1977 or The Conservation Act 1987.*”

As stated in a description of significant natural areas (Papakura District Plan - Plan Change No.13, Section Two, Part 3 - General Rules, 9, Significant Natural Areas) the Papakura District Council”*has provided provision in this plan to enable the voluntary protection of these areas (SNAs), as well as subdivision provisions to encourage the protection of these areas.*” It is important to note that covenants created under the provisions of the Reserves Act 1997, the QE II National Trust Act 1977 or the Conservation Act 1987 as memoranda of understanding, are voluntary agreements between the territory authority (council) and the landowners. Bushlot covenants

differ in being encumbrances that are listed on the consent notice and are waivers on subdivision restrictions enforced under the Resource Management Act (RMA).

2.4.3 Manukau City Council

The Manukau Operative District Plan allows for general land subdivision under chapter 9 (Land Modification, Development and Subdivision). General rules are as follows.... *Land modification, development or subdivision which is not a permitted, controlled or non-complying activity is a restricted discretionary activity in all zones.* Specific rules apply to the subdivision of rural land where indigenous vegetation exists (12.15.1.3Native Bush Lots 12.15.1.3.1Development Standards Rule). The regulatory incentive is a waiver on subdivision restrictions similar to the bushlot covenant implemented by Rodney and Franklin District Councils. The Manukau Operative District Plan is clearer (more prescriptive) than other Councils regarding the regulations governing the establishment of multiple covenants on large sites (>40 hectares)...”(i)*The existing site must be 10 hectares or more in area. (ii) One lot only shall be allowed under this rule for each existing site greater than 10 hectares and less than 40 hectares. (iii) Two lots shall be allowed on existing sites of 40 hectares or more provided that : (a) the lots are created from two discrete parcels of native bush on the site; or (b) if the 2 lots are created from a single area of native bush on the site, then the total area of bush protected by the two lots must exceed 20 hectares. (iv) Each native bush lot shall have a minimum size of 1 hectare excluding any access strip or esplanade reserve except as required by iii(b). (v) The area of native bush shall constitute at least 90 percent of the proposed native bush lot. (vi) The native bush shall be protected by a suitable stock proof fence which must be in place before the issue of the Section 224 Certificate. The area so fenced shall be kept free of livestock as a condition of the encumbrance or covenant. (vii) Where two lots are created from the one area of native bush on a site the native bush can be fenced around the perimeter of the native bush.”*

As with Rodney and Franklin, the Manukau covenants are created with the landowner being responsible for the continual protection of the native bush within each native bush lot created with the....”*owner entering into a binding covenant with and approved by the Council not to destroy or damage the native bush on the site which the Council considers should be preserved under and in accordance with a native bush management plan prepared and duly approved in accordance with rule 12.14.2.7.1 (ii). The covenant so entered into by the owner shall be registered as an encumbrance on the title to the land so as to run with the land and bind successive owners. Any such encumbrance shall be prepared by the Council and the reasonable expense thereof shall be met by the owner.”*

Alternative to an RMA covenant, the Manukau District Plan does allow for landowners to create voluntary covenants similar to the incentives offered by Papakura District Council where landowners can choose to covenant their land via a QE II, DOC or Reserves Act encumbrance. However, the same conditions apply to both RMA and voluntary covenants with conditions imposed on the consent notice of the subdivision title....” *As an alternative, the Council will accept encumbrances or covenants detailing the same requirements as above under the Reserves Act 1977 or the Queen Elizabeth II National Trust Act 1977. (x) At the time of the creation of a native bush lot the Council will also require that the owner will enter into a binding covenant along the lines outlined in clause (ix) above with either the Council or under the provisions of the Reserves Act 1977 or the Queen Elizabeth II National Trust Act 1977 for the remaining areas of native bush in excess of 3000m² on the parent lot. An agreement regarding the encumbrance must be entered into before the issue of the Section 224 Certificate.”*

2.4.4 North Shore City Council

The North Shore City Council imposed a different type of incentive where subdivision was confined to open areas. The legacy council of the previous North Shore City administered mainly urban areas but the North Shore City also included extensive areas of rural land to the northeast (Okura) and west of Auckland. As a consequence of this, the North Shore City Council had a set of General Subdivision Standards - (Rules 9.4.7, 9.5, 9.6, 9.7 & 9.8) that applied to all areas and a subset of rules applying to rural subdivision (Rural 4(i) & 4(ii)) zones).

