

**IN THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**ENV-2017-AKL-**

**IN THE MATTER** of the Local Government (Auckland Transitional Provisions) Act 2010 (“**LGATPA**”) and the Resource Management Act 1991 (“**RMA**”)

**AND**

**IN THE MATTER** of an appeal under section 156(3) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (“**Hearings Panel**”) on the proposed Auckland Unitary Plan (“**Proposed Plan**”)

**AND**

**IN THE MATTER** of Proposed Plan Hearing Topic 081 – Rezoning and Precincts (Geographic areas)

**BETWEEN** **THE NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED**

**Appellant**

**A N D** **AUCKLAND COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

**DATED: 11 October 2017**

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**ELLIS GOULD  
SOLICITORS  
AUCKLAND**

**REF: D J Sadlier**

**Level 17 Vero Centre  
48 Shortland Street, Auckland  
Tel: (09) 307 2172 Fax: (09) 358 5215  
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AUCKLAND**

TO: The Registrar  
Environment Court  
AUCKLAND

1. The National Trading Company of New Zealand Limited ("**NTC**") appeals against a decision of Auckland Council ("**the Council**") on the Auckland combined plan, now the Auckland Unitary Plan: Operative in Part ("**Unitary Plan**").
2. NTC received notice of the Auckland Unitary Plan Independent Hearings Panel's ("**Hearings Panel**") recommendation to Auckland Council that it confirm the provisions of the Redhills Precinct ("**Precinct**" and "**Recommendation**") on 27 July 2016. NTC received notice of the Council's decision to accept the Recommendation ("**Decision**") on 19 August 2016.

***Part of Decision appealed***

3. NTC appeals the part of the Decision approving I610.10.1. Redhills Precinct: Precinct plan 1 ("**Precinct Plan**"), and in particular the part of the Decision approving the inclusion of arterial roads, amendments to the alignment of those arterial roads relative to the alignment of the collector roads shown in submissions, and provision of a new arterial connection to the Don Buck Road/Fred Taylor Drive roundabout as part of the Precinct Plan.
4. NTC was an intervener in judicial review proceedings filed by Bunnings Limited challenging the Hearings Panel's failure to identify its Recommendation as being outside the scope of submissions on the Unitary Plan. In *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141, the High Court has now declared that the Recommendation in relation to the Precinct Plan was outside the scope of submissions, and has accordingly set aside that part of the Recommendation.<sup>1</sup> Council's notification of the High Court's decision, and notice that appeal rights are thereby triggered in relation to the Decision, was published on the Council's website on 14 September 2017.

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<sup>1</sup> *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141 which declared that: "the Panel made an error of law by recommending the inclusion of arterial roads, amendments to the alignment of those arterial roads relative to the alignment of the collector roads shown in the submissions, and the new arterial connection to the roundabout as part of the precinct plan, without identifying those recommendations as beyond the scope of submissions made on the PAUP."

5. NTC is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”). In any event, it is directly affected by effects of the Decision that:
- (a) adversely affect the environment; and
  - (b) do not relate to trade competition or the effects of trade competition.

***Standing to appeal***

6. NTC has the right to appeal the Council’s decision to the Environment Court under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 because:
- (a) The High Court has declared that the Recommendation was beyond the scope of submissions and should have been identified as such.
  - (b) The Council’s Decision resulted in a matter being included in the proposed plan. That is, the identification of arterial roads on the Precinct Plan for the Precinct.
  - (c) NTC will be unduly prejudiced by the inclusion of that matter, as described in the reasons for this Appeal set out in paragraph 7 below.

***Reasons for appeal, and undue prejudice to NTC***

7. The reasons for this Appeal, and why NTC is unduly prejudiced by the Decision, are:
- (a) Foodstuffs North Island Limited is one of two regional buying co-operatives that collectively operate throughout New Zealand. Its members operate supermarkets and grocery outlets throughout the North Island under the Pak’n Save, New World and Four Square brands. NTC is the property holding company for those outlets and is a wholly owned subsidiary of Foodstuffs.
  - (b) NTC owns a Pak’n Save supermarket at 17-19 Fred Taylor Drive (“**Supermarket**”). The Supermarket has two vehicle accesses, from Tawhia Drive and from Te Oranui Way. Te Oranui Way is one of the four existing arms of the roundabout intersection of Fred Taylor Drive and Don Buck Road (“**Roundabout**”).
  - (c) The Supermarket was established pursuant to LUC-2012-1109 and Permit 410526 (“**Consents**”). The Consents were granted in reliance on the roading layout shown in Plan Change 15 to the Auckland Council District Plan (Waitakere Section) and the Massey North Urban

Concept Plan, which included Rua Road and the Don Buck Road Extension (now, Tawhia Drive and Te Oranui Way respectively). This roading layout is now set out in I615.10.2. Westgate Precinct plan 2 – conceptual road network. Te Oranui Way is identified in Westgate Precinct plan 2 as a “strategic road alignment”, and the intersection as a “strategic access point – signals”.

- (d) The Consents were granted subject to conditions that Tawhia Drive and Te Oranui Way were constructed, and suitable access to Tawhia Drive and Te Oranui Way was available, prior to operation of the Supermarket. Further, conditions of the Consents require NTC to monitor traffic effects associated with the supermarket, particularly insofar as these relate to right turn movements to and from the site via the Supermarket’s Tawhia Drive access. A review of the Tawhia Drive access arrangements can be undertaken based on the results of that monitoring.
- (e) Accordingly, any reduction in accessibility to, or level of service of, the Roundabout, will have direct and significant effects on the operation of NTC’s Supermarket, and the ability of NTC to comply with conditions of the Consents for the Supermarket.
- (f) The Decision provides for the creation of a new arterial road connecting to the Roundabout as a fifth arm to the Roundabout. The provision of a fifth connection to the Roundabout, whether or not it is signalised in future, is likely to result in the introduction of limitations on access to and from Te Oranui Way, and will lead to the creation of an inappropriate, inefficient, ineffective and less integrated road layout when considered in the context of existing and planned future development in Massey North, Redhills and the broader area.
- (g) Finally, unless and until the Proposed Plan is amended to include the relief sought at para 8 below, the provisions will not:
  - (i) promote the sustainable management of resources;
  - (ii) enable social, economic and cultural well being;
  - (iii) otherwise be consistent with Part 2 of the RMA; or
  - (iv) be appropriate in terms of section 32 of the RMA.

**Relief sought**

8. The Appellant seeks the following relief:
- (a) That the Decision subject to this Appeal be disallowed.
  - (b) That the Precinct Plan is amended so that the amended roading layout:
    - (i) does not include an arterial (or other) road with a direct connection to the Roundabout; and
    - (ii) does not impact on access to or from the Supermarket, including through continuing to enable the full range of movements into and out of Te Oranui Way.
  - (c) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
  - (d) Costs of and incidental to the Appeal.

**Service**

9. The Council will be served today with an electronic copy of this Notice in accordance with the decision of the Environment Court granting waivers (Refer: [2016] NZ EnvC 153) in respect of the requirement to serve a copy of any Notice of Appeal on a submission on the provision or matter to which the appeal relates.

**Attachments**

10. NTC **attaches** the following documents to this Notice of Appeal:
- (a) A copy of the Hearings Panel recommendations version of the Precinct Plan (**Annexure A**)
  - (b) A copy of the relevant parts of the Hearings Panel's reports to the Council which formed part of its Recommendation (**Annexure B**).
  - (c) A copy of the relevant parts of the Decision (**Annexure C**).
  - (d) A copy of the High Court decision, *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141 (**Annexure D**).

- (e) A map showing the location of the Supermarket at Westgate, which is affected by the Decision (**Annexure E**).

**DATED** at Auckland this 11<sup>th</sup> day of October 2017

**THE NATIONAL TRADING COMPANY OF  
NEW ZEALAND LIMITED** by its solicitors and  
duly authorised agents Ellis Gould



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**D J Sadlier**

**ADDRESS FOR SERVICE:** The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215. dsadlier@ellisgould.co.nz (email service preferred).

**Advice to recipients of copy of notice of appeal***How to become a party to proceedings*

1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2016] NZEnvC 153, within 15 working days after the period for lodging a notice of appeal ends you must:
  - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz);
  - (b) serve copies of your notice on the Auckland Council on [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz); and
  - (c) serve copies of your notice on the appellant electronically.
2. Service on other parties is complete upon the Court uploading a copy of the notice onto the Environment Court's website.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
4. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

*Advice*

5. If you have any questions about this notice, contact the Environment Court in Auckland.

**ANNEXURE A**

**HEARINGS PANEL RECOMMENDATIONS VERSION OF PRECINCT PLAN**



**ANNEXURE B**  
**HEARINGS PANEL RECOMMENDATION REPORT**

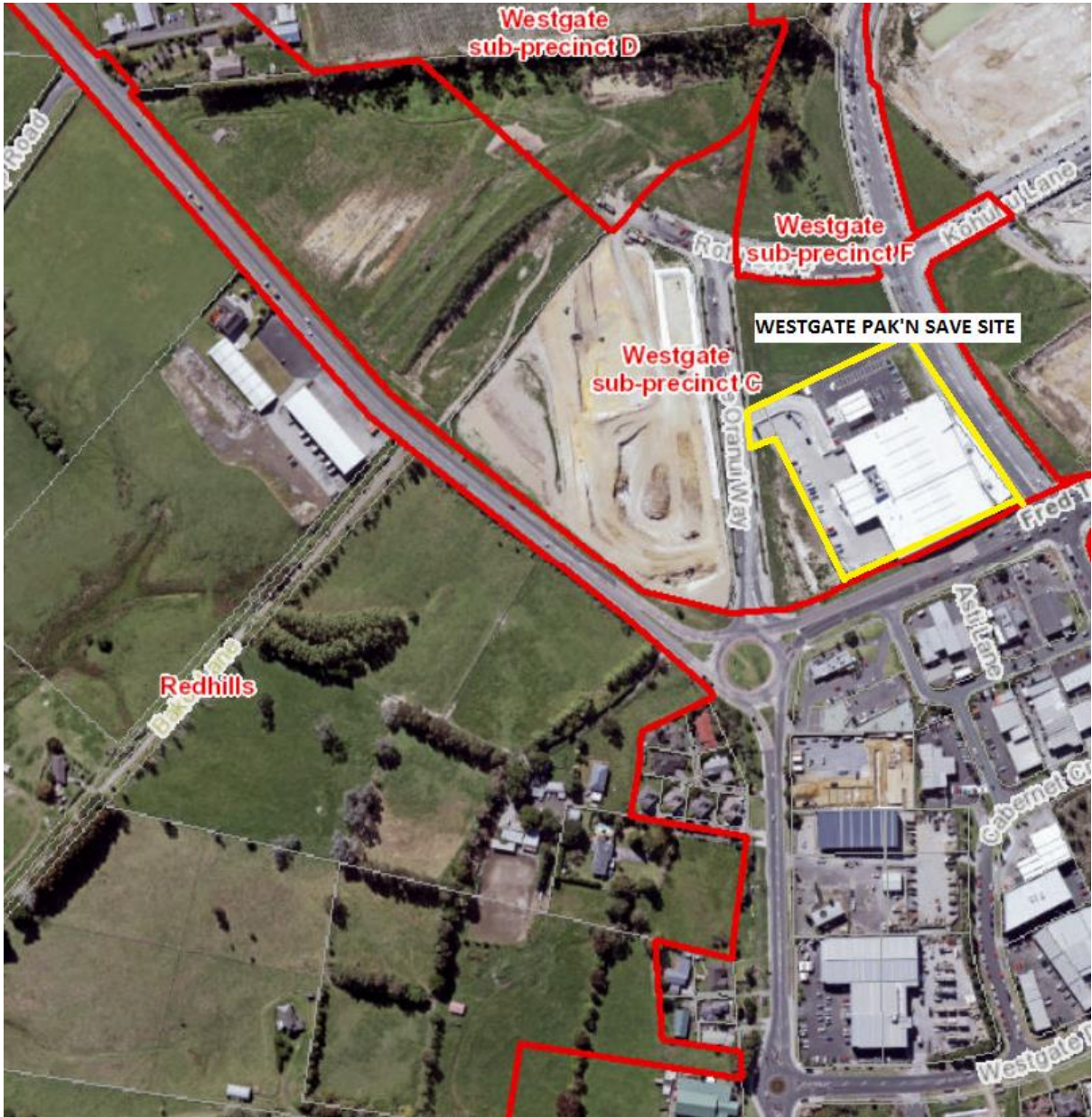
**ANNEXURE C**  
**COUNCIL DECISION EXTRACT**

**ANNEXURE D**

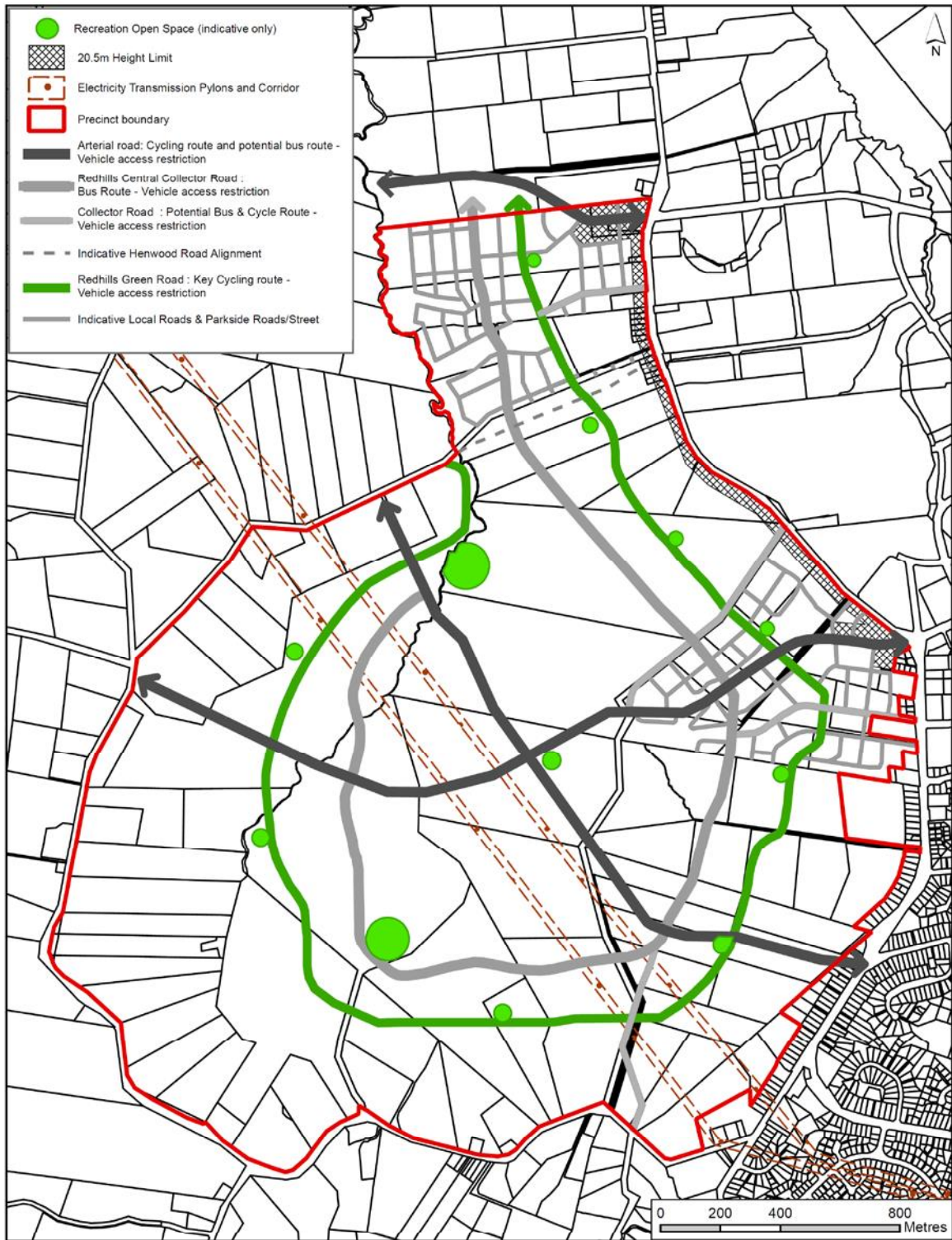
**BUNNINGS LIMITED v AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL**

ANNEXURE E

WESTGATE PAK'N SAVE LOCATION PLAN



**I610.10.1. Redhills Precinct: Precinct plan 1**



## 610 Redhills Precinct

### 1. Summary of recommendations

The Panel supports a new precinct and operative zoning and recommends the changes proposed by submitters including Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama.

This precinct was heard in Topic 081.

