

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topics 006 Natural
resources and 010 Biodiversity**

July 2016

Report to Auckland Council – Hearing topics 006 Natural resources and 010 Biodiversity

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1. Hearing topic overview

1.1. Topic description

Topics 006 and 010 address the regional policy statement provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
Minerals	B6 - 6.2	E28 Mineral extraction form land
Freshwater systems	B7 - 7.3	E3 Lakes, rivers, streams and wetlands
Coastal water, freshwater and geothermal water	B6 - 6.3 B7 - 7.3	E2 Water quantity, allocation and use E7 Taking, using, damming and diversion of water and drilling
Indigenous biodiversity	B4.3 - 4.3.4	E15 Vegetation management and biodiversity

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8)(c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathway report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

1.2.1. Minerals

- i. Objective 1 has been changed from "Auckland's mineral needs are met largely from within Auckland" to an objective requiring that mineral resources are effectively and efficiently utilised.

1.2.2. Freshwater systems

- i. Freshwater systems have been separated from Freshwater and Geothermal water. This is to recognise that freshwater systems are different, but related, to water issues. Also having the provisions for freshwater systems combined with Freshwater and Geothermal water was confusing.
- ii. The objectives and policies seek to enhance degraded freshwater systems, minimise their further loss, and seek that the adverse effects from the change of land uses on these systems are avoided, remedied or mitigated.

1.2.3. Coastal water, freshwater and geothermal water

- i. For integrated management purposes all water; coastal, fresh and geothermal water, have been grouped to provide a more integrated and comprehensive approach to the sustainable management of water. Degraded coastal waters were included in the coastal section, however due to the restructuring of the regional policy statement it is the Panel's recommendation that all waters are addressed together.

1.2.4. Indigenous biodiversity

- i. Indigenous biodiversity provisions have been relocated from the chapter on natural heritage to natural resources. The Panel's view is that this is a better fit with the revised structure of the regional policy statement.
- ii. The provisions have been substantially redrafted due to:
 - a. the regional policy statement being a standalone document, and not tagged as regional and district plan, means that some of the objectives and policies have been relocated to the Plan section - Overlays and Auckland-wide provisions;
 - b. many of the provisions were written in an overly complex and complicated way and this combined with the internal referencing to other policies in the chapter, made the provisions difficult to understand. The Panel has redrafted the provisions to make them clearer while retaining the management and protection focus necessary to maintain and where practicable enhance biodiversity values.

1.2.5. General changes

- i. Key amendments to the objectives and policies include:
 - a. a number of amendments to give better effect to the New Zealand Coastal Policy Statement 2010 and National Policy Statement for Fresh Water Management 2014;
 - b. a number of amendments to objectives to provide stronger support for the regional policy statement policies;
 - c. a number of amendments to objectives and policies to provide stronger support for regional plan and coastal plan provisions;

- d. reference to point and non-point discharges generally in the objectives (was Objective 4 of the notified plan), rather than just specifically stormwater runoff and wastewater discharges;
- e. new objective that addresses adverse effects associated with changes in land use and particularly effects of intensification on freshwater and coastal water; and
- f. promoting catchment management planning and its integration with structure planning.

1.3. Overview

1.3.1. General

As explained in the Panel's Report to Auckland Council – Overview of recommendations July 2016, the regional policy statement is a document in its own right, i.e. standalone. It no longer has objectives and policies tagged as regional and district plan provisions. As also explained, the structure of the regional policy statement has been amended and the topics covered in this report now all sit within B7 Natural resources. For this reason the topics minerals, freshwater systems, coastal Water, freshwater and geothermal water and indigenous biodiversity have been addressed together in this report.

It is noted that air is addressed in a separate report which combines the regional policy statement as well as the Plan matters. See the Panel's Report to Auckland Council – Hearing topic 035 Air quality July 2015.

Key amendments to the objectives and policies include those listed below.

- i. A number of amendments to give better effect to the New Zealand Coastal Policy Statement 2010 and the National Policy Statement - Fresh Water Management 2014.
- ii. A number of amendments to objectives to provide stronger support for the regional policy statement policies.
- iii. A number of amendments to objectives and policies to provide stronger support for regional plan and coastal plan provisions.
- iv. Reference to point and non-point discharges generally in Objective 4 of the notified Plan, rather than just specifically stormwater runoff and wastewater discharges. There are no regional policy statement objectives that refer to non-point (indirect discharges) and point (direct discharges). The inclusion of such references will ensure that discharges of all types of contaminants, such as nutrients and sediment, are covered by the objective and not just stormwater and wastewater. This amendment will provide support for a number of regional policy statement policies and regional plan provisions that refer to point and non-point discharges and sediment runoff, and will ensure the issues relating to freshwater systems and water quality are better addressed.
- v. New objective that addresses adverse effects associated with changes in land use and particularly effects of intensification on freshwater and coastal water.