Although general rules were all encompassing, the rules applying to rural subdivision varied according to area. For example, the rural rules allowed for subdivision in West Okura of an average site area of 2 hectares and in East Okura, an average site area of 4hectares. In both cases, a consent notice under section 221 of the Resource Management Act 1991 was entered into and registered against the title to ensure that the average lot size was maintained and that further subdivision did not result in an average site area of less than specified as based on the original parent lot.

Under Section 9.4.7.4.2 (Protection of Existing Native Bush) of the North Shore District Plan, rural subdivision rules allowed.....” *building/house sites and access to be confined to land totally clear of native vegetation as at 17 October 2003.*” These rules differ from bushlot covenants in that all remaining indigenous vegetation is protected but the rules did allow for subdivision of larger blocks of land as long as the remaining fragments of indigenous vegetation were covenanted..... *Covenants in perpetuity shall be registered against the titles of the lots to be created through subdivision. These covenants shall require that existing native*

vegetation on the original lot and the newly created lots is protected and remains undisturbed and weeds and pests are controlled. All covenanted areas shall be fenced to prevent undergrazing, unless the Council approves an alternative fencing layout which effectively excludes all livestock from such areas, and such fencing is to be maintained in livestock proof condition. An agreement to covenant the native bush on the property shall be entered into before the issue by the Council of a Certificate of Completion pursuant to Section 224(c) of the Resource Management Act; or A consent notice under section 221 of the Resource Management Act 1991 shall be entered into and registered against the title in order to secure compliance with the condition of the consent.”