### 2. Precinct description

The Redhills Precinct is a new suburb (some 600ha) forming a significant part of the north western extent of Auckland's wider metropolitan area, approximately 18km northwest of Auckland's CBD, 4.5km north west of Waitākere City, 3km south west of Whenuapai and adjacent to the suburb of Massey West, and west of Fred Taylor Drive and the Westgate/Massey North Metropolitan Centre.

The precinct is bordered by Fred Taylor Drive and Don Buck Road to the east, Redhills Road to the south and west and Henwood Road to the north, with the exception of a small portion that extends north of Henwood Road, between the Ngongotepara Stream and Fred Taylor Drive up to the northern cadastral boundary of 132-140 Fred Taylor Drive (opposite Northside Drive)

The purpose of the Redhills Precinct is to implement the Redhills Precinct Plan to ensure that the precinct creates high-quality residential development with a local centre established centrally within the precinct to provide a heart and focal point for the Redhills community.

The precinct is zoned Residential - Single House Zone, Residential - Mixed Housing Suburban Zone, Residential - Mixed Housing Urban Zone, Residential - Terrace Housing and Apartment Buildings Zone, Business - Local Centre Zone and Special Purpose – School Zone.

As notified by Council this area was proposed to be zoned Future Urban Zone. Council opposed a live zoning.

Furthermore, Council's planner, Ms Wickham, noted in her evidence in chief that the Redhills special housing area is located on a smaller portion of this larger area of Future Urban Zone. The Redhills special housing area was gazetted under the Housing Accords and Special Housing Areas Act 2013 in September 2014 as part of Tranche 4 and covers 200ha. Ms Wickham further noted that the evidence from Westgate Joint Venture, Nuich Trust, Peter Bolam, and the Orchard Plant Trust related to the rezoning and application of a precinct to the area of land that is subject to the Redhills special housing area (as opposed to the wider area zoned Future Urban Zone that Hugh Green Limited has sought to be rezoned). That special housing area was limited notified on 13 June 2016, with a hearing anticipated early in September 2016.

### 3. Key issues

Council opposed the precinct primarily because of:

- i. unresolved agreement on the funding of water and wastewater infrastructure;
- ii. different approaches being taken to stormwater management by the two main proponents;
- iii. incomplete agreement on strategic road alignments and cross-sections;
- iv. late lodgement of information on traffic effects and precinct provisions;
- v. miscellaneous issues relating to location of parks and urban design;
- vi. insufficiently detailed review by Council of the Redhills Structure Plan; and
- vii. uncertainty about the extent of consultation undertaken.

These issues were discussed in the evidence of Ms Wickham.

### **3.1 Stormwater**

The submitters' stormwater evidence (Mr Michael Chapman) was that there was nothing inherently or practically incompatible between the management approaches proposed; that the draft stormwater management plan was aligned with Council practice and principles; and that communication between the respective stormwater consultants was ongoing to align rule provisions. Mr Chapman also advised of his familiarity working with Council's stormwater unit on stormwater management plans over time as well as since the proposed Auckland Unitary Plan was notified.

While the Panel accepts that final stormwater provisions are yet to be agreed, and applications progressed, it does not accept this issue as a basis for not proceeding with a precinct. It appears to the Panel that sufficient work has been undertaken over many years such that the baseline for addressing stormwater issues is now well understood and agreed. What remains is the fine-grained detail that can and will emerge through the application process based, as the Panel understands, on agreed management principles and the provisions of this Plan.

### **3.2 Water Infrastructure**

The submitter advised, by Memorandum of Counsel on 3 June 2016, that Watercare and the relevant submitter parties had agreed to prepare and sign a Memorandum of Understanding regarding a process to conclude wastewater funding arrangements for the Redhills special housing area; that this would be followed by a detailed service agreement; and confirming that Watercare agreed to work on a wider servicing strategy for the Redhills area taking into account Watercare's bulk infrastructure requirements. In addition the precinct requires wastewater infrastructure to be in place as a prerequisite for certain dwelling numbers to be exceeded.

That memorandum included an attachment to the above effect signed by Marion Bridge, General Manager Retail, Watercare Services Limited dated 26 May 2016.

The Panel is satisfied that provides sufficient ground for progressing the precinct.

### **3.3 Rooding**

All parties accept that roading and traffic issues are significant matters that need to be addressed. In addition to the submitters and Council, the Panel also heard from Auckland

Transport and the New Zealand Transport Agency on wider strategic issues (such as access through the Northside Drive extension).

Rather than detail that considerable evidence, helpfully captured in Mr Ian Clark's powerpoint presentation to the Panel on 14 April 2016, the Panel records it accepts that those issues are now well identified, understood and will need to be addressed not just for this proposed precinct but also for the wider development areas of Hobsonville, Massey and beyond. Furthermore, while the critical east-west arterial road alignment (from the Fred Taylor Drive/Don Buck Road intersection to the Nelson/Nixon /Red Hills Road intersection) is not yet precisely anchored (although indicated on the precinct plan) it is clear that this, and the other key arterials, must be resolved before significant actual development within the precinct can occur – and provisions proposed ensure that. In addition the precinct provisions require defined transport issues to be resolved as a prerequisite for certain dwelling numbers to be exceeded.

The Panel is therefore satisfied that sufficient consideration has been given to these matters to enable their detailed resolution to proceed to the next stage.

### 3.4 Other

Beyond those key issues the Panel is not persuaded that the other matters raised by Council are incapable of resolution through the normal processes of development application. Furthermore it is not unusual with an area of this size for a series of subsequent plan changes to be promoted as developments are refined and circumstances change. That prospect is not a reason for further delay for an area that has been heralded for urban development for some considerable time – and the Panel did not understand Council to dispute that future.

The Panel also notes that any decision on the special housing area, if that were to become operative before this Plan, could well require changes to the precinct plan in the event that different road alignments, for example, are required. However, it would not be appropriate to defer the precinct pending that outcome.

The main differences between the Redhills Precinct as proposed and the relevant overlays, zone, and Auckland-wide rules are:

- i. a comprehensive suite of objectives and policies to reflect the structure and purpose of the precinct;
- ii. detailed development control and activity provisions; and
- iii. contingency provisions for the relationship between infrastructure and the staging of development.

The precinct otherwise employs the zone structure of the Plan.

The Panel recommends a consequential change to the zoning proposed by the submitters to increase the extent of the Residential - Terrace Housing and Apartment Buildings Zone that borders Fred Taylor Drive and is close to the Westgate/Massey North Metropolitan Centre. The Panel considers this change to be more consistent with the centres and corridors strategy it has taken with the Plan more widely.



In summary, the Council's position in relation to the Redhills Precinct is set out in the evidence in chief of Ms Jarette Wickham, the evidence in rebuttal of Mr Derek Foy and Mr Gregory Akehurst, and Mr Ian Clark's (transportation) presentation.

Multiple statements of evidence were made on behalf of Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama. These are summarised in the legal submissions and Memorandum of Counsel of Ms Asher Davidson and Ms Sue Simons, their joint Memorandum of Counsel and the summary and supplementary statements of planning evidence of Mr Russell Baikie and Ms Emma Bayley, Ms Karen Joubert and Mr David Haines. Those statements were supported by further technical evidence on transportation, water, wastewater and stormwater, geotechnical and civil engineering, ecology, and urban design.

Council and the submitters did not resolve their respective differences.

Having considered the relevant evidence presented, the Panel prefers the overall evidence of the submitter and supports a precinct and operative live zoning.

#### **4. Panel recommendations and reasons**

The Panel supports a new precinct and recommends the changes proposed by submitters including Hugh Green Limited, Mr and Mrs S Nuich Trust, Westgate Partnership, Peter Bolam, Orchid Plant Trust and Plantarama, for the reasons set out above. Furthermore the Panel is satisfied that an operative live zoning as recommended gives effect to the regional policy statement.

#### **5. Reference documents**

Auckland Council

[081d Ak Cncl - West - Precincts \(Redhills\) - \(G Akehurst\) - Economics - REBUTTAL](#) (1 April 2016)

[081d Ak Cncl - West - Precincts \(Redhills\) - \(D Foy\) - Economics - REBUTTAL](#) (12 April 2016)

[081d Ak Cncl - West - Precincts \(Redhills\) - \(J Wickham\) - Planning](#) (12 April 2016)

[081 Ak Cncl - West - Precincts \(Redhills\) - \(I Clark\) - Transport - HEARING PRESENTATION](#) (14 April 2016)

Refer to [hearings webpage](#) for other evidence documents logged on behalf of Hugh Green Limited – Redhills (081 Rezoning and Precincts (Geographical Areas) - IHP DOCUMENTS AND SUBMITTERS EVIDENCE)

**49. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST)”**

**Panel recommendations accepted:**

49.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 49.2.

**Panel recommendations rejected:**

49.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the WEST) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

**(a) No mechanisms within the Redhills precinct relating to the provision of transport infrastructure**

<b>Reasons</b>	
(i) While the urban zoning and the creation of a precinct is accepted, the specific provisions relating to transport infrastructure provision need to be revised, and associated text amended to clarify the transport requirements for Redhills, both within the area and in the context of the wider transport networks	
<b>Alternative solution</b>	See Attachment A

**(b) No indicative roading pattern required to achieve an effective transport network in the Westgate Precinct.**

<b>Reasons</b>	
(i) While the Council supports the removal of sub-precinct F, its removal has had the effect of deleting the indicative roading pattern for this part of Westgate.	
(ii) The indicative roading pattern is vital to achieve an efficient and effective transport network, and should therefore be re-included in the precinct.	
(iii) As a consequence, text in the precinct requires amendment to correctly reference the re-instated indicative roads.	
<b>Alternative solution</b>	See Attachment A

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2016-404-2351  
[2017] NZHC 2141**

BETWEEN BUNNINGS LIMITED  
Plaintiff

AND THE AUCKLAND UNITARY PLAN  
INDEPENDENT HEARING PANEL  
First Defendant

(Continued next page)

Hearing: On the papers

Counsel: D J Minhinnick and L J Eaton for Bunnings Ltd  
P Andrew for Independent Hearings Panel  
M Wakefield and V Evitt for Auckland Council  
D J Sadlier for The National Trading Company of NZ Ltd  
S J Simons and R M Steller for Westgate Joint Venture and  
Nuich Trust  
R E Bartlett QC for Western City Holdings Ltd and I B and G A  
Midgley  
M Casey QC and A Davidson for Hugh Green Ltd  
B J Matheson for NZ Retail Property Group Ltd  
D Allan for Waitakere Ranges Protection Society  
M Wright for Environmental Defence Inc  
J Brabant for Samson Corporation Ltd & Sterling Nominees Ltd  
C E Kirman for Housing New Zealand Corporation

Judgment: 6 September 2017

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**JUDGMENT OF WHATA J**

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*This judgment was delivered by me on 6 September 2017 at 4.00 pm,  
pursuant to Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date: .....*

AUCKLAND COUNCIL  
Second Defendant

THE NATIONAL TRADING COMPANY OF  
NEW ZEALAND LIMITED

WESTGATE JOINT VENTURE

NUICH TRUST

WESTERN CITY HOLDINGS LIMITED

IAN BERTRAM MIDGLEY AND GRAHAM  
ANDREW MIDGLEY

HUGH GREEN LIMITED

NEW ZEALAND RETAIL PROPERTY  
GROUP  
Intervenors

**CIV-2016-404-2290**

BETWEEN THE WAITAKERE RANGES PROTECTION  
SOCIETY INCORPORATED  
Appellant

AND AUCKLAND COUNCIL  
Respondent

ENVIRONMENTAL DEFENCE SOCIETY  
INC  
Section 301 party

**CIV-2016-404-2310**

BETWEEN SAMSON CORPORATION LIMITED AND  
STERLING NOMINEES LIMITED  
Appellant

AND AUCKLAND COUNCIL  
Respondent

AND HOUSING NEW ZEALAND  
CORPORATION  
Section 301 party

## **Introduction**

[1] Forty-nine legal challenges were originally brought against the Auckland Unitary Plan (the Unitary Plan).<sup>1</sup> A number of these challenges have since settled. This decision considers settlements reached in respect of three of those challenges.

[2] The appeals and judicial review application were brought by:

- (a) Bunnings Ltd (Bunnings);
- (b) Waitakere Ranges Protection Society Incorporated (WRPS); and
- (c) Samson Corporation Limited and Sterling Nominees Limited (Samson).

[3] I set out the background, position of the parties, my reasons for allowing the appeals and judicial review application and appropriate relief below. Each of the matters before me has come by way of consent, and the parties to each appeal (or application) agree on the key facts and issues. I adopt these facts for the purpose of this judgment.

## **Approach**

[4] The frame for the resolution of appeals by consent was set out in *Ancona Properties Ltd*,<sup>2</sup> which I adopt.

[5] In particular, consent orders are granted where:

- (a) the consent orders reflect the proper resolution of issues of law raised by the appellants;

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<sup>1</sup> The Auckland Unitary Plan is now operative in part and named the “Auckland Unitary Plan Operative in Part”. References in this judgment to the Unitary Plan refer to the operative plan.

<sup>2</sup> *Ancona Properties Ltd v Auckland Council* [2017] NZHC 594.

- (b) the proposed amendments and the resolution of the appeals is consistent with the purpose and principles of the Resource Management Act 1991 (RMA), including in particular Part 2;
- (c) approval of the proposed consent orders would also be consistent with the purpose and intent of the Local Government (Auckland Transitional Provisions) Act 2010 (the LGATPA), namely Part 4, which provides a streamlined process designed to enable the Unitary Plan to become operative within a short period of time;
- (d) the orders may be granted pursuant to r 20.19 of the High Court Rules 2016, ss 300-307 of the RMA and s 158 of the LGATPA;<sup>3</sup> and
- (e) the consent orders are within the scope of the appeals.

[6] And:

[4] A curious feature of the Unitary Plan process is that the Council may accept or reject an IHP recommendation.<sup>4</sup> A decision to accept an IHP recommendation may be appealed to this Court on a question of law, while a decision to reject an IHP recommendation triggers a right of appeal to the Environment Court.<sup>5</sup> A decision of this Court to substantively amend the Unitary Plan must usually trigger a statutory right of appeal to the Environment Court because the effect of the amendment is to reject the IHP recommendation. Subject to futility, this statutory right of appeal should be activated. By futility I mean situations where:

- (a) there are no other submitters on the relevant part(s) of the Proposed Auckland Unitary Plan (PAUP);
- (b) any submitters consent to the changes; or
- (c) the changes are of a technical nature only.

[5] A corollary of this is that a consent order granting substantive amendments will ordinarily trigger the notice and appeal procedures of s 156 as if the consent order is a decision of the Council to reject an IHP recommendation. ...

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<sup>3</sup> As I address later in the judgment, s 4(2) of the Judicature Amendment Act 1972 provides the appropriate avenue for relief in respect of Bunnings' judicial review application.

<sup>4</sup> Local Government (Auckland Transitional Provisions) Act 2010, s 148.

<sup>5</sup> Sections 158 and 156 respectively.

## **Bunnings Ltd**

[7] Bunnings brought a judicial review proceeding against the first respondent, the Auckland Unitary Plan Independent Hearings Panel (the Panel) and the second respondent, Auckland Council (the Council) on 16 September 2016 alleging error of law in relation to the recommendation of the Panel and subsequent decision of Council to include roading changes in a new Redhills Precinct in the Unitary Plan.

[8] In a joint memorandum of counsel dated 21 June 2017, counsel recorded that five of the parties to the application had reached settlement,<sup>6</sup> with four parties of the remaining parties agreeing to abide the Court's decision.<sup>7</sup>

### *Background*

[9] Bunnings owns and operates numerous building improvement and outdoor living stores. Among its portfolio is 2.8 hectares of land at 21 Fred Taylor Drive (the Site), on the corner of Fred Taylor Drive and Te Oranui Way, at which it has resource consent to construct a Bunnings Warehouse. The primary access route for the Site, and other properties owned by interested parties to this appeal, is Te Oranui Way.

[10] Immediately to the west of the Site is an area of approximately 600 hectares of greenfields land, known as Redhills (Redhills Area). The Redhills Area is bordered by Fred Taylor Drive and Don Buck Road to the east, Redhills Road to the south and west and Henwood Road to the north.

[11] In the notified version of the Proposed Auckland Unitary Plan (the PAUP), the Redhills Area was zoned Future Urban, which would not in itself enable urban development, and no indicative roading layout for the Redhills Area was included.

[12] Various of the interested parties to this appeal, as well as the Council, made submissions on the PAUP as it related to the Redhills Area. Hugh Green Ltd and

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<sup>6</sup> The parties in agreement are Bunnings, the Council, The National Trading Company of New Zealand Ltd, Ian Bertram Midgley and Graham Andrew Midgley and New Zealand Retail Property Group.