Changes in land use, especially when land is urbanised, have the potential to cause significant adverse effects on freshwater and coastal water and freshwater systems unless appropriately managed. While there are policies relating to the integration of land use and water at the regional policy statement level, and provisions at regional plan level, there is no corresponding regional policy statement objective to be implemented by these policies and provisions.

- vi. The Panel considers this to be a significant oversight, particularly given the region's future growth pressures, and is therefore recommending the inclusion of a new objective to address this issue. The inclusion of the new objective will also better address the issues relating to freshwater systems and water quality.
- vii. Promoting catchment management planning and its integration with structure planning. To better integrate the management of land use, water and freshwater systems and to implement the objectives; the Panel recommends amendments to the policies that promote catchment management planning and the integration of catchment management plans with structure plans. A number of submitters, including the Waiheke Community Planning Group (5111,) have identified the need to achieve better management of land and water on a catchment-wide basis to more effectively control sediment runoff and other contaminant discharges.
- viii. Setting priorities for the allocation of water. A number of submitters sought that the regional policy statement provisions identify specific uses for which the allocation of water should be prioritised. The Panel considers allocation mechanisms including the setting priorities are better addressed at the regional plan level.

1.3.2. Minerals

The only change of any significance is to the first objective. That objective sought that "Auckland's mineral needs are met largely from within Auckland". The Panel recommends that this be replaced by an objective requiring that mineral resources are effectively and efficiently utilised.

1.3.3. Freshwater systems

The Panel recommends a structural change to this chapter of the regional policy statement to create a new section on freshwater systems.

The notified Plan uses the term 'freshwater systems' which is defined as:

The beds, banks, margins, flood plains and waters of rivers and natural lakes and wetlands, and groundwater systems together with their natural functioning and interconnections.

Freshwater systems include the water in rivers, lakes, wetlands and groundwater. The Panel is concerned about the overlap of provisions relating to freshwater and to freshwater systems, and the potential for inconsistency in approaches and confusion regarding which provisions should apply when dealing with water in freshwater systems.

1.3.4. Coastal water, freshwater and geothermal water

For integrated management purposes all types of water - coastal, fresh and geothermal - have been grouped to provide a more integrated and comprehensive approach to the sustainable management of water. Degraded coastal waters were included in the coastal section, however as a result of the Panel's restructuring of the regional policy statement; it is the Panel's recommendation that all waters are addressed together. This gives better effect to the objectives and policies of the New Zealand Coastal Policy Statement 2010, in particular Objective 1 and Policy 4 (integration) and Policy 21 (enhancement of water quality), as well as those of the National Policy Statement for Freshwater Management 2014, in particular those in Section A - Water Quality and Section C - Integrated Management.

1.3.5. Biodiversity

The Panel recommends that the regional policy statement be a standalone document. In doing so the biodiversity provisions which were tagged regional coastal plan (rcp), regional (rp) and/or district plan (dp) have been relocated to new sections created in the overlay and Auckland-wide sections of the Plan.

This has resulted in a much simplified regional policy statement addressing biodiversity, with much of the detail being relocated to the regional and district plan portion of the Unitary Plan. The recommendations of the Panel in relation to those provisions is to retain the policy direction of identifying and protecting significant ecological areas, and managing, by avoiding, remedying or mitigating, significant adverse effects on those areas not identified as significant ecological areas. Offsetting adverse effects is also retained, but redrafted to enable offsetting to be considered where there are significant residual adverse effects.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions, other than one matter relating to the objective for minerals which the Panel considered to be beyond the scope of submissions.

The Panel has redrafted Objective 1 Minerals from "Auckland's mineral needs are met largely from within Auckland" to an objective requiring that "mineral resources are effectively and efficiently utilised". The reasons for this are set out in this report.

While the Panel accepts there were no submissions to change this objective, the Panel did raise its concerns with the Council and its planning expert, and the expert planners for the minerals industry. The Panel questioned whether the objective as notified was an appropriate resource management objective and if the concept of the effective and efficient utilisation of the resource was more appropriate. The minerals industry planners said they had no major concerns if the objective was framed in terms of the effective and efficient utilisation of the resource.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 12 Reference documents.