2.4.5 Waitakere City Council

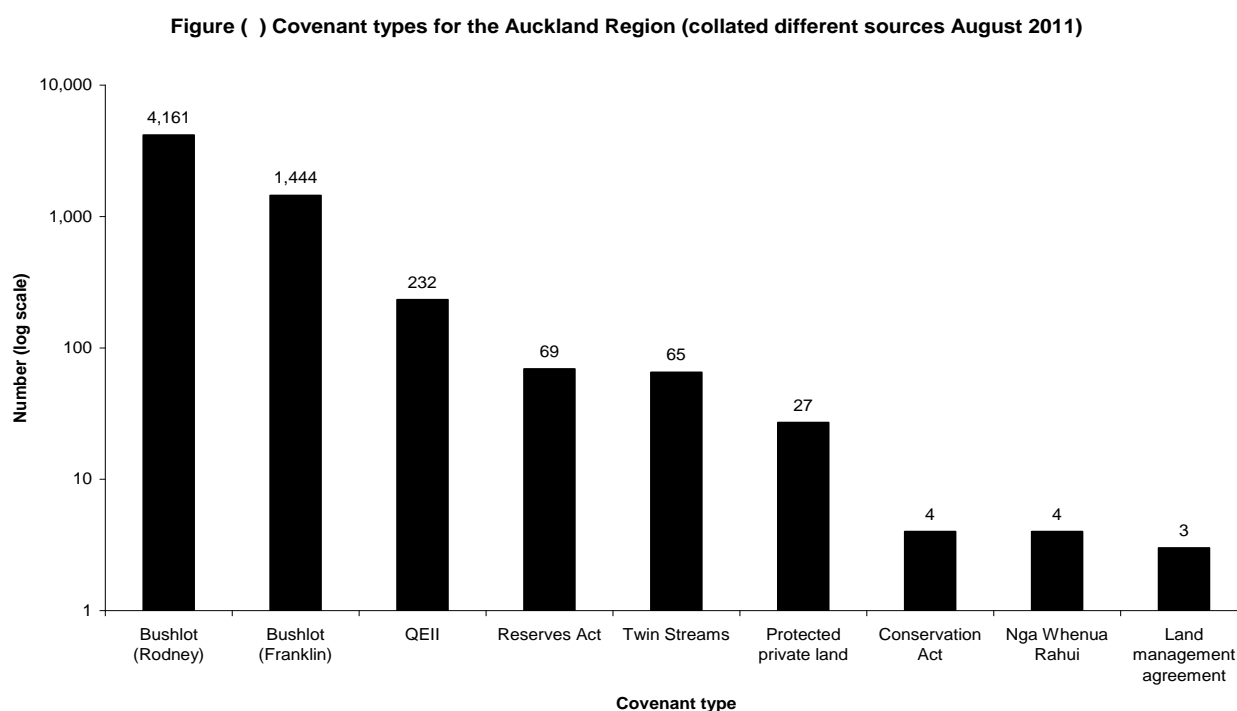
Subdivision rules from the legacy Waitakere City Council relate to the restrictions imposed under the Natural Areas Rules which cover”*requirements on vegetation clearance, earthworks, impermeable surfaces, environmentally damaging plants and some structures.”* Also, restrictions on subdivision apply to sensitive ridges and natural landscape elements that are notations and designations included in natural area and human environment maps. To allow for a comparison with other legacy councils, this report reviews the Waitakere subdivision rules that are described as Countryside Environment (Rule 6.0). General rules limit the minimum site area for subdivision to 4 hectares (Rule 6.1(a)) and excludes subdivision within the Green Network and other ecological sensitive areas such as natural landscape elements. The general rule also encompasses areas that are designated protection and enhancement areas (Rule 6.2) that are protected by way of covenants, encumbrances or consent notice. Rule 6(y) ensures any subdivision allows for protection of Ecological Linkage Opportunities and Restoration of Natural Areas and any Bush Improvement Areas are planted with native species. All conditions imposed on subdivision restrictions via the Countryside Environment Rule 6 are notified on the resource consent.

The Waitakere District Plan allows for subdivision of land described as Foothills Environment under Rule 7. Under the controlled activities of general rule 7.1(a), the minimum area for each subdivided site is 4 hectares except where subdivision is provided for via a structure plan process, which includes requirements to protect and enhance areas of native vegetation by way of a covenant which is an encumbrance lodged in the consent notice of the title.

3.0 Covenants established in the Auckland region

There have been 6,009 covenants established in the Auckland region with 5,605 established under regulatory incentives and 404 established as voluntary covenants, refer figure (2).

Figure (2) The different types of covenants established in the Auckland region



A variety of covenant types have been used by legacy councils to protect areas of significant or quality rural natural heritage, refer table (1). Most district councils offer regulatory incentives via RMA covenants. Manukau offers the option of either RMA or other statutory covenants (QE II, DOC or Reserves Act) and Papakura offers only QE II, DOC or Reserves Act covenants. It is important to note that all incentives (waivers of restrictions) are all regulatory in nature and are encumbrances on the consent notice of the land titles that result from rural subdivision.

Table (1) Summary of details of covenant types established under legacy council district plans

Legacy Council District Plan	Covenant Type	Regulatory type	Length of Time	Number of Covenants	Monitoring
Rodney District Council	Bushlot	RMA	In perpetuity	4,161	Yes
Franklin District Council	Bushlot	RMA	In perpetuity	1,444	No records
Papakura District Council	Rural Covenant	(QE II, DOC, Reserves Act)	In perpetuity	31	No records
Manukau	Rural Covenant	RMA	In perpetuity	Not recorded	No records
	Rural Covenant	(QE II, DOC, Reserves Act)	In perpetuity	Not recorded	No records
North Shore City Council	Open Space	RMA	In perpetuity	Not recorded	No records
Waitakere City Council	Countryside Environment	RMA	In perpetuity	Not recorded	No records
	Foothills Environment	RMA	In perpetuity	Not recorded	No records

