

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 064 Subdivision -
rural**

July 2016

Report to Auckland Council - Hearing topic 064

Subdivision - rural

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1. Hearing topic overview

1.1. Topic description

Topic 064 addresses the district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	IHP reference
Rural Subdivision	Chapter C.6 Subdivision Chapter D.6 Zone Objectives and Policies - Rural Zones Chapter H.5 Auckland Wide Rules - Subdivision	E39 Subdivision - Rural

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

- i. Subdivision is provided for in rural zones to a greater extent than in the notified Plan as signalled in the Panel's interim guidance on rural subdivision dated 10 June 2015.
- ii. Subdivision is more enabled where it is for the protection, rehabilitation or enhancement of significant indigenous biodiversity.
- iii. Subdivision relating to indigenous vegetation, wetland and native re-vegetative planting subdivision is provided for as follows:
 - a. restricted discretionary activity to create additional lots by protecting:

- scheduled significant ecological areas – one lot for two hectares and one extra for every additional 10 hectares;
 - indigenous vegetation meeting significant ecological area criteria – one lot for two hectares and one extra for every additional 10 hectares;
 - wetland meeting significant ecological area criteria – one lot for 5000m²; and
 - native re-vegetative planting meeting standards – one lot for every five hectares.
- b. the lots created may be in-situ or transferred to identified receiver sites in the Rural - Countryside Living Zone.
- iv. Transferable rural site subdivision is also enabled from donor lots in the identified in the 'Land amalgamation incentivised area' (refer to Appendix 14 of the Plan).
- v. The objectives and policies have been amended to reflect the changes made to the subdivision provisions.

This report needs to be read in conjunction with the Panel's Report to Auckland Council – Hearing topic 056 and 057 - July 2016. It also needs to be read in conjunction with the Panel's Report to Auckland Council - Hearing topic 064 Subdivision - urban July 2016, which addresses subdivision more broadly in terms of the 'mechanics' of subdivision as well as those related to urban areas.

1.3. Overview

As set out in the Panel's Report to Auckland Council – Hearing topic 011 Rural environment July 2016, the Panel has recommended a policy framework that would enable rural subdivision to a greater extent than in the notified Plan. The Panel issued interim guidance on how that greater enablement should be translated into the district plan.

The Panel's report stated:

Probably the most controversial aspect of the rural provisions was subdivision. In terms of the proposed Auckland Unitary Plan as notified subdivision was very restrictive, with many submitters saying it was tantamount to a prohibition. In response to hearing the rural subdivision provisions, the Panel issued interim guidance stating that subdivision needed to be provided for to a greater extent than in the proposed Auckland Unitary Plan. (Section 1.3, page 5.)

The Council and submitters addressed the interim guidance in their legal submissions and evidence. The Council considered it had fully addressed the guidance and enabled greater subdivision opportunity though providing for in-situ and the transfer of environmental protection lots.

Most submitters who presented evidence did not think the Council had addressed the direction in the guidance and that the Council had held too tight a rein on rural subdivision. Some submitters sought significantly more subdivision opportunity including:

- i. enabling rural residential lots from existing titles;

- ii. subdivision of land containing elite and prime soils;
- iii. the creation of farm parks and hamlets; the protection of areas with natural, physical and cultural values; and
- iv. enabling a greater use of the provision for transferable rural site subdivision.

In summary the Panel has recommended greater opportunity for rural subdivision in relation to enablement for the protection, rehabilitation and enhancement of significant indigenous biodiversity, i.e. indigenous vegetation, wetland and native re-vegetative planting. These lots may either be created in-situ or transferred.

The transferable rural site subdivision option is enabled from donor lots within the incentivised land amalgamation area, and in the circumstances where indigenous vegetation, wetland and native re-vegetative planting subdivision is provided for. These lots are transferred to sites identified on the planning maps by the subdivision variation control as receiver sites in the Rural - Countryside Living Zone.

While the transferable rural site subdivision option is similar to the proposed Auckland Unitary Plan, the Panel considers there is considerable opportunity for this technique to achieve better environmental, social, economic and cultural outcomes. However the policy shift required to achieve this has not been well enough established in section 32 terms to justify such a change at this time. This would need to be progressed through a plan change process.

No provision has been made for hamlets or farm parks. Neither has any provision been made for the protection of sites and places of significance to Mana Whenua through subdivision. The reasons for this are set out in some detail below but are the same as those in the paragraph above relating to the transferable rural site subdivision provisions.

The Panel has recommended the minimum site size subdivision be as set out in the table below (as proposed by the Council following the Panel's interim guidance and presented in evidence for topics 011 and 056 and 057). This is largely based on the expert evidence of the Council's witnesses and supported by a number of submitters including Horticulture New Zealand and the Pukekohe Vegetable Growers Association.

Zone	Minimum Average site size (ha)	Minimum site size (ha)
Rural Production	100	80
Mixed Rural	50	40
Rural Coastal	50	40
Rural Conservation	20	10

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 in full below. See section 11 Reference documents.

2. Interim guidance- enabling rural subdivision

2.1. Statement of issue

The Panel issued interim guidance in June 2015 on how rural subdivision should be provided for in the district plan. The Council considers it has given full effect to the guidance. Some submitters do not think the Council has gone far enough in terms of that guidance and has not enabled sufficient rural subdivision opportunity.

2.2. Panel recommendation and reasons

The Panel's guidance stated the position set out below.

- i. Subdivision in rural zones should be provided for to a greater extent. It may be discouraged or constrained but should not be effectively prevented. There should be no requirement to use existing rural sites rather than create new ones.
- ii. The productive potential of elite land (soil) should not be undermined.
- iii. Subdivision should provide resilience to effects of natural hazards.
- iv. Provision for rural subdivision should enable protection, rehabilitation or enhancement of significant indigenous biodiversity through subdivision in appropriate locations, subject to evidence that it will produce significant environmental benefits, and with cost-effective monitoring.
- v. Provision for subdivision for rural lifestyle purposes should be enabled subject to constraints on location, scale and density which:
 - a. avoid areas that would undermine the integrity of the Rural Urban Boundary or compromise the expansion of identified towns and villages;
 - b. protect areas of identified significant ecological, landscape and natural character values;
 - c. avoid elite land containing elite soil;
 - d. avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;
 - e. maintain or enhance landscape, rural character and amenity values;
 - f. avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and
 - g. safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

The Council considers that it has given effect to the guidance and how it had done so was set out in the evidence in chief of Mr B Mosley, Council's expert planner. Some submitters suggested that the Council had rejected, not accepted or poorly responded to the guidance.

Overall, it is the Panel's view that the Council has responded to the guidance, but that the opportunity to enable more and appropriate transfer of titles has not been sufficiently developed. The Panel addresses the transfer issues (transferable rural site subdivision) in more detail below.

It is the Panel's view that subdivision has been provided to a greater extent than in the notified Plan. The Panel accepts that subdivision has been discouraged or constrained, particularly in areas that are highly productive and where subdivision is likely to impact rural production potential. This is appropriate based on the Council's evidence, in particular that of Dr Curran-Cournane, Council's expert soil scientist, who addressed the importance of Auckland's elite and prime soils.

Provision has been made for rural subdivision to enable protection, rehabilitation or enhancement of significant indigenous biodiversity where it can be demonstrated this will produce significant environmental benefits, with cost-effective monitoring. This is also addressed further below.

The changes recommended in Mr Mosley's evidence in chief (paragraph 1.12), which were supported by the Council, are set out as follows.