2. Minerals

2.1. Statement of issue

Whether Objective 1 of the notified regional policy statement (“Auckland’s mineral needs are met largely from within Auckland”) was an appropriate resource management objective, or whether the objective was more appropriately framed as the efficient and effective utilisation of mineral resources.

2.2. Panel recommendation and reasons

During the hearing, the Panel questioned Ms Wickham, the Council’s expert planner, and Mr Tollemache, the expert planner on behalf of the industry groups, in relation to Objective 1 “Auckland’s mineral needs are met largely from within Auckland”.

In response the Council provided the Panel with the following documents:

- i. Assessment of Aggregate Resources North of Auckland;
- ii. Economic Benefits of Allowing Quarrying of Aggregate at Wainui; and
- iii. The Economics Contribution and Impact of Brookby Quarry.

The Panel was advised that the first report relates generally to aggregate resources, and the other reports are site-specific assessments of the economic benefits of quarrying.

The Panel accepts these reports confirm the responses given by Mr Tollemache in relation to the costs associated with the transport of aggregate and the benefits derived from aggregate being sourced within the Auckland region. Notwithstanding this, the Panel is not convinced by, nor is it appropriate to have, an objective requiring Auckland’s mineral needs to be met largely from within Auckland. The Panel recommends that the objective be redrafted to one where mineral resources are utilised in an efficient and effective manner, irrespective of where they are sourced.

The Panel accepts the importance of mineral resources to Auckland, and their contribution to enabling people and communities to provide for their social, cultural and economic needs.

There was little disagreement between the Council and submitters. On this basis the Panel has largely accepted the evidence in chief of Ms Wickham, and the industry submitters. The Panel has recommended some wording changes in light of the change to the objective and for Plan consistency and functionality purposes. These are not substantive.

The provisions the Panel recommends satisfy part 2 of the Resource Management Act, and are the most appropriate in terms of section 32AA of that Act.

3. Freshwater systems

3.1. Statement of issue

That a structural change be made to this chapter of the regional policy statement to create a new section on freshwater systems

3.2. Panel recommendation and reasons

The Panel recommends a structural change to this chapter of the regional policy statement to create a new section on freshwater systems.

The notified Plan uses the term 'freshwater systems' which is defined as:

The beds, banks, margins, flood plains and waters of rivers and natural lakes and wetlands, and groundwater systems together with their natural functioning and interconnections.

Freshwater systems include the water in rivers, lakes, wetlands and groundwater. The Panel is concerned about the overlap of provisions relating to freshwater and to freshwater systems and the potential for inconsistency in approaches and confusion regarding which provisions should apply when dealing with water in freshwater systems. It is for these reasons that the Panel is recommending that the provisions relating to freshwater and geothermal water be split into two sections: freshwater systems; and coastal water, freshwater and geothermal water. The explanation for the amended sections is to clearly specify when and how the provisions in each section are to be applied and implemented.

While there are no specific submissions directly seeking the restructuring of this section in the manner recommended by the Panel, Mighty River Power (836) identified the need to include reference to coastal water in this section. The Panel does not consider this structural change to be out of scope, as the policy intent remains the same, but is presented in a more logical and understandable way. The Panel is of the view that these structural changes will improve the overall usability and clarity of the Plan. It is also necessary to address a policy gap in that there are no objectives and policies in the regional policy statement relating to the management of coastal water that has not been identified as degraded. A number of submitters raised this issue more generally during the hearing.

4. Coastal water, freshwater and geothermal water

4.1. Statement of issue

Whether to combine the management approach to all water, including coastal, fresh and geothermal, into one section, rather than the split as in the notified Plan between coastal (in the chapter on coastal environment) and freshwater and geothermal.

4.2. Panel recommendation and reasons

The Panel recommends that the provisions on areas of degraded water quality contained in Chapter 7 of the notified Plan (Sustainably managing our coastal environment) are combined with the provisions relating to freshwater and geothermal water in the section on freshwater and geothermal water. Also see the issues relating to freshwater systems above.

The interrelationship between freshwater and coastal water, particularly in terms of the effects freshwater has on coastal water, is a key reason for the Panel's recommendation to have a chapter at the regional policy statement level that addresses coastal water, freshwater and geothermal water all in one place.

There are other reasons for recommending this change to the structure. Firstly, Chapter 7 is silent on how water in the coastal marine area that is not degraded is to be managed. Secondly, the objectives and policies in the freshwater and geothermal water section contain references to coastal water. The Panel is concerned that users of the Plan would not look in this section of the regional policy statement for provisions relating to coastal water. Finally, Chapter C of the notified Plan (Auckland-wide objectives and policies, Section 5.15.1 Water quality and integrated management) contains provisions that relate to both freshwater and coastal water and therefore a combined approach at the regional policy statement level would align with the approach adopted by Council at the regional plan level.

