

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 023**

**Significant ecological areas and
vegetation management**

July 2016

Report to Auckland Council - Hearing topic 023 Significant ecological areas and vegetation management

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1. Hearing topic overview

1.1. Topic description

Topic 023 – Significant ecological areas and vegetation management addresses the coastal plan, regional plan and district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent hearings Panel reference
Topic 023 – Significant ecological areas and vegetation management	<p>Chapter B - regional policy statement - 4, Protecting our historic heritage, special character and natural heritage - Te tiaki taonga tuku iho.</p> <p>Chapter C - Auckland Wide Objectives and Policies - Section 5, Natural Resources.</p> <p>Chapter H - Auckland Wide Rules - Section 4, Natural Resources.</p> <p>Appendix 5.1 Schedule of Significant Ecological Areas – land</p> <p>Appendix 6.1 Schedule of Significant Ecological Areas – Marine</p> <p>Appendix 6.5 Significant Ecological Areas – marine where mangroves are a minor component or absent</p> <p>Planning maps</p>	<p>D9 Significant Ecological Areas Overlay.</p> <p>E15 Vegetation management and biodiversity.</p> <p>Schedule 3 Significant Ecological Areas – Terrestrial Schedule</p> <p>Schedule 4 Significant Ecological Areas – marine Schedule</p> <p>Schedule 5 Significant Ecological Areas – Marine where mangroves are a minor component or absent</p> <p>Planning maps on the GIS viewer)</p>

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 Pathways 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

The following is a summary of the key changes, other than those already accepted by the parties at mediation, expert conferencing and direct discussion, recommended by the Panel.

- i. The majority of the objectives and policies of the notified plan have been retained, but some have been re-cast due to the restructuring of the Plan. The regional policy statement is now 'standalone' and as a consequence there is no provision tagging (e.g. regional policy statement, regional plan, regional coastal plan, district plan) (as set out in the Panel's Report to Auckland Council - Overview of recommendations July 2016). Due to this a number of the objectives and policies have been recast and relocated to the Chapter D Overlays (which generally addresses section 6, 7 and 8 matters) and to the Chapter E Auckland-wide provisions. This means that the provisions addressed in this report need to be read in conjunction with the other parts of the Plan, in particular Chapter B Regional policy statement, Chapter D Overlays and Chapter E Auckland-wide.
- ii. That the rules relating to vegetation management and infrastructure have been relocated to section E26 Infrastructure.
- iii. That the vegetation management rules are retained as regional rules, with a number of permitted activities to address the concerns of the designating authorities and farmers. An exception to this is for land held or managed under the Conservation Act 1987, where the rules are deemed to be district plan rules.
- iv. Additional provisions have been provided for development on Māori and Treaty Settlement Land.
- v. A number of significant ecological areas have been spatially modified and in some cases deleted as the Panel found they did not satisfy the significant ecological area factors as set out in the recommended regional policy statement, the evidence for them was inadequate, or other planning imperatives outweighed their identification. The details of these changes are addressed in this report.
- vi. Vegetation removal provisions have been retained over quarry zones, notwithstanding that the significant ecological areas have been removed from the Special Purpose - Quarry Zone.

The Panel notes that the subdivision provisions relating to significant ecological areas are addressed in the Panel's Report to Auckland Council – Hearing topic 064 - Subdivision -

General for urban subdivisions and Report to Auckland Council – Hearing topic 064 (and 056) Rural Subdivision for rural subdivisions. This includes the "cluster subdivision rule for urban areas" as set out in the Council's closing statement to this topic.

1.3. Overview

The Panel acknowledges the importance of protecting significant ecological areas and that this is a matter of national importance in section 6(c) of the Resource Management Act 1991 - the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. The Plan identifies (maps) significant ecological areas and provides a management regime protecting these areas by seeking to avoid the adverse effects of subdivision use and development. Other areas not identified as significant ecological areas, but having significant biodiversity and ecological values, are also important. The Plan also seeks to manage these areas, including by avoiding, remedying and mitigating adverse effects, particularly in terms of vegetation removal.

The policy direction of the notified Plan and the policies recommended by the Panel are not significantly different. As set out in the summary of the changes, probably the most significant is the plan structure and where the provisions sit within that structure. The regional policy statement is now 'standalone' and as a consequence there is no tagging of provisions (e.g. regional policy statement, regional plan, regional coastal plan, district plan). Due to this a number of the objectives and policies have been recast and relocated to the Chapter D Overlays (which generally addresses section 6, 7 and 8 matters) and to the Auckland-wide provisions. This means that the provisions addressed in this report need to be read in conjunction with the other parts of the Plan, in particular the regional policy statement, the Overlay chapter and the Auckland-wide provisions. Also the rules relating to vegetation management and infrastructure have been relocated to section E26 Infrastructure.

After significant debate in the hearing and by the Panel in deliberations, the vegetation management rules are recommended to be retained as regional rules. The reasons for this are addressed more fully later in this report. However, a range of permitted activities for vegetation removal has been included, largely agreed by the Council, to address the concerns of the designating authorities and farmers. These rules, with specified standards, will enable those parties to undertake their day-to-day activities without having to obtain resource consent. One exception to this approach is that the vegetation removal rules are district rules for land held or managed under the Conservation Act 1987. Again the reasons for this are set out below.