4.0 Monitoring

Except for Rodney, no records of monitoring established regulatory (RMA) covenants were found. This lack of records does not apply to non-regulatory covenants established as QE II or DOC covenants as these are monitored independently of District Councils. The Rodney District Council conducts monitoring of regulatory incentive covenants to record whether the conditions imposed upon the landowners have been met. As at July 2011, 31 properties in the Puhoi catchment of Rodney with covenants (bond or RMA) had been inspected with monitoring showing all 31 had non-compliance issues. Both bond and RMA covenants are registered against the title with pre-RMA bond covenants established for 999 years which do not require pest management or stock fencing; although this usually is done by the landowners. The newer RMA bushlot covenants require active management through pest management and stock fencing. Compliance to protect natural heritage values is enforceable under the RMA regulatory procedures.

Compliance of covenant title agreements Type of covenant	Poor compliance	Fair compliance	Compliant
Bond covenant	0	0	14 (100%)
RMA Bushlot covenant	3 (18%)	14 (82%)	0
Total	3 (10%)	14 (45%)	14 (45%)

Ecological condition of covenants Type of covenant	Poor condition	Fair condition	Good condition
Bond covenant	1 (7%)	5 (36%)	8 (57%)
RMA Bushlot covenant	5 (29%)	10 (59%)	2 (12%)
Total	6 (19.3%)	15 (48.4%)	10 (32.3%)

Cost recovery for monitoring RMA regulatory incentives, especially bushlot covenants is an issue the Auckland Council is still attempting to solve. Under Section 35 Section 36(1)(c) of the RMA, Auckland Council is empowered to monitor all the conditions of resource consents and to set fees accordingly. All bushlot covenants have been effectively established as consents. Currently, monitoring fees have been set by the Strategy and Community Committee at a standard rate of \$165 per bushlot consent (covenant). This rate only covers 18% of the total (\$960) cost of monitoring, with the Auckland Council bearing the other 82% (\$795). The one off cost of

monitoring all 6,000 bushlot covenants is \$5,760,000 with cost recovery of \$990,000. This cost is ongoing as under the RMA Section 35; bushlot covenants need to be monitored at regular intervals (either 2 or 5 years).

5.0 Discussion

The focus of this report is an evaluation of regulatory incentives used by local authorities to meet the directives of the RMA to ensure natural heritage on private land is managed appropriately and that areas of significant biotic quality (fauna, flora) are protected.

There has been a large uptake of regulatory incentives in the form of bushlot and wetland covenants in the Rodney district. There has been a moderate uptake in the Franklin district and a small uptake in the Papkura district.

This report has found that the comparatively faster uptake of regulatory incentives in the Rodney district has created challenges. The majority of the issues raised in the following section relate to an examination of bushlot and wetland covenants established in the Rodney district.

6.0 issues identified

In this conclusion section of the report, a number of issues with regulatory incentives have been raised. During the review process of the Rodney District Plan, the Rodney District Council Rural Strategy (RDCRS 2010 identified.... *"a blanket of subdivision activity across almost all of the district outside of public and forestry areas ...has occurred...with associated issues of...proliferation of small enhancement bushlots of low ecological value."* The main concerns of Legacy Council staff who produced the RDCRS were that bush remnants that are isolated and of poor quality are increasingly being put forward for covenanting and there is a need to consider broader ecological benefits than currently is being applied with the regulatory waiver.

6.1 Quality of areas being covenanted

6.1.1 Hierarchical approach to protection

Consenting staff (Rodney District) identify that the current regulatory incentive policy framework does not provide for a hierarchical approach to protection. There is a suggestion that areas identified as having high quality natural heritage values such as SNAs should be protected first and foremost whilst "other" sites are a secondary consideration. There is an inconsistent approach across the district councils with most allowing subdivision in areas with high quality natural heritage values. The North Shore is the only council to confine subdivision to land totally clear of native vegetation.

