

IN THE HIGH COURT OF NEW ZEALAND

AUCKLAND REGISTRY

CIV-2016-

IN THE MATTER of an appeal under section 158(1) of the Local Government (Auckland Transitional Provisions) Act 2010

BETWEEN **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**, an incorporated society having its registered office at Level 1, 90 Ghuznee Street, Wellington
Appellant

AND **AUCKLAND COUNCIL**, a unitary authority under section 6 of the Local Government (Auckland Council) Act 2009
Respondent

NOTICE OF APPEAL

13 September 2016

Royal Forest and Bird Protection Society of New Zealand Inc.
PO Box 2516
Christchurch 8140
Ph 03 9405524
Solicitor acting: Peter Anderson/Sally Gepp

To: The Registrar of the High Court at Auckland

And to: Auckland Council

TAKE NOTICE that the Royal Forest and Bird Protection Society of New Zealand Incorporated (the Appellant) will appeal to the High Court against the decisions of the Auckland Council (the Respondent) on the Auckland Unitary Plan dated 19 August 2016, upon the grounds that the decisions are wrong in law.

DECISIONS OR PARTS OF DECISIONS APPEALED AGAINST

1. The Auckland Unitary Plan (the plan) is a combined regional and district planning instrument comprising:
 - (a) a regional policy statement for Auckland;
 - (b) a regional plan, including a regional coastal plan, for Auckland; and
 - (c) a district plan for Auckland.¹
2. The Appellant appeals against decisions on the plan. The decisions were adopted by the Respondent on recommendations made by the Independent Hearings Panel (the Panel).
3. The specific parts of the decisions that are appealed are decisions on Topic 10 (Biodiversity) and Topic 23 (Significant ecological areas and vegetation management).

ERRORS OF LAW

First alleged error of law – failure to identify terrestrial significant ecological areas

4. The Respondent decided not to identify certain significant ecological areas as SEA_T or SEA_M. The Respondent’s decision was as follows:

20. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 023 (Significant ecological areas and vegetation management), July 2016”

Panel recommendations accepted:

¹ Section 122 Local Government (Auckland Transitional) Provisions Act 2010

20.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 023 (Significant ecological areas), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.²

5. This decision was based on the recommendation from the Independent Hearings Panel that:

“The Panel generally accepts the Council’s position that areas that satisfy the significant ecological factors (set out in the regional policy statement) should be mapped as such. However, where there are competing values, a judgment call, based on evidence, needs to be made as to what provisions better promote sustainable management of natural and physical resources as required by section 5 of the Resource Management Act 1991. ...

As addressed below a number of significant ecological areas have been spatially modified and in some case deleted as the Panel found ... other planning imperatives outweighed their identification”³

and

“Where there was evidence that the identification of the significant ecological area would frustrate the purpose of the zone or location, and that purpose has economic or strategic importance to the region and could not readily be achieved in another way or area, the Panel recommends removal of the identification of the significant ecological area. Examples include their removal from all Special Purpose – Quarry Zones and from the Middlemore Hospital site.”⁴

(“the other planning imperatives reason”).

6. The Panel also gave other reasons for spatially modifying, or not identifying as significant ecological areas, certain areas put forward by the Council or submitters as potential significant ecological areas. The other reasons included the area not

² Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan, Decisions Report, Auckland Council, 19 August 2016.

³ Report to Auckland Council Hearing Topic 023 Significant ecological areas and vegetation management, page 6.

⁴ Report to Auckland Council Hearing Topic 023 Significant ecological areas and vegetation management, page 14.

satisfying the significant ecological area factors, or that there was inadequate evidence for the area (to demonstrate the factors were met).⁵ Other than by reference to the Special Purpose – Quarry Zone and Middlemore Hospital “examples” set out above, the Panel did not identify which significant ecological areas were “not identified” for which reason.

7. The area put forward by the Council or submitters as significant ecological areas but altered or not recommended for identification as significant ecological areas are set out in Schedule 1 to this Notice of Appeal.
8. The Respondent’s decision to not identify or to spatially modify certain SEA’s based on the *other planning imperatives* reason was unlawful, as it:
 - (a) applied the wrong legal test in recognising and providing for areas under s 6(c) of the Act;
 - (b) took into account an irrelevant consideration, namely the *other planning imperatives*; and/or
 - (c) failed to implement the regional policy statement provisions of the plan.