<sup>7</sup> These parties comprise Hugh Green Ltd, Westgate Joint Venture, Nuich Trust and Western City Holdings Ltd. The final party, the Panel, does not take a position on the alleged errors of law and will abide the decision of the Court, consistent with approach to Unitary Plan judicial review applications.



Westgate Partnership, landowners in part of the Redhills Area, sought residential zoning and a new precinct to be known as Redhills Precinct. They attached proposed precinct plans, which included an indicative roading layout for the Redhills Area. Neither of their proposed precinct plans involved a direct connection to the roundabout from which Te Oranui Way begins, or arterial roads.

[13] Bunnings filed submissions on the PAUP in relation to the Site, but did not file further submissions in response to the proposal that it form part of a separate Redhills Precinct.

[14] Hugh Green Ltd and Westgate Partnership then provided evidence to the Panel on 14 March 2016 in support of their submissions. Their evidence at hearing attached a different proposed precinct plan from that included in submissions, and included an arterial road connecting to the roundabout.

[15] Bunnings alleges this new roading alignment will necessitate the closure of Te Oranui Way, or at the very least, a reduction in available movements to and/or from it, which will have significant consequential effects on it.

[16] On 22 July 2016, the Panel recommended to the Council that the Redhills Precinct be included in the Unitary Plan on the basis of the precinct plan presented in evidence at hearing. In its report it noted that at hearing the Council had opposed the precinct for a number of reasons, including incomplete agreement on strategic road alignments and cross-sections, but found that:<sup>8</sup>

All parties accept that roading and traffic issues are significant matters that need to be addressed. In addition to the submitters and Council, the Panel also heard from Auckland Transport and the New Zealand Transport Agency on wider strategic issues (such as access through the Northside Drive extension).

Rather than detail that considerable evidence, helpfully captured in Mr Ian Clark's powerpoint presentation to the Panel on 14 April 2016, the Panel records it accepts that those issues are now well identified, understood and will need to be addressed not just for this proposed precinct but also for the wider development areas of Hobsonville, Massey and beyond. Furthermore, while the critical east-west arterial road alignment (from the Fred Taylor

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<sup>8</sup> Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing topics 016, 017 Changes to the Rural Urban Boundary; 080, 081 Rezoning and precincts Annexure 5 Precincts West* (22 July 2016) at 26-27.

Drive/Don Buck Road intersection to the Nelson/Nixon /Red Hills Road intersection) is not yet precisely anchored (although indicated on the precinct plan) it is clear that this, and the other key arterials, must be resolved before significant actual development within the precinct can occur – and provisions proposed ensure that. In addition the precinct provisions require defined transport issues to be resolved as a prerequisite for certain dwelling numbers to be exceeded.

The Panel is therefore satisfied that sufficient consideration has been given to these matters to enable their detailed resolution to proceed to the next stage.

[17] The Council accepted this recommendation.

*Alleged errors of law*

[18] Bunnings' allegation is the Panel, in making its recommendation, failed to identify that it was beyond the scope of submissions made in respect of the topic, pursuant to s 144(8)(a) of the LGATPA. Specifically, Bunnings alleges there was no scope to introduce a precinct plan with the proposed arterial road network, including the arterial road connecting to the roundabout with consequential effects on the existing roundabout connections. Because the Panel did not identify the recommendations as out of scope, Bunnings had no right of appeal pursuant to s 156(3). In reaching settlement, the parties have been informed by the scope test cases decision.<sup>9</sup>

[19] The position of the parties who have agreed to settlement is the present application is analogous to the site-specific proceedings brought by Stand Holdings Ltd, which was considered as part of the scope decision:

- (a) The Panel's jurisdictional scope to introduce the Redhills Precinct had its foundation in the primary submissions lodged by Hugh Green Ltd and Westgate Partnership, which sought a new precinct and which proposed specific precinct plans and roading network layouts of local and collector roads only. Neither of these submissions sought, as part of their specific precinct plans, any arterial roads or any road connection to the roundabout.

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<sup>9</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138.

- (b) The Council's notified "summary of decisions requested" report provided no clear signal to potential further submitters that the proposed roading layout sought could be amended, as a direct result of any other primary submissions, to include arterial roads.
- (c) Because the relief sought by Hugh Green Ltd and Westgate Partnership was specific, the Panel's recommended amendments to the precinct plan, specifically the inclusion of arterial roads, amendments to the alignment of those arterial roads relative to the indicative collector roads shown in the submissions, and the new arterial connection to the roundabout, are not a reasonably foreseen and logical consequence of those submissions.
- (d) This is particularly so as the amendments are considered by some parties to have facilitated a fundamental change to the operation of the local road network, in a manner which would be disabling, particularly for existing users of the roundabout, which has left them unduly prejudiced (in terms of s 156(3)(c)) and without a right of appeal.
- (e) Accordingly, the recommendation as it relates to the changes above lacks jurisdictional scope and should properly have been identified as such pursuant to s 144(8) of the LGATPA. Failure to do so amounts to an error of law.

[20] Four of the parties do not adopt this position, but are willing to abide the Court's decision as to error of law, in reliance on an agreement between the parties to seek a priority fixture in the Environment Court if the relief sought before this Court is granted.

*Relief sought*

[21] The parties request that, pursuant to s 4(2) of the Judicature Amendment Act 1972, the Court exercise its discretion to declare that the Panel made an error of law by recommending the inclusion of arterial roads, amendments to the alignment of

those arterial roads relative to the alignment of the collector roads shown in the submissions, and the new arterial connection to the roundabout as part of the precinct plan, without identifying those recommendations as beyond the scope of submissions made on the PAUP.

[22] Section 4(2) provides:

**4 Application for review**

...

- (2) Where on an application for review the applicant is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorised or otherwise invalid, the Court may, instead of making such a declaration, set aside the decision.

[23] The effect of this relief is the Council's decision to accept the Panel's recommendations will have been made in relation to a recommendation that should properly have been identified as beyond the scope of submissions, triggering the right of unduly prejudiced persons to appeal to the Environment Court pursuant to s 156 of the LGATPA.<sup>10</sup>

*Assessment*

[24] Whether the precise roading changes were a logical and foreseeable consequence of the Hugh Green Ltd and Westgate Partnership submissions is disputable. I accept that the changes to the arterial roads or roundabout were not explicitly foreshadowed in their primary submissions or indicated in the "summary of decisions requested" report. They form part of subsequent evidence. I should note, however, that it is not uncommon in environmental matters for such detail to evolve during the course of a hearing and I would ordinarily be circumspect about finding lack of scope on matters of detail. However, as the parties have reached agreement or are prepared to abide my decision, I am content to allow the appeal for want of scope on the precise roading changes. I am also satisfied, given a right of appeal to the Environment Court for substantive assessment is now available, there is no prejudice to any party in the result.

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<sup>10</sup> Bunnings filed a concurrent appeal with the Environment Court on 16 September 2016, which is on hold pending the outcome of this proceeding. The parties (except the Panel) have agreed to seek a priority fixture for any appeal in the Environment Court subsequent to the relief sought.

[25] Accordingly, the relief sought by the parties is granted.

### **Waitakere Ranges Protection Society Incorporated**

[26] WRPS alleges the Panel and Council erred in law by changing the activity status for subdivision beyond certain density limits in the Waitākere Ranges Heritage Area (the Heritage Area).

[27] On 23 June 2017, the parties to this appeal filed a joint memorandum recording settlement and seeking consent orders from the Court.<sup>11</sup>

#### *Background*

[28] The PAUP as notified contained precincts and sub-precincts that identified the proposed subdivision pattern for land in the Waitākere Ranges. In some of those precincts and sub-precincts, the activity status for subdivision at a density greater than that provided for in the plan was a Prohibited Activity.

[29] WRPS is an incorporated society and registered charity, whose purpose is to protect and conserve the natural environment in the Heritage Area. It made submissions and a further submission on the PAUP which, relevant to this appeal, addressed various provisions relating to the activity status for subdivision beyond certain density limits in the Heritage Area. In particular WRPS:

- (a) supported the provisions of the PAUP that allocated a default Prohibited Activity status for subdivision in certain precincts and subprecincts with the Waitākere Ranges; and
- (b) through further submission, opposed submissions filed by third parties that sought to remove the default Prohibited Activity status for subdivision.

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<sup>11</sup> The parties being WRPS, the Council and the Environmental Defence Society.

[30] During the hearing of submissions on Topic 075 Waitākere Ranges (Topic 075), WRPS presented legal submissions and called expert planning evidence supporting the relief it sought in its submissions.

[31] On 22 July 2017 the Panel recommended a non-complying activity status:<sup>12</sup>

During the hearing, the Panel explored the appropriate activity status for subdivisions exceeding the allocated entitlement. The Panel concluded that non-complying activity status is appropriate in the context of a policy framework that seeks to limit subdivision, particularly its cumulative effects. Where entitlements are allocated as a result of site-specific assessments carried out in the context of area-wide landscape, ecological and other studies, there will be few properties where additional lots can be justified. The exceptions are likely to arise where amalgamation and re-subdivision is proposed or circumstances have changed due to the passing of time (e.g. vegetation has matured).

Prohibited activity status implies that the Plan has got all the answers right which seems unlikely in the Waitākere Ranges, given its history and existing pattern of subdivision, use and development. Further, prohibited activity status imposes high costs on applicants seeking to change the status quo and is therefore not enabling of people and communities. The Panel's new structure has an overlay containing objectives and policies limiting subdivision. Proposals to subdivide land over and above the allocated entitlement face robust assessment under sections 104 and 104D of the Resource Management Act 1991 and sections 7 and 8 of the Waitākere Ranges Heritage Area Act 2008.

[32] The Council accepted these recommendations in its decisions version of the Unitary Plan.

*Alleged errors of law*

[33] WRPS raised various errors of law in its notice of appeal. Two alleged errors continue to carry relevance:

- (a) the Panel failed to comply with its duties and obligations pursuant to ss10 and 11 of the Waitakere Ranges Heritage Area Act 2008 (the WRHAA); and
- (b) the Panel applied an incorrect legal test for the implementation of prohibited activity status in asserting that “prohibited activity status

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<sup>12</sup> Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing topic 075 Waitākere Ranges* (22 July 2016) at 21.

implies the Plan has got all the answers right which seems unlikely in the Waitākere Ranges, given its history and existing pattern of subdivision, use and development”.

[34] Sections 10 and 11 of the WRHAA provide:

**10 Regional policy statements and regional plans**

- (1) When preparing or reviewing a regional policy statement or regional plan that affects the heritage area, the Council must give effect to the purpose of this Act and the objectives.
- (2) The requirements in subsection (1) are in addition to the requirements in sections 61, 66, and 79 of the Resource Management Act 1991.
- (3) When evaluating a proposed policy statement, or proposed plan, change, or variation that affects the heritage area, the Council must also examine whether the statement, plan, change, or variation is the most appropriate way to achieve the objectives (having regard to the purpose of this Act).
- (4) The requirements in subsection (3) are in addition to the requirements in section 32(3) of the Resource Management Act 1991.

**11 District plans**

- (1) When preparing or reviewing a district plan that affects the heritage area, the Council must give effect to the purpose of this Act and the objectives.
- (2) The requirements in subsection (1) are in addition to the requirements in sections 74, 75, and 79 of the Resource Management Act 1991.
- (3) When evaluating a proposed district plan, change, or variation that affects the heritage area, the Council must examine whether the plan, change, or variation is the most appropriate way to achieve the objectives (having regard to the purpose of this Act).
- (4) The requirements in subsection (3) are in addition to the requirements in section 32(3) of the Resource Management Act 1991.

[35] The purpose section, s 3, then relevantly provides:

**3 Purpose**

- (1) The purpose of this Act is to—

- (a) recognise the national, regional, and local significance of the Waitakere Ranges heritage area; and
- (b) promote the protection and enhancement of its heritage features for present and future generations.

...

[36] On the first ground, WRPS submits:

- (a) When preparing or reviewing a regional policy statement, regional plan or district plan that affects the Heritage Area, the Council must give effect to the purpose of the WRHAA and its objectives in ss 10(1) and 11(1).
- (b) When evaluating a proposed policy statement, proposed regional plan or proposed district plan that affects the Heritage Area, the Council must examine whether the proposal is the most appropriate way to achieve the objectives, having regard to the purpose of the WRHAA (ss 10(3) and 11(3)).
- (c) The reasons for the Panel's recommendations with respect to the status change do not address the purpose of the WRHAA, the objectives set out in the WRHAA or ss 10 or 11. As such, the Panel's recommendations with respect to the status change, and the Council's decision to adopt the recommendations:
  - (i) do not give effect to the purpose of the WRHAA or the objectives set out in it;
  - (ii) do not examine whether the status change is the most appropriate way of achieve the objectives, having regard to the purpose of the WRHAA; and
  - (iii) instead, have regard to the WRHAA only in terms of the extent to which it might influence the assessment of the subsequent



applications for resource consent to subdivide land within the Heritage Area.

[37] On the second ground, WRPS claims:

- (a) In asserting that “prohibited activity status implies that the Plan has got all the answers which seems unlikely in the Waitākere Ranges, given its history and existing pattern of subdivision, use and development”, the Panel has misdirected itself as to the correct legal test for implementation of a prohibited activity status in planning instruments made under the RMA.
- (b) The Panel effectively imposed a threshold test on the imposition of prohibited activity status, being it could only be adopted if there is no prospect of a resource consent being appropriately granted if non-complying activity status is allocated instead of prohibited activity status. Rather, WRPS submits prohibited activity status is a tool available to the Council pursuant to the RMA. There is no other threshold exclusively relating to the allocation of a prohibited activity status to an activity.
- (c) Moreover, prohibited activity status is not necessarily permanent and:
  - (i) is subject to periodic review through the plan review process; and
  - (ii) may be altered through a private plan change request or public plan change process.
- (d) Prohibited activity status should be upheld if it is warranted in terms of the evaluation under s 32 of the RMA, regardless of whether resource consent might appropriately be granted to a proposal if non-complying activity status was adopted instead.

- (e) The Panel's evaluation is also contrary to the Court of Appeal decision in *Coromandel Watchdog of Hauraki Incorporated v Chief Executive of the Ministry of Economic Development*.<sup>13</sup>
- (f) Had the Panel's recommendations and the Council's decision applied the correct legal test for the implementation of prohibited activity status in the planning instruments made under the RMA they would not have upheld the activity status change.

[38] The Council accepts these alleged errors in the following terms:

- (a) The Panel did not adequately give effect to ss 11(1) and (3) of the WRHAA in recommending a change to the activity status for subdivision. There was little or no evidential basis to demonstrate that the change was an appropriate way of achieving the purpose and objectives of the Act, in particular that it would ensure appropriate level of protection for the area and its heritage features. This runs contrary to the objectives of the WRHAA which require the adoption of a holistic and precautionary approach to decisions which could adversely affect heritage features or the area (pursuant to s 8(b), (c) and (d)).
- (b) The Panel misdirected itself as to the correct legal test for implementation of prohibited activity status in planning instruments made under the RMA, by applying a threshold test or requirement for certainty that does not accord with the RMA. Rather, under s 32 of the RMA, the decision-maker must only be satisfied that prohibited activity status is the most appropriate way of achieving the objectives of the Plan, which in turn must achieve the objectives and purpose of the WRHAA, and the purpose of the RMA. Circumstances where such an approach may be appropriate include where a precautionary

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<sup>13</sup> *Coromandel Watchdog of Hauraki Incorporated v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473, [2008] 1 NZLR 562 [*Coromandel Watchdog*].

approach is adopted or where the Council wishes to ensure a coordinated and integrated approach to development.<sup>14</sup>

*Relief sought*

[39] The parties have agreed to amendments to activity tables D12.4.2 and E39.4.5 in Chapters D12 and E39, which are set out in Appendix A. In effect, they amend the default activity status for subdivision from non-complying to prohibited activity when specific density requirements are exceeded in the following areas:

- (a) the southern parts of the former Swanson Structure Plan;
- (b) the Oratia Ranges (the upper parts of the Oratia Valley);
- (c) rural parts of Titirangi-Laingholm (but not those sites that were part of Titirangi Subdivision Area 1 and Titirangi-Laingholm Subdivision Area 2); and
- (d) the Rural – Waitakere Ranges zone (comprising privately owned land around the periphery of the regional park).