6.1.2 Criteria used to assess bush and wetland quality

There is a lack of a consistent method of deciding what natural features (unusually forest or wetland) are appropriate for covenanting which can lead to confusion between landowners and the Council. Within the current Auckland Council District Plan (Rodney Section, appendix 7B) guidelines for field assessment of both native bush and wetland quality there is no clear indication of what is considered to have “ecological value” with the current default criteria being that a site may have “potential”. Consenting staff identify that the two (5 &6) weighting or ranking criteria of “aesthetic/unusual value” and “potential” in Scale (2) of Appendix 7B of the Bush Quality Assessment Field Sheet allow too broad an interpretation of what is ecologically appropriate to be protected as a bushlot covenant, refer table (2).

Table (2) Bushlot assessment criteria contained in Appendix 7B of Auckland District Plan (Rodney) 2011.

6.1.3 Man-made structures

There are instances of the regulatory incentive waiver being used to covenant man-made structures that are of very low ecological quality. There are examples in the Rodney District where these man-made structures, such as dams, have failed and the biodiversity elements have been compromised or destroyed. An extra burden is put on the landowner, who may not be the original covenanting applicant, to maintain the consent notice requirements. A senior Council staff member made the following comment.... *"we should be extremely careful allowing subdivision from artificially created structures, and if we do why are we not considering the possibility of future (remedial) work?"* An example of a failed man-made dam is given.... *"The property owner is now facing an uphill struggle to keep consent notice requirements and a large dam build cost prospect. If they choose to do nothing; dam collapses, wetland disappears, the area will be silted up and probable infringement of wetland modification rules too....I have questioned in the past these structures and have requested integrity analysis.... there is a case to be made for firming up wetland rules; more and more (the Council) is running into these issues."*

6.1.4 Establishment of covenants through the regulatory incentive process

The incentive to create bushlot and wetland covenants has been used by a large number (>4,000) of Rodney District landowners, a moderate number (1,400) of Franklin District landowners and to a lesser extent (237) by Thames Coromandel landowners. The rate at which covenants have been establishment in the Rodney District has overwhelmed the resources of the staff. As a result of the speed at which covenants have been established, many are of poor quality and in the opinion of Council staff, there have been minimal ecological gains.

6.1.5 Misinterpretation of regulatory incentive waiver

The intent of the regulatory incentive waiver (reducing restrictions on subdivision resulting in protection of high quality bush and wetland) has been blurred or misinterpreted. For example, the waiver has been allowed for ephemeral water bodies approved as wetlands and isolated clumps of trees approved as forest covenants, refer Plates (1-14). The following comment from a Legacy Council staff member is pertinent.... *"there is a fundamental issue with the state in which we find the bush lots / covenant area to start with. Most are in a degraded state and it's left for Council to battle to get them is a reasonable state before we issue title. Simply put, it needs to be the other way round; they should be in a good state before we consider the subdivision for bushlot / wetland entitlements."*



Plate (1&2) Proposed bushlot covenant (application Waitoki) Issue: Disconnected stand of Totara





Plate (3) Proposed bushlot covenant (application Waitoki) Issue: Buildings, roads and equipment within a degraded coppice of Totara



Plate (4&5) proposed bushlot covenant (application Waitoki) Issue: Weedy coppice of mainly podocarps; no sub-canopy and understorey





Plate (6&7) Proposed esplanade reserve (application Waitoki) Issue: Stock damaged stream and weedy understory





Plate (8&9) Proposed esplanade reserve (application Waitoki) Issue: Stock damaged stream and weedy understorey





Plate (10) Approved wetland covenant Issue: Inappropriate degraded farmland of poor quality approved as a wetland covenant.