Changes to the notified provisions have been made to provide additional provisions for development on Māori and Treaty Settlement Land. Notwithstanding section 6(c) of the Resource Management Act 1991 (the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna), the Panel is recommending greater development opportunity, with limits, on Māori and Treaty Settlement Land where these areas may also be significant ecological areas, to better address section 6(e) - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, 7(a) - kaitiakitanga, and section 8 relating to the Treaty of Waitangi.

No change has been made to the activity status for vegetation clearance to establish an accessway and building platform for a dwelling in a significant ecological area (there was a request to move from controlled to restricted discretionary activity). The Panel has taken the same approach to this activity as it has for development on Māori and Treaty Settlement Land as set out in the paragraph above.

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 resource as required by section 5 of the Resource Management Act 1991. Also, it follows that if an area does not satisfy the significant ecological factors, then it should not be mapped as a significant ecological area.

As addressed below a number of significant ecological areas have been spatially modified and in some cases deleted as the Panel found they did not satisfy the significant ecological area factors as set out in the recommended regional policy statement, the evidence for them was inadequate, or other planning imperatives outweighed their identification. The details of these are addressed in this report.

Significant ecological areas have been deleted from the Special Purpose - Quarry Zone areas. This is due to the economic and strategic importance of the mineral resource. These areas are identified as areas to be quarried, which means ground cover has to be removed to access the resource, giving rise to a direct conflict between the purpose of the zone as a quarry and this form of protection. Notwithstanding this, the vegetation removal provisions are retained over the Special Purpose - Quarry Zone.

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.

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 9 Reference documents.

2. Changes to objectives and policies

2.1. Statement of issue

A number of objectives and policies need to be rewritten as a result of the changes to the structure of the Plan.

2.2. Panel recommendation and reasons

The reasons for the revised structure to the Plan have been set out in the Panel's Report to Auckland Council – Overview of recommendations July 2016. The reasons are also set out in the Summary and Overview sections of this report. Those reasons are not repeated here.

3. Vegetation management - regional vs district plan rules

3.1. Statement of issue

A number of submitters filed legal submissions and evidence relating to the rules for vegetation management; whether they were appropriate and, if so, should they be regional or district plan rules. J Webber and A Murray opposed the application of the Significant Ecological Area Overlay and vegetation management rules over a coastal grove of pohutukawa on their property in Marine Parade, Herne Bay but also raised wider concerns about the legal basis for the rules. In their legal submissions, Ms Webber and Mr Murray challenged the validity of the Plan's significant ecological areas and coastal vegetation management provisions on the basis that these regional rules are contrary to Parliament's intention behind amending section 76 of the Resource Management Act 1991 to remove the ability to provide general tree protection rules in district plans, and that such protections do not relate to regional council functions under section 30 of the Resource Management Act 1991.

Similar concerns about the Council seeking to circumvent Parliament's intent were raised by Federated Farmers in relation to the Significant Ecological Areas Overlay. Mr Gardner for Federated Farmers did however accept that the Council had the power to regulate land use for the protection of biodiversity in rural areas through regional rules.

3.2. Panel recommendations and reasons

The Panel agrees with the Council's position. The Council has clear jurisdiction to create regional plan level vegetation management rules. This is set out in the Council's opening legal submissions, its closing statement, as well as the evidence in chief of Dr Andrea Julian (filed in relation to the regional policy statement Chapters B.4.3.3 (Trees and Vegetation) and B.4.3.4 (Biodiversity) for Topic 010. The retention and maintenance of trees, vegetation and significant ecological areas assists the Council in meeting regional functions described under subsections 30(1)(c), 30(1)(f), 30(1)(fa) and 30(1)(ga) of the Resource Management Act 1991.

Notwithstanding the above the Panel understands the concerns raised by a number of submitters, notably the designating authorities, farmers (mainly through Federated Farmers) and the Minister of Conservation regarding regional rules. These matters were raised at the

hearing and the Council was sympathetic to the concerns that regional rules, as opposed to district rules, would:

- i. impact on the designating authorities (as pursuant to section 166 *designation* means a provision made in a district plan);
- ii. land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act (other than land held for administrative (as pursuant to section 4 (3) of the Resource Management Act) that section covers district use rules); and
- iii. farming activities where existing use rights would be lost in terms of regional rules.

The Council's response, which the Panel supports and has recommended, is that a number of activities be provided for as permitted activities. This is to enable legitimate and necessary activities, within specified limits (standards), to be undertaken by designating authorities (in particular network utility operators), the Department of Conservation on behalf of the Minister and farmers who need to be able to maintain tracks and fences and ensure vegetation is clear of buildings, as they have lawfully done prior to the notification of this Plan.