5. Water quality

5.1. Statement of issue

Whether that the water quality objectives should include the words 'overall' and 'in the region'. The inclusion of these words would result in an objective that seeks to maintain overall water quality in the region.

5.2. Panel recommendation and reasons

A number of submitters, including Man O War Farms Limited and Clime Asset Management Limited (882) considered that the objectives do not give effect to the National Policy Statement for Freshwater Management 2014, because they omit the words 'overall' and 'in the region'. The inclusion of these words would result in an objective that sought to maintain overall water quality in the region.

The National Policy Statement for Freshwater Management 2014 sets the direction for water quality management throughout New Zealand. Objective A2 provides:

The overall quality of freshwater within a region is maintained or improved while:

- (a) protecting the significant values of outstanding freshwater bodies;
- (b) protecting the significant values of wetlands; and
- (c) Improving the quality of freshwater in water bodies that have been degraded by human activities to the point of being over-allocated.

(Emphasis added.)

The policy statement requires councils to maintain or improve overall water quality.

This overall objective became the subject of extensive discussion by the Environment Court in the recent decision in *Ngati Kahungunu Iwi Inc v The Hawkes Bay Regional Council* [2015] NZEnvC 50. In the Ngati Kahungunu case, the Regional Council gave evidence that it considered that this objective required maintenance of the overall quality of freshwater within the whole of the Hawkes Bay region, and this was considered to allow for an 'unders and overs' approach. This is discussed more below and in the Panel's Report to Auckland Council - Water Quality and Quantity – 046, July 2016.

With respect to the New Zealand Coastal Policy Statement 2010, Objective 1 directs councils to enhance water quality where it has been degraded. The majority of Auckland's land area discharges to those coastal waterbodies that are identified as being degraded. In the context of the National Policy Statement for Freshwater Management, the New Zealand Coastal Policy Statement and the current state of water quality in Auckland, the Council has proposed objectives which set a higher expectation than that set down by the national policy statement.

The Panel accepts that in the Auckland region, areas of coastal water and a number of freshwater bodies, particularly those in the urban area, are below national bottom lines (which are minimum standards for specified water quality attributes) in the National Policy Statement for Freshwater Management such that improvement in water quality is required. Also a large part of Auckland's coastal environment, which is the ultimate receiving environment for most fresh water, is identified as being degraded.

The Panel notes that in the hearing on Topic 046 - Water Quality and Quantity the Council sought the following objective:

- 1A. The overall quality of fresh water and associated ecosystems within Auckland is progressively improved.

This was in addition to the following objectives set out in the plan:

1. Areas of excellent or good freshwater quality, ecosystem health, and areas of significant Mana Whenua values are protected from degradation, and
2. Areas of degraded water quality and ecosystem health are protected from further degradation and they are progressively enhanced.

The Panel has recommended in its report on the water-related hearing topics as referenced above that objective 1A is not adopted, as objective 1 and 2 effectively incorporate objective 1A. This also avoids the potential issues of the word 'overall' as the other objectives are clear that where water quality is excellent or good it needs to be maintained, and where it has been degraded it can be improved over time.

Reflecting on all of the evidence relating to water quality in terms of the regional policy statement and the regional plan provisions the Panel has recommended a consistent approach that requires coastal and fresh water quality to be maintained where it is excellent or good and progressively improved over time, rather than an 'overall approach.

6. Water quantity

6.1. Statement of issue

Whether the regional policy statement should be setting allocation priorities, or whether this should be undertaken at the plan level of the Unitary Plan.

6.2. Panel recommendation and reasons

Auckland Council sought to make particular reference to the community's need for domestic and municipal supply in allocating water. Horticulture New Zealand submitted that this was not appropriate or desirable in the regional policy statement.

It was the Council's view that a lack of clear direction in the regional policy statement on the importance of municipal water supply in allocating water is likely to lead to an unnecessarily high level of dispute over the prioritisation of water within the regional plan-level provisions of the notified Plan.