[40] These areas represent the most sensitive parts of the Heritage Area which were afforded this level of protection under the legacy Waitakere Plan, as the relief is consistent with what the Council proposed in the PAUP. The parties consider this outcome better gives effect to s 11(1) and (3) of the WRHAA where:

- (a) there is currently insufficient information to determine whether a particular subdivision proposal or pattern in excess of the existing entitlements will adversely affect the Heritage Area and/or its features; and
- (b) the WRHAA requires a holistic approach to development which is better achieved through a plan change application for a given area or catchment than on an ad hoc site by site basis.

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<sup>14</sup> Citing *Coromandel Watchdog*.

[41] The parties acknowledge the changes are substantive in nature and spatial extent, and there may be other affected submitters who wish to challenge the agreed position which has been reached. As such, they accept this is not a scenario where triggering a right of appeal under s 156 of the LGATPA would be futile. In the circumstances, they submit the most appropriate course of action would be to grant the relief as sought by consent but require the Council to serve notice of its decision on all affected submitters advising of their right of appeal pursuant to s 156(1) of the LGATPA, in effect treating the agreed amendments proposed by the parties as an alternative solution adopted by Council pursuant to s 148(1)(b).<sup>15</sup>

#### *Assessment*

[42] Ordinarily, I would decline an appeal asserting in generic terms failure to have regard to legislation where that legislation is specifically referred to in the Panel's reasoning. Furthermore, on the facts, the Panel was applying a planning judgment as to the suitability of prohibited activity status which was available to it, notwithstanding ss 10 and 11 of the WRHAA. This dispenses with the first and second grounds of the WRPS appeal. I also consider that the reference in the reasons to "prohibited activity status implies that the plaintiff has got all the answers right, which seems unlikely in the Waitākere Ranges, given its history and existing pattern of subdivision, use and development" was available to it and does not reveal an error of law on its face.

[43] By definition, "prohibited activity status" precludes a subsequent assessment process which necessarily means that by imposing prohibited activity status the Council is closing off further evaluation, at least and until the plan is changed. I am prepared to accept, however, given the consensus reached with the Council, that the Panel may have erred in a similar way to the Council in *Coromandel Watchdog*. In that case, the Environment Court found that prohibited activity status should not be used unless an activity was actually forbidden. This was upheld by the High Court. But the Court of Appeal held that the Court was in error insofar as it held that prohibited status could only be used when a planning authority was satisfied that,

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<sup>15</sup> This was the relief provided in *University of Auckland v Auckland Council* [2017] NZHC 1150 at [19]-[21], and *Man O'War Farm Limited v Auckland Council* [2017] NZHC 1349 at [16].

within the time span of the plan, the activity in question should in no circumstances be allowed in the area under consideration.<sup>16</sup>

[44] The Court of Appeal noted:

[36] It is clear from the extracts from the Environment Court decision we have highlighted at paragraphs [3] – [4] above that the Court postulated a bright line test – that is, the local authority must consider that an activity be forbidden outright, with no contemplation of any change or exception, before prohibited activity status is appropriate. We are satisfied that, in at least some of the examples referred to at paragraph [34] above, the bright line test would not be met. Yet it can be contemplated that a local authority, having undertaken the processes required by the Act, could rationally conclude that prohibited activity status was the most appropriate status in cases falling within the situation described in that paragraph.

[45] The examples at [34] included the following.<sup>17</sup>

(a) Where the council takes a precautionary approach. ... This would allow proper consideration of the likely effects of the activity at a future time during the currency of the plan when a particular proposal makes it necessary to consider the matter, but that can be done in the light of the information then available. ...

...

(c) Where the council is ensuring comprehensive development. ... it may be appropriate to provide that any development which is premature or incompatible with the comprehensive development is a prohibited activity. ...

(d) Where it is necessary to allow an expression of social or cultural outcomes or expectations ...

[46] In the present case, I agree with the appellant that the WRHAA articulates a number of values which are expressions of social, environmental and cultural outcomes or expectations which might properly justify prohibited activity status as an outcome. The most effective way of achieving these objectives may have been to impose prohibited activity status on subdivision. To the extent the Panel did not approach the imposition of prohibited activity status in this way, it applied the incorrect legal test, in terms of *Coromandel Watchdog*.

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<sup>16</sup> *Coromandel Watchdog*, above n 13, at [40]-[41].

<sup>17</sup> At [34].

[47] In those circumstances, but particularly in light of the agreement of all parties, crucially including the Council, I allow the appeal. As with the earlier *University of Auckland* and *Man O'War Farm Ltd* appeals, I am fortified in adopting this approach because the parties accept that the proper relief is to grant the relief sought but require notification to all affected submitters. They are to be advised of a right of appeal under s 156(1) of the LGATPA.

[48] I had, however, one residual concern, namely whether subdivision of the affected properties will now lose the benefit of non-complying activity status if I grant the relief as sought. I convened a conference about this. Helpfully, counsel indicated that the effect of the relief affirms the status quo ante, as the subdivision of those properties is currently prohibited by operation of the existing operative plan rules.

[49] Accordingly the appeal is allowed and the relief granted on the terms sought by consent.

### **Samson Corporation Ltd and Sterling Nominees Ltd**

[50] Samson holds a property portfolio in the Auckland area. Among its sites is a property at 1-3 Grosvenor Street, Grey Lynn (the Property). It has brought three appeals against decisions of the Council adopting Panel recommendations. The present appeal concerns the Council's decision to zone the Property Residential – Single House Zone (SHZ) and apply a Special Character Overlay.

[51] On 26 June 2017, the parties filed a joint memorandum recording settlement and seeking consent orders.

#### *Background*

[52] The Property was zoned Residential 1 under the Auckland Council District Plan – Isthmus Section. The PAUP then applied a SHZ with a Special Character Overlay.

[53] Samson opposed this, and made a submission and further submission to that effect. It instead sought a Business – Mixed Use zone (MU), and removal of the Special Character Overlay. It then presented evidence before the Panel supporting its submissions, to the effect that the site has always been of a commercial nature, adjoins properties fronting Great North Road which are zoned MU, and that the Council granted resource consent on 10 September 2015 to Samson to demolish the existing building and construct a new commercial premises. Demolition was completed on 6 February 2017 and construction of the new premises began on 13 February 2017.

[54] The Council supported retention of the PAUP provisions at hearing, on the basis the Special Character Overlay was a constraint that best accorded with the SHZ. However its evidence did not address the specific features of the Property, resource consent or the existing commercial use.

[55] The Panel then recommended a SHZ and Special Character Overlay in relation to the Property. The Council accepted these recommendations.

[56] The purpose of the Special Character Overlay, as outlined in the operative Unitary Plan, is to “retain and manage the character of the traditional town centres and residential neighbourhoods by enhancing existing traditional buildings, retaining intact groups of character buildings, and designing compatible new building infill and additions that do not necessarily replicate older styles and construction methods, but reinforce the predominant streetscape character.”<sup>18</sup>

[57] In relation to the SHZ, in its recommendations the Panel stated:<sup>19</sup>

The purpose of the Residential – Single House Zone is to maintain and enhance the amenity values of established residential neighbourhoods in a number of locations...

To support the purpose of the zone, multi-unit development is not anticipated, with additional housing limited to conversion of an existing dwelling into two dwellings and minor dwelling units. The zone is generally

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<sup>18</sup> Auckland Unitary Plan Chapter D18 Special Character Areas Overlay D18.2.2.

<sup>19</sup> Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing topics 059-063 Residential zones* (22 July 2016) at 14.

characterised by one to two storey high buildings consistent with a suburban built character.

[58] By contrast, the MU zone is described in the Unitary Plan as follows:<sup>20</sup>

The Business – Mixed Use Zone is typically located around centres and along corridors served by public transport. It acts as a transition area, in terms of scale and activity, between residential areas and the Business – City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone. It also applies to areas where there is a need for a compatible mix of residential and employment activities.

The zone provides for residential activity as well as predominantly smaller scale commercial activity that does not cumulatively affect the function, role and amenity of centres. ...

...

New development within the zone requires resource consent in order to ensure that it is designed to a high standard which enhances the quality of streets within the area and public open spaces.

[59] The Plan's policies in relation to the MU zone include:<sup>21</sup>

(16) Locate the Business – Mixed Use Zone in suitable locations within a close walk of the City Centre Zone, Business – Metropolitan Centre Zone and Business – Town Centre Zone or the public transport network.

(17) Provide for a range of commercial activities that will not compromise the function, role and amenity of the City Centre Zone, Business – Metropolitan Centre Zone, Business – Town Centre Zone and Business – Local Centre Zone, beyond those effects ordinarily associated with trade effects on trade competitors.

...

(20) Promote and manage development to a standard that:

- (a) recognises the moderate scale, intensity and diversity of business, social and cultural activities provided in the zone;
- (b) recognises the increases in residential densities provided in the zone; and
- (c) avoids significant adverse effects on residents.

(21) Require activities adjacent to residential zones to avoid, remedy or mitigate adverse effects on amenity values of those areas.

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<sup>20</sup> Auckland Unitary Plan Chapter H13 Business – Mixed Use Zone H13.1.

<sup>21</sup> Auckland Unitary Plan Chapter H13 Business – Mixed Use Zone H13.2.



[60] The Panel provided guidance on its approach to re-zoning. This “best practice” approach included the following considerations:<sup>22</sup>

- 1.1. The change is consistent with the objectives and policies of the proposed zone. This applies to both the type of zone and the zone boundary.
- ...
- 1.6. Changes should take into account features of the site (e.g. where it is, what the land is like, what it is used for and what is already built there).
- ...
- 1.11. Generally no "spot zoning" (i.e. a single site zoned on its own).
- 1.12. Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

*Alleged error of law*

[61] Samson initially alleged numerous errors of law. The Council accepts one of these – failure to consider mandatory relevant considerations. Specifically, it concedes in light of the Panel’s approach to rezoning and the purpose and application of the SHZ that the Panel failed to take into account certain relevant considerations which either separately or together would justify a MU zoning, including:

- (a) the evidence addressing the specific features of the Property;
- (b) the evidence addressing its existing use; and/or
- (c) the evidence detailing the resource consent granted by Council authorising the demolition of the existing buildings on the Property, and hence the destruction of the built character of those buildings, construction of a replacement non-residential building on the Property, and ongoing non-residential use of the Property for retail/showroom/commercial warehouse activities.

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<sup>22</sup> Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing topics 016, 017 Changes to the Rural Urban Boundary; 080, 081 Rezoning and precinct* (22 July 2016) at 6.

[62] The Council does not accept the other alleged errors, and Housing New Zealand Corporation, interested in this appeal only in relation to Samson's allegation that the Panel failed to provide reasons, disputes that error.

*Relief sought*

[63] The parties seek an amendment to the Unitary Plan, whereby the Property is rezoned MU and the Special Character Overlay is removed. They request approval of the amendment by consent, and submit providing a right of referral to the Environment Court would be futile, given the amendment is technical in nature and unopposed.<sup>23</sup> The proposed relief is set out in Appendix B.

*Assessment*

[64] A bare assertion that the Panel failed to have regard to relevant considerations belies the context. But I am satisfied this appeal should be allowed on the more limited basis that the outcome was not available to the Panel on the evidence. In particular, there appears to be agreement between the parties to the appeal that the outcome is not reconcilable with the following considerations:

- (a) The evidence addressing the specific features of the site;
- (b) The evidence addressing the existing use of the site;
- (c) The evidence detailing the resource consent granted by the Council authorising the demolition of the existing buildings on the site; and/or
- (d) The guidance provided by the Panel on its approach to rezoning. See [60].

[65] I also agree with the parties that in the special circumstances of this case, where a resource consent for commercial use has been granted and the heritage value of the building has been removed from the Property, the imposition of special

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<sup>23</sup> Citing *Ancona Properties Ltd v Auckland Council*, above n 2, at [4].

character zoning on a site adjacent to a major arterial suggests something has gone wrong in the decision-making process.

[66] I note for completeness, as I have with the other appeals in this judgment, that I place some significance on the fact the Council agrees there has been a failure to have regard to a relevant consideration.

[67] As to relief, I am advised that the only submitter on the appellant's primary submission now consents to the relief sought. That being the case, referral of the matter back for the purposes of an appeal to the Environment Court would be futile. Accordingly, the relief as sought by the appellant is granted.

### **Outcome**

[68] In relation to the Bunnings application, I set aside the decision of the Panel. As a result, a right of appeal to the Environment Court is available.

[69] The appeals by the parties in the WRPS and Samson matters are allowed.

[70] In relation to the WRPS appeal, the relief set out in Appendix A is granted, subject to the Council serving notice of its decision on all affected submitters advising of their right of appeal to the Environment Court, pursuant to s 156(1) of the LGATPA.

[71] In relation to the Samson appeal, the relief outlined in Appendix B is granted.

## APPENDIX A

**Consent order version 23 June 2017**

**D12. Waitākere Ranges Heritage Area Overlay**

**D12.1. Background**

The Waitākere Ranges Heritage Area Overlay gives effect to the purpose and objectives of the Waitākere Ranges Heritage Area Act 2008, and to section B4.4 of the regional policy statement. The overlay applies to the area identified in Schedule 1 of the Waitākere Ranges Heritage Area Act 2008 and is shown on the planning maps.

The Waitākere Ranges Heritage Area Act 2008 recognises the national, regional, and local significance of the heritage area and promotes the protection and enhancement of its heritage features for present and future generations. The heritage features described in section 7 of the Waitākere Ranges Heritage Area Act 2008 include a range of ecological, landscape, historical, cultural, rural character and natural character values as well as the area's distinctive local communities.

Sites located within the Waitākere Foothills are zoned Rural – Waitākere Foothills Zone and those in the Waitākere Ranges are zoned Rural – Waitākere Ranges Zone. Residential sites in Titirangi – Laingholm are zoned Residential – Large Lot Zone and those in the coastal villages are zoned Residential – Rural and Coastal Settlement Zone. Where sites are used for business purposes, these are zoned Business – Local Centre Zone and Business – Neighbourhood Centre Zone.

The Te Henga, Waimanu and Bethells precincts relate to a number of large sites where unique cultural, historic and ecological values have been identified. The subdivision rules for these areas are located within the precinct provisions. The objectives and policies of the Waitākere Ranges Heritage Area Overlay also apply to these precincts.

The objectives, policies and rules of this overlay apply to subdivision, use and development in the Waitākere Ranges Heritage Area Overlay. The areas and sites identified in the Subdivision Scheduled Areas/Sites prescribe additional subdivision standards when subdividing in the specified areas/sites. The objectives, policies and standards in E38 Subdivision – Urban and E39 Subdivision – Rural also apply to subdivision in these areas unless otherwise specified.

**D12.1.1. Subdivision Scheduled Areas/Sites**

The following provides an overview for the area/sites which are subdivision scheduled areas/sites in the Waitākere Ranges Heritage Area Overlay. These areas/sites are subject to additional subdivision standards.

**D12.1.1.1. Ōrātia (Foothills)**

Ōrātia (Foothills) is characterised by low-density settlement with few urban-scale activities. Buildings in Ōrātia still reflect the area's rural history and are subservient to the natural and rural landscapes. There is a clear distinction between the character of urban Auckland and rural Ōrātia which is viewed as a 'gateway' or edge to the Waitākere Ranges.

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The area's settlement pattern is in transition through the implementation of the former Ōrātia Structure Plan, which enabled the establishment of small rural holdings throughout the settlement area.

Ōrātia is significant to Mana Whenua, notably Te Kawerau a Maki who have a long history of occupation and use of the land.

The area is identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills). Its zone is the Rural – Waitākere Foothills Zone.

### **D12.1.1.2. Swanson South (Foothills)**

Swanson South (Foothills) comprises that part of the former Swanson Structure Plan area that falls within the heritage area. It is characterised by low-density settlement and rural and natural landscape character. The Swanson South area is valued for its vineyards and pastoral landscape elements.

The area is identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills). Its zone is the Rural – Waitākere Foothills Zone.

### **D12.1.1.3. Rural Bush Living (Ranges)**

The Rural Bush Living (Ranges) area includes those parts of the Rural – Waitākere Ranges Zone where natural features dominate, but settlement has substantially fragmented the bush. A partly residential but nonetheless 'non-urban' character predominates as a result.

The area is identified in Figures D12.10.7 – D12.10.14 Overlay Subdivision Plans 7a – 7g – Rural Bush Living (Ranges). Its zone is the Rural – Waitākere Ranges Zone.

### **D12.1.1.4. Ōrātia (Ranges)**

The Ōrātia (Ranges) area is located in the Upper Ōrātia catchment and is generally characterised by bush-clad landscapes which contain buildings that do not dominate the extensive bush area. It contains areas of sparse population with some more intensive settlement and has a feeling of peaceful quietness despite proximity to the city. The capacity for subdivision and development in the area is limited, and restricted to areas outside the Significant Ecological Area Overlay and the Outstanding Natural Landscape Overlay. Beyond that level, subdivision is generally prohibited.