The Panel notes that it attempted to redraft the provisions so that those which would apply in urban areas (urban significant ecological areas which the Panel views as forests as opposed to a collection of individual trees) would be regional rules and those in rural areas would be district land use provisions. This was an option suggested by Federated Farmers. However the distinction between urban and rural is not clear as open space zones and a number of special purpose zones are neither urban nor rural, so this became problematic and created a complicated set of provisions. The Panel's recommended approach as addressed above is, in section 32 and 32AA terms, the most appropriate and efficient.

4. Permitted activities

4.1. Statement of issue

A number of submitters requested that new permitted activities be provided for in the general vegetation rules and within the overlays, including:

- i. enrichment and restoration planting;
- ii. wetland management;
- iii. farming operations, including the removal of shelter belts;
- iv. works on Department of Conservation land (including new tracks); and
- v. large-scale and commercial gardening.

4.2. Panel recommendations and reasons

4.2.1. Enrichment and restoration planting

The Panel has not listed 'enrichment planting' as a permitted activity. The Panel agrees with the Council that it is generally inappropriate within significant ecological areas as ecological restoration should focus on removing threats and constraints to natural forest regeneration and letting vegetation patterns re-establish naturally. However 'conservation planting' is a permitted activity.

4.2.2. Wetlands - Wildlife management

Fish and Game New Zealand (Auckland/Waikato Region) sought a permitted activity for 'vegetation removal for the purpose of managing wildlife'.

The Panel supports the Council's position that pest species removal is provided for as a permitted activity through the activity of 'pest plant removal'. Accordingly the most significant risk to the functioning of natural wetlands is already provided for and it is not necessary to provide for a new permitted activity for vegetation removal for the purpose of managing wildlife in wetlands.

4.2.3. Farming activities

Federated Farmers, Horticulture New Zealand, Potai Farms and Waytemore Forests sought additional permitted activities for vegetation alteration or removal in relation to riparian margins, coastal margins and rural areas for:

- i. normal farming operations, and
- ii. the management of shelter belts.

Amendments have been made to permit all forestry and farming activities that existed at the time the Plan was notified. Shelter belts are to be treated no differently to other vegetation management provisions, so to the extent that the rules address vegetation management that would apply to shelter belts, those provisions apply.

4.2.4. Department of Conservation land

The Minister of Conservation sought permitted activity status for vegetation removal on Department of Conservation land for activities in accordance with a conservation management strategy. The Minister's submissions and evidence were that the proposed permitted activities were not adequate to cover all the necessary activities the Department carries out.

The Council supported the position of its expert planner Ms Ford's evidence in rebuttal that the proposed rules adequately provide for the majority of the Departments' work (through the permitted activities for maintenance of existing structures, tracks and fences) and there was insufficient reason to justify a wider permitted activity for the Minister. The Panel notes its earlier comments with respect to the Minister's submission and land held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of the Conservation Act 1987.

4.2.5. Large-scale and commercial

Mr D Hay, expert planner, appeared for the Potts Road Trust which runs Ayrlires Garden and Wetlands. The Trust sought amendments to ensure that its operations were not affected by the imposition of a significant ecological area and proposed a range of options including removal of the significant ecological area, a new precinct with associated rules or amendments to the definitions.

As the Panel understands the rules proposed by the Council and supported by the Panel, they allow for vegetation removal and alteration for the purposes of operation, maintenance and repair of garden fences and other lawfully established activities as a permitted activity. From the evidence of Mr Hay the Panel finds that Ayrlires Garden would fall within the ordinary meaning of a garden, and as a result the Panel considers no further provisions are required to address the submitter's concern.

5. Development on Māori and Treaty Settlement Land

5.1. Statement of issue

The Independent Māori Statutory Board presented legal submissions from Mr Hovell and expert evidence from Mr Rawiri (tikanga associated with papakāinga) and Dr Mitchell (expert planner) regarding the Board's request for additional development capacity on Māori and Treaty Settlement Land. The Council did not support the Board's request and had expressed this view, supported by expert evidence, at a number of hearings (Topics 036, 023 and 019), that it did not agree with the amendments sought by the Independent Māori Statutory Board.

5.2. Panel recommendation and reasons

The Panel supports the Independent Māori Statutory Board requests for the reasons set out below. The Panel notes the Council's acknowledgement that this issue involved "a difficult balance between section 6(e) and other section 6 matters about natural character, outstanding landscapes and significant indigenous biodiversity, and there is no clear answer" (paragraph 7.2 of the Council's closing statement).

It was the Council's view that amending the plan in the manner sought by the Independent Māori Statutory Board would potentially result in significant adverse effects on natural character, landscapes and biodiversity and a site-specific assessment of the activity and the values is required through a resource consent application.

The Independent Māori Statutory Board position was that significant ecological area values should not operate as an overriding priority over Mana Whenua values, and the appropriate balance was to be best achieved through a controlled activity rule for papakāinga and marae complexes on ancestral land in natural heritage overlay areas.

The Independent Māori Statutory Board also considered that the threshold proposed by the Council as a controlled activity of one marae complex and up to ten dwellings per site was inappropriate and too restrictive, and that the amount of vegetation that could be cleared was too low to give effect to the Part 2 statutory imperatives and the provisions of the regional policy statement.