Average minimum lot sizes

- (a) Introduce a table of minimum average and minimum densities for rural subdivision in the five rural zones based on: the zone objectives; the character of the zones; parcels sizes in the zone; the growth projections for rural lifestyle living in other rural areas in the Auckland Plan; and policy directions in the proposed Auckland Unitary Plan.
- (b) Reduce the minimum site size in the Rural Production zone down from 150ha to 80ha, in conjunction with a 100ha minimum average site size.
- (c) Reduce the minimum site size in the Mixed Rural zone down from 150ha to 40ha, in conjunction with a 50ha minimum average site size.

Adjustment to transferable rural site subdivision rules including land amalgamation in the Incentivised Land Amalgamation Area (ILAA)

- (d) Introduce a restricted discretionary activity status for transferable rural site subdivision where protection of ecological values occurs or land is amalgamated in the ILAA.

Greater Incentives for significant ecological area Protection & Land Amalgamation (Transfer Rural Site Subdivision i.e. transferable rural site subdivision)

- (e) Increase the benefits from the protection of ecological values and amalgamation of fragmented land comprising of elite land and prime land.
- (f) Refocus the former "Receiver Site Exclusion Area" as an "Incentivised Land Amalgamation Area".

significant ecological area Protection or Restoration Planting – In situ subdivision opportunity

- (g) Introduce the possibility for in situ subdivision for rural lifestyle living as a restricted discretionary activity where a significant area of identified significant ecological area is being protected or a significant area of identified significant ecological area is being restored.

Prohibited activity status

- (h) Remove the default prohibited activity status in table 5 for other subdivision possibilities. These now default to non-complying or are specifically provided for as a restricted discretionary activity or full discretionary activity.

Boundary adjustments

- (i) Remove the prohibited activity status for boundary adjustments, simplify the definition of boundary adjustments and boundary locations into one definition, and introduce a controlled activity for boundary adjustments complying with controls.
- (j) Make boundary adjustments unable to comply with controlled activity rule a discretionary activity.

Density in Country Side Living zone

- (k) Make minor changes to table 10 in the provisions determining site sizes for Countryside Living zones to either: restrict transferable rural site subdivision in response to the constraints of the locality or provide greater opportunity for transferable rural site subdivision where appropriate.

Reverse sensitivity

- (l) Introduce a rule and consequential amendments that ensure dwellings are not located to create reverse sensitivity problems for activities associated with mineral extraction.

Natural Hazards

- (m) Introduce a requirement that building areas not be in locations subject to flooding, coastal inundation and sea level rise.

These changes are also generally accepted by the Panel and have been put forward in its recommendations. The Panel has, however, made further changes in relation to the size of lots to protect significant ecological areas and the introduction of enhancement lots where indigenous bush is planted.

Moreover the provision for subdivision for rural lifestyle purposes is enabled by:

- i. the ability to create in-situ lots through the protection, rehabilitation or enhancement of significant indigenous biodiversity;

- ii. the ability to transfer lots created through the protection, rehabilitation or enhancement of significant indigenous biodiversity to receiver Rural - Countryside Living Zones;
- iii. the ability to transfer lots from the land amalgamation incentivised area to receiver Rural - Countryside Living Zones;
- iv. the provision of Rural - Countryside Living Zones; and
- v. boundary relocations.

As above in section 1.3, the Panel considers there is a much greater potential for the use of the transfer technique to result in better environmental outcomes and to enable people to provide for their social, cultural and economic well-being. However, this technique has not been sufficiently developed for the Panel to recommend its wider use at this time.

3. Managing subdivision to maintain and enhance productive potential

3.1. Statement of issue

The Council sought in the notified Plan to limit subdivision in the rural areas, particularly to maintain and preferably enhance the productive potential of rural land, especially land that contains elite and prime soil. The Council maintained this position and presented expert evidence to justify it.

A number of submitters sought greater subdivision enablement, including that of land containing prime and elite soil. Based on the evidence and in section 32 terms, the Panel largely supports the Council's position. However it is noted that this issue cannot be addressed in isolation from the Panel's findings and recommendations that the provisions for subdivision need to be more enabling than those in the notified Plan.

3.2. Panel recommendation and reasons

The Panel generally supports the evidence in chief of Council's expert planner Mr Mosley. His position is that the Auckland Plan reinforces that the key driver for rural subdivision objectives, policies and rules should be to support the purpose of the five rural zones. The Panel agrees but adds that the rural subdivision provisions, enabled and/or constrained, need to give effect to the objectives and policies in the regional policy statement.

In the case of the Rural - Rural Production Zone and Rural - Mixed Rural Zone the Panel accepts that it is important that the subdivision provisions support the policy direction of ensuring that rural production activities can continue and that reverse sensitivity issues associated with rural lifestyle can be avoided. This is reinforced by the evidence of Dr Curran-Cournane, Council's soil scientist.

The issues relating to the importance of rural productive potential, elite and prime soils, the policy basis for these, and the regional policy statement policy provisions for rural subdivision, have been set out in the Panel's Report to Auckland Council - Hearing topic 011 Rural environment July 2016 and Report to Auckland Council - Hearing topics 056 and 057 Rural zones July 2016. These matters are not repeated here.

The Panel generally accepts the evidence of Dr Curran-Cournane for the Council. As noted in her evidence in rebuttal for topic 011:

Thirty-five percent of the best agricultural land in the Auckland region is occupied by lifestyle blocks and this trend will increase into the future if stricter objectives and policies about rural subdivision and development are not included in Chapter B8 'Sustainably managing our rural environment' in the proposed Auckland Unitary Plan (proposed Auckland Unitary Plan). The development of elite and prime land is therefore not primarily attributable to urbanisation and future urban zoning as suggested in the evidence on behalf of the following submitters: the Smithies Family Trust and others, and Better Living Landscapes Limited. Research indicates that the development of elite and prime land by rural lifestyle blocks pose an even bigger threat than that from urbanisation and this has been a long standing land use issue in rural Auckland.

There is very little scientifically robust and defensible research indicating the productive value of small-scale, lifestyle block production other than to say it is largely being used for consumptive purposes. This raises concerns that a large proportion of elite and prime land is being occupied for non-commercial primary production and the adverse accumulative effects of rural subdivision will continue to limit large scale operations that for economic purposes require large areas of land to operate.

Loss of land (especially 'versatile' or high quality' soils)' and 'reverse sensitivity effects' were identified as the major issues associated with land fragmentation in New Zealand. These were the key concerns raised by all regional and unitary councils across New Zealand and three district councils in relation to rural fragmentation.

Considering the above and what is detailed in my rebuttal evidence below, there is compelling scientific research indicating that adhoc, sporadic rural subdivision has been a long standing land use issue in rural Auckland and 35% of the best agricultural land in Auckland is occupied by lifestyle blocks. These trends will continue without intervention. To maintain the integrity and viability of this non-renewable and ever decreasing resource in Auckland I support stricter objectives and policies about the enabling of rural subdivision in the region (Paragraphs 1.1-1.5.).

This position was reinforced in her evidence in chief for topic 056, again setting out the issues of parcel size in relation to land containing elite and prime soil and, in her opinion, the importance of protecting land containing elite and prime soils for potential production purposes. She supported the planning provisions recommended by Mr Mosley in his planning evidence.

With respect to provision for rural lifestyle lots, Mr Mosley's opinion was one supported by the Panel. It agrees it is appropriate to provide for rural lifestyle subdivision in specific Rural - Countryside Living Zones and where this is accompanied by the protection of significant ecological values or the restoration of areas which possess identified significant ecological values.