The Council set out that in Auckland approximately 90 per cent of the population is provided with and are (for the most part) completely dependent on municipal water supply. Water is collected, treated and distributed from 12 dams, 14 groundwater sources and springs and three river sources to over one million people, including a range of lifeline utilities and essential businesses, making the supply of municipal water a critical contributor to the health, prosperity, and well-being of the Auckland community. Safeguarding this contribution is closely aligned with achieving the purpose of the Resource Management Act 1991 and other associated legislation affecting water such as:

- i. the Health (Drinking Water) Amendment Act 2007, which provides for the Minister of Health to promulgate drinking water standards and imposes a range of duties on water suppliers (including network suppliers), including duties as regards adequacy of supply, protection of water sources and compliance with drinking water standards;
- ii. the Local Government Act 2002, which requires Council to have particular regard to the contribution [of] "core services" "to its communities" [including] "network infrastructure" (sections 11-11A); and
- iii. the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice, which sets out what constitutes a sufficient supply of water for firefighting in urban fire districts.

Some submitted that the priority setting should occur at the regional plan level. The Panel notes that this is already the case, as the policy framework at the regional plan level includes a policy that sets the priorities for water allocation.

The Council asserted that it is not intended that policy at the regional policy statement level set the allocation priorities, but that it clearly signals that in Auckland ensuring sufficient water for municipal and domestic needs is a priority and is fundamental to the Council's ability to meet the growth that is provided for in the Plan. The Council further asserted that the proposed regional policy statement does not set this policy direction at the exclusion of other uses, but sets out the policy intent which in turn supports the policy direction at the regional plan level.

The Council considers that it is appropriate to send this signal, given that enabling urban growth is a key priority for the Council. Ensuring there is adequate municipal water supply is an important element of the proposed Council planning process that is required for urban development, particularly in greenfield areas. It is also important to underscore that while municipal and domestic supply does have a priority status at the regional plan level, this is not without restrictions. The policy framework states that the amount of water taken and

used must be reasonable and justifiable, and in the case of municipal water supply, this must be supported by a water management plan.

The Panel supports a resource management framework for the appropriate allocation of water. However it does not support the wording proposed by the Council which sought a regional policy statement objective:

Freshwater and geothermal resources are managed within limits to safeguard life supporting capacity and support their natural and cultural values. Water that is available for use is allocated to provide for economic, social and cultural purposes, particularly the community's need for domestic and municipal supply.

and the supporting policy including:

establishing priorities and mechanisms for allocation of water takes that provide fresh water for domestic and municipal water supplies.

It is the Panel's recommendation that the regional policy statement not be as directive as set out in the Council's evidence. The Panel recommends the objective and policy framework it has drafted which seeks to ensure that freshwater and geothermal water is allocated efficiently to provide for social, economic and cultural purposes while, amongst other things:

- i. establishing clear limits for water allocation
- ii. avoiding over- allocation, and
- iii. providing for the reasonable requirements of domestic and municipal water supplies.

While a number of submitters sought that the regional policy statement provisions identify specific uses for which the allocation of water should be prioritised, the Panel considers allocation mechanisms including the setting priorities are better addressed at the regional plan level.

7. Structure of the biodiversity provisions

7.1. Statement of issue

As has already addressed, the Panel recommends that the regional policy statement be a standalone document. The Panel has redrafted the regional policy statement accordingly, removing the tagging provisions from the entire regional policy statement, including those relating to biodiversity. This has resulted in the notified regional policy statement biodiversity provisions being located in the regional policy statement as well as new sections created in the overlay and Auckland-wide sections of the Plan.

7.2. Panel recommendation and reasons

Due to the restructure of the regional policy statement the biodiversity provisions have been split across the regional policy statement and the regional and district plan provisions of the Unitary Plan.

The regional policy statement provisions follow the same approach as the other values-based chapters. That is the biodiversity objectives set out that significant indigenous biodiversity values in terrestrial, freshwater and the coastal marine area are protected from the adverse effects of subdivision, use and development. Also that indigenous biodiversity is maintained through protection, restoration and enhancement where those values are degraded or where development is occurring.

The policies, in addressing the objectives, set out how areas containing such values are to be identified and evaluated based on a range of factors, and those that satisfy those factors are included in the schedules of significant ecological areas - either in Schedule 3 Significant Ecological Areas - Terrestrial Schedule or Schedule 4 Significant Ecological Areas – Marine Schedule.

All of the other biodiversity provisions that were in the notified regional policy statement have been relocated to the Plan section of the Unitary Plan, either in D Overlays or E Auckland-wide. Those recommended to go to the overlay section are generally those relating to identified significant ecological areas, as they relate to Part 2 matters of the Resource Management Act 1991. Those provisions that relate to areas other than significant ecological areas, are contained in the Auckland-wide provisions. Some provisions relating to the coastal marine area are in the regional coastal plan section of the Plan.