It is noted that the Council proposed a controlled activity rule for significant ecological areas, but qualified this to circumstances where there was “no practicable alternative location outside of the area of protected vegetation on the site”. This, according to the Independent Māori Statutory Board, meant that the Plan retained the overriding priority for significant ecological areas as opposed to enabling the development of Māori and Treaty Settlement Land. The Independent Māori Statutory Board noted, and the Panel agrees, that the term ‘where practicable’ is uncertain and is not an appropriate mechanism for determining activity status.

The legal submissions of Mr Hovell and evidence of Mr Rawiri and Dr Mitchell set out why the additional provisions should be provided in this context and why, notwithstanding section 6(c) of the Resource Management Act 1991 (the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna), that section 6(e) (the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga), section 7(a) kaitiakitanga, and section 8 relating to the Treaty of Waitangi, should predominate in this case. They also set out why the development thresholds were too low and needed to be increased and why the ‘where practicable’ part of the rule needed to be deleted (noting that Dr Mitchell in his redrafted provisions proposed that the ‘where practicable’ clause become an assessment criterion).

The Panel accepts the position of the Independent Māori Statutory Board; that the provisions they proposed would give effect to sections 6(e), 7(a) and 8 of the Resource Management Act 1991 and to the regional policy statement. The Council was concerned about the potential for significant adverse effects on natural character, landscapes and biodiversity. The Panel accepts there may be a greater risk of adverse effects due to a policy and rule direction enabling use and development of Māori and Treaty Settlement Land, however this needs to be balanced with the provisions of sections 6, 7 and 8 as set out above. In this respect the Panel is mindful of Mr Rawiri's evidence where he states that:

It is also important to note that Mana Whenua themselves have important tikanga as kaitiaki. Whakapapa expresses the connection of Mana Whenua to the natural world through whakapapa to the atua and the primal parents of Ranginui and Papatuanuku. Mana Whenua are therefore connected to the whenua and native bush for example through Tanemahuta. Through this whakapapa and respect for the mana of the atua, Mana Whenua have inherent duties to maintain the mauri of the natural environment, and Mana Whenua do not undertake activity lightly and do not undertake unnecessary activity that will destroy the mauri of the natural environment. (Paragraph 12, evidence in chief.)

Moreover as a percentage of land held, Māori Land is significantly over-represented in terms of land covered by a significant ecological area than non-Māori land. This places a much greater regulatory burden on Māori Land, and makes it more difficult to give effect to the Part 2 matters addressed above.

Finally, while additional development provisions are provided, a consent is still required and this will trigger a site assessment and the development of an assessment of environmental effects. The Council, as the consent authority, is able to assess any proposal and impose conditions where control has been retained and includes, amongst other things:

- i. the location of the activities;

- ii. the area of vegetation to be cleared;
- iii. the ability to locate activities outside of significant ecological areas but on the site;
- iv. measures to remedy or mitigate adverse effects of vegetation clearance and associated earthworks.

6. Controlled activity status for accessway and building platform clearance

6.1. Statement of issue

Ngati Whatua Orakei Whai Maia Limited opposed the controlled activity status for altering or removing up to 300m² of vegetation within a significant ecological area for a building platform and accessway when there is no practicable alternative. This was set out in the legal submissions and evidence in chief of Mr Roberts, expert planner.

6.2. Panel recommendation and reasons

Ngati Whatua Orakei Whai Maia Limited considered that the scope of the controlled activity did not allow the Council to impose conditions which would alter any proposed building to avoid adverse effects on significant ecological areas. Ngati Whatua Orakei Whai Maia Limited sought discretionary activity status for this activity. Moreover the legal submissions (paragraph 16) expressed concerns that it would not be possible for the Council to impose conditions that would reduce the size of the area to be cleared or relocate the building platform to a different location as this would essentially mean declining consent for the activity.

The Panel acknowledges that pursuant to sections 87A(2) and 104A of the Resource Management Act 1991, controlled activities cannot be declined and the conditions can only be imposed on matters over which control is reserved. However the Panel does not agree with the submitter's legal submissions that it would not be possible to impose appropriate conditions which could reduce the size of the area to be cleared or relocate the building platform to a location different to that applied for. The reasons for this are those set out in the Council's closing statement paragraphs 7.15-7.19.

The Panel does however find that it is not appropriate for the rule itself to state "Vegetation alteration or removal within a SEA for a building platform and accessway for one dwelling per site where there is no practicable alternative location outside the area of protected vegetation on the site" (emphasis added) as proposed by the Council. The reasons for this are those set out in section 5 above.

To provide certainty to those who have a significant ecological area over their land and who wish to build a dwelling, the Panel recommends the retention of the controlled activity status (as it has for additional provision for development on Māori and Treaty Settlement Land in section 4 above). The matters over which control has been retained include:

- i. the location of the building platform and accessway;

- ii. the area of vegetation to be removed; and
- iii. measures to remedy or mitigate adverse effects of vegetation clearance and associated earthworks.