The changes he recommended to the rural subdivision provisions, and supported by the Council, are set out in section 2.2 above.

A number of submitters did not support the Council's position.

Karaka Lakes Limited and Karaka Centre Limited were represented by Mr Allan who presented legal submissions. The submissions explain that while these submitters are primarily concerned to have their land at Hingaia and Kingseat rezoned for urban development (addressed in hearing topics 016, 017 and 080 and 081), should this rezoning not occur they wish to ensure that countryside living at an appropriate density is enabled.

In the section of Mr Allan's legal submissions relating to general observations about rural subdivision in the Auckland region, there is a statement that much of the southwest of the region in the vicinity of Kingseat, Karaka, Waiuku and Pukekohe is land containing prime soil. The legal submissions suggest that, while New Zealand has an agriculturally-based economy, it does not maximise the use of land containing prime soil close to Auckland.

The Panel notes these submitters did not produce any expert evidence or a section 32 analysis. Also these submissions are contrary to the evidence of Horticulture New Zealand that land containing elite and prime soils is used by their growers in the southern part of the Auckland region interchangeably. The submissions also did not have regard to the evidence of Dr Curran-Cournane which addresses the importance of Auckland's land containing elite and prime soils for outdoor vegetable production in the regional and wider New Zealand context. As already addressed, Dr Curran-Courane's evidence outlines the effects that rural lifestyle subdivision has had on the availability of elite and prime soil for rural production activities.

The Maskell Trust and W and B Dickens and B and J Dickens (evidence from their expert planner Ms J Rackley), suggested that the minimum average site size relating to in-situ subdivision in Table 4A of Mr Mosley's evidence (proposed Chapter H.5.2.3.3 rural zones subdivision provisions) should be removed. This would leave only the minimum site size control in Table 4A.

Ms Rackley expressed the view that such a minimum average site size approach was more appropriate in an urban area than a rural area. The Council, and the Panel, disagree. As discussed in the evidence in chief of Mr Mosley, the inclusion of a minimum average site size as well as a minimum site size provides landowners with added flexibility. This enables landowners to subdivide a site with one of the new sites being potentially larger and one being smaller depending on the landowner's needs (with a range of production activities still being enabled on both sites). In the Council's view, and supported by the Panel, this approach is in accordance with section 7(a) of the Resource Management Act 1991 as it will promote the efficient use and development of natural and physical resources.

Having had regard to the submissions and evidence the Panel generally agrees with the Council. The revised objectives, policies and subdivision rules recommended by Mr Mosley in relation to rural productive purposes, and subject to the changes recommended by the Panel (changes made in relation to the size of lots to protect significant ecological areas and the introduction of enhancement lots where indigenous bush is planted), are the most appropriate having had regard to the Auckland Plan and to give effect to the regional policy statement and the purpose of the Resource Management Act 1991.

4. Subdivision and significant indigenous biodiversity

4.1. Statement of issue

The Council, in its evidence and closing statement, provided for the possibility of in-situ subdivision for rural lifestyle living where a significant area of an identified significant ecological area is to be protected or a significant area of an identified significant ecological area is being restored.

Some submitters sought greater enablement by allowing subdivision for rural lifestyle living where: two hectares and not five hectares of an identified significant ecological area is to be protected; where an area (two hectares) which meets the significant ecological area factors significant ecological area is to be protected; a wetland of 5000m² that meets the significant ecological area factors; and where five hectares is planted with indigenous bush meeting specified standards.

The Panel has enabled greater subdivision than proposed by the Council, and generally supported those submitters seeking the additional option set out above.

4.2. Panel recommendation and reasons

The Panel received a considerable amount of evidence on this issue, including from the Council and a range of submitters. Most of it was expert evidence from ecologists and planners.

4.2.1. Subdivision of an identified significant ecological area

With respect to the subdivision of parts of or all of an identified significant ecological area, there was broad support for this. However the main issue in contention was the size of the lot to be created. Council's position was that five hectares was the appropriate size compared to two hectares suggested by a number of submitters.

Mr Goodwin (for Cato Bolam Consultants Limited), an expert ecologist, advised the Panel that two hectares was an appropriate minimum. His evidence was based on his expertise as well as having considerable experience under the operative district plans (particularly Rodney) in implementing these types of subdivisions. The Panel records it was particularly persuaded by his evidence.

Mr Nicholls, a surveyor, also with considerable 'on the ground' experience, suggested that the five-hectare threshold was too high and was also of the view that the existing two-hectare threshold for and environmental lot subdivision was too high in the Auckland Council District Plan – Operative Franklin Section. Similarly Ms Pegrume (for Better Living Landscapes), again another practitioner with considerable experience, considered that a two-hectare threshold provides a more equitable outcome and contended in her summary of evidence that if a two-hectare area of bush meets the significant ecological area criteria then it is already nationally significant and should be protected. Chin Hill Farms (Mr Brown - planner) and others supported more enabling plan provisions.

The matter of the size of lots was addressed by the Council's ecological expert Ms Myers. It was her opinion that the larger the area of indigenous vegetation the better. She considered that a five-hectare area would be more sustainable and ecologically viable than a two-

hectare area of indigenous vegetation and more resilient to external influences such as weeds and edge effects. Ms Myers was of the view that this would lead to greater ecological gains.

It was the Council's position, in light of the evidence of Ms Myers and Dr Bird, that the five-hectare threshold set out in Mr Mosley's proposed rules would give better effect to the Panel's interim guidance for Topic 011 Regional policy statement - rural. This was because the interim guidance stated that the provisions for rural subdivision should enable protection, rehabilitation or enhancement of significant indigenous biodiversity through subdivision in appropriate locations, subject to evidence that it will produce significant environmental benefits.

The Panel does not dispute Ms Myers opinion essentially that 'bigger is better'. The issue before the Panel from the submitters is whether two hectares of significant ecological area is an appropriate minimum to enable a subdivision. The Panel is persuaded that it is by the evidence of the submitters (set out above) and based on their 'on the ground' experiences in working with and implementing the legacy plan provisions.

While this may result in more subdivision, the Panel was not persuaded by Mr Mosley's arguments that sufficient capacity had been enabled in light of the Auckland Plan's directive on the number of rural lots that could be created (addressed in more detail later). The Panel is of the view that there will not be proliferation of these lots (based on the submitters' evidence), with a greater benefit in terms of the increased protection of these areas. The rules have been drafted in such a way that strict standards need to be met and monitoring carried out. The Panel finds that, in relation to its interim guidance, the two-hectare minimum will produce significant environmental benefits.

4.2.2. Subdivision of an area meeting the significant ecological area criteria

The Panel, again based on submitter evidence, has enabled the same subdivision option for sites in a significant ecological area, where it can be demonstrated that the site meets the specified significant ecological area factors in the regional policy statement.

Mr Goodwin, along with a number of other submitters' witnesses, expressed the view that the requirement for indigenous vegetation eligible for protection to be a significant ecological area was too high a hurdle. The submitters' view was that if the site satisfied the significant ecological area factors it should be eligible to be considered for protection and subsequent subdivision. The submitters accepted that they would need to demonstrate that the site did in fact satisfy the factors to be a significant ecological area. The Panel notes that this is a requirement in the subdivision rules recommended by the Panel.

The Council's position during the hearing and in its closing statement is that the most appropriate method available to ensure significant environment benefits is to use the significant ecological area overlay as the basis for a regulatory incentive subdivision. This was discussed by the Council's witnesses in their written evidence and in answers to the Panel. The Council's position is that the vast majority of the region's most significant areas of indigenous biodiversity have been identified in the significant ecological area overlay. The Council advised that minor errors in the significant ecological area overlay were being

updated through the hearings process and the overlay would be added to over time (through a plan change process).