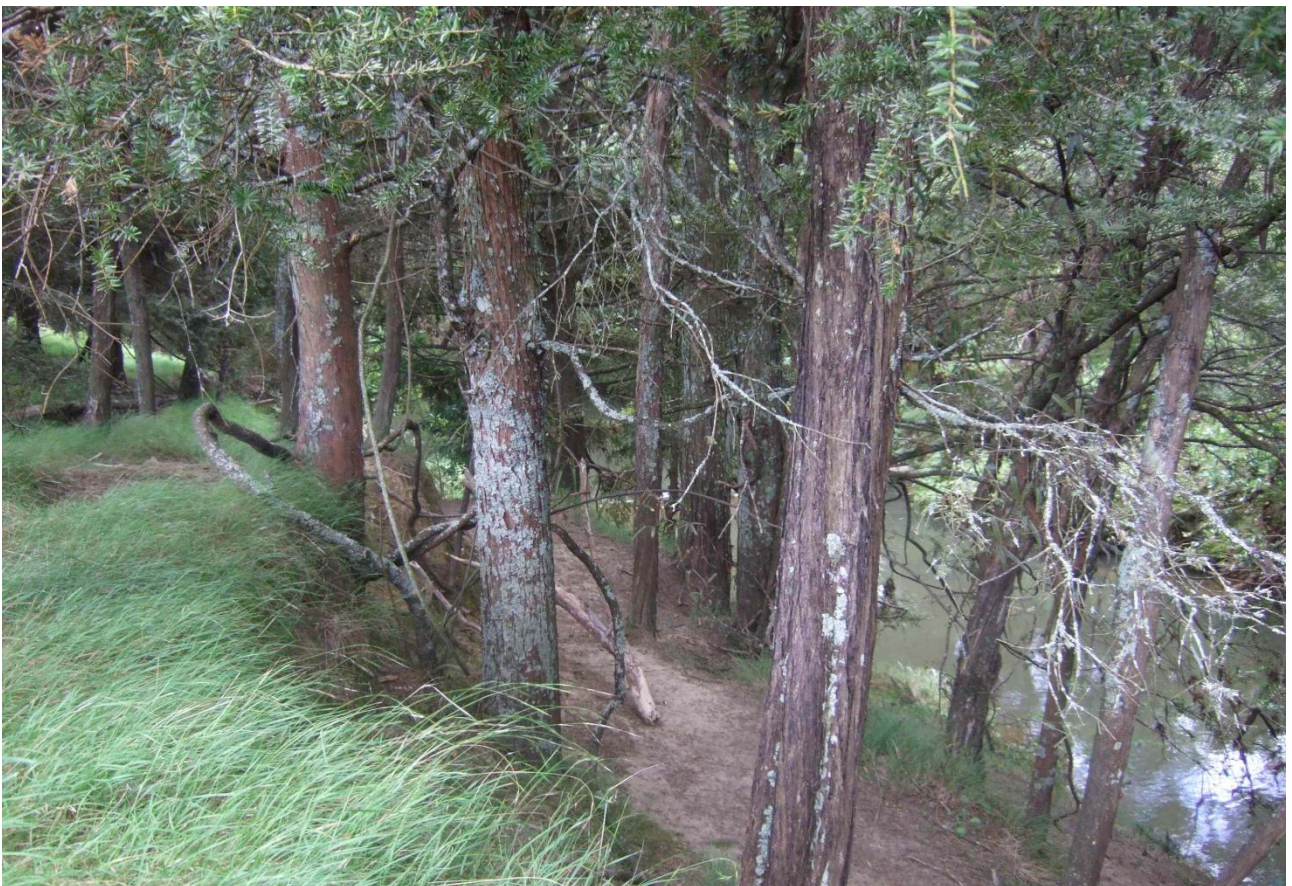


Plate (11&12) Approved bushlot covenant Issue: Degraded and damaged Manuka stand of very low quality





Plate (13&14) Approved bushlot covenant Issue: Not a natural wetland with no appropriate planting and thick sward of grass under Totara preventing establishment of understorey



6.2 Monitoring of covenants created under regulatory incentives

This report has only obtained monitoring information on the covenants established in the Rodney area. Monitoring has not kept pace with the number of bushlot and wetland covenants being established in the Rodney District with less than 1% of the 4,161 Rodney covenants been fully monitored for compliance of consent conditions. Rodney Council staff identified that all covenants they monitored had non-compliance issues and that poor quality covenants had further degraded. To some degree the lack of compliance may be a reflection of landowners not being adequately supported by council. This lack of communication between landowners and Council may be as a result of resourcing issues.