Given the changes to the structure of the Plan as recommended by the Panel, and the range of submissions and evidence received, the Panel considers that all of the key policy directions relating to indigenous biodiversity in the notified plan have been retained. While a number of the provisions have been re-cast, redrafted, deleted or added to (in light of the submissions and evidence) the Panel is satisfied the provisions give effect to the New Zealand Coastal Policy Statement 2010 (in relation to the coastal environment) and the New National Policy Statement for Freshwater Management 2014.

In changing the structure of the regional policy statement, and relocating the provisions that were tagged regional plan (rp), regional coastal plan (rcp) and/or district plan (dp) to the regional and district plan, the Panel is satisfied in terms of section 32 and 32AA that the provisions and where they are placed is the most appropriate.

8. Biodiversity offsetting

8.1. Statement of issue

The issues addressed are:

- i. the extent to which biodiversity offsetting should be provided for;
- ii. whether it can be required;
- iii. whether it is 'more than minor ' residual adverse effects or 'significant' residual effects that should be offset; and
- iv. should the offset 'requirement' be 'not net loss' and 'like for like' or 'like for better'.

8.2. Panel recommendation and reasons

Offsetting was a significant issue throughout the hearing and was the subject of a range of expert opinion and legal submissions.

The Panel is of the view that offsetting is a valid and appropriate planning technique. The Panel is clear that offsetting is not part of avoiding, remedying and mitigating adverse environmental effects; and these are clear obligations set out in section 5 of the Resource Management Act. That is, offsetting is not an alternative to avoiding, remedying and mitigating adverse environmental effects, but an opportunity to offset residual effects where they have not been able to be avoided, remedied or mitigated. Accordingly the Panel recommends the policy provision for offsetting. The Panel's view of the appropriate policy response is addressed below.

8.2.1. Requiring offsetting

The Panel asked various submitters, including the Minister of Conservation, about the requirement within the relevant policy to offset adverse effects. Applications for resource consent which do not achieve 'no net loss' would be inconsistent with this policy and the benefits of that offsetting would not be recognised by the policy framework.

A number of submitters (in legal submissions and expert evidence) over the course of the hearing process (at the regional policy statement and plan level hearings) questioned the ability to 'require' the offsetting of residual adverse effects. The Panel notes that both the Minister of Conservation and the Council proposed amendments to Policy 7 (the relevant policy) to remove the word 'requiring'. The amendments proposed by the Minister were outlined in the memorandum of counsel from Ms Crossen in December 2014.

The Panel agrees with the Council and submitters that offsetting cannot be required, but may be offered as part of any proposal where residual effects cannot be avoided, remedied or mitigated. The offsetting policies in the Plan have been changed accordingly.

8.2.2. Scope of residual effects to be offset

There was a considerable debate amongst submitters and the Council about the scope of residual effects to be offset which centred on whether more than minor residual effects were to be offset or those that were significant.

At an informal conferencing session of the expert ecologists it was agreed that Policy 7 of the notified Plan should be amended so that it was only 'significant adverse effects' that were required to be offset. Ms Fuller, the Council's expert planner, supported this position and suggested rewording of the policy in her rebuttal evidence.

During the course of the hearing, witnesses for the Minister of Conservation, Environmental Defence Society and Royal Forest and Bird Protection Society stated that the phrase 'significant adverse effects' was meant to refer to 'ecologically significant adverse effects' which is used within the New Zealand Guidance on Biodiversity offsetting. The witnesses sought that either the phrase 'ecologically significant adverse effects' or 'more than minor' be used instead of 'significant'.

In answer to questions from Ms Gepp, legal counsel for the Environmental Defence Society and Royal Forest and Bird Protection Society, Ms Fuller considered that the guidance

implies that only significant effects are offset and she continued to support the use of the phrase 'significant effects'. A number of other witnesses, including Ms Hopkins (expert planner) and Dr Ussher (expert ecologist) for the New Zealand Transport Agency, supported Ms Fuller's version of the policy.

The Panel agrees with those parties that it is the significant residual adverse effects that are to be offset if offsetting is offered. The reasons for this are as presented by Ms Fuller for the Council and submitter evidence that supported Ms Fuller's approach. The relevant policies have been redrafted to reflect this position.

8.2.3. No net loss

A number of submitters questioned the requirement to specify that in offsetting there should be a no net loss and preferably a net gain. Drs Flynn (for Auckland Utility Operators Group), Kessing (for Man O War Farms Limited) and Ussher (for New Zealand Transport Agency) all expressed that 'no net loss' is difficult to achieve.