Council's expert witnesses (Ms Fuller at the hearing for Topic 011 and Ms Myers at the hearing for Topic 056) considered that the Council had done an 'unprecedented' job in identifying, evaluating and mapping the significant ecological areas. While the Panel does not dispute this, Ms Myers did concede that not all areas satisfying the significant ecological area factors had been mapped. This was confirmed by some submitters, including Mr Brown, expert planner for Chin Hill Farms, who stated that a significant part of his client's landholding was not a significant ecological area, but would satisfy the factors to be one.

Given the matters addressed above, the Panel recommends an additional significant ecological area subdivision option where it can be demonstrated that the site satisfies the specified significant ecological area factors set out in the Plan. The provision is otherwise the same as the subdivision based on an identified significant ecological area.

4.2.3. Subdivision involving wetlands

Mr Goodwin raised a number of issues about the Council's proposed provisions relating to wetlands. He advised the Panel that regulatory incentive subdivision involving wetlands is the most popular form of regulatory incentive subdivision. He suggested that the Council had concentrated on the failures and not the successes. Mr Goodwin stated that the Council's proposed 20-metre buffer requirement around wetlands was too great, and that in-situ subdivision involving the protection of wetlands should be allowed.

The reasons why the Council considers that in-situ subdivision involving wetlands is not appropriate was comprehensively addressed in the evidence of Dr Bird. The reasons why dwellings should not be built in close proximity to wetlands include the need for space to extend and expand and the danger domestic pets present to threatened wetland species.

As far as the proposed 20-metre buffer is concerned, Ms Myers' evidence confirms that with her proposed changes to require planting within the buffer, this requirement will increase the size and ecological function of a wetland.

The Council considers it to be extremely important that wetlands which qualify for regulatory incentive subdivision opportunities in the proposed Auckland Unitary Plan are identified as significant ecological areas in the Plan.

The Panel understands the concerns of the Council and accepts that wetlands are highly sensitive. However for the same reasons that the Panel has recommended indigenous bush subdivisions that meet the Plan's significant ecological area criteria, the same should apply to wetlands. The Panel accepts the Council's reasons for the need of a 20 metre buffer. Also a subdivision created by the wetland provisions may also be transferred to a Rural - Countryside Living Zone receiver area.

4.2.4. New areas involving re-vegetative planting (enhancement planting)

The Council's position was not to support those submitters who sought to enable the subdivision of land where substantial areas are planted (or replanted) with native vegetation. The reasons for this are addressed below.

Mr Goodwin in his evidence to the hearing on Topic 11 Regional policy statement - rural (8 December 2014) set out compelling reasons why this form of subdivision should be applied across the region, and not only in identified precincts.

At paragraph 5.3 of his evidence in chief, Mr Goodwin stated:

The current provisions that allow for subdivision rights from the protection of bush and wetland areas that meet certain criteria, or bush planting were introduced in the Rodney Plan released at the end of 2000, although bush protection subdivision was available in the previous Plan. They have therefore been in place in their current form for about 14 years now. These replaced previous subdivision options that allowed for rural subdivision with no environmental benefit. In my opinion, the rules that were introduced in 2000 have worked well, and as a result large areas of bush and wetland have been protected, and large areas of new bush have been established through the planting rule. This would not have occurred if these rules had not been in place (emphasis added).

He goes on to say:

In the fifteen years I have been involved in the restoration and protection of the region's natural resources, and the associated subdivision, I have seen significant and obvious improvements to the quality and cover of both wetlands and bush areas throughout the Rodney area, which is where my main work is. The current objectives and policies have allowed for rules that have seen a large increase in protected natural areas, and large increase in the actual area of bush cover, and a large increase in the extent and number of wetland areas that are protected.

As examples of projects I am currently working on, a 30ha area of flood plain on the Kaukapakapa River flats area has recently been planted with native forest with the aim being to re-establish the kahikatea dominant forest that would once have covered these areas, and now is known only from remnant stands. Once established, this will be the largest area of lowland kahikatea forest I am area of in the region. Another 30ha area of proposed replanting is about to be consented in Waimauku, along with the accompanying wetland areas. There are many other projects I have been involved with that have also established substantial bush areas (paragraphs 5.4 and 5.5).

Mr Goodwin (in section 6.0 of this evidence) concludes that the Plan should have rules that allow for the creation of new titles through protection of and enhancement and creation of significant ecological areas. He considers that there is a good history of the successful implementation of the operative district plan rules, and as a result large areas of native bush are being established, wetland areas restored to regain their former values and existing good quality bush and wetland areas are being protected in perpetuity. It was his opinion that the rules are therefore working as intended to create significant ecological and environmental benefits.

The Panel also notes that legal submissions were presented on behalf of Clime Assets Management Limited and Man O War Farm Limited that reference the evidence of Ms Gilbert and Mr Hartley which suggests that a broader range of environmental benefits could be secured through greater provisions for subdivision than the Council proposes. The submissions state that under the Council's rules the type of restoration of degraded pastoral

farm land on Waiheke Island and discussed by Ms Gilbert in her evidence would not be possible.

Also Mr Hartley and Dr Bellingham, representing a number of submitters, set out in evidence the benefits of enhancement planting, and supported the use of the planting rules/standards based on the Auckland Council District Plan - Operative Rodney Section provisions.

The Council's response to those submitters seeking this option is that expert evidence from Mr Balderston in Topic 056/057 demonstrates the amount of subdivision that could be generated by enhancement planting rules applied across the region is not in accordance with the strategic direction of the Auckland Plan, which anticipates that the dwelling growth in Rural - Countryside Living Zones and other rural areas will be less than 10,000 in the 30-year period between 2012 and 2041. Mr Mosley made the same points in his evidence.

As pointed out by Dr Bellingham (paragraph 8 of his summary statement presented at the hearing on Topic 056) it is expensive to undertake restoration planting. He stated:

I have quotes from current restoration projects that puts the cost of planting to Council's standards (same as Mr Harley's) \$20,000 per hectare, fencing \$15-20 per metre, annual weed and pest management \$150 -200 per hectare per annum (on a very long term basis), and consenting, surveying and covenanting costs would be typically \$40,000 per consent for smaller sites and slightly more for larger sites.

Mr Goodwin, in answer to questions about the cost of creating these lots, said the cost is substantial (in the order of thirty thousand dollars per hectare). Given the cost of this form of development and subdivision, the Panel finds it is highly unlikely that it will generate a proliferation of lots.

The Panel does not agree with the Council that if the enhancement planting rules were applied across the region it would be contrary to the strategic direction of the Auckland Plan. The Panel finds the likely lot yield would have a negligible effect on that strategic direction, while at the same time restoring or creating native bush areas, and providing an enhanced subdivision option.

The Panel also notes that a number of proposed precincts would enable this form of subdivision and would, if taken up, add to the supply of lots.

For the reasons addressed above, in particular the evidence of Mr Goodwin and Dr Bellingham, the Panel supports the wider application of this subdivision option than to the identified precincts. It has the potential to create ecological benefits and, due to the complexity of the rules, the size of lots to be created and the cost involved, it is likely that only few lots would be created.

In respect of contiguous planting a number of submitter witnesses, including Dr Bellingham and Mr Hartley, advised the Panel that they did not consider it necessary for restoration planting to be contiguous to an existing significant ecological area, as proposed by Mr Mosley.