7.0 Recommendations

Successful maintenance of natural heritage values results when there is a collaborative and legally binding long term agreement between the regulatory authorities and property owners. The following recommendations are made. For each recommendation, the issue is first identified, and an improvement is recommended.

(1) Issue: Criteria for vegetation and wetland assessment under the Auckland Council District Plan (Rodney Section Appendix 7B & 7C; scale 1 & 2) currently allow too broad an interpretation of what is ecologically appropriate to be protected as a bushlot or wetland covenant.

Improvement:

- Expand Scale (1) bush quality assessment criteria of vegetation structure and complexity to include sub-canopy and ground cover layer. Refer Appendix 7B & 7C of Auckland Council District Plan (Rodney Section)
- Provide a full description of these layers and a list of the native species present within these layers
- Prohibit the inclusion of exotic and inappropriate native species

(1a) Issue: The criteria of “potential” in the Auckland Council District Plan bush quality assessment allows for too broad an interpretation of what vegetation and wetland can be considered for covenanting. This criterion increases the likelihood of landowners challenging the Council when an application is declined.

Improvement:

- Either remove the criterion of potential from Scale (2) of bush quality assessment or make it tightly descriptive. Refer Appendix 7B & 7C of Auckland Council District Plan (Rodney Section).

- If retained, provide precise guidelines on what conditions of an area of vegetation and wetland will meet a measure of ecological functionality.
- If retained, the potential of an area equates to improvements that can be achieved by the landowner over a short period of time. Potential should not be a criterion where improvements are expected in the long term because of the high levels of uncertainty that this improvement will be achieved.

(2) Issue: It is important that landowners understand the legal obligations they commit to when using the waiver to subdivide their property resulting in a bushlot or wetland covenant. Currently, information provided to landowners is not complete and there is a need for a comprehensive information pack to be created and available to landowners. This information pack needs to be continually updated and provided to successive purchasers of properties that have a bushlot or wetland covenant. The following information needs to be clearly stated when title is issued.

Improvement:

- Covenants remain the property of the landowner
- Conditions of the regulatory restrictions waiver are registered on the land title by way of bond or consent notice
- Landowners are responsible for maintaining the natural heritage values of their covenanted land which includes pest (weed and animal) control and exclusion (usually fencing) of stock
- Council can charge and recover a monitoring fee of \$165 where there is a registered consent notice or bond.
- Covenants and the conditions listed on the consent notice are in perpetuity
- Covenants cannot be rescinded or removed from a title.

(2a) Issue: There is a need for a collaborative approach between Council and landowners to the implementation of regulatory incentives. Legacy Council consenting staff recommend:

Improvement:

- Maintain supportive engagement and communication with bushlot owners
- Provide more guidance to bushlot owners on their conservation/management responsibilities
- Educate bushlot owners as to the importance of ecological linkages and habitat values
- Ensure compliance issues are addressed early
- Support bushlot owners to effectively protect and manage the biodiversity within bushlots

- Communicate with every new owner of a covenanted property to explain their obligations to the maintenance of the covenants“ natural heritage values

(3) Issue: A weakness identified for all types of covenants and regulatory incentives is the lack of resources to monitor compliance of conditions imposed on property owners.

Improvement:

- Compliance can be improved with the consent conditions being enforced by Council with regular monitoring to ensure these conditions are being met in the long-term. This can only be achieved if a standardised but fully resourced monitoring system is established
- Allocate dedicated resources and staff to monitoring of covenants established under the regulatory incentive waiver

9.0 Acknowledgements

Many people have contributed information and their thoughts in the preparation of this report. I thank the following staff of the Auckland Council: Dr Carol Bergquist, Jonathan Boow, Stacey Byers, Malcolm Harrison, Dr Tim Lovegrove, Rosalie Richards, Scott Speed, Rue Stratham, Craig Pratt, Craig Bishop, Melinda Rixon, Brenda Osborne, Rosalie Richards, John Sawyer, Chris Haddon, Jenny Fuller, Alina Wimmer, Abigail Forbes. I thank the number of landowners for permission to view their properties.