The assessment criteria include:

- i. whether there are practicable alternative locations for the development on the site outside of the vegetated area or significant ecological area; and
- ii. whether vegetation clearance can be carried out in a way that removes lower quality vegetation such that the removal of the high quality vegetation is avoided.

7. Mapping of significant ecological areas

7.1. Statement of issue

A number of submitters requested additions, modifications or deletions to the notified mapped significant ecological areas.

7.2. Panel recommendation and reasons

The Panel generally accepts the Council's position that areas that meet 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 which provisions better promote sustainable management of natural and physical resources as required by section 5 of the Resource Management Act 1991. Also, it follows that if an area does not meet the significant ecological area factors, then it should not be mapped as a significant ecological area.

The Panel acknowledges that this was one of the key issues that emerged throughout the hearing, i.e. should a significant ecological area be applied to land where that might create a tension between competing planning considerations (e.g. the development of Māori Land addressed above) and/or frustrate the achievement of other objectives within the Plan (e.g. the Special Purpose - Quarry Zone), notwithstanding that one or more of the significant ecological area factors for identification were present.

A number of submitters argued that the significant ecological area should either be removed or modified, or that the greater range of activities be enabled or provided for. These submitters included: Brookby Quarry (quarry use); Manukau District Health Board (healthcare facilities); Regional Facilities Auckland (zoo); the Turners (farming); and Melanesia Mission Trust Board, John Compton, Chitty Family Trust, Ms C Caughey, Nuttal Family Trust, Brian and Patricia Beecroft, R and J Duthie and COD Crown Projects Limited (all in relation to housing).

These submitters contended that the significant ecological areas should be removed from their respective properties or modified due a range of reasons including:

- i. the significant ecological area was inconsistent or in conflict with the zoning of the site and other components of the Plan;

- ii. that conflict should be resolved now through the removal of the significant ecological area and not left to a resource consent application for the site;
- iii. the costs of imposing the significant ecological area (in consenting costs and loss of development potential) for individual landowners are greater than the benefits and have not been taken into account;
- iv. the combination of the costs of resource consents and the policy framework for significant ecological areas will reduce development options for the land;
- v. other alternatives had not been adequately considered, including protecting the ecological values through other methods in the Plan, such as the riparian vegetation rural vegetation or subdivision rules; and
- vi. the potential restrictions imposed by the significant ecological area would frustrate the achievement of other parts of the Plan.

The Panel recommends addition, modification or deletion of a number of significant ecological areas relative to the mapped areas as notified. The results of these recommendations are set out in the overlay maps. The Panel used the following approach to arrive at its recommendations.

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.

Where the Panel found the evidence in support of the significant ecological area to be inadequate relative to the significant ecological area factors, the Panel recommends modification or deletion. This situation often occurred where the Council evidence was not supported by a site visit (e.g. relied on photographic or mapping evidence) and the land owner provided evidence that either contradicted or called into question the Council evidence. In a limited number of cases the Panel was provided competing evidence from experts that had all visited the site and in these circumstances the Panel formed a judgement on that evidence. The overall timing and volume of the hearings process precluded the Panel undertaking site visits.

The Panel has made specific comments on some of the significant ecological areas, set out below. These are particularly where there was contested expert evidence and spatial change (removal of or the reduction in size a significant ecological area or an addition) has been made.

7.2.1. Portland Road – Remuera

Ms Davis, expert ecologist for the Portland Road Ecological Valley Group provided evidence in support of retaining this significant ecological area. She stated at paragraph 9 of here evidence in chief

My conclusion is that the site listed in Schedule 5.4 of the PAUP as SEA_T_6065 fully meets the criteria for Threat status and rarity, and substantially meets the criteria for

Representativeness and in part meets the criteria for Stepping stones, migration pathways and buffers. Given that for a site to qualify as a SEA it only needs to meet one of the criteria then I recommend that Portland Bush remain on Schedule 5.4 of the PAUP as a Significant Ecological Area.

The Panel agrees, but accepted the evidence of Ms C Caughey that her property should have the significant ecological area overlay removed. The Council has already agreed to this change and the removal of the significant ecological area overlay from her property, and the Panel agrees.

7.2.2. Norcross Reserve Area

The Panel heard considerable expert evidence from planners and ecologists on the ecological values of this area. Northcross Reserve and its environs is land formerly owned by the Ministry of Education. In this area there are some indigenous broadleaved trees and shrubs with interspersed podocarps and also a low-fertility ridgeline with a mix of gumland scrub species and weeds common in this type of habitat. It is noted that this area was not identified as a significant ecological area in the notified Plan.

The Environmental Defence Society Incorporated and Royal Forest and Bird Protection Society of New Zealand sought that the entire area be a significant ecological area (Areas A, B and C set out in Dr Goldwater's (expert ecologist) evidence. The reasons for this were set out in his evidence. Dr Goldwater stated in his evidence in rebuttal

The five sites are listed below together with the criteria they meet for the SEA overlay: a. Northcross Reserve and environs: meets criterion Stepping stones, migration pathways and buffers (4c).