Second alleged error of law –Significance factors for SEA-M

9. The regional policy statement contains (in Schedule 4) criteria or “factors” for determining whether any part of the coastal marine area is a marine significant ecological area (“SEA-M”). The SEA_M criteria apply to areas below Mean High Water Springs.
10. The Respondent decided to adopt the panel’s recommendations on significance factors for SEA_M. The Respondent’s decision was as follows:

7. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topics 006 (Natural resources) and 010 (Biodiversity), July 2016”

Panel recommendations accepted:

- 7.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 006 (Natural

⁵ Page 6 and 14.

resources) and Hearing Topic 010 (Biodiversity), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

11. The Panel's recommendation with respect to the SEA_M factors was that:

...The Panel finds that there is no compelling evidence to change the criteria proposed by Ms Fuller and Dr Lundquist.

The Panel notes that it has changed the term 'criteria' to 'factors' and that this is a consistent change across the regional policy statement. The Panel's view is that criteria should be capable of being objectively measured; whereas those listed in the Plan and supported by the Council fall into the category of factors to be considered in the identification of (in this case) significant ecological areas.

While the Panel has retained those factors, including representativeness, stepping stones, threat status and rarity, uniqueness or distinctiveness and recognised international or national significance, the detail of these has been included in the schedules of identified significant ecological areas. One of the reasons for doing this is that one of the amendments to the rural subdivision provisions is to enable a subdivision where a site satisfies the significant ecological areas factors, but is not identified in the Plan as a significant ecological area.⁶

12. The SEA_M factors are set out in Appendix 2 to this Notice of Appeal. They include six factors and four "exclusion indicators". A site that meets one of the six factors, but also meets any exclusion indicator is determined not to be a SEA_M.

13. The Respondent erred in law by adopting significance factors that include "exclusion indicators" because:

- (a) the Respondent applied the wrong test, and/or took into account an irrelevant consideration, in that the exclusion criteria are not relevant to whether an area is significant indigenous vegetation or significant habitat of indigenous fauna under s 6(c) of the Act;

⁶ Report to Auckland Council Hearing Topic 006 Natural Resource and 010 Biodiversity, page 18.

- (b) the regional policy statement (Schedule 4) does not give effect to the New Zealand Coastal Policy Statement 2010, specifically Policy 11, because the exclusion criteria exclude areas, including habitat for threatened taxa, that are protected under Policy 11;
- (c) the decision is unreasonable and/or based on an evident logical fallacy and/or unsupportable, in that:
 - (i) the regional policy statement is internally inconsistent in that Policy B7.2.2(3) and (4) of the regional policy statement directs identification of areas meeting any of the SEA_M factors as SEA_M;
 - (ii) all areas of the coastal marine area are likely to be human-modified to some extent.
 - (iii) many of the sites identified in the plan as SEA_M are human-modified to some extent; and/or
 - (iv) the criteria or factors for determining whether an area outside the coastal marine area is a terrestrial significant ecological area (“SEA_T”) do not incorporate exclusion criteria. This means that where the factors are met, the portion of an area of vegetation or habitat that is above MHWS will be SEA_T, where-as the portion below MHWS will not be SEA_M.

Third alleged error of law – Failure to give effect to NZCPS

14. The Respondent decided to adopt a range of policies in the Plan for the management of SEA_M and SEA_T (Regional Plan D9.3), vegetation management and biodiversity policies applying outside SEA_M and SEA_T (E15.3), and activities in the coastal environment (F2), that are contradictory, and do not give effect to the NZCPS, specifically Policy 11, as required by s 67(3)(b) of the Act.

QUESTIONS OF LAW

First alleged error of law – reasons for not identifying significant ecological areas

15. Did the Respondent, in ruling that certain SEAs be excluded from the plan:

(a) Exclude or spatially modify areas meeting the SEA factors for an invalid reason?

(b) Fail to implement Policy B7.2.2 of the regional policy statement?

Second alleged error of law – Failure to give effect to NZCPS for significance criteria for SEA-M

16. Did the Respondent, in adopting a set of significance factors for SEA-M that contain “exclusion indicators”:

(a) apply the wrong test, in determining that the exclusion indicators were relevant to identification of areas meeting s 6(c) of the Act?