10.0References

Auckland Council District Plan (Rodney Section). 2011. Auckland Council District Plan (Rodney Section). Auckland Council, Auckland, New Zealand.

Bergquist, C. 2011. The Use of Covenants and Grants on Private Land for Biodiversity Gains Covenants as Condition of Resource Consent. Unpublished internal report to Auckland Council, Auckland, New Zealand.

Bellingham, M. 2009. Does district planning under the Resource Management Act 1991 protect biodiversity? Unpublished PhD thesis, Auckland University, Auckland New Zealand. Available at: <https://researchspace.auckland.ac.nz/handle/2292/3406>

Bellingham, M. 2005. Thinking like a tree: Short-term planning ignores New Zealand’s urban and Peri-urban development crisis. Aristos Consultants Ltd, Waitakere City. Unpublished PowerPoint presentation. Available at: http://www.lincoln.ac.nz/Documents/1216_Bellingham_2005_s3913.pdf

- Gibbs, D and M. Sanson. 1990. Covenants and Easements for state Forest Assets Sales. A report by the Parliamentary Commissioner for the Environment. ISBN 0-908804-18-0, Wellington, New Zealand
- Greenhalgh, S., Simcock, R., Kaighin, C. 2010. Biodiversity offsets for the Auckland Region. Auckland Regional Council. Landcare Research Contract Report LC0012. Auckland , New Zealand.
- Joseph, P.A. 2001. Property rights and environmental regulation. *In*: Joseph, P.A. 1999. Property rights and environmental regulation under the Resource Management Act 1991. Ministry for the Environment, Wellington, New Zealand.
- Kendal, H., Stewart, P. 2010. Are Covenants Working? Biodiversity protection through the Thames Coromandel District Council Plan. Contract Report 10/093. Natural Solutions Marine and Terrestrial Ecologists Ltd. Thames, New Zealand.
- Kurusheva, J., Bolstad, R. 2011. Transformations International Consulting & Training Ltd <http://www.transformations.net.nz/> Auckland, New Zealand.
- Ministry for the Environment. 2011. Measuring up. Environmental reporting - A discussion document. Wellington, New Zealand.
- Ministry for the Environment. 2011. Proposed National Policy Statement on Indigenous Biodiversity Evaluation under section 32 of the Resource Management Act 1991. Wellington, New Zealand.
- Ministry for the Environment. 2000. The New Zealand Biodiversity Strategy. Wellington, New Zealand.
- Rodney District Council. 2010. Rodney District Council Rural Strategy. Orewa, New Zealand.
- Sage, E. 2001. The Biotic Holocaust. *In*: Resource Management Law Association Conference, 4-7 October 2001, Wellington, New Zealand. Session 3 Plenary "Land: Bioinvasions, Biodiversity, Biotic Holocaust.
- Seabrook-Davison, M. 2010. An evaluation of the conservation of New Zealand's threatened

biodiversity - management, species recovery and legislation. Unpublished PhD thesis, Massey University, New Zealand.

Stewart, P. 2011. TCDC Covenant Monitoring Field Report 2010/11. Thames Coromandel District Council. Thames, New Zealand.

Young, M. D., Gunningham, N., Elix, J. Lambert, J., Howard, B., Grabosky, P., McCrone, E. 1996. Reimbursing the future: an evaluation of motivational, voluntary, price-based, property-right, and regulatory incentives for the conservation of biodiversity Biodiversity Series, Paper No. 9. CSIRO Division of Wildlife and Ecology, the Australian Centre for Environmental Law, and Community Solutions Biodiversity Unit, Department of the Environment, Sport and Territories. ISBN 0 642 24429 4