COD Crown Projects Limited presented expert planning evidence (Mr Mattison) and ecological evidence (Dr Flynn) setting out why only part of this area should be retained as a significant ecological area. COD Crown Projects Limited had recently purchased some the land from the Ministry of Education for a housing development (area B on the Goldwater map).

Dr Flynn states at 1.4 and 1.5 of her evidence that:

In my assessment, the vegetation within the subject site as a whole is an example of a "novel/ hybrid ecosystem" as described in Singers et al (2015), as the canopy and emergent tiers are dominated by exotic vegetation pine and wattle), while the subcanopy largely comprises native broadleaved shrubs and treeferns. These factors suggest that the land owned by COD Crown Projects Limited ("CCPL") has characteristics which trigger the exclusion criteria used by Auckland Council's ecologists (see page 2 of the ecological assessment undertaken by Jane Andrews in relation to submission 1219-1 in 023 Hrg – Auckland Council – Joint Ecology - Appendix 1.1 – Rebuttal).

I do not consider that the subject site meets any of the PAUP SEA criteria.

The Council took the position that it did not support the significant ecological area overlay over private land where the land owner was not in agreement.

The Panel agreed with the evidence of COD Crown Projects Limited and has not included its land in the significant ecological area overlay. The Panel also agrees with Dr Goldwater and the Council evidence that area A in Dr Goldwater's map does meet the significant ecological area factors, and accordingly this area has included in the Significant Ecological Areas Overlay.

7.2.3. Kohimarama and Significant Ecological Area 6180

There was a considerable number of 'competing' submissions in relation to this significant ecological area overlay. Some submitters sought the removal of the significant ecological area overlay while others sought its retention and some its expansion.

The Melanesian Mission Trust Board (expert evidence from Ms Covington – planning and Dr Flynn – ecological) sought the removal of many of the sites within the significant ecological area overlay. Legal submissions from Ms Goodyear sought the removal of the overlay from 310A Kohimarama Road (for P and C Ellis and J Radley).

The Frances Battersby Family Trust (legal submissions from Ms Chappell and Ms Battersby) sought an expansion of the significant ecological area overlay over 69 Allum Street. The Kohimarama Forest Preservation Group opposed the submissions of The Melanesian Mission Trust Board. The Kohimarama Forest Preservation Group presented expert evidence from Mr Brown – planning and Dr Goldwater – ecologist.

The Panel understood the importance of this area to those who submitted in support of the significant ecological area. However, in terms of the significance factors the Panel was persuaded by the expert evidence of Dr Flynn. In her conclusion to her evidence in chief at 4.1 and 4.2 she stated:

Vegetation within the SEA in the gully between Kohimaramara Road, Allum Road and Pamela Place is dominated by exotic species, most of which are regarded as invasive weed species. Notwithstanding that the site has some features of ecological value, I do not consider that SEA criteria can be applied in a "categorical" way, without using one's judgement as to the long-term viability of the ecological feature in question, and its relative importance in achieving the protection and maintenance of biodiversity in the local and regional context. I also do not support simply retaining sites of marginal value as SEAs on a precautionary basis, using the rationale that "more is better". In my opinion, given its condition and context, the vegetation and habitat within the subject site does not meet the threshold of ecological significance envisaged by PAUP SEA criteria.

Furthermore, I do not consider it appropriate or practicable to retain sites as SEAs where invasive weed species comprise the dominant component of the vegetation, as PAUP provisions intended to protect SEAs would provide little or no protection to identified ecological values.

The Panel has recommended reducing the size of the significant ecological area. This is shown on the overlay in the planning maps on the GIS viewer.

7.2.4. 21 Ayr Street Parnell

Mr Compton requested the removal of the significant ecological area (SEA_T_6063) from the entire property at 21 Ayr St, Parnell. Expert planning evidence was presented by Mr

Lovett. The primary reason for seeking the deletion was on the basis that the site does not meet the relevant factors and was not likely to have any threatened species (ornate skink) present.

The primary evidence of the Council was that the site meets the relevant factors due to the likely presence of ornate skinks. The Council's expert ecologist, Dr Ussher, in his evidence in rebuttal, focused on the likely presence of native lizards with a conservation classification of 'threatened' or 'at risk' in the significant ecological area at 21 Ayr Street, Parnell. He acknowledged that he had not sighted an ornate skink on the submitter's property (cross examination from Mr Bartlett, legal counsel for Mr Compton).

The Council's opening legal submissions (at section 9.4) stated:

The Council's primary argument is that the site meets the relevant criteria and so should be mapped in order to reflect the important biodiversity values present on the site. In relation to the alternative proposed by Mr Lovett, the Council agrees that the translocation of skinks can be an appropriate response to a development proposal that affects the habitat of skinks. However, the primary response should be the retention of the habitat.

Having had regard to the evidence, the likelihood or not of ornate skinks being in this area, and that if they were they could be relocated, the Panel has recommended the removal of the significant ecological area over this property.

7.2.5. Waikumete Cemetery

Auckland Botanical Society, Richard Reid and Associates Limited and Richard H Gallen sought that the Plan continue to recognise and protect the significant ecological area of contiguous native gum land vegetation within Waikumete Cemetery as was shown in the Auckland Council District Plan – Operative Waitākere Section (Natural Areas).