(b) fail to give effect, in Schedule 4 of the regional policy statement, to the NZCPS, particularly Policy 11?

(c) make a decision that was unreasonable and/or based on an evident logical fallacy and/or unsupportable?

Third alleged error of law – Failure to give effect to NZCPS for indigenous biodiversity and CMA policies

17. Did the Respondent, in adopting the suite of policies in the Plan relating to protection of the coastal environment and activities in the coastal environment, fail to give effect to:

(a) the NZCPS 2010, particularly Policy 11?

(b) the regional policy statement, particularly Policy B.7.2.2(5)?

GROUND OF APPEAL

First alleged error of law – reasons for not identifying significant ecological areas

Wrong legal test

18. Case law relating to identification of outstanding natural landscapes (ONLs) under section 6(a) of the Act has determined that the identification of ONLs is to occur with respect to objective criteria. The identification of ONLs drives the policies. It is not the case that policies drive the identification of ONLs. The Act clearly delineates the

task of identifying ONLs and the task of protecting them. The identification of ONLs does not depend on the protections those areas will receive. Rather, Councils are expected to identify ONLs with respect to objective criteria of outstandingness and these landscapes will receive [in the case of landscapes in the coastal environment] the protection directed by the Minister in the applicable policy statement: (*Man O'War Station Limited v Auckland Council* [2015] NZHC 1537 at [59] – [60] (under appeal)).

19. That approach must also be the correct approach to identification of areas of significant indigenous vegetation and significant habitat of indigenous fauna meeting s 6(c) of the Act. That is, they are to be identified based on objective criteria, without reference to the policy implications of their identification. That submission is supported by the High Court's decision in *West Coast Regional Council v Friends of Shearer Swamp* [2012] NZRMA 45 at [76(d)], which confirms that identification of significant areas is a different question from how the areas are protected, and that the latter is a function of the Plan's objectives, policies and methods.
20. A weighing up analysis or "judgment call" as to whether to identify sites meeting the SEA criteria, or not, based on whether there are "other planning imperatives" that outweigh such identification is wrong in law.

Failure to give effect to the Regional Policy Statement

21. Under section 67(3)(c), a regional plan must give effect to a regional policy statement.
22. Policy B7.2.2 of the regional policy statement provisions of the plan states:
 - B7.2.2. Policies
 - (1) Identify and evaluate areas of indigenous vegetation and the habitats of indigenous fauna in terrestrial and freshwater environments considering the following factors in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule:
 - (a) representativeness;
 - (b) stepping stones, migration pathways and buffers;
 - (c) threat status and rarity;
 - (d) uniqueness or distinctiveness; and
 - (e) diversity.

(2) Include an area of indigenous vegetation or a habitat of indigenous fauna in terrestrial or freshwater environments in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule if the area or habitat is significant.

(3) Identify and evaluate areas of significant indigenous vegetation, and the significant habitats of indigenous fauna, in coastal environments considering the following factors in terms of the descriptors contained in Schedule 4 Significant Ecological Areas – Marine Schedule:

- (a) recognised international or national significance;
- (b) threat status and rarity;
- (c) uniqueness or distinctiveness;
- (d) diversity;
- (e) stepping stones, buffers and migration pathways; and
- (f) representativeness.

(4) Include an area of indigenous vegetation or a habitat of indigenous fauna in the coastal environment in the Schedule 4 Significant Ecological Areas – Marine Schedule if the area or habitat is significant.

23. Policy B7.2.2(2) and B7.2.2(4) are directive policies, requiring that areas that are significant in terms of the SEA_T or SEA_M criteria are included in Schedule 3 (terrestrial) or Schedule 4 (marine). A decision to spatially modify or not include in Schedule 3 or 4 areas that meet the SEA_T or SEA_M criteria on the basis of “other planning imperatives” means that RPS Policy B7.2.2(2) or (4) has not been given effect to in relation to those sites.