The area is identified in Figure D12.10.15 Overlay Subdivision Plan 8 – Ōrātia (Ranges). Its zone is the Rural – Waitākere Ranges Zone.

### **D12.1.1.5. Titirangi – Laingholm (North, South and West)**

Titirangi – Laingholm North is located north of a line running along the ridge at Scenic Drive/Titirangi Road/Rangiwai Road and Godley Road. The land drains north and is mostly oriented towards the urban parts of the city. The density of subdivision enabled in this area recognises the proximity of the area to the urban environment.

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Titirangi – Laingholm South drains towards the Manukau Harbour and is located further from urban areas. It contains many large sites and areas of intact vegetation. The residential density is less in this area and subdivision is limited to avoid fragmentation of intact vegetation.

Titirangi – Laingholm West covers a narrow strip of land bounded by the Waitākere Ranges Regional Park to the west, and Victory Road and Kauri Point Road to the east. The area generally forms a buffer between the regional park and the urban parts of Titirangi – Laingholm.

The area is identified in Figure D12.10.16 Overlay Subdivision Plan 9 – Titirangi – Laingholm North, Figure D12.10.17 Overlay Subdivision Plan 10 – Titirangi – Laingholm South, Figure D12.10.18 Overlay Subdivision Plan 11 – Titirangi – Laingholm West. Its zone is Residential – Large Lot Zone.

### D12.2. Objectives

- (1) The heritage area and its features described in section 7 of the Waitākere Ranges Heritage Area Act 2008 are protected, restored and enhanced.
- (2) A range of activities are enabled in order for people to work, live and recreate within the heritage area.
- (3) The limited capacity of the heritage area to provide for growth is recognised.
- (4) Subdivision in the heritage area is of an appropriate scale and intensity and complements the character and landscape of the heritage area.
- (5) The quality and diversity of landscapes in the heritage area identified as having local, regional or national significance are maintained.
- (6) Subdivision, use and development in the heritage area is subservient to the natural and rural landscape and character.
- (7) Risks and uncertainties associated with subdivision, use and development that could threaten serious or irreversible damage to a heritage feature of the heritage area are recognised and considered.
- (8) The water supply catchments and their related supply functions are protected.
- (9) Infrastructure and related activities are enabled, provided that the heritage features of the area are protected.

#### *Waitākere Foothills*

- (10) The Waitākere Foothills retain a rural character with low-density settlement and few urban-scale activities.
- (11) The Waitākere Foothills provide a rural buffer between urban Auckland and the forested landscape of the Waitākere Ranges and the coasts.

#### *Ōrātia (Foothills)*

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- (12) Subdivision and development retains and enhances local rural character and amenity values.
- (13) Subdivision and development is designed to maintain and enhance rural character and natural landscape qualities, including watercourses and significant native vegetation and fauna habitats.

##### *Swanson South (Foothills)*

- (14) Swanson South's rural character, with low-density settlement and few urban-scale activities, is protected.
- (15) The ecological and landscape values of the area are protected from inappropriate subdivision and development.
- (16) The effects of subdivision and associated development are managed to retain a buffer between the bush-clad and urban parts of the city.

##### *Rural Bush Living (Ranges)*

- (17) The forested character and natural landscape qualities of the surrounding environment, including prominent ridgelines, watercourses, native vegetation and fauna habitats are maintained and enhanced.

##### *Ōrātia (Ranges)*

- (18) The rural character and natural landscape qualities of the Ōrātia area, including watercourses and native vegetation and fauna habitats are maintained and enhanced.

##### *Titirangi – Laingholm (North, South and West)*

- (19) The unique settlement pattern and landscape qualities of the residential areas of Titirangi – Laingholm are maintained and enhanced.
- (20) The forested character and natural qualities of the surrounding landscape which includes a low-density residential setting, prominent ridgelines, coastal areas and native vegetation and fauna habitats are maintained and enhanced.

#### **D12.3. Policies**

- (1) Limit subdivision and development within the heritage area to protect its heritage features.
- (2) Manage the scale, design, and location of subdivision so that it is consistent with section 8 of the Waitākere Ranges Heritage Area Act 2008.
- (3) Protect the different natural landforms and landscape within the heritage area.
- (4) Protect the distinctive natural and rural character of the heritage area.
- (5) Protect the quietness and darkness of the Waitākere Ranges and the coastal part of the area.



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- (6) Recognise that people live in distinct communities by enabling appropriate residential, business and community activities.
- (7) Protect the Waitākere Ranges Regional Park for the benefit, use and enjoyment of people and communities and maintain the quietness and wilderness of the regional park.
- (8) Manage subdivision, use and development within the area to ensure all of the following:
  - (a) areas identified in the Outstanding Natural Character and High Natural Character Overlay, the Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay, and the Significant Ecological Areas Overlay and are protected, restored or enhanced;
  - (b) heritage features are not adversely affected;
  - (c) rural landscape and character is retained; and
  - (d) degraded landscapes are restored and enhanced.
- (9) Manage built development so that it is integrated and is subservient to the natural and rural landscape and the heritage features of the area.
- (10) Adopt a precautionary approach when assessing subdivision, use and development that could threaten serious or irreversible damage to a heritage feature.

*Waitākere Foothills*

- (11) Maintain a clear contrast between the urban parts of the city and the Waitākere Ranges foothills through the design and location of subdivision, use and development which maintains and enhances rural character and amenity values.
- (12) Provide for limited subdivision and development that:
  - (a) protects and enhances streams, lakes, watercourses, and wetlands and their margins;
  - (b) restores low-quality areas of vegetation or carries out revegetation of bare areas along waterway margins; and
  - (c) minimises vegetation clearance by locating buildings and development in areas of lower ecological value.
- (13) Require subdivision design to:
  - (a) incorporate on-site native vegetation planting;
  - (b) retain or link significant vegetation and fauna habitat areas; and

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(c) avoid adversely affecting the visual, historical, cultural, or spiritual significance of heritage features.

(14) Provide for legal and physical protection of native vegetation to ensure these areas are protected for perpetuity, including, where necessary requiring fencing to achieve permanent stock exclusion.

*Ōrātia (Foothills)*

(15) Provide for limited subdivision and development that:

- (a) protects where possible significant and outstanding native vegetation and fauna habitat;
- (b) minimises adverse effects arising from placement of structures, driveways, and other infrastructure, on the overall resilience, biodiversity and integrity of ecosystems;
- (c) retains, enhances and maintains native vegetation and fauna habitat and stream margins; and
- (d) retains and enhances rural landscapes through the management of existing vegetation and replanting of exotic and native vegetation where appropriate.

*Swanson South (Foothills)*

(16) Provide for limited subdivision and development that:

- (a) protects and enhances streams, watercourses, and wetlands;
- (b) avoids where possible the need to clear native vegetation and restores areas of vegetation or re-vegetates areas of land along watercourses;
- (c) avoids, remedies or mitigates adverse effects on rural character and amenity values;
- (d) retains or links native vegetation and fauna habitat areas; and
- (e) avoids where possible development on natural landscape elements and heritage features.

*Titirangi – Laingholm (North, South and West)*

(17) Provide for limited subdivision and development that:

- (a) avoids where practicable, or otherwise minimises the need for clearance of native vegetation and maintains the dominance of the natural environment;
- (b) includes planting of native vegetation to improve the natural environment;
- (c) protects native vegetation through legal protection mechanisms and fences;

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- (d) ensures buildings and structures will not be visually prominent, particularly on ridgelines, or through the removal of native vegetation;
- (e) enables practical vehicle access to a road which maintains safety but does not modify the site to an extent that adversely affects the character of the surrounding landscape; and
- (f) is consistent with the existing pattern of residential density in the area.

*Ōrātia (Ranges) and Rural Bush Living (Ranges)*

(18) Provide for limited subdivision and development that :

- (a) protects significant and outstanding native vegetation and fauna habitat, and where possible avoids clearance of, or damage to, this resource;
- (b) minimises adverse effects arising from the placement of structures on the overall resilience, biodiversity and integrity of ecosystems; and
- (c) recognises the natural values of native vegetation and fauna habitat areas and the linkages between these areas.

**D12.4. Activity table**

Table D12.4.1 specifies the activity status of land use and subdivision activities in the Waitākere Ranges Heritage Area Overlay pursuant to sections 9(3) and 11 of the Resource Management Act 1991.

**Table D12.4.1 Activity Table – Land use and subdivision activities within the Waitākere Ranges Heritage Area Overlay**

Activity		Activity status
<b>Use</b>		
(A1)	Filming that complies with Standard D12.6.1	P
(A2)	Minor dwelling within the Residential – Rural and Coastal Settlement Zone or Residential – Large Lot Zone that complies with Standard D12.6.2	RD
(A3)	Minor dwelling within the Residential – Rural and Coastal Settlement Zone or Residential – Large Lot Zone that does not comply with Standard D12.6.2	D
(A4)	Conversion of a principal dwelling existing as at 30 September 2013 into a maximum of two dwellings in the Residential – Rural and Coastal Settlement Zone	NC
<b>Subdivision</b>		
(A5)	Subdivision of a minor dwelling from the principal dwelling where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	Pr
(A6)	Subdivision of a converted dwelling established from the conversion of a principal dwelling existing as at 30 September 2013	Pr

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where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	
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Table D12.4.2 specifies the activity status of subdivision of sites in the subdivision scheduled areas/sites in the Waitākere Ranges Heritage Area Overlay pursuant to section 11 of the Resource Management Act 1991.

The standards for subdivision in E38 Subdivision – Urban or E39 Subdivision – Rural apply unless otherwise specified in Table D12.4.2.

**Table D12.4.2 Activity table - Subdivision of sites in the subdivision scheduled areas/sites**

Activity	Activity status
<b>Subdivision of sites within scheduled areas</b>	
(A7) Subdivision in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills) that complies with Standard D12.6.3.1	RD
(A8) Subdivision in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills) that does not comply with Standard D12.6.3.1	D
(A9) Subdivision in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills) that complies with Standard D12.6.3.2	RD
(Axx) <u>Subdivision in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills) that does not comply with Standard D12.6.3.2(2)-(10)</u>	NC
(A10) <u>Subdivision of sites without a lot allocation as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills) creating a minimum site size less than 4ha in site area</u>	Pr
(A11) Subdivision in Figures 12.10.7 – D12.10.14 Overlay Subdivision Plans 7a – 7g – Rural Bush Living (Ranges) that comply with Standard D12.6.3.3	D
(A12) Subdivision in Figures 12.10.7 – D12.10.14 Overlay Subdivision Plans 7a – 7g – Rural Bush Living (Ranges) that does not comply with Standard D12.6.3.3	NG Pr
(A13) Subdivision in Figure D12.10.15 Overlay Subdivision Plan 8 – Oratia (Ranges) that complies with Standard D12.6.3.7	NC
(Axx) <u>Subdivision in Figure D12.10.15 Overlay Subdivision Plan 8 – Oratia (Ranges) that does not comply with Standard D12.6.3.7</u>	Pr
(A14) Subdivision in Figure D12.10.16 Overlay Subdivision Plan 9 – Titirangi – Laingholm (North) that complies with Standard D12.6.3.4	D
(A15) Subdivision in Figure D12.10.16 Overlay Subdivision Plan 9 – Titirangi – Laingholm (North) that does not comply with Standard D12.6.3.4	NC
(A16) Subdivision in Figure D12.10.17 Overlay Subdivision Plan 10 – Titirangi – Laingholm (South) that complies with Standard D12.6.3.5	D

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(A17)	Subdivision in Figure D12.10.17 Overlay Subdivision Plan 10 – Titirangi – Laingholm (South) that does not comply with Standard D12.6.3.5	NC
(A18)	Subdivision in Figure D12.10.18 Overlay Subdivision Plan 11 – Titirangi – Laingholm (West) complying with Standard D12.6.3.6	D
(A19)	Subdivision in Figure D12.10.18 Overlay Subdivision Plan 11 – Titirangi – Laingholm (West) that does not comply with Standard D12.6.3.6	NC Pr
<b>Subdivision of scheduled sites</b>		
(A20)	Subdivision of the following sites that comply with Standard D12.6.4.1: <ul style="list-style-type: none"> <li>• 24 Christian Road, Swanson (Lot 5 DP 158819)</li> <li>• 37 O' Neills Road, Swanson (Lot 1 DP 179784)</li> </ul>	C
(A21)	Subdivision of the following sites that do not comply with Standard D12.6.4.1: <ul style="list-style-type: none"> <li>• 24 Christian Road, Swanson (Lot 5 DP 158819)</li> <li>• 37 O' Neills Road, Swanson (Lot 1 DP 179784)</li> </ul>	NC
(A22)	Subdivision of the following sites that comply with Standard D12.6.4.2: <ul style="list-style-type: none"> <li>• 12-14 Gum Road, Henderson Valley (Lots 1 and 2 DP 49129)</li> <li>• 233 Forrest Hill Road, Waiatarua (Lot 5 DP 59154)</li> </ul>	RD
(A23)	Subdivision of the following sites that do not comply with Standard D12.6.4.2: <ul style="list-style-type: none"> <li>• 12-14 Gum Road, Henderson Valley (Lots 1 and 2 DP 49129)</li> <li>• 233 Forrest Hill Road, Waiatarua (Lot 5 DP 59154)</li> </ul>	NC
(A24)	Subdivision of the following sites that comply with Standard D12.6.4.3: <ul style="list-style-type: none"> <li>• 47-51 Holdens Road, Henderson (Lot 14 DP 86225)</li> <li>• 15 Holdens Road, Henderson (Lot 1 DP 63568)</li> </ul>	RD
(A25)	Subdivision of the following sites that do not comply with Standard D12.6.4.3(2)-(10): <ul style="list-style-type: none"> <li>• 47-51 Holdens Road, Henderson (Lot 14 DP 86225)</li> <li>• 15 Holdens Road, Henderson (Lot 1 DP 63568)</li> </ul>	D
(A26)	Subdivision of the following sites which creates more than a total of five lots and does not comply with Standard D12.6.4.2(1): <ul style="list-style-type: none"> <li>• 47-51 Holdens Road, Henderson (Lot 14 DP 86225)</li> <li>• 15 Holdens Road, Henderson (Lot 1 DP 63568)</li> </ul>	NC
(A27)	Subdivision of the following site that complies with Standard D12.6.4.4: <ul style="list-style-type: none"> <li>• 43 O'Neills Road (Lot 2 DP 78994)</li> </ul>	D
(A28)	Subdivision of the following site that does not comply with Standard D12.6.4.4: <ul style="list-style-type: none"> <li>• 43 O'Neills Road (Lot 2 DP 78994)</li> </ul>	NC
(A29)	Subdivision of the following site that complies with Standard	RD

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	D12.6.4.5: • 39 Awhiorangi Promenade (Lot 4 DP 137580)	
(A30)	Subdivision of the following site that does not comply with D12.6.4.5: • 39 Awhiorangi Promenade (Lot 4 DP 137580)	NC
(A31)	Subdivision of the following site that complies with Standard D12.6.4.6: • 144 Candia Road, Henderson Valley (Part Allot 275 PSH OF Waipareira)	RD
(A32)	Subdivision of the following that does not comply with Standard D12.6.4.6: • 144 Candia Road, Henderson Valley (Part Allot 275 PSH OF Waipareira)	NC
(A33)	Subdivision of the following site that complies with Standard D12.6.4.7: • 32 Christian Road, Swanson (Lot 1 DP 53766)	RD
(A34)	Subdivision of the following site that does not comply with Standard D12.6.4.7: • 32 Christian Road, Swanson (Lot 1 DP 53766)	NC
(A35)	Subdivision of the following site that complies with Standard D12.6.4.8: • 42 Christian Road, Swanson (Lot 1 DP 80978)	RD
(A36)	Subdivision of the following site that does not comply with Standard D12.6.4.8: • 42 Christian Road, Swanson (Lot 1 DP 80978)	NC
(A37)	Subdivision of the following site that complies with Standard D12.6.4.9: • 46 Christian Road, Swanson (Lot 1 DP 425696)	RD
(A38)	Subdivision of the following site that does comply with Standard D12.6.4.9: • 46 Christian Road, Swanson (Lot 1 DP 425696)	NC
(A39)	Subdivision of the following site that complies with Standard D12.6.4.10: • 56 Christian Road, Swanson (Lot 2 DP 161541)	RD
(A40)	Subdivision of the following site that does not comply with Standard D12.6.4.10: • 56 Christian Road, Swanson (Lot 2 DP 161541)	NC
(A41)	Subdivision of the following site that complies with Standard D12.6.4.11: • 33-35 Coulter Road, Henderson Valley (Allot 232 PSH of Waipareira)	RD
(A42)	Subdivision of the following site that does not comply with Standard D12.6.4.11: • 33-35 Coulter Road, Henderson Valley (Allot 232 PSH of	NC