The Council in response proposed further amendment to Policy 7, (the relevant policy) to remove the reference in that policy to 'achieving no net loss and preferably a net gain'. The Panel agrees and has redrafted the relevant policies accordingly, and has retained the reference to the appendix on biodiversity offsets. That appendix, among other things, sets out that where possible the overall result from offsetting should be a no net loss and preferably a net gain in ecological values.

The Panel also notes and accepts that a goal of offsetting can be to achieve no net loss, and while this outcome may be expected on most occasions, the achievement of no net loss should not be a strict requirement. This provides some flexibility so that an offset, which achieves a high level offsetting but not no net loss, is still recognised in the policies (and would not be considered to be contrary to those policies in terms of any non-complying gateway tests).

9. Criteria for significant ecological areas

9.1. Statement of issue

Much of the notified Plan's provisions in relation to biodiversity are centred on areas identified and scheduled as significant ecological areas. Accordingly the criteria for identifying and evaluating these are an important part of the Plan.

9.2. Panel recommendation and reasons

A high level of agreement was reached in expert conferencing about the criteria for identifying and evaluating significant ecological areas. The Panel acknowledges that a range of amendments were made to the criteria in response to submissions. Despite this a number of submitters and experts continued to seek amendments to the criteria for the identification of significant ecological areas, in particular terrestrial significant ecological areas.

Dr Flynn, on behalf of the Auckland Utility Operators Group and Better Living Landscapes, considered that the notified version of the criteria should be retained, although she acknowledged that the expanded wording did reflect the actual criteria used to identify the

significant ecological areas. Mr Lloyd, on behalf of the Environmental Defence Society and Royal Forest and Bird Protection Society sought amendment to reflect his preferred version of the criteria. Ms Gepp, counsel for the Environmental Defence Society and Royal Forest and Bird Protection Society, put various questions to Ms Fuller and Dr Lundquist (Council's expert ecologist) to test those criteria.

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.

10. Regional vs district rules

10.1. Statement of issue

Whether it is appropriate to use regional plan rules rather than district rules with respect to biodiversity provisions.

10.2. Panel recommendation and reasons

Federated Farmers lodged a general submission seeking that the biodiversity provisions be amended to be district rules rather than regional rules. The primary concern of Federated Farmers appears to be in relation to existing uses, which can continue under existing use rights if the new rules in the Plan are district rules, but which are extinguished if they are regional rules.

In hearing topic 023 - Significant ecological areas, similar issues were raised by Federated Farmers, as well as the utility operators in relation to their designations and the Minister of Conservation in relation to land held or managed under the Conservation Act 1987. These submitters all argued that if the rules were regional rules, this would have significant implications (essentially that they would all need consents to carry out their otherwise authorised activities).

Mr Gardner for Federated Farmers accepted that there is no jurisdictional barrier to the Council using its regional functions instead of district function but he continued to seek that district rules be used.

The Panel notes that while this issue was raised in the context of the regional policy statement, it is a rule issue. This issue is more fully addressed in the report 023 - significant ecological areas. However in summary the Panel is recommending that regional rules be used as sought by the Council. Specific rules have been written to 'grandfather' existing activities being undertaken prior to the notification of the Plan to permit activities being undertaken by network utility operators and exempt land held or managed under the Conservation Act 1987.

11. Consequential changes

11.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below. These have been addressed above and relate to the structural changes made to the regional policy statement (as a standalone document). Due to this change, new sections have been created in D Overlays and E Auckland-wide to accommodate those provisions that were tagged rp, rcp and/or dp and are no longer part of the regional policy statement.

11.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

12. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

12.1. General topic documents

Panel documents

[006-Submission Point Pathway Report - Freshwater and Geothermal Water - 14 Oct 2014](#) (17 October 2014)

[006-Submission Point Pathway Report - Minerals - 14 Oct 2014](#) (17 October 2014)

[010-Submission Point Pathway Report - Natural Heritage - 22 Sept 2014](#) (17 October 2014)

[010-Submission Point Pathway Report - Biodiversity - 15 Oct 2014](#) (20 October 2014)

[006-Parties and Issues Report-Freshwater & Geothermal Water- 6 November 2014](#) (06 March 2015)

[006-Parties and Issues Report-Minerals-6 November 2014](#) (06 March 2015)

[010-Parties and Issues Report - Biodiversity - 11 Nov 2014](#) (11 November 2014)

[010-Expert Conference Joint Statement B4.3.4 Biodiversity](#) (11 November 2014)

Auckland Council marked up version

[006-Mediation Record \(Freshwater and Geothermal\) 2014-10-31](#) (31 October 2014)