Second alleged error of law – Significance factors for SEA-M

Exclusion indicators not relevant under s 6(c)

24. Identification of areas that are significant indigenous vegetation or significant habitat of indigenous fauna is the first step in recognising and providing for the protection of such areas under s 6(c) of the Act. The exclusion indicators for SEA_M in Schedule 4 are not relevant to whether an area is significant indigenous vegetation or significant habitat of indigenous fauna in terms of section 6(c) of the Act. The application of these factors in determining whether an area is a SEA_M will result in the exclusion of areas deserving of protection under s 6(c).

Exclusion indicators result in failure to give effect to the NZCPS Policy 11

25. Identification of areas as SEA_M, together with the application of protective policies, is one of the Plan's methods for giving effect to Policy 11 of the NZCPS. The exclusion indicators are not relevant to determining whether an area meets any of the criteria of Policy 11 of the NZCPS. The application of these factors in determining whether an area is a SEA_M will result in the exclusion of areas deserving of protection under Policy 11, such that the plan fails to give effect to the NZCPS.

Unreasonable decision, or decision based on an evident logical fallacy, or unsupportable decision

26. Policy B7.2.2 (3) and (4) of the regional policy statement direct identification as SEA_M of areas meeting any of the SEA_M "inclusion" factors. Schedule 4 provides that areas that meet any of the SEA_M inclusion factors, but also meet a SEA_M exclusion factor, are not SEA_M. This results in an internal inconsistency, where compliance with Schedule 4 results in a failure to give effect to Policy B7.2.2. This internal inconsistency is unreasonable or based on an evident logical fallacy.

27. The first exclusion criterion ("human-modified") is unreasonable because:

(a) The term "human-modified", used in the first exclusion factor, is not defined. All areas of the coastal marine area are likely to be human-modified to some extent.

(b) Schedule 4 of the Plan includes sites that are said to have been assessed as SEA_M on the basis of the SEA_M factors. It includes sites that, according to the description of their values in Schedule 4, are "human-modified" to some extent. For example, Atiu Creek (SEA_M1) includes "stands of regenerating kanuka forest and scrubland" and Tauhoa River is "one of the two most extensive areas of saline vegetation in the Kaipara Harbour and is relatively unmodified by reclamation".

28. The SEA_T criteria in the notified Plan also included exclusion criteria. However, these were not adopted in the decisions version of the Plan. As a result, a different approach to significance applies above and below Mean High Water Springs, which is not justified by the different environments. Areas spanning MHWS may be significant above MHWS, but not significant below. This is illogical.

Third alleged error of law – Failure to give effect to NZCPS for indigenous biodiversity and CMA policies

29. Under s 67(3)(b) and (c) of the Act, a regional plan must give effect to the NZCPS and a regional policy statement.

30. Policy 11 of the NZCPS is:

To protect indigenous biological diversity in the coastal environment:

(a) avoid adverse effects of activities on:

(i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

(ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;

(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

(v) areas containing nationally significant examples of indigenous community types; and

(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;

(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;

(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

(v) habitats, including areas and routes, important to migratory species; and

(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

31. Policy B.7.2.2(5) of the regional policy statement is:

Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.

32. The Plan incorporates a range of policies for:

- (a) protection of, and management of activities within, SEA_M and SEA_T (Regional Plan D9.3);
- (b) vegetation management and biodiversity policies applying outside SEA_M and SEA_T (E15.3); and
- (c) activities in the coastal environment (F2).

33. The Policies are not able to be reconciled in a manner that gives effect to the NZCPS (specifically Policy 11) or the regional policy statement (specifically Policy B7.2.2(5)).

RELIEF SOUGHT

34. The Appellant seeks the following relief:

- (a) That the appeal is allowed.
- (b) A declaration that the Respondent erred in relation to the questions of law set out in this notice of appeal;
- (c) That the Respondent's decisions that are affected by the errors of law are quashed;
- (d) That the Respondent's is directed to reconsider its affected decisions in light of the High Court's findings on the matters set out above.
- (e) The costs of this appeal.