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	Waipareira)	
(A43)	Subdivision of the following site that complies with Standard D12.6.4.12: • 40 Coulter Road, Henderson Valley (Lot 1 DP 61729)	RD
(A44)	Subdivision of the following site that does not comply with Standard D12.6.4.12: • 40 Coulter Road, Henderson Valley (Lot 1 DP 61729)	NC
(A45)	Subdivision of the following site that complies with Standard D12.6.4.13: • 70 Coulter Road, Henderson Valley	RD
(A46)	Subdivision of the following site that does not comply with Standard D12.6.4.13: • 70 Coulter Road, Henderson Valley	NC
(A47)	Subdivision of the following site that does not comply with Standard D12.6.4.14: • 78 Coulter Road, Henderson Valley (Lot 1 DP 485454)	RD
(A48)	Subdivision of the following site that does not comply with Standard D12.6.4.14: • 78 Coulter Road, Henderson Valley (Lot 1 DP 485454)	NC
(A49)	Subdivision of the following site that complies with Standard D12.6.4.15: • 163 Simpson Road, Henderson Valley (Lot 2 DP 426324)	RD
(A50)	Subdivision of the following site that does not comply with Standard D12.6.4.15: • 163 Simpson Road, Henderson Valley (Lot 2 DP 426324)	NC
(A51)	Subdivision of the following site that complies with Standard D12.6.4.16: • 780 Swanson Road, Swanson (Lot 1 DP 196223)	RD
(A52)	Subdivision of the following site that does not comply with Standard D12.6.4.16: • 780 Swanson Road, Swanson (Lot 1 DP 196223)	NC
(A53)	Subdivision of the following site that complies with Standard D12.6.4.17: • 790 and 792 Swanson Road, Swanson (Lot 3 DP 185681 and Lot 2 DP 185681)	RD
(A54)	Subdivision of the following site that does not comply with Standard D12.6.4.17: • 790 and 792 Swanson Road, Swanson (Lot 3 DP 185681 and Lot 2 DP 185681)	NC
(A55)	Subdivision of the following site that complies with Standard D12.6.4.18: • 40 Tram Valley Road, Swanson (Lot 6 DP 60454).	RD
(A56)	Subdivision of the following site that does not comply with Standard D12.6.4.18:	NC

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	<ul style="list-style-type: none"> <li>• 40 Tram Valley Road, Swanson (Lot 6 DP 60454).</li> </ul>	
(A57)	Subdivision within the area bounded by Holdens Road, Forest Hill Road, Pine Avenue and Parrs Cross Road that complies with Standard D12.6.4.19	D
(A58)	Subdivision within the area bounded by Holdens Road, Forest Hill Road, Pine Avenue and Parrs Cross Road that does not comply with Standard D12.6.4.19	NC
(A59)	<u>Subdivision of sites listed in Table D12.4.2 activities (A227) – (A56) creating sites exceeding the lot allocation as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Foothills (Swanson)</u>	NC Pr
(A60)	Subdivision of the following site that complies with Standard D12.6.4.20: <ul style="list-style-type: none"> <li>• 205A Godley Road, Titirangi (Part Lot 3 DP 30902)</li> </ul>	D
(A61)	Subdivision of the following site that does not comply with Standard D12.6.4.20: <ul style="list-style-type: none"> <li>• 205A Godley Road, Titirangi (Part Lot 3 DP 30902)</li> </ul>	NC
(A62)	Subdivision of the following site that complies with Standard D12.6.4.21: <ul style="list-style-type: none"> <li>• 333 Laingholm Drive, Laingholm (parcels contained in certificate of Title 91D/282)</li> </ul>	D
(A63)	Subdivision of the following site that does not comply with Standard D12.6.4.21: <ul style="list-style-type: none"> <li>• 333 Laingholm Drive, Laingholm (parcels contained in certificate of Title 91D/282)</li> </ul>	NC
(A64)	Subdivision of the following site that complies with Standard D12.6.4.22: <ul style="list-style-type: none"> <li>• 175A Laingholm Drive, Laingholm (Certificate of Title 37B/232)</li> </ul>	D
(A65)	Subdivision of the following site that does not comply with Standard D12.6.4.22: <ul style="list-style-type: none"> <li>• 175A Laingholm Drive, Laingholm (Certificate of Title 37B/232)</li> </ul>	NC
(A66)	Subdivision of the following site in accordance with <b>Figure 12.10.19 Overlay Subdivision Plan 12</b> the subdivision scheme plan and that complies with Standard D12.6.4.23: <ul style="list-style-type: none"> <li>• 7-11 Christian Road, Henderson Valley (Part Allot 124 PSH OF Waipareira)</li> </ul>	D
(A67)	Subdivision of the following site not in accordance with <b>Figure 12.10.19 Overlay Subdivision Plan 12</b> the subdivision scheme plan or that does not comply with Standard D12.6.4.23: <ul style="list-style-type: none"> <li>• 7-11 Christian Road, Henderson Valley (Part Allot 124 PSH OF Waipareira)</li> </ul>	NC
AXX	<u>Subdivision of the following site exceeding the lot allocation in accordance with the subdivision scheme plan:</u> <ul style="list-style-type: none"> <li>• 7-11 Christian Road, Henderson Valley (Part Allot 124 PSH OF Waipareira)</li> </ul>	PR



**D12.5. Notification**

- (1) Any application for resource consent for an activity listed in Table D12.4.1 or Table D12.4.2 will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

### **D12.6. Standards**

All activities in Table D12.4.1 and Table D12.4.2 must comply with the following standards.

#### **D12.6.1. Filming**

- (a) The activity must not involve any filming activity longer than six months from start to finish, irrespective of whether the activity is carried out in different years.
- (b) The activity must not involve vehicle movements exceeding 200 per day.
- (c) The site used for filming activity must be restored to its original state on completion of filming activities.
- (d) Associated car parking must be off-road except for any filming activity undertaken pursuant to an approval granted under the Auckland Council Trading and Events in Public Places Bylaw 2015.

#### **D12.6.2. Minor dwelling**

Purpose:

- To provide accommodation that is limited in size and secondary to the principal dwelling on a site;
  - to ensure that sufficient outdoor living space is provided for the minor dwelling; and
  - to ensure there is no more than one minor dwelling on each site.
- (a) The minor dwelling must be located on a site with a minimum net site area of 1,500m<sup>2</sup>.
  - (b) A minor dwelling must have an outdoor living space that is:
    - (a) at least 5m<sup>2</sup> for a studio or one-bedroom dwelling and 8m<sup>2</sup> for a two or more bedroom dwelling;
    - (b) at least 1.8m in depth; and
    - (c) directly accessible from the minor dwelling.
  - (c) There must be no more than one minor dwelling per site.

#### **D12.6.3. Subdivision in subdivision scheduled areas**

The subdivision standards in E38 Subdivision – Urban and E39 Subdivision – Rural apply unless otherwise specified below.

##### **D12.6.3.1. Subdivision within Figure D12.10.1 Overlay Subdivision Plan 1 - Ōrātia (Foothills)**

- (1) Subdivision must comply with the following:
  - (a) creates sites that generally coincide with the location of proposed site boundaries as identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills); or

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- (b) subdivision must be in accordance with or less than the lot densities identified for each existing site as identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills).
- (2) The required planting as identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills) as enhancement areas must be established and be protected by way of covenant, encumbrance or consent notice.

**D12.6.3.2. Subdivision within Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills)**

- (1) The number of sites created on each existing site must not exceed the total lot allocation for the site as identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) All stock must be permanently removed from the Indicative Enhancement Area and the Ecological Areas identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills), and these areas must be adequately fenced to prevent stock entering these areas.
- (3) Any new fences to be established on proposed sites must not be located within any Indicative Enhancement Area identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills) unless the fence is required to limit stock accessing the Indicative Enhancement Area.
- (4) Weeds must be removed from any Indicative Enhancement Area and Ecological Areas identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (5) The Indicative Enhancement Area and Ecological Areas identified on Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills) must be kept substantially weed-free for a period of 10 years.
- (6) A management plan including vegetation planting for the Indicative Enhancement Area must be provided as part of any subdivision consent application. The vegetation planting must be provided at a ratio of 0.125m<sup>2</sup> per 1m<sup>2</sup> of the site (excluding any existing Ecological Area) as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (7) If the sum of the Indicative Enhancement Area is less than the area required to be planted in Standard D12.6.3.2(6), the difference must be made up by planting on any area outside the Ecological Area as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (8) Any planting which dies prior to effective canopy closure being established must be replaced.

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- (9) Where a second dwelling is located greater than 15m from a dwelling on the same site, either the second dwelling is to be placed on a separate proposed site to the existing dwelling or it must be removed from the site.
- (10) Subdivision of sites involving an indicative Public Walkway Linkage identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills) must provide a public walkway and it is to be protected by registering a right of way as an easement in gross on the title in favour of the Auckland Council.

**D12.6.3.3. Subdivision within Figure 12.10.7 – Figure 12.10.14 Overlay Subdivision Plans 7a – 7g – Rural Bush Living (Ranges)**

- (1) Subdivision must meet one of the following:
  - (a) creating sites with minimum net site area of 2,000m<sup>2</sup> where:
    - (i) the average site area exceeds 4,000m<sup>2</sup> measured over the net site area of the site as it existed on 14 October 1995;
    - (ii) each proposed site contains a building platform outside the Significant Ecological Areas Overlay; and
    - (iii) each proposed site will be provided with a connection to a reticulated wastewater disposal system.
  - (b) creating sites with minimum net site area of 8,000m<sup>2</sup> where:
    - (i) a building platform is situated within the Significant Ecological Areas Overlay;
    - (ii) no more than one new site is created for each site existing on 14 October 1995; and
    - (iii) each proposed site will be provided with a connection to a reticulated wastewater disposal system.
  - (c) creating sites with minimum net site area of 4ha.

**D12.6.3.4. Subdivision within Figure D12.10.16 Overlay Subdivision Plan 9 – Titirangi – Laingholm (North)**

- (1) Subdivision must meet one of the following:
  - (a) creating sites with building platforms and driveways located wholly outside the Significant Ecological Areas Overlay and complying with all of the following:
    - (i) the average net site area of all proposed sites must exceed 2000m<sup>2</sup>. This is calculated from the existing site area at 30 September 2013; where 50 per cent or more of the existing site area is outside the Significant Ecological Areas Overlay, an area at least equivalent to the total area covered by the proposed building

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platform and driveway, (including car parking, access and manoeuvring areas) must be permanently planted on the existing site with native vegetation; and

- (ii) areas identified in the Significant Ecological Areas Overlay required to be planted in Standard D12.6.3.4(1)(a)(i) within a proposed site are to be permanently protected by an appropriate legal mechanism to be registered on the title. The protected area excludes any vegetation consented for removal; or
- (b) creating sites with building platform and driveways partially or wholly inside the Significant Ecological Areas Overlay complying with all of the following:
- (i) the minimum net site area for the proposed site containing the existing dwelling must be 2000m<sup>2</sup> provided the existing site has a minimum net site area of 6000m<sup>2</sup> and there is no more than one additional site created which is less than 4000m<sup>2</sup> in net site area;
  - (ii) the average net site area of all proposed sites must exceed 3000m<sup>2</sup>. This is calculated from the existing site area;
  - (iii) no more than 500m<sup>2</sup> of native vegetation may be removed to provide for any proposed dwelling, and driveway, (including car parking, access and manoeuvring areas) within each proposed site;
  - (iv) all remaining native vegetation must be permanently protected by appropriate legal mechanism registered on the title. This excludes any vegetation consented for removal;
  - (v) any driveway exceeding 10m in length must not exceed an average slope of 1 in 5; and
  - (vi) no new road may be created.

**D12.6.3.5. Subdivision within Figure D12.10.17 Overlay Subdivision Plan 10 – Titirangi – Laingholm (South)**

(1) Subdivision must meet one of the following:

- (a) subdivision providing for building platforms and driveways wholly outside the Significant Ecological Areas Overlay complying with all of the following:
  - (i) the average net site area of all proposed sites must exceed 4000m<sup>2</sup>. This is calculated from the existing site area;
  - (ii) where a proposed site is partially located within the Significant Ecological Areas Overlay, a minimum of 1000m<sup>2</sup> of the net site area must be located outside the Significant Ecological Areas Overlay;

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- (iii) where 50 per cent or more of the existing site area is outside the Significant Ecological Areas Overlay, an area at least equivalent to the total area covered by the proposed building platform and driveway, (including car parking, access and manoeuvring areas) must be permanently planted on the existing site with native vegetation; and
  - (iv) areas identified in the Significant Ecological Areas Overlay required to be planted in Standard D12.6.3.5(1)(a)(iii) within a proposed site are to be permanently protected by an appropriate legal mechanism to be registered on the title. The protected area excludes any vegetation consented for removal.
- (b) subdivision providing for proposed building platforms and driveways partially or wholly within the Significant Ecological Areas Overlay complying with all of the following:
- (i) the minimum net site area of a proposed site containing an existing dwelling must be 4000m<sup>2</sup> provided the existing site has a minimum net site area of 1.4ha and there is no more than one additional site created that is less than 1ha net site area;
  - (ii) the average net site area of all proposed sites must exceed 1ha. This is calculated from the existing site area;
  - (iii) no more than 500m<sup>2</sup> of native vegetation may be removed to provide for any proposed dwelling, and driveway, (including car parking, access and manoeuvring areas) within a proposed site;
  - (iv) all remaining native vegetation on-site must be permanently protected by appropriate legal mechanism registered on the title. This excludes any vegetation consented for removal;
  - (v) any driveway exceeding 10m in length must not exceed an average slope of 1 in 5; and
  - (vi) no new road may be created.

**D12.6.3.6. Subdivision within Figure 12.10.18 Overlay Subdivision Plan 11 – Titirangi – Laingholm (West)**

- (1) Subdivision must meet one of the following
- (a) creating sites with minimum net site area of 2,000m<sup>2</sup> and complying with all of the following:
    - (i) the average net site area must exceed 4000m<sup>2</sup> when calculated over the net site area of the site as it existed on 14 October 1995; and
    - (ii) each proposed site contains a building platform located wholly outside the Significant Ecological Areas Overlay; or

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- (b) creating sites with minimum net site area of 8,000m<sup>2</sup> and complying with all of the following:
  - (i) any part of a building platform is situated within the Significant Ecological Areas Overlay;
  - (ii) no more than one new site is created per site existing on 14 October 1995; and
  - (iii) each proposed site is provided with a connection to a reticulated water system; or
- (c) subdivision creating sites with a minimum net site area of 4ha.

**D12.6.3.7 Subdivision within Figure 12.10.15 – Figure 12.10.15 Overlay  
Subdivision Plan 8 – Oratia (Ranges)**

**(1) Subdivision must comply with the following:**

- (a) Subdivision must not create development or establishment of buildings within land areas identified in the Significant Ecological Areas Overlay and Outstanding Natural Landscapes Overlay.**

**D12.6.4. Subdivision in scheduled subdivision sites**

The subdivision standards in E38 Subdivision – Urban or in E39 Subdivision – Rural apply unless otherwise provided for in the following standards.

**D12.6.4.1. Subdivision at 24 Christian Road and 37 O’Neills Road, Swanson**

- (1) The minimum net site area for each proposed site is 7,000m<sup>2</sup>.
- (2) The average site area must be greater than 1ha.

**D12.6.4.2. Subdivision at 12 – 14 Gum Road, Henderson Valley (Lots 1 and 2 DP 49129) and 233 Forrest Hill Road, Waiatarua (Lot 5 DP 59154)**

- (1) The total land area includes the land parcels legally described as lots 1 and 2 DP 49129 and lot 5 DP 59154.
- (2) The minimum net site area is 2ha.
- (3) The average net site area exceeds 4ha across the total land area.
- (4) The total number of sites over the total land area is limited to 24.
- (5) An ecological assessment and a landscape assessment identifying areas of ecological and landscaping opportunity and enhancement must be provided. This must include any areas where buildings are not to be constructed.

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- (6) A planting plan taking into account the site's ecological and landscape assessments identified in Standard D12.6.4.2(5) must be provided. This must include weed management, and any planting for stormwater mitigation, visual amenity, and privacy.
- (7) A public walking trail must be provided to connect Forest Hill Road and Gum Road at the time of the first subdivision of Lots 1 and 2 DP 49129 and Lot 5 DP 59154.