The legal submissions for Better Living Landscapes state that the contiguous requirement is unreasonable and that Mr Mosley's proposed provisions contained no subdivision opportunities based on the enhancement or rehabilitation of degraded rural areas that

contain no qualifying significant ecological area or significant ecological area that satisfies the factors for a significant ecological area.

The Council considers that restoration planting should be contiguous to an existing significant ecological area to ensure that significant ecological benefits are obtained. Ms Myers stated that there would be better ecological gains out of restoration planting being contiguous to a significant ecological area. She also noted that enhancement planting on land where no vegetation currently exists is more difficult and needs greater management.

As a result, the Council considers that the rules promoted by Mr Mosley are more likely to result in the protection of significant indigenous vegetation and the significant habitats of indigenous fauna in accordance with section 6(c) of the Resource Management Act 1991, than the alternative more ad hoc approach to restoration planting suggested by submitters.

The Panel does not agree and is more persuaded by the submitters' evidence. It is likely that much of the enhancement planning will be contiguous to an existing significant ecological area or an area that satisfies the factors for a significant ecological area. However the Panel, largely based on the evidence and experience of Mr Goodwin, considers that the option of an entirely new area should not be precluded.

The Panel has already set out it does not envisage this to be used often due to the substantial cost of establishing five hectares of native bush that meets the standards set out in the Panel's recommended rule. The Panel finds, contrary to the Council, that the rules recommended by the Panel are more likely to result in the protection of significant indigenous vegetation and the significant habitats of indigenous fauna in accordance with section 6(c) of the Resource Management Act 1991.

4.2.5. Significant ecological area subdivision yield

A number of submitters considered that the Council's cap on the maximum yield for transferable rural site subdivision and in-situ subdivision involving the protection of significant ecological area indigenous vegetation was too low. For example this issue was raised in the legal submissions (and summary hearing statement) of Jeffrey Brown on behalf of Chin Hill Farms Limited and in the legal submissions for Omaha Park Limited.

Mr Serjeant in his evidence to the Panel suggested that the rules should provide for one additional site for every 10 hectares of significant ecological area protected beyond the Council's total maximum yield of three sites where a significant ecological area is greater than 15 hectares.

Submitters considered that there is little incentive to protect large significant ecological area sites under the Council's proposed rules. For example submitters pointed out that in circumstances where there was say, 100 hectares of significant ecological area, a landowner had to fence the entire 100 hectares in order to get a yield of three sites for transfer and the subdivision reward for the costs involved was not commensurate.

The Council considered the matters raised above in relation to the subdivision rules relating to protection of significant ecological areas. The Council agrees that in their current form the rules create some inequities for landowners who have large significant ecological areas on their properties. The Council proposed to amend the relevant provisions to enable additional

sites to be generated for transfer beyond the maximum yield of three in Mr Mosley's rebuttal evidence.

The Panel agrees and recommends rules that enable one additional site for the protection of each additional 10 hectares of indigenous vegetation. This means that for a 100 hectare site, the total yield would therefore be 11 sites instead of three as set out in the Council's proposed rules.

The Council considers that this addresses the issues of fairness and workability of the rule raised at the hearing (including the requirement to fence the entire significant ecological area on a site once any area of significant ecological area is utilised for subdivision opportunities). The Panel agrees for the reasons presented in the evidence and in Council's closing statement.

5. Transferable rural site subdivision

5.1. Statement of issue

A number of submitters sought that much greater use should be made of transferable rural site subdivision than proposed by the Council. Submitters sought that the donor criteria be significantly relaxed and receiver areas be expanded so that they were not limited to identified Rural - Countryside Living Zones. Submitters sought that receiver areas should be within the same zone and/or enable clustering or the creation of hamlets.

The Council's position, in summary and supported by expert evidence, is that the donor criteria could be relaxed, and that the receiver area in addition to identified Rural - Countryside Living Zones be expanded to enable transfer into rural and coastal villages. However in relation to the rural and coastal villages, no transfer mechanism was proposed.

5.2. Panel recommendation and reasons

The Panel heard a considerable amount of evidence on this topic from the Council and submitters.

Overall the Panel is persuaded that, contrary to the Council's position, there is likely to be considerable opportunity to improve the potential rural productive capacity of rural land and protect significant ecological areas though enabling subdivision by the transfer of lots and titles. Despite the evidence on this topic from the Council and submitters, there remained a significant difference of opinion about the effects of a more comprehensive transferable rural site subdivision system, whether it was appropriate given the Council's approach to the rural environment and in particular subdivision, and the mechanisms to enable it to occur. (See also Panel's Report to Auckland Council – Hearing topic 011 Rural environment July 2016, and Report to Auckland Council – Hearing topics 056 and 057 Rural zones July 2016),

The Panel does not consider that the Council's transferable rural site subdivision will achieve much due to its restrictive nature, in particular the limited receiver areas. However, as a consequence of the Panel's recommendations to extend the Rural – Countryside Living Zone, results in a greater opportunity for the transfer of sites. The Panel notes that while the Council attempted to expand the receiver area to include the rural and coastal villages, no transfer mechanism was proposed.

While the Panel has enabled greater subdivision opportunity, both in-situ and by transfer (as set out above), it has not recommended a significantly different transferable rural site subdivision than that proposed by the Council. This is because the Panel thinks the policy shift to enable a more comprehensive transferable rural site subdivision system is too significant to be addressed by this Unitary Plan process, particularly as there is little agreement between the Council and its experts and those of submitters and their experts.

Prior to making a major shift in rural subdivision policy to address a more comprehensive transfer system, a detailed section 32 analysis would be required, with appropriate consultation, considering a range of options and determining that which was most appropriate. The Panel recommends that the Council consider working with a number of the submitters with a view to undertaking a section 32 analysis and a subsequent plan change to introduce a more comprehensive transferable rural site subdivision system.

The Council's strategic rural policy approach in the Auckland Plan is reflected in the notified regional policy statement (B9 – Rural Environment). As with the Auckland Plan and the provisions of rural chapter, the Council considers that the Plan's rural strategy would be undermined if "significant swathes of the rural areas were to be utilised for rural lifestyle purposes at the expense of rural production activities and other activities that require a rural location" (paragraph 8.6 of Council's opening legal submissions to Topic 081).

It is the Council's evidence that subdivision should not undermine the productive potential of rural land and avoids, remedies or mitigates adverse effects on biodiversity, landscape values, rural character and amenity. Transferable rural site subdivision is proposed as one method to address those effects, while still enabling subdivision. The Council is aware of the need to ensure adequate receiver sites in the Rural - Countryside Living Zone are available to facilitate transferable rural site subdivision.

Mr Balderston's modelling evidence in rebuttal for hearing topics 056 and 057 suggested that under the Council's proposed rural subdivision provisions, a minimum of approximately 3380 transferable rural site subdivision donor sites could be generated and that there was a receiver capacity of approximately 1754 sites in the Rural - Countryside Living Zones.

While it is not possible to know how many landowners will in the future take up transferable rural site subdivision opportunities, Mr Mosley was of the opinion that the potential donor supply and receiver capacity for transferable rural site subdivision were appropriately aligned. He considered it unnecessary to identify additional receiver areas outside the Rural - Countryside Living Zones or serviced villages.

It appears to the Panel that the limit on receiver areas in the Rural - Countryside Living Zone will be a real constraint to the effective use of the transferable rural site subdivision.