Dated 9 September 2016



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Appendix 1 – areas not included as SEA or spatially modified

SCHEDULE OF ALTERED SEAs	TYPE OF SPECIAL PURPOSE ZONE (IF ANY)
SEA_T_1177	Special Purpose - Quarry Zone
SEA_T_1186	
SEA_T_2042	
SEA_T_2043	
SEA_T_2295	
SEA_T_2626	Special Purpose - Quarry Zone
SEA_T_2626a	Special Purpose - Quarry Zone
SEA_T_4345	Special Purpose - Healthcare Facility and Hospital Zone
SEA_T_4386	
SEA_T_4558	Special Purpose - Quarry Zone
SEA_T_4711	
SEA_T_5274	Special Purpose - Quarry Zone
SEA_T_5323	Special Purpose - Quarry Zone
SEA_T_5346	Special Purpose - Quarry Zone
SEA_T_5349	Special Purpose - Quarry Zone
SEA_T_5492A	Special Purpose - Cemetery Zone
SEA_T_5492A	Special Purpose - Cemetery Zone
SEA_T_5492B	Special Purpose - Cemetery Zone
SEA_T_5492C	Special Purpose - Cemetery Zone
SEA_T_5492C	Special Purpose - Cemetery Zone
SEA_T_5539	Special Purpose - Quarry Zone / Residential – Rural and Coastal Settlement Zone / Rural – Waitakere Ranges Zone / Open Space – Conservation Zone / Road
SEA_T_5547	
SEA_T_5548a	
SEA_T_5588	Special Purpose - Quarry Zone
SEA_T_6063	
SEA_T_6065	
SEA_T_612	Special Purpose - Quarry Zone
SEA_T_6180	
SEA_T_6245	Special Purpose - Major Recreation Facility Zone
SEA_T_6346	
SEA_T_6373a	Special Purpose - Airports and Airfields Zone / Future Urban Zone
SEA_T_6393	
SEA_T_6436	Special Purpose - Quarry Zone
SEA_T_6454	Special Purpose - Quarry Zone
SEA_T_6464	Special Purpose - Quarry Zone
SEA_T_6622	
SEA_T_6652	
SEA_T_6652b	
SEA_T_6669	
SEA_T_6677	

SEA_T_6998	
SEA_T_7032	Special Purpose - Quarry Zone
SEA_T_770	
SEA_T_780	
SEA_T_785	
SEA_T_8049	
SEA_T_8160	Special Purpose - Quarry Zone
SEA_T_8162	
SEA_T_8169	
SEA_T_8295	
SEA_T_8297	
SEA_T_8299	
SEA_T_8300	
SEA_T_8343	
SEA_T_8443	Special Purpose - Quarry Zone
SEA_T_930	
SEA_T_973	
SEA-M2-26a	
SEA-M2-3262DD	

Appendix 2 – SEA_M factors

Schedule 4 Significant Ecological Areas – Marine Schedule

Factors for assessing ecological value [rps]

An area shall be considered an area of significant indigenous vegetation and/or a significant habitat of indigenous fauna in the coastal marine area if it meets one or more of the sub-factors (1) to (6) below, with factors (1) to (5) being applied first, and factor (6) last to identify gaps in representation across marine habitats and ecosystems, and to identify best examples of each habitat or ecosystem. These factors are also referred to in B7.2.2(3).

Areas are not considered to be of significant ecological value – marine if they meet one of the exclusion indicators identified in (7)(a) to (d).

These factors have been used to determine the areas included in Schedule 4 Significant Ecological Areas – Marine Schedule, and will be used to assess proposed future additions to the schedule.

FACTORS:

(1) RECOGNISED INTERNATIONAL OR NATIONAL SIGNIFICANCE

Sub-factor:

(a) it is an area identified as internationally or nationally significant for either indigenous marine ecosystems or biodiversity, or with reference to the species that utilise these ecosystems.

(2) THREAT STATUS AND RARITY

Sub-factors:

(a) it is a habitat that is required to provide for the life cycle of a marine plant or animal that is locally rare and has been assessed under the New Zealand Threat Classification System (NZTCS), and determined to have a national 'At Risk' conservation status of Naturally Uncommon, Relict, Recovering and Declining; or

(b) it is a habitat that is required to provide for the life cycle of a plant or animal that occurs naturally in Auckland and has been assessed as having a regional

threatened conservation status including Regionally Critical, Endangered and Vulnerable and Serious and Gradual Decline; or

(c) it is a habitat that is required to provide for the life cycle of a plant or animal that occurs naturally in Auckland and has been assessed by a nationally or internationally recognised assessment process (e.g. NZTCS, IUCN) and determined to have a threatened conservation status including Critical, Endangered, or Vulnerable; or