**D12.6.4.3. Subdivision at 47-51 Holdens Road, Henderson (Lot 14 DP 86225) and 15 Holdens Road, Henderson (Lot 1 DP 63568)**

- (1) No more than three additional sites (i.e. five sites in total) may be created on the site. This excludes any lot for the purpose of access that may be created.
- (2) The area within 47-51 Holdens Road, Henderson legally described as Lot 14 DP 86225 may be subdivided into two sites along the boundary of the Residential – Single House Zone and the Rural – Waitākere Foothills Zone provided that the proposed site subject to the Rural – Waitākere Foothills Zone has a net site area exceeding 1ha and cannot be subdivided further. A consent notice must be registered on the title to give effect to this requirement.
- (3) The minimum net site area is 1ha, excluding any joint access lots.
- (4) The subdivision must not create any new road.
- (5) Any driveway exceeding 10m in length must not exceed an average slope of 1 in 5.
- (6) No new buildings may be located within 25m of the Holdens Road frontage along the southern boundary of 15 Holdens Road, Henderson legally described as Lot 1 DP 63658.
- (7) Access from Holdens Road to any new site created by the subdivision of 15 Holdens Road, Henderson legally described as Lot 1 DP 63658 will provide a maximum of one additional driveway.
- (8) A landscaping strip no less than 5m in depth must be provided along the Holdens Road boundary (not including the eastern boundary of 15 Holdens Road, Henderson legally described as Lot 1 DP 63658 and vehicle access provided for in D12.6.3.4(7)). The strip must consist of densely planted vegetation including species that reach a height of no less than 3m, and may incorporate the existing shelter belt. The planting must be established prior to the issue of a certificate under section 224(c) of the Resource Management Act 1991.



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- (9) The landscaping strip must be maintained at a minimum height of 3m and be protected by way of a covenant, encumbrance or consent notice on the title.
- (10) A consent notice will be registered against the titles to all parts of the land, excluding the area within 47-51 Holdens Road, Henderson legally described as lot 14 DP 86225 on completion of subdivision on the site, to record the following:
  - (a) the density of subdivision provided for in Standard D12.6.4.3(1) has been utilised in full; and
  - (b) there will be no further subdivision of the land previously comprised of Lot 14 DP 86225 and Lot 1 DP 63568.

**D12.6.4.4. Subdivision at 43 O'Neills Road (Lot 2 DP 78994)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) A fenced, 20m wide planted strip incorporating the public walkway linkage as shown in Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills) along the northern boundary of the site must be provided and protected by a registered right of way as an easement in gross.

**D12.6.4.5. Subdivision at 39 Awhiorangi Promenade (Lot 4 DP 137580)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure that any existing pine trees (*Pinus* sp) and wattle trees (*Acacia* sp) are removed from the site in accordance with an approved management plan prior to the issue of a certificate under section 224 of the Resource Management Act 1991.
- (3) Subdivision must ensure there are no further residential buildings, other than replacements, constructed on the site containing the existing second dwelling.

**D12.6.4.6. Subdivision at 144 Candia Road, Henderson Valley (Part Allot 275 PSH OF Waipareira)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).

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- (2) Subdivision must ensure no less than 1ha of the southwest corner of the site is planted and fenced.
- (3) Subdivision must ensure that no further residential buildings may be erected within the Ridgeline Protection Overlay. This must be protected in perpetuity by way of an encumbrance, covenant or consent notice to be registered on the title.

**D12.6.4.7. Subdivision at 32 Christian Road, Swanson (Lot 1 DP 53766)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must include a fenced, 20m wide planted strip incorporating a public walkway linkage as shown in Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills) along the northern boundary of the site, which must be protected by a registered right-of-way as an easement in gross registered on the title.
- (3) Subdivision must ensure any proposed site has vehicle access from the existing driveway.

**D12.6.4.8. Subdivision at 42 Christian Road, Swanson (Lot 1 DP 80978)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure any proposed site has vehicle access from the existing driveway.
- (3) Subdivision must ensure vehicle access to any new dwelling is from O'Neills Road and is protected by a registered right of way or other appropriate legal mechanism registered on the title.
- (4) Subdivision must ensure any new dwelling is located within the permitted building area identified in Figure D12.10.3 Overlay Subdivision Plan 3 – Permitted Building Area for 42 Christian Road, Swanson.

**D12.6.4.9. Subdivision at 46 Christian Road, Swanson (Lot 1 DP 425696)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure any proposed dwelling is located in the southeast corner of the site and gains vehicle access from O'Neills Road only.
- (3) Subdivision must provide for the complete removal of any monkey-apple trees (*Acmena smithii*), conifers (*Pinus* sp) and wattles (*Acacia* sp).

**D12.6.4.10. Subdivision at 56 Christian Road, Swanson (Lot 2 DP 161541)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure that the existing dwelling and studio are on separate lots.

**D12.6.4.11. Subdivision at 33-35 Coulter Road, Henderson Valley (Allot 232 PSH of Waipareira)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure any new dwelling is located within the permitted building area shown in Figure D12.10.4 Overlay Subdivision Plan 4 – Permitted Building Area - 33 – 35 Coulter Road, Henderson Valley.

**D12.6.4.12. Subdivision at 40 Coulter Road, Henderson Valley (Lot 1 DP 61729)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure vehicle access to any proposed dwelling is from the existing driveway.
- (3) Subdivision must provide for the complete removal of any monkey-apple (*Acmena* sp) trees from the site.

**D12.6.4.13. Subdivision at 70 Coulter Road, Henderson Valley**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure that any proposed dwelling is set back from the Coulter Road boundary and located outside the Ridgeline Protection Overlay.
- (3) Subdivision must provide for the complete removal, or demolition of the existing minor dwelling.

**D12.6.4.14. Subdivision at 78 Coulter Road, Henderson Valley (lot 1 DP 485484)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).

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- (2) Subdivision must ensure that there is no net increase in building coverage on the site.
- (3) Subdivision must ensure that no further dwelling is established on any proposed site that contains the existing dwelling and that this is provided for by way of covenant, encumbrance or consent notice registered on the title.
- (4) Subdivision must ensure that the location of any replacement dwelling(s) is restricted to the area adjacent to Coulter Road above the 90m contour line.
- (5) No further dwellings may be constructed on the site or the resulting two lots after subdivision.

**D12.6.4.15. Subdivision at 163 Simpson Road, Henderson Valley (Lot 2 DP 426324)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure that no further dwellings are located within the Ridgeline Protection Overlay on the site.
- (3) The existing minor dwelling must be located on the same site as the existing dwelling.
- (4) Access to the proposed site must be from the existing vehicle crossing at Simpson Road in the north eastern part of the site.

**D12.6.4.16. Subdivision at 780 Swanson Road, Henderson Valley (Lot 1 DP 196223)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure 12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must comply with all of the following:
  - (a) any new dwelling is located within the permitted building area as shown in Figure D12.10.5 Overlay Subdivision Plan 5 – Permitted Building Area – 780 Swanson Road, Swanson;
  - (b) no building exceeds 6m in height;
  - (c) prohibits the establishment of any second dwelling (including any minor dwelling) on any proposed site and this must be guaranteed in perpetuity by way of an encumbrance, covenant or consent notice registered on the title;
  - (d) any proposed lot has vehicle access from the existing driveways;

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- (e) landscaping strips are provided and/or retained along the boundary of any proposed lot which adjoins either Swanson Road or Christian Road (with the exception of existing driveway entrances);
  - (f) planting within the landscaping strips must be maintained at a minimum height of 3m; and
  - (g) existing planting adjacent to the stream is fenced.
- (3) The requirements in D12.6.4.16(2)(b) – (g) must be guaranteed in perpetuity by way of an encumbrance, covenant or consent notice registered on the title.
- (4) An ecological assessment and a landscape assessment identifying areas of ecological and landscaping opportunity and enhancement must be provided.

**D12.6.4.17. Subdivision at 790 and 792 Swanson Road, Swanson (Lot 3 DP 185681 and Lot 2 DP 185681)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) 790 and 792 Swanson Road must be amalgamated prior to subdivision.

**D12.6.4.18. Subdivision at 40 Tram Valley Road, Swanson (Lot 6 DP 60454)**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) Subdivision must ensure that any new dwelling is located within the permitted building area as shown in Figure D12.10.6 Overlay Subdivision Plan 6 – Permitted Building Area – 40 Tram Valley Road, Swanson.

**D12.6.4.19. Subdivision of any site within the area bounded by Holdens Road, Forest Hill Road, Pine Avenue and Parris Cross Road**

- (1) Subdivision must comply with the Standard D12.6.3.2 for subdivision within Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).
- (2) The average net site area must exceed 1.6ha. This is calculated from the existing site area.
- (3) The minimum net site area is 4000m<sup>2</sup>.
- (4) The subdivision must not create new roads.
- (5) any driveway exceeding 10m in length must not exceed an average slope of 1 in 5.

**D12.6.4.20. Subdivision at 205A Godley Road, Titirangi (Part Lot 3 DP 30902)**

- (1) Subdivision must not create more than a total of four sites. This includes any balance lot but excludes any reserve or access lot.
- (2) Any proposed building platform and driveways must be located wholly outside the Significant Ecological Areas Overlay.

**D12.6.4.21. Subdivision at 333 Laingholm Drive, Laingholm (Certificate of Title 91D/282)**

- (1) Subdivision must not create a total of more than 22 lots on the site.
- (2) No more than 500m<sup>2</sup> of native vegetation within a proposed site may be removed to provide for any proposed dwelling, and driveway, (including car parking, access and manoeuvring areas).
- (3) All remaining native vegetation on-site must be permanently protected by an appropriate legal mechanism registered on the title. This excludes any vegetation consented for removal.
- (4) any driveway exceeding 10m in length must not exceed an average slope of 1 in 5.
- (5) No new road is to be created.

**D12.6.4.22. Subdivision at 175A Laingholm Drive (Certificate of Title 37B/232)**

- (1) Subdivision must not create a total of more than three lots on the site.
- (2) The clearance of native vegetation required for any proposed dwelling and driveway (including car parking, access and manoeuvring areas) must not exceed 300m<sup>2</sup> for every lot created excluding that area for the existing driveway.
- (3) Any areas within the Significant Ecological Areas Overlay on the site must be permanently protected by legal mechanism registered on the title. This excludes any vegetation consented for removal.

**D12.6.4.23. Subdivision at 7-11 Christian Road, Henderson Valley (Part Allot 124 PSH OF Waipareira)**

- (1) Subdivision must be undertaken in accordance with Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley.
- (2) Sites identified in the Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley as subject to 600m<sup>2</sup> minimum lot size must have a net site area of not less than 600m<sup>2</sup>.

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- (3) Sites identified in Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley as subject to 1200m<sup>2</sup> minimum lot size must have a net site area of not less than 1200m<sup>2</sup>.
- (4) Sites identified in the Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley as subject to 2000m<sup>2</sup> minimum lot size must have a net site area of not less than 2000m<sup>2</sup>.
- (5) The subdivision must ensure that the maximum height limit for dwellings and buildings to be constructed on sites with a net site area of between 1200m<sup>2</sup> and 2000m<sup>2</sup> must not be greater than 6m high. A consent notice shall be registered against the titles of all such sites to ensure ongoing compliance with this rule.
- (6) Subdivision to provide a through road between Christian and Tram Valley Roads as identified in Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley.
- (7) Vehicle access from the new sites must be through the new internal roads as identified in Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley.
- (8) The drainage and green network identified in Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley must be provided. The width of this network must be 20m.
- (9) The area identified for a 10m wide planted covenant in the Figure D12.10.19 Overlay Subdivision Plan 12 – 7-11 Christian Road, Henderson Valley must be provided and permanently protected by legal mechanism registered on the title.
- (10) The 'no build' area identified in Figure D12.10.19 Overlay Subdivision Plan 12– 7-11 Christian Road, Henderson Valley must be permanently protected by legal mechanism registered on the title.

#### **D12.7. Assessment – controlled activities**

##### **D12.7.1. Matters of control**

The Council will reserve its control to all of the following matters when assessing a controlled activity resource consent application:

- (a) subdivision at 24 Christian Road, Swanson (Lot 5 DP 158819) and 37 O'Neills Road, Swanson (Lot 1 DP 179784):
  - (a) the design, size and location of sites and site boundaries;
  - (b) the design, location, construction and alignment of driveways and roads;
  - (c) provision for landscape treatment and enhancement planting;
  - (d) protection of natural features and enhancement planting; and

- (e) the location, design and construction of infrastructure.

**D12.7.2. Assessment criteria**

The Council will consider the relevant assessment criteria for controlled activities from the list below:

- (a) subdivision at 24 Christian Road, Swanson (Lot 5 DP 158819) and 37 O'Neills Road, Swanson (Lot 1 DP 179784):
  - (a) the extent to which the design, scale and layout of the subdivision is compatible with the character and amenity of the Rural – Waitākere Foothills Zone;
  - (b) the extent to which the subdivision individually or cumulatively adversely affects the rural character and amenity values of the Rural – Waitākere Foothills Zone;
  - (c) the extent to which the design, location, construction and alignment of driveways and roads will create no more than minor adverse effects on the environment;
  - (d) whether the subdivision provides adequate measures including enhancement planting to retain and enhance landscape of the area;
  - (e) whether the subdivision avoids, remedies and mitigates adverse effects on natural features; and
  - (f) whether sufficient infrastructure is provided and its location, design and construction does not adversely affect the rural character and amenity values of the area.

**D12.8. Assessment – restricted discretionary activities**

**D12.8.1. Matters of discretion**

The Council will restrict its discretion to all the following matters when assessing a restricted discretionary resource consent application:

- (a) minor dwelling:
  - (a) rural character and amenity values;
  - (b) the scale and intensity of buildings and activities;
  - (c) retention and maintenance of vegetation;
  - (d) landscape treatment of sites; and
  - (e) parking, access and traffic movement.

subdivision within the area identified in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills):

- (a) the design, size and location of sites and site boundaries;
- (b) the design, location, construction and alignment of driveways and roads;
- (c) the design and scale of and the location of building platforms;



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- (d) provision for landscape treatment and enhancement planting;
- (e) provision for works intended to protect and enhance vegetation;
- (f) driveway construction between road carriageways and individual sites;
- (g) the adequacy of any management plan for the maintenance and enhancement of Ecological Area and Indicative Enhancement Area within the site as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills);
- (h) the extent of any Ecological Area and Indicative Enhancement Area within the site as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills);
- (i) the location of fence lines;
- (j) the mitigation of adverse effects on landscape and amenity values that may arise as a result of the future dwellings;
- (k) the location and formation of indicative public walkway linkages shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills); and
- (l) the possible removal or relocation of any existing second dwellings or other accessory buildings.

subdivision within the area identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the adverse effects resulting from increases in proposed lot numbers.

subdivision at 12-14 Gum Road, Henderson Valley (Lots 1 and 2 DP 49129) and 233 Forrest Hill Road, Waiaatarua (Lot 5 DP 59154):

- (a) the matters in D12.8.1(2)(a) – (f);
- (b) the protection and enhancement of vegetation, drainage works and other infrastructure works;
- (c) re-vegetation and/or protection of any ecological linkage opportunity areas from the establishment of any new buildings or groups of buildings;
- (d) the mitigation of potential adverse effects on landscape, amenity values and rural character; and
- (e) provision for a public walkway through the site using a walking trail or trails.

subdivision at 47-51 Holdens Road, Henderson (Lot 14 DP 86225) and 15 Holdens Road, Henderson (Lot 1 DP 63568) and the areas bounded by Holdens Road, Forest Hill Road, Pine Avenue and Parrs Cross Road:

- (a) the matters in D12.8.1(2)(a) – (f);
- (b) the effects of subdivision on rural character;

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- (c) the extent of any proposed planting; and
- (d) the effects of subdivision on heritage features of the heritage area.

subdivision at 39 Awhiorangi Promenade (Lot 4 DP 137580):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the adequacy of any management plan provided for the complete removal of any existing pine (*Pinus* sp) and wattle trees (*Acacia* sp) from the site.

subdivision at 144 Candia Road (Part Allot 275 PSH of Waipareira):

- (a) the matters in D12.8.1(2)(a) – (f);
- (b) the species to be planted in the area required to be planted; and
- (c) the extent of the area to be fenced and maintained weed free until canopy closure.

subdivision at 32 Christian Road, Swanson (Lot 1 DP 53766):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the adequacy of the planted strip along the northern boundary of the site.

subdivision at 46 Christian Road, Swanson (Lot 1 DP 425696):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the location of any proposed dwelling platform and adverse effects on visual or aural amenity values.

subdivision at 33-35 Coulter Road, Henderson Valley (Allot 232 PSH of Waipareira)

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) location of any proposed dwelling relative to the road boundary, the eastern edge of the Ridgeline Protection Overlay identified onsite, the area within the Ridgeline Protection Overlay identified onsite, the area west of the indicative enhancement area, as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).

subdivision at 40 Coulter Road, Henderson Valley (Lot 1 DP 61729):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the vehicle access to any existing or proposed site.

subdivision at 70 Coulter Road, Henderson Valley:

- (a) the matters in D12.8.1(2)(a) – (g);
- (b) the location of any proposed dwelling platform in the south-western part of the site relative to the Coulter Road boundary and the Ridgeline Protection Overlay on the site; and
- (c) any adverse effects on the visual and aural amenity of the neighbours at 66 Coulter Road.

subdivision at 78 Coulter Road, Henderson Valley (lot 1 DP 485484):

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- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the extent of any increase in the existing building coverage on the site resulting from any subdivision.

subdivision at 163 Simpson Road, Henderson Valley (Lot 2 DP 426324):

- (a) the matters in D12.8.1(2)(a) – (f);
- (b) the location of any further dwelling platforms relative to the Ridgeline Protection Overlay identified on the site; and
- (c) the location and nature of vehicle access to any proposed site relative to the Indicative Enhancement Area shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).

subdivision at 780 Swanson Road, Henderson Valley (Lot 1 DP 196223):

- (a) the matters in D12.8.1(2)(a) – (f);
- (b) the potential effects of any proposed dwelling platform and its adverse visual or landscape effects on the surrounding neighbourhood; and
- (c) the screening of any proposed dwelling platform from Swanson Road and Tram Valley Road.

subdivision at 40 Tram Valley Road, Swanson (Lot 6 DP 60454):

- (a) the matters in D12.8.1(2)(a) – (f); and
- (b) the location of proposed dwelling platform(s) relative to the cleared areas south of the existing minor dwelling.