The Panel also notes that the Council did propose to expand the transferable rural site subdivision option to include the rural and coastal villages. In relation to this the Panel was unclear on the mechanisms to enable it. The Panel, in a memorandum to the Council (9 December 2015) sought clarification on how the bonus/incentive provisions for transferable rural site subdivision work in relation the rural and coastal villages as receiver areas stating:

The Panel is unclear on what the proposed bonus/incentive provisions are for transfers to the "rural or coastal villages" (described as "Within the RUB of a Serviced Village or where no RUB has been established for a Serviced Village within the urban areas

existing at the date this Unitary Plan becomes operative” in the Council’s closing statement for topic 064).

The Panel is not aware that this matter was addressed in the residential zones hearing as set out in Council’s closing [as was stated it would in para 6.6 of Council’s Closing statement]. The bonus/incentive provisions were not addressed in hearing topic 064 either.

The Panel asked the Council to identify the specific plan provisions which set out the bonus/incentives provisions for transferable rural site subdivision into the rural and coastal villages.

The Council responded (memorandum dated 16 December 2015) that:

On behalf of the Council, we confirm that there are no specific proposed Auckland Unitary Plan provisions which set out the bonus/incentives rules for the transferable rural site subdivision into the rural and coastal villages and implement the policies relating to transfer subdivision.

The Council went on to say:

We also stated in opening submissions for the Council on Topics 056 and 057 that an incentivised approach for transfers to sites within the RUB of existing serviced villages where there is no RUB, within the existing urban area was intended to be taken.

The Council’s closing remarks for Topic 064 acknowledge that the transferable rural site subdivision opportunities for the Auckland region will not occur at one point in time and therefore the method is sufficiently flexible to enable the Council to adjust its zoning pattern over time and in response to demand for receiver sites generated from transferable rural site subdivision.

It is clear that while the Council intends to provide for the transferable rural site subdivision provisions to apply to the rural and coastal villages, it has not done so in this process. A plan change will be required to enable the transfer into the rural and coastal villages.

It appears to the Panel that given the limited countryside living transferable rural site subdivision option and lack of transfer mechanism to the rural and coastal villages, there is insufficient transfer capacity. On this basis the Panel does not understand Mr Mosley’s position that that the potential donor supply and receiver capacity for transferable rural site subdivision are appropriately aligned. This reinforces the Panel’s position that the transferable rural site subdivision system has not been optimised.

A number of submitters raised issues with the Council’s notified transferable rural site subdivision. Mr Nicholls, surveyor representing a number of submitters (6127 - Baigent, 5699 - Smalley, 5878 - Geottler (Brookdale Limited), 6381 - Wolfgram, 4998 - Wallace (Tripp Andrews) and 5172 - Chapman (COEL Limited)) stated in his summary evidence that:

My evidence discusses the problems with the rules regarding rural subdivision as proposed in the proposed Auckland Unitary Plan. The problems identified are vast, and far too extensive to reconcile within the statements of evidence. Our evidence has therefore been limited to the most significant failings we have identified, and we offer suggested remedies that are reasonably achievable, but will require further work

to be done by all parties. The methods proposed by Council will not achieve the desired outcomes and I will attempt to point out the flaws in those methods.

(Paragraph 5, 056&057 Hearing Evidence (Peter Nicholls).)

Mr Nicholls, in his hearing statement (23 June 2015) for a number of submitters (e.g. Kent Baigent), stated that the major change from the notified version of the transferable rural site subdivision rules is that the receiver locations within the rural zones had now been limited to specific Rural - Countryside Living Zones or serviced villages. In his opinion this changed the whole dynamics of the title transfer component of the rural subdivision rules and is very different to those rules which were publicly notified. This was supported by Mr Williamson, expert planner for the above submitters.

In particular, all rural zones, other than some selected Rural - Countryside Living Zones and serviced villages, have been excluded as receiver areas. Mr Nicholls also noted that there were no receiver areas in the southern region of the district. Mr Williamson pointed out in his evidence there is an opportunity in the South Auckland area to allow some infill rural areas to be defined in the manner that he has outlined. Mr Nicholls considered these areas could be utilised as defined receiver areas using mapped overlays.

Mr Nicholls also raised concerns about changing the name and purpose of the incentivised land amalgamation area referred to in Mr Mosley's rules. He was also concerned the incentive provisions within the incentivised land amalgamation area would not achieve what Mr Mosley said that they would. Ms Pegrume in her evidence for Better Living Landscapes held the same opinion - that the provisions were too restrictive.

As discussed in the Council's legal submissions, the donor site criteria for transferable rural site subdivision involving the amalgamation of sites were amended by Mr Mosley in his evidence. The amendments include the requirement for donor sites to:

- i. contain at least 90 per cent elite soil or at least 90 per cent prime soil (i.e. Classes 1-3);
- ii. have a net site area of between one and ten hectares; and
- iii. have been in existence or shown on an approved scheme plan of subdivision at or before 1 November 2010.

The Council remains of the view that only sites already in existence at or before 1 November 2010 that have land containing 90 per cent prime or elite soils should be eligible for transferable rural site subdivision.

As Mr Mosley explained in his evidence this criterion targets the issue of the continuing trend of fragmentation of land containing elite and prime land soils. In his opinion this will ensure that it is Auckland's most valuable agricultural land that is incentivised for amalgamation. This was also consistent with the evidence of Dr Fiona Curran-Cournane. It was her evidence that specifically highlighted the unique qualities and importance of land containing elite and prime soils and the continued loss of this resource through fragmentation and urbanisation.

Notwithstanding the above the Council amended the criteria to incentivise the amalgamation of sites larger than 10 hectares, as sites in the 10 to 20 hectare size range were potentially vulnerable to use for rural lifestyle purposes. While this will increase the number of sites in

the Rural - Rural Production Zone, Rural - Mixed Rural Zone or Rural – Rural Coastal Zone which would qualify for amalgamation, the Panel still finds that there is likely to be a shortage of receiver sites.

In respect of the purpose of the incentivised land amalgamation area referred to in Mr Mosley's proposed rules, the rural subdivision provisions in the notified proposed Auckland Unitary Plan included rules relating to the receiver site exclusion area, the spatial extent of which is depicted in Appendix 12.1 to the notified Plan.

Mr Mosley recommended this area be renamed to the incentivised land amalgamation area. The Panel prefers the term 'Land amalgamation incentivised area'. As set out in Council's closing statement by way of background, the receiver site exclusion area in the notified version of the Plan had its origins in the Auckland Council District Plan – Operative Franklin Section. Its spatial extent (in Appendix 12.1 of the notified Plan) mirrors that of the Environmental Enhancement Overlay Area in the operative district plan. It was introduced through the process to resolve appeals on Plan Change 14 (PC 14). Its boundary was confirmed by the Environment Court in its 2013 decision in *Madsen Lawrie Consultants & Nicholls & Ors v Auckland Council & Ors* [2013] NZEnvC.

The Environment Court in that decision approved an incentive transfer lot rule for the transfer of rural lots within the Environmental Enhancement Overlay Area. The purpose of that rule was to encourage a reorganisation and reduction of the dispersed existing vacant lots that occur within the Environmental Enhancement Overlay Area. Similarly, Mr Mosley's proposed rural subdivision provisions enable two new sites for transfer to be obtained from the amalgamation of two sites located in the incentivised land amalgamation area (as opposed to just one as is the case in other donor site locations).

The rules proposed by Mr Mosley are directed at land fragmentation in the incentivised land amalgamation area, an area that contains areas of land containing elite and prime soil. The Panel accepts Mr Mosley's proposed approach in the proposed Auckland Unitary Plan is consistent with the existing policy approach of the operative district plan to transferable rural lot right subdivision in this area. However the Panel notes that Mr Nicholls' concerns are broader than just this issue, and the Panel has already identified above that it has an overall concern about the limited nature of the entire transferable rural site subdivision approach.