[006-Mediation Record \(Minerals\) 2014-10-31](#) (31 October 2014)

[010-Attachment 1 - marked-up text for B4.3.4 Biodiversity](#) (11 November 2014)

Auckland Council closing statement

[006/007 - Closing Statement](#) (02 December 2014)

[Hearing Evidence – Closing Statement - Tracked changes Attachment A \(B4.3, B4.3.1 and B4.3.2\)](#) (23 December 2014)

[Hearing Evidence - Closing Statement - Tracked changes Attachment B \(B4.3.3, B4.3.4 and B4.3.5\)](#) (23 December 2014)

[Hearing Evidence - Closing Statement \(B4.1 and B4.2\)](#) (19 December 2014)

[Hearing Evidence –Closing Statement \(B4.3.1, B4.3.2, B4.3.3, B4.3.4 and B4.3.5\)](#) (13 January 2015)

12.2. Specific evidence

Auckland Council

[006 - Hearing Evidence \(Minerals - J Wickham\)](#) (05 November 2014)

[Hearing Evidence – Jarette Wickham](#) (13 November 2014)

[Rebuttal Evidence –Jarette Wickham \(B4.3.4\)](#) (28 November 2014)

[Rebuttal Evidence - Jennifer Fuller \(B4.3.4\)](#) (28 November 2014)

[Rebuttal Evidence – Jennifer Fuller \(B4.3.4\) Attachment A](#) (28 November 2014)

[Rebuttal Evidence – Jennifer Fuller \(B4.3.4\) Attachment B](#) (28 November 2014)

Auckland Utility Operators Group Incorporated

[Hearing Evidence – Sarah Flynn](#) (13 November 2014)

Environmental Defence Society Incorporated

[006 - Legal Submission](#) (26 November 2014)

[006 - Legal Submission \(Appendix A\)](#) (26 November 2014)

[006 - Legal Submission \(Appendix B\)](#) (26 November 2014)

[006- Pre Hearing Meeting Document](#) (29 October 2014)

[Hearing Evidence – Kelvin Lloyd](#) (12 November 2014)

[Hearing Evidence - Kelvin Lloyd - Supplementary Evidence](#) (05 December 2014)
[Hearing Evidence -Legal Submissions](#) (05 December 2014)
[Hearing Evidence -Legal Submissions - Appendix A and B](#) (05 December 2014)
[Hearing Evidence -Legal Submissions - Final rewrite Appendix C \(4.3.3\)](#) (05 December 2014)
[Hearing Evidence -Legal Submissions - FINAL rewrite - Appendix D \(4.3.4\)](#) (05 December 2014)

Federated Farmers of New Zealand

[006 - Legal Submission](#) (26 November 2014)
[006-Hearing Evidence](#) (06 November 2014)
[006 - Rebuttal Evidence \(Gardner\)](#) (18 November 2014)
[Hearing Evidence - Legal Submissions](#) (09 December 2014)
[Hearing Evidence and Legal Submission](#) (13 November 2014)
[Rebuttal Evidence and Legal Submission](#) (27 November 2014)

Minister of Conservation

[006 - Legal Submission](#) (27 November 2014)
[006 - Rebuttal Evidence \(Witham\)](#) (19 November 2014)
[006-Hearing Evidence](#) (06 November 2014)
[Hearing Evidence- John Andrew Riddell](#) (13 November 2014)
[Rebuttal Evidence - Andrew Riddell](#) (26 November 2014)
[Hearing Evidence- Dr Laurence Barea](#) (13 November 2014)
[Rebuttal Evidence - Laurence Barea](#) (26 November 2014)
[Hearing Evidence -Memorandum of Counsel - Biodiversity Offsetting \(B4.3.4\)](#) (22 December 2014)

Man O War Farm Limited and Clime Asset Management Limited

[Rebuttal Evidence - Vaughan Keesing](#) (26 November 2014)

New Zealand Transport Agency

[006- Pre Hearing Meeting Document](#) (29 October 2014)
[006- Hearing Evidence \(Lesley Hopkins\)](#) (06 November 2014)
[006- Hearing Evidence \(David A Greig\)](#) (06 November 2014)
[006- Hearing Evidence \(Camilla Needham\)](#) (06 November 2014)
[006- Hearing Evidence \(Attachment 1\)](#) (06 November 2014)
[Rebuttal Evidence - Lesley Hopkins](#) (26 November 2014)
[Hearing Evidence- Dr Graham Thomas Ussher](#) (13 November 2014)