The notified Plan mapped a smaller area of the Waikumete Cemetery as a significant ecological area (reduced by approximately 50 per cent from that shown in the operative district plan).

The Council's opening legal submissions (paragraph 8.7) set out the Council's position in relation to Waikumete Cemetery. It stated:

a number of submitters seek the extension of the SEA to cover a greater proportion of the site. The Council Parks Department in its capacity as landowner of the site does not agree to the addition and notes that the current extent of the SEA is consistent with the recently approved Reserve Management Plan for the Cemetery, Reserves Act Classification and Resource Management Act Designation of the site, for cemetery purposes.

The Council did not present any evidence in relation to Waikumete Cemetery and its status as a significant ecological area.

The submitters presented expert evidence in chief from Dr Bellingham (ecologist and planner), and Mr Cameron (botanist). Mr Reid, and architect, also presented evidence in chief. A summary of their collective evidence considered that the native gum land vegetation was unique, nationally rare and critically threatened. They set out that the Council had

assessed Waikumete Cemetery as meeting three factors for significant ecological area status: representativeness; threat status and rarity; and diversity. Notwithstanding this the significant ecological area overlay in the notified Plan reduced the area by approximately 50 per cent.

The Panel's view was that the area sought by the submitters to have a significant ecological area overlay met the relevant factors. According to the Council, its position was that an area meeting the factors should be mapped as a significant ecological area. The Panel has recommended that the significant ecological area be mapped as requested by the submitters.

In relation to requests to expand or add identified significant ecological areas the Panel issued guidance in Procedural Minute 6 (5 August 2014, see paragraphs 12 to 16) that indicated the Panel did not expect its processes would be able to do justice to situations where the landowner(s) were not in support of such requests by other parties. In response few requests for expansions or additions were sustained through the hearing process and most that were related to land in public ownership.

8. Consequential changes

8.1. Changes to other parts of the plan

There are no consequential changes to other parts of the Plan as a result of the Panel's recommendations on this topic.

8.2. 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.

9. 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.)

9.1. General topic documents

Panel documents

[023 - Submission Point Pathway Report - 15 May 2015](#) (15 May 2015)

[023 - Submission Point Pathway Report - 4 August 2015](#) (4 August 2015)

[023 - Parties and Issues Report - 2 July 2015](#) (2 July 2015)

[023 - Mediation Joint Statement - Sessions 1,2 and 3 \(15, 16 and 19 June 2015\)](#) (26 June 2015)

[Procedural Minute 6 5 August 2014](#)

Direct Discussion Outcomes

[023 - Outcome of Direct Discussions - stream 1 - 28 April 2015](#) (6 May 2015)

[023 - Outcome of Direct Discussions - stream 1 - 5 June 2015](#) (17 June 2015)

[023 - Outcome of Direct Discussions - stream 2 - 28 April 2015](#) (11 May 2015)

[023 - Outcome of Direct Discussions - stream 2 - 5 June 2015](#) (17 June 2015)

[023 - Outcome of Direct Discussions - stream 3 - 5 June 2015](#) (17 June 2015)

Auckland Council marked up version

[023 - Proposed Marked-up Version \(Objectives and Policies\)](#) (10 June 2015)

[023 - Proposed Marked-up Version \(Provisions - SEA's and Rivers, Lakes, Streams and Wetlands\)](#) (10 June 2015)

[023 - Proposed Marked-up Version \(Rules - Vegetation Management\)](#) (10 June 2015)

Auckland Council closing statement

[023 Hrg - Auckland Council - Closing Remarks](#) (2 September 2015)

[023 Hrg - Auckland Council - Closing Remarks - Attachment A](#) (2 September 2015)

[023 Hrg - Auckland Council - Joint Ecologists Post Closing Tracker - 12 November 2015](#) (13 November 2015)

[023 Hrg - Auckland Council - Joint Ecologists Closing Tracker - Appendix 1](#) (2 September 2015)

[023 Hrg - Auckland Council - Joint Ecologists Closing Remarks - Appendix](#) (2 September 2015)

[023 Hrg - Auckland Council - Post Closing Remarks - Appendix 5.1 Schedule of Significant Ecological Areas - Land](#) (13 November 2015)

[023 Hrg - Auckland Council - Post Closing Remarks - Appendix 6 Final Mark-up](#) (13 November 2015)

[023 Hrg - Auckland Council and Makgill Brothers and Haldane Trust - Memorandum - 28 July 2015](#) (28 July 2015)

023 Hrg - Auckland Council and Makgill Brothers and Haldane Trust - Memorandum - Attachments (28 July 2015)

023 - List of Minor Errors (23 April 2015)

023 - Memorandum of counsel for Council - 22 June 2015 (23 June 2015)

9.2. Specific evidence

Auckland Botanical Society

023 Hrg - Richard Reid and Associates Limited et al (Ewen Cameron) - Primary Evidence (22 July 2015)

Auckland Council

023 Hrg - Auckland Council - Legal Submissions (6 August 2015)

023 Hrg - Auckland Council (Marilyn Ford) - Planning - Vegetation Management - REBUTTAL (31 July 2015)

023 Hrg - Auckland Council (Marilyn Ford) - Planning - Vegetation Management - REBUTTAL - Attachment A (31 July 2015)

Hearing Evidence – Andrea Julian (13 November 2014)