(d) it is a habitat that occurs naturally in Auckland and is required to provide for the life cycle of a marine animal that is listed as a Protected Species in Schedule 7A of the Wildlife Act (1953); or

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Schedule 4 Significant Ecological Areas – Marine Schedule

(e) it is an indigenous marine habitat or ecosystem that occurs naturally in Auckland and has been assessed by the Council or other national assessment process to be threatened based on evidence and expert advice;
or

(f) it is an indigenous vegetation or habitat of indigenous fauna that occurs within an indigenous coastal ecosystem as identified in NZCPS Policy 11b(iii) as being particularly vulnerable to modification.

(3) UNIQUENESS OR DISTINCTIVENESS

Sub-factors:

(a) it is habitat for a marine plant or animal that is endemic or near-endemic to the Auckland region; or

(b) it is an indigenous ecosystem that is endemic to the Auckland region or supports ecological assemblages, structural forms or unusual combinations of species that are endemic to the Auckland region; or

(c) it is a habitat that supports occurrences of a plant, animal or fungi that are the largest specimen or largest population of the indigenous species in Auckland or New Zealand.

(4) DIVERSITY

Sub-factors:

(a) it is an intact habitat sequence extending across an environmental gradient, and including both floral and faunal habitat components; or

(b) it includes a large number of intertidal and/or subtidal habitats; or

(c) it is a habitat type that supports a high species richness for its type.

(5) STEPPING STONES, BUFFERS AND MIGRATION PATHWAYS

Sub-factors:

- (a) it is a site which makes an important contribution to the resilience and ecological integrity of surrounding areas; or
- (b) it is part of a network of sites that cumulatively provide important habitat for indigenous fauna or when aggregated make an important contribution to ecological function and integrity; or
- (c) it is an example of an indigenous ecosystem, or habitat of indigenous fauna that is used by key species permanently or intermittently for an essential part of their life cycle, including migratory pathways, roosting or feeding areas; or
- (d) it is an example of an ecosystem, indigenous vegetation or habitat of indigenous fauna, that is immediately adjacent to, and provides protection for, indigenous biodiversity in an existing protected natural area (established for Proposed Auckland Unitary Plan Decision Version 19 August 2016 2 Schedule 4 Significant Ecological Areas – Marine Schedule the purposes of biodiversity protection for either terrestrial or marine protection) or an area identified as significant under the ‘threat status and rarity’ or ‘uniqueness’ criteria.

(6) REPRESENTATIVENESS

Sub-factors:

- (a) it is an example of an indigenous marine ecosystem (including both intertidal and sub-tidal habitats, and including both faunal and floral components) that makes up part of at least 10% of the natural extent of each of Auckland’s original marine ecosystem types and reflecting the environmental gradients of the region; and
- (b) it is an example of an indigenous marine ecosystem, or habitat of indigenous marine fauna (including both intertidal and sub-tidal habitats, and including both faunal and floral components), that is characteristic or typical of the natural marine ecosystem diversity of Auckland; or
- (c) it is a habitat that is important to indigenous species of Auckland, either seasonally or permanently, including for migratory species and species at different stages of their life cycle (and including refuges from predation, or key habitat for feeding, breeding, spawning, roosting, resting, or haul out areas for marine mammals); or
- (d) it is an ecosystem that contains an intact ecological sequence across an

environmental gradient (e.g., intact intertidal vegetation sequence including seagrass, mangrove, saltmarsh, and terrestrial coastal vegetation); or

(e) it is an ecosystem that contains a large number of marine habitat types, with the full range of habitats represented that is typical for that depth and exposure within the Auckland region; or

(f) it is a habitat or ecosystem of particular importance for indigenous or migratory species.

(7) EXCLUSION INDICATORS

- (a) It is a human-modified or artificial structure or habitat (unless they have been created specifically or primarily for the purpose of protecting or enhancing biodiversity).
- (b) It is a site maintained for aquaculture production of either native or nonindigenous marine fauna or flora.
- (c) It is a novel or synthetic ecosystem dominated by non-indigenous marine fauna or flora.
- (d) It is a habitat created by beach nourishment or coastal planting (unless they have been created specifically or primarily for the purpose of protecting or enhancing biodiversity).