A number of submitters' witnesses, including Mr Nicholls, Mr Williamson, Ms Pegrume and Mr Serjeant (on behalf of the Serjeant Family Trust), raised concerns that receiver site locations be either in identified Rural - Countryside Living Zones or within urban areas of serviced villages. The general thrust of this evidence is that the receiver criteria are too limited and/or it is not clear how it would work. The Panel addresses Mr Hartley's hamlet issues separately below.

The Council's reason why receiver areas for transferable rural site subdivision need to be in clearly delineated areas such as Rural - Countryside Living Zones or within serviced village is the potential for random, ad hoc rural lifestyle subdivision from transferable rural site subdivision occurring across the rural zones.

Mr Nicholls' opinions on this have been addressed above and Mr Serjeant considers that there are issues about receiver capacity with the Council's proposed rules, a matter with which the Panel agrees. He also set out that a bonus system to enable serviced villages to

be receiver areas has yet to be addressed by the Council. Again the Panel agrees and this has been addressed earlier.

The Council noted in its closing statement on rural subdivision (paragraph 6.5) that it is likely that additional receiver area capacity will be added in Rural - Countryside Living Zones and serviced villages during the hearings for the Rural Urban Boundary (topics 016 and 017) and rezoning (topics 080 and 081). The Panel notes that this has not occurred and refers back to the memorandum the Panel provided to the Council on 9 December 2015.

The Council also stated that:

Further the incentives or bonus mechanism for the transfer of sites to a rural or coastal village will be considered as part of the residential zones hearing. This process will result in a range of receiver site opportunities across the region and address the concerns raised by Peter Nicholls and others about a perceived lack of potential receiver areas for transferable rural site subdivision in the south.

Therefore the Council considers that the proposed Auckland Unitary Plan hearings process once complete will result in additional capacity beyond the current 1754 potential receiver site capacity identified in the modelling evidence of Mr Balderston's closing statement on rural subdivision (Paragraphs 6.6 and 6.7.)

The Panel reiterates it does not agree that any additional capacity has been provided.

The Council confirmed in its closing statement (paragraph 6.9) that it intends to monitor the receiver areas for transferable rural site subdivision and, if required, introduce plan changes to provide additional receiver site capacity over the life of the Plan. This reinforces the Panel's view that the Council's approach to lot and title transfer to achieve better environmental outcomes, is not likely to be the most appropriate in terms of section 32 of the Resource Management Act 1991.

The Panel concludes there are better transfer opportunities that would achieve the objective of the Auckland Plan and give effect to regional policy statement policies seeking to protect the productive potential of rural land, along with ensuring that biodiversity, landscape values, rural character and amenity are maintained and enhanced. However this matter and that of hamlets and farm parks addressed below, requires a more comprehensive analysis than has been carried out to date.

6. Hamlets

6.1. Statement of issue

Some submitters sought the provision of a rural subdivision option to create hamlets, and greater use of the transferable rural site subdivision system could be used to do this. The Council's position is that it does not support the hamlet concept.

6.2. Panel recommendation and reasons

Mr Hartley provided evidence on the benefits of hamlet development and provided the Panel with a comprehensive set of planning provisions to enable such development. In his

summary statement on behalf of Man O War Farm Limited and Clime Asset Management Limited he suggested some further limits, taking a more cautionary approach, on the potential receiving sites for hamlets should the Panel consider that the hamlet rules were appropriate.

These further limits included amending his proposed rules to:

- i. reduce the location (distance) of the hamlet area from roads and settlements to 3kms (from 5km);
- ii. apply a minimum site area of either 20 or 30 hectares (up from eight hectares); and
- iii. provide a minimum separation between hamlets of up to one kilometre (up from 300 metres).

At the hearing, Mr Hartley proposed these revisions in response to the concerns raised by the Council's witnesses, in particular Messrs S Brown and Mosley. Their evidence highlighted the adverse environmental outcomes that could result from hamlet development of the scale proposed by Mr Hartley, including the loss of rural character and amenity, reverse sensitivity and increased fragmentation of rural land.

The Panel notes the Council's view that the amendments suggested by Mr Hartley do little to address the fundamental problems with the provisions identified in the Council's evidence. The Council says reducing the maximum distance of hamlets from existing roads and settlements will not address the potential impact of hamlet development on infrastructure such as rural roads. It also considers there is still likely to be a proliferation of rural lifestyle living in rural zones on land intended to be used for rural production activities and the increase in minimum site area is likely to increase the degree of land fragmentation. Increasing the minimum site area would not mitigate the adverse effects on rural character and amenity of rows of townhouses located in a rural environment at densities associated with an urban environment.

The Council's position is that the provisions would not give effect to the regional policy statement's direction to avoid urbanisation outside the Rural Urban Boundary. Furthermore, while increasing the separation distances between each hamlet will disperse the visual impact of hamlets being located right next to each other, that approach does not address the cumulative effects of an unknown number of hamlets potentially locating in numerous locations. For these reasons the Council remains of the view that hamlets are not a subdivision method that should be enabled in the rural zones of the Plan.

The Panel has not recommended the inclusion of provisions for hamlet subdivision. The reasons are the same as for transferable rural site subdivision in section 5.2 above. The Panel did not consider it had sufficient justification in terms of section 32 and 32AA to provide for this type of development, and was mindful that Mr Hartley had also offered alternative provisions at the hearing.

Notwithstanding this the Panel considers there is merit in providing for hamlet development but this would need an appropriate policy basis to enable evaluation. As for transferable rural site subdivision, more comprehensive analysis is required.

The Panel notes that in any section 32 evaluation to consider the appropriateness of transferable rural site subdivision provisions, including for hamlets, many of the concerns Council has could potentially be addressed by the Panel's interim guidance, namely that provision for subdivision for rural lifestyle purposes should be enabled subject to constraints on location, scale and density which:

- i. avoid areas that would undermine the integrity of the Rural Urban Boundary or compromise the expansion of identified towns and villages;
- ii. protect areas of identified significant ecological, landscape and natural character values;
- iii. avoid elite land;
- iv. avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;
- v. maintain or enhance landscape, rural character and amenity values;
- vi. avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and
- vii. safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

7. Farm parks

7.1. Statement of issue

Whether provision should be made for enabling subdivision to create farm parks.

7.2. Panel recommendation and reasons

The legal submissions and evidence presented to the Panel on behalf of Neatherlea Holdings Limited, Stratford Properties Limited and Roscommon Properties Limited (Neatherlea) promote a farm park method of rural subdivision.

The legal submissions for Neatherlea assert that the proposed farm park provisions prepared by Mr Tim Grace (expert planner) will ensure that subdivision for rural lifestyle purposes is enabled in a manner which achieves the matters listed in paragraph 5 of the Panel's interim guidance.

The Council disagrees that Mr Grace's provisions will give effect to the Panel's interim guidance. The Panel agrees. Notably there is no mention in the legal submissions or in Mr Grace's evidence of how the proposed farm park form of rural subdivision will enable the protection, rehabilitation or enhancement of significant indigenous biodiversity through subdivision in appropriate locations (paragraph 4 of the Panel's interim guidance).

The farm park provisions were not accompanied by a detailed section 32 analysis or any other expert evidence including landscape evidence which would help determine the potential cumulative adverse effects that could arise from this form of development. The

Panel finds that the proposed farm park provisions will result in rural lifestyle opportunities with no accompanying environmental benefits in the rural zones. This is contrary to the Panel's interim guidance and would not achieve the rural regional policy statement direction.