023 Hrg - Auckland Council (Dr Graham Ussher) - Ecology - Significant Ecological Areas Terrestrial - REBUTTAL (29 July 2015)

COD Crown Projects Limited

023 Hrg - COD Crown Projects Limited (Sarah Flynn) - Ecology (4 August 2015)

023 Hrg - COD Crown Projects Limited (Sarah Flynn) - Ecology - Appendix 1 (4 August 2015)

023 Hrg - COD Crown Projects Limited (Sarah Flynn) - Ecology - Appendix 2 (4 August 2015)

023 Hrg - COD Crown Projects Limited (Nick Mattison) - Planning (4 August 2015)

023 Hrg - COD Crown Projects Limited (Nick Mattison) - Planning - Appendices (4 August 2015)

Federated Farmers

023 Hrg - Federated Farmers (Richard Gardner) - Opening Representations (10 August 2015)

Fish and Games New Zealand

023 Hrg - Fish and Game New Zealand (Auckland and Waikato Region) - Evidence - LATE (9 August 2015)

Frances Battersby Family Trust

[023 Hrg - Frances Battersby Family Trust - Legal Submissions](#) (10 August 2015)

Horticulture New Zealand: Pukekohe Vegetable Growers Association

[023 Hrg - Horticulture New Zealand \(Vance Hodgson\) - Planning](#) (16 July 2015)

Independent Maori Statutory Board

[023 Hrg - Independent Maori Statutory Board - Legal Submissions](#) (6 August 2015)

[023 Hrg - Independent Maori Statutory Board \(Hau Rawiri\) - Statement of Evidence](#) (16 July 2015)

[023 Hrg - Independent Maori Statutory Board \(Philip Mitchell\) - Statement of Evidence](#) (16 July 2015)

John Compton

[023 Hrg - John Compton \(John Lovett\) - Planning](#) (16 July 2015)

Julie Webber and Andrew Murray

[023 Hrg - Julie Webber and Andrew Murray - Legal Submissions](#) (6 August 2015)

Melanesian Mission Trust Board

[023 Hrg - Melanesian Mission Trust Board \(Clare Covington\) - Planning](#) (16 July 2015)

[023 Hrg - Melanesian Mission Trust Board \(Sarah Flynn\) - Ecology](#) (16 July 2015)

Minister of Conservation

[023 Hrg - Minister of Conservation \(Christopher Staite\) - Planning](#) (16 July 2015)

Ngāti Whātua Ōrākei Whai Maia

[023 Hrg - Ngati Whatua Orakei Whai Maia Limited \(Nicholas Roberts\) - Planning](#) (16 July 2015)

[023 Hrg - Ngati Whatua Orakei Whai Maia Limited - Legal Submissions](#) (7 August 2015)

Peter D Ellis, Cherryl D Ellis and John K Radley

[023 Hrg - Peter D Ellis, Cherryl D Ellis and John K Radley - Legal Submissions](#) (10 August 2015)

Potai Farms Limited

[023 Hrg - Potai Farms Limited - Primary Evidence](#) (15 July 2015)

Potts Road Trust and Clifton Holdings Trust and The Ayrliès Gardens and Wetlands Charitable Trust

[023 Hrg - Potts Road Trust and Clifton Holdings Trust and The Ayrliès Gardens and Wetlands Charitable Trust \(David Hay\) - Planning](#) (14 July 2015)

Portland Ecological Valley Group

023 Hrg - Portland Ecological Valley Group (Alison Davis) - Ecology (15 July 2015)

Richard Reid and Associates Limited

023 Hrg - Richard Reid and Associates Limited (Richard Reid) - Primary Evidence (16 July 2015)

023 Hrg - Richard Reid and Associates Limited et al (Dr Mark Bellingham) - Primary Evidence - Waikumete Cemetery (22 July 2015)

Royal Forest and Bird Protections Society of New Zealand Inc

023 Hrg - EDS and Royal Forest and Bird Protection Society (Nick Goldwater) - Ecology (15 July 2015)

023 Hrg - EDS and Royal Forest and Bird Protection Society (Nick Goldwater) - Ecology - Site Specific Matters (21 July 2015)

023 Hrg - EDS and Royal Forest and Bird Protection Society (Nick Goldwater) - Ecology - Site Specific Matters - Supplementary Evidence (6 August 2015)

The Kohimarama Forest Preservation Group

023 Hrg - The Kohimarama Forest Preservation Group (Nick Goldwater) - Ecology (15 July 2015)

Waytemore Forests Limited, Waytemore Farms Limited, Adfordston Farms Limited and Kauri Hiwi Limited

023 Hrg - Waytemore Forests Limited, Waytemore Farms Limited, Adfordston Farms Limited and Kauri Hiwi Limited (Mark Tollemache) - Planning (16 July 2015)