For the above reasons, the Panel agrees with the Council that the inclusion of a farm park rural subdivision method in the Plan will not give effect to the regional policy statement and is not the most appropriate way to achieve the district plan objectives and policies.

The submitters land and its zoning and subdivision enablement is addressed in more detail in the Clevedon precinct provisions. This includes some extension of the Rural - Countryside Living Zone and specific precinct subdivision provisions.

8. Subdivision opportunities for protection of sites and places of significance to Mana Whenua

8.1. Statement of issue

Whether subdivision provisions enabling subdivision opportunities for sites or places of significance to Mana Whenua should be provided for.

8.2. Panel recommendation and reasons

During the hearing, the representative for Ngāti Whātua o Kaipara tabled revised subdivision provisions seeking to enable subdivision opportunities for sites or places of significance to Mana Whenua.

This issue was addressed in the Council's closing statement for hearing topics 056 Rural objectives and policies and 057 Rural activities and controls (land use) dated 10 July 2015. As outlined in that closing statement, the Council has considered the changes proposed by Ngāti Whātua o Kaipara in relation to Chapter D6 Rural zone objectives and policies but, having done so, the Council has not proposed any changes to those provisions.

As set out in Council's closing statement, the reasons for this include that there is a lack of detail as to how the provisions might work. Moreover the Council does not consider that the proposed provisions enabling the transfer of a residential development opportunity based on protecting or restoring sites or places of significance to Mana Whenua is comparable to the significant ecological area transfer subdivision rules.

Unlike the significant ecological area transfer rules, there is no certainty, based on the evidence presented, as to the appropriate threshold for triggering the ability to transfer a development right. In particular it is not clear whether all middens, kōiwi and/or other taonga would trigger the transfer rule. In these circumstances it would not be appropriate to change either the rural subdivision objectives and policies or the rules to address the submitter's concerns.

The Panel agrees with the Council's position. However for the reasons in section 5 above, it is the Panel's view that the Council needs to undertake a more comprehensive analysis of a lot and title transfer system so as to determine if greater opportunities would result in appropriate social, cultural and environmental outcomes.

9. Countryside Living Zone – minimum site size

9.1. Statement of issue

Some submitters sought that the minimum site size in the Rural - Countryside Living Zone be two hectares without the option of a one hectare site based on the transferable rural site subdivision provisions. Other submitters sought that if a one hectare site based on the transferable rural site subdivision provision could be created, then the default site size should also be one hectare.

9.2. Panel recommendation and reasons

The Panel has not recommended altering the lot sizes in the Rural - Countryside Living Zone in response to submissions. The Panel agrees with the Council in terms of its position that the two hectare is appropriate, with the ability through the transferable rural site subdivision provision to create one hectare lots. The Panel's position on the transferable rural site subdivision provision has been fully set out above.

Mr Allan presented legal submissions on behalf of B and C Crawford, the owners of a rural lifestyle property at Lucas Heights. Among the relief sought was to reduce the minimum net site size for the Paremoro – Albany Heights Rural - Countryside Living Zone from two hectares to one hectare.

The Council did not support this request, largely on the basis of rural landscape and amenity. This was discussed in the evidence in rebuttal of Mr Brown, Council's landscape expert, and in the Council's legal submissions.

With respect to the transferable rural site subdivision provision, the Panel is mindful that if the minimum site size for subdivision in Rural - Countryside Living Zones generally is reduced to one hectare, this would essentially result in there being no incentive to transfer a site under the transferable rural site subdivision method to a Rural - Countryside Living Zone.

The Panel and the Council only consider it appropriate to provide for subdivision in Rural - Countryside Living Zones at a one hectare minimum site size (rather than two hectares) where a site is transferred. This is because significant environmental benefits can be achieved where: significant ecological areas are protected, significant enhancement planting is carried out, or sites on land containing elite and prime soil are amalgamated.

10. Consequential changes

10.1. 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.

10.2. 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.

11. 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.

(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.)

11.1. General topic documents

Panel documents

[064-Submission Point Pathway \(12 October 2015\)](#) (13 October 2015)

[056-Parties and Issues Report-11 June 2015](#) (12 June 2015)

[064-Parties and Issues Report \(3 September 2015\)](#) (3 September 2015)

[064 - Memo from IHP to Auckland Council - 9 December 2015 - bonus/incentive provisions for TRSS into the rural and coastal villages](#) (9 December 2015)

[064 - Memo from IHP to Auckland Council - 9 December 2015 - bonus/incentive provisions for TRSS into the rural and coastal villages - Auckland Council response](#) (16 December 2015)

Mediation statements

[056 & 057 - Mediation Markup version \(Draft for 6 May\)](#) (22 April 2015)

[056 & 057 - Mediation Markup version - 057 Rural Rules Subdivision \(Draft for 6 May\)](#) (22 April 2015)

[056 & 057 - Mediation Joint Statement - 8 May 2015](#) (8 May 2015)

[064-Mediation Joint Statement \(26 August 2015\)](#) (3 September 2015)

Mark Up Provisions for Mediation

[Mark Up Provisions for Mediation \(Clean version with Council's proposed track changes accepted\)](#) (25 August 2015)

Panel Interim Guidance

[Interim Guidance RPS Topic 011 Rural subdivision 10 June 2015](#)

Council closing statement

[064 Hrg - Auckland Council - Closing statements](#) (19 November 2015)

[064 Hrg - Auckland Council - Closing statements - Annexure A](#) (19 November 2015)

11.2. Specific evidence

Auckland Council

011 RPS Rural

011 [Rebuttal Evidence - Dr Fiona Curran-Cournane \(Land and Soil Scientist\) \(Topic 011 RPS B8\)](#) (12 January 2015)

056/057 Rural Objectives and Policies/ Rural activities and controls

056/057 [Legal submissions](#) (21 June 2015)

056/057 [Rebuttal evidence \(Stephen Brown\) - Landscape Architecture](#) (12 June 2015)

056/057 [Rebuttal evidence \(Stephen Brown\) - Landscape Architecture - Annexures 1-9](#) (12 June 2015)

056/057 [Rebuttal evidence \(Kyle Balderston\) - Modelling](#) (16 June 2015)

056/057 [Rebuttal evidence \(Fiona Curran-Cournane\) - Land and Soil](#) (12 June 2015)

056/057 [Summary statement \(Barry Mosley\) - Planning](#) (8 July 2015)

057 [Rebuttal evidence \(Barry Mosley\) - Planning](#) (17 June 2015)

057 [Rebuttal evidence \(Shona Myers\) - Ecology](#) (12 June 2015)

057 [Summary statement \(Shona Myers\) - Ecology](#) (8 July 2015)

057 [Rebuttal Evidence \(Barry Mosley\) - Planning - Appendix 3](#) (17 June 2015)

057 [Hearing evidence \(Barry Mosley\) - Planning](#) (18 May 2015)

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056/057 [Rebuttal evidence \(Kyle Balderston\) - Modelling](#) (16 June 2015)

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064 [Hrg - Auckland Council \(Barry Mosley\) - Planning \(Rural Subdivision\)](#) (25 September 2015)

064 [Hrg - Auckland Council \(Barry Mosley\) - Planning \(Rural Subdivision\) - REBUTTAL](#) (23 October 2015)

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081 [Ak Cncl - Rezoning - LEGAL SUBMISSIONS](#) (8 March 2016)

Bryan and Christine Crawford

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Better Living Landscapes Limited

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The Maskell Trust

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W C and E J Dickens

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