**D12.8.2. Assessment criteria**

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- (a) minor dwelling:
  - (a) the extent to which the scale and intensity of buildings and activities adversely affect rural character and amenity values;
  - (b) the extent to which the proposed minor dwelling avoids, remedies or mitigates any adverse effects on the landscape;
  - (c) whether the proposal will retain and maintain vegetation; and
  - (d) whether landscape treatment of sites is provided.

subdivision within the area identified in Figure D12.10.1 Overlay Subdivision Plan 1 – Ōrātia (Foothills):

- (a) assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which the subdivision avoids, remedies or mitigates any adverse effects (including any cumulative adverse effects) generated by any change in lot boundaries on or by an increase in the number of proposed lots in relation to all of the following:

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- (i) landscape character;
- (ii) amenity values;
- (iii) natural features;
- (iv) protection and/or enhancement of vegetation generally as shown on Figure D12.10.1 Overlay Subdivision Plan 1 - Ōrātia (Foothills).
- (v) access;
- (vi) native vegetation and ecological corridors;
- (vii) streams and the quality of water containing on the site;
- (viii) the ability of each proposed site, and the entire Ōrātia Foothills catchment affected by any increase in the number of proposed sites, to treat and dispose of stormwater;
- (ix) the ability of each proposed site to treat and dispose of wastewater; and
- (x) heritage sites, buildings and trees.

Subdivision within the Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills):

- (a) whether the proposed lot is of a useable shape;
- (b) the extent to which the proposed subdivision identifies a stable building platform and stable vehicle access within each proposed lot;
- (c) whether the proposed subdivision will or will likely be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source;
- (d) the extent to which the subsequent use of the proposed lot likely to be made will not accelerate, worsen, or result in material damage to that land, other land, or structure, by erosion, falling debris, subsidence, slippage or inundation from any source;
- (e) the extent to which the subdivision contributes to the achievement of the planned character and amenity values of the local area.
- (f) the extent to which the subdivision provides measures that remedy or mitigate adverse effects on the landscape;
- (g) whether the proposed subdivision provides for works intended to protect and enhance vegetation;
- (h) the extent to which the subdivision requires driveway construction and how it avoids, remedies and mitigates adverse effects on the heritage features;
- (i) the extent to which the proposed subdivision avoids, remedies or mitigates any adverse effects on the landscape arising from existing or future multiple clusters of buildings, and associated accessways;

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- (j) whether the proposed subdivision avoids the potential for further development of existing building areas within visually sensitive landscapes;
- (k) whether the proposed subdivision retains the rural character of the environment, taking into account any cumulative effects arising in association with existing buildings on the site and on surrounding sites;
- (l) whether the proposed subdivision retains the characteristic open spaciousness of the rural environment, rural amenity values and the amenity of neighbours;
- (m) whether the proposed subdivision locates any new building platforms in a more appropriate location than any existing building or whether the proposed subdivision will remove any existing poorly placed buildings from inappropriate locations e.g. sensitive ridgelines;
- (n) whether the proposed subdivision provides for public access to and alongside streams, lakes and wetlands and for any public walkway linkages shown in Figure D12.10.2 Overlay Subdivision Plan 2 - Swanson South (Foothills).
- (o) whether the proposed subdivision includes a management plan that adequately addresses the following:
  - (i) areas of vegetation to be removed;
  - (ii) the number, location, grade, size and species of plants to be planted;
  - (iii) weed control measures;
  - (iv) replacement of any planting which dies prior to effective canopy closure; and
  - (v) the management of natural regeneration.
- (p) whether where any proposed subdivision creates fewer lots than the allocation shown in Figure D12.10.2 Overlay Subdivision Plan 2 - Swanson South (Foothills), the proposed subdivision scheme plan ensures an appropriate design layout is provided which :
  - (i) anticipates future subdivision up to the full allocation shown in Figure D12.10.2 Overlay Subdivision Plan 2 Swanson South (Foothills);
  - (ii) provides for the future location of building platforms;
  - (iii) establishes the size of any proposed lot(s) appropriate to the landscape character of the area;
  - (iv) limits the extent of impervious surface(s) through the use of shared driveways;
  - (v) provides for the protection of any Significant Ecological Areas and the establishment of any required planting in any Indicative Enhancement

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Area(s) over the whole site as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills);

(vi) provides for the management of stormwater runoff over the whole site; and

(vii) provides for any indicative walkway linkages shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson (Foothills).

subdivision at 12-14 Gum Road, Henderson Valley (Lots 1 and 2 DP 49129) and 233 Forrest Hill Road, Waiatarua (Lot 5 DP 59154):

- (a) the assessment criteria in D12.8.2(3)(a)-(f);
- (b) whether the proposed subdivision provides for the protection and enhancement of vegetation, drainage works and other infrastructure works;
- (c) the extent to which the proposed subdivision implements infrastructure, including roads and driveways that have a rural scale and character;
- (d) the extent to which the proposed subdivision retains and/or enhances rural character through the pattern of the proposed subdivision and location of buildings platforms;
- (e) the extent to which the proposed buildings are located in a manner that maintains spacious rural views and rural landscape of the area;
- (f) the extent to which the subdivision provides for a public walkway using a walking trail or trails between Forrest Hill Road and Gum Road;
- (g) whether an ecological assessment and a landscape assessment identifying areas of ecological and landscaping opportunity and enhancement is provided including any areas where buildings are not to be constructed; and
- (h) whether a planting plan taking into account the site's ecological and landscape assessments identified in D12.6.4.2(5) is provided. This must include weed management, and any planting for stormwater mitigation, visual amenity, and privacy.

subdivision at 47-51 Holdens Road, Henderson (Lot 14 DP 86225) and 15 Holdens Road, Henderson (Lot 1 DP 63568) and the areas bounded by Holdens Road, Forest Hill Road, Pine Avenue and Parrs Cross Road:

- (a) the assessment criteria in D12.8.2(3)(a)-(f);
- (b) the extent to which the proposed subdivision locates any proposed building(s) away from Holdens Road so the rural character of the area is protected;
- (c) the extent to which the proposed subdivision avoids blurring the boundary between the metropolitan area and the rural landscape;

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- (d) the extent to which the proposed subdivision retains the rural character of the environment, taking into account any cumulative effects arising in association with existing buildings on the site;
- (e) whether the proposed plantings screen proposed building(s) from Holdens Road; and
- (f) whether the proposal protects, restores and enhances heritage features, streams, wetlands and indigenous vegetation within the site.

subdivision at 37 Awhiorangi Promenade (Lot 2 DP 462556):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which any approved management plan provides for the complete removal of any existing pine (*Pinus* sp) and wattle trees (*Acacia* sp) from the site.

subdivision at 144 Candia Road (Part Allot 275 PSH of Waipareira):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which the required area to be planted is planted with species appropriate to the landscape and ecology of the area, fenced and maintained weed free until canopy closure.

subdivision at 32 Christian Road, Swanson (Lot 1 DP 53766):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and
- (a) the extent to which the required 20m-wide planted strip is established along the northern boundary of the site, and will create a buffer between the site and the adjoining land to the north.

subdivision at 46 Christian Road, Swanson (Lot 1 DP 425696):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which the location of any proposed dwelling avoids any adverse effects on the visual or aural amenity values of any adjacent or surrounding sites.

subdivision at 33 – 35 Coulter Road, Henderson Valley (Allot 232 PSH of Waipareira):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which the location of any proposed dwelling avoids the visible face above Coulter Road between the road boundary and the eastern edge of the Ridgeline Protection Overlay identified onsite, the area within Ridgeline Protection Overlay identified onsite, and the area west of the indicative enhancement area, as shown in Figure D12.10.2 Overlay Subdivision Plan 2 – Swanson South (Foothills).

subdivision at 40 Coulter Road, Henderson Valley (Lot 1 DP 61729):

- (a) the assessment criteria in D12.8.2(3)(a)-(f); and

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- (b) the extent to which vehicle access to any existing or proposed site uses the existing driveway.

subdivision at 70 Coulter Road, Henderson Valley:

- (a) assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which any proposed dwelling in the south-western part of the site is sufficiently set back from the Coulter Road boundary to be clear of the Ridgeline Protection Overlay onsite and avoids adverse effects on the visual and aural amenity of the neighbours at 66 Coulter Road.

subdivision at 78 Coulter Road, Henderson Valley (lot 1 DP 485484):

- (a) assessment criteria in D12.8.2(3)(a)-(f); and
- (a) the extent to which there is no net increase in the existing building coverage on the site resulting from any subdivision.

subdivision at 163 Simpson Road, Henderson Valley (Lot 2 DP 426324):

- (a) assessment criteria in D12.8.2(3)(a)-(f);
- (b) the extent to which further residential building within the Ridgeline Protection Overlay onsite is avoided and protected by way of covenant, encumbrance or consent notice; and
- (c) the extent to which vehicle access to any proposed site avoids any Indicative Enhancement Area shown in Overlay Subdivision Plan 2 – Swanson South (Foothills).

subdivision at 780 Swanson Road, Henderson Valley (Lot 1 DP 196223):

- (a) assessment criteria in D12.8.2(3)(a)-(f);
- (b) the extent to which any proposed dwelling avoids any adverse visual or landscape effects on the surrounding neighbourhood; and
- (c) the extent to which any proposed dwelling is screened from Swanson Road and Tram Valley Road.

subdivision at 40 Tram Valley Road, Swanson (Lot 6 DP 60454):

- (a) assessment criteria in D12.8.2(3)(a)-(f); and
- (b) the extent to which any proposed dwelling(s) within any proposed site(s) are located within the cleared areas south of the existing minor dwelling.

**D12.9. Special information requirements**

There are no special information requirements in this overlay.



**Consent order version 23 June 2017**

**E39. Subdivision – Rural**

**E39.1. Introduction**

Subdivision is the process of dividing a site or a building into one or more additional sites or units, or changing an existing boundary location.

Objectives, policies and rules in this section apply to subdivision in the following zones:

- Rural – Rural Production Zone, Rural - Mixed Rural Zone, Rural - Rural Coastal Zone, Rural – Rural Conservation Zone and Rural – Countryside Living Zone;
- Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone;
- Future Urban Zone; and
- Special Purpose – Quarry Zone.

For subdivision provisions in all other zones refer to E38 Subdivision – Urban.

**E39.2. Objectives**

- (1) Land is subdivided to achieve the objectives of the zones, the relevant overlays and Auckland-wide provisions.
- (2) Land is subdivided in a manner that provides for the long-term needs of the community and minimises adverse effects of future development on the environment.
- (3) Land is vested to provide for esplanades, reserves, roads, stormwater, infrastructure and other purposes.
- (4) Infrastructure supporting subdivision and development is planned and provided for in an integrated and comprehensive manner and provided for to be in place at the time of the subdivision or development.
- (5) Infrastructure is appropriately protected from incompatible subdivision, use and development, and reverse sensitivity effects.
- (6) Subdivision has a layout which is safe, efficient, convenient and accessible.
- (7) Subdivision manages adverse effects on historic heritage or Māori cultural heritage.
- (8) Subdivision maintains or enhances the natural features and landscapes that contribute to the character and amenity values of the areas.
- (9) The productive potential of rural land is enhanced through the amalgamation of smaller existing land holdings sites, particularly for sites identified in Appendix 14 Land amalgamation incentivised area, and the transfer of titles to certain Rural – Countryside Living Zone areas.
- (10) Fragmentation of rural production land by:

- (a) subdivision of land containing elite soil is avoided;
  - (b) subdivision of land containing prime soil is avoided where practicable; and
  - (c) subdivision of land avoids contributing to the inappropriate, random and wide dispersal of rural lifestyle lots throughout rural and coastal areas.
- (11) Subdivision avoids or minimises the opportunity for reverse sensitivity effects between agriculture, horticulture, mineral extraction activities, rural industry, infrastructure and rural lifestyle living opportunities.
- (12) Rural lifestyle subdivision is primarily limited to the Rural – Countryside Living Zone, and to sites created by protecting or creating significant areas of indigenous vegetation or wetlands.
- (13) Subdivision of any minor dwellings and workers' accommodation from the parent site is avoided.
- (14) Subdivision is provided for by either:
- (a) Limited in-situ subdivision through the protection of significant indigenous vegetation and/or through indigenous revegetation planting; or
  - (b) Transfer of titles, through the protection of indigenous vegetation and wetlands and/or through indigenous revegetation planting to Countryside Living zones.
- (15) Subdivision maintains or enhances the natural features and landscapes that contribute to the character and amenity values of rural areas.
- (16) Rural subdivision avoids or minimises adverse effects in areas identified in the Outstanding Natural Features Overlay, Outstanding Natural Character Overlay, High Natural Character Overlay, Outstanding Natural Landscape Overlay and Significant Ecological Areas Overlay.
- (17) Subdivision:
- (a) outside of urban and serviced areas avoids adverse effects to people, property, infrastructure and the environment from natural hazards;
  - (b) avoids where possible, and otherwise mitigates, adverse effects associated with subdivision for infrastructure or existing urban land uses; and
  - (c) maintains the function of flood plains and overland flow paths to safely convey flood waters while taking into account the likely long term effects of climate change;

### **E39.3. Policies**

- (1) Provide for subdivision which supports the policies of the zones.

- (2) Require subdivision to manage the risk of adverse effects resulting from natural hazards in accordance with the objectives and policies in E36 Natural hazards and flooding, and to provide safe and stable building platforms and vehicle access.
- (3) Manage rural subdivision and boundary adjustments to facilitate more efficient use of land for rural production activities by:
  - (a) restricting further subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone and Rural – Rural Coastal Zone for a range of rural production activities; and
  - (b) providing for the transfer of titles to certain Rural – Countryside Living Zones.
- (4) Require subdivisions to be designed to retain, protect or enhance features including those in the Historic Heritage Places Overlay and Sites and Places of Significance to Mana Whenua Overlay, or otherwise remedy adverse effects.
- (5) Provide for subdivision around existing development and subdivision where it enables creation of sites for uses that are in accordance with an approved land use resource consent, where there is compliance with Auckland-wide and zone rules and appropriate provision is made for areas of common use.
- (6) Provide for minor boundary adjustments which enable a more efficient and effective use of land where there is compliance with Auckland-wide and zone rules.
- (7) Require any staged subdivision to be undertaken in a manner that promotes efficient development.
- (8) Avoid the fragmentation by subdivision of land containing elite soil and avoid where practicable fragmentation by subdivision of land containing prime soil.
- (9) Encourage the amalgamation of small fragmented land parcels identified in Appendix 14 Land amalgamation incentivised area through transferable rural site subdivision.
- (10) Require any proposal for rural lifestyle subdivision to demonstrate that any development will avoid or mitigate potential reverse sensitivity effects between it and any rural production activities, mineral extraction activities, rural industries and infrastructure.
- (11) Restrict in-situ subdivision for rural lifestyle living to where:
  - (a) the site is located in the Rural – Countryside Living Zone;
  - (b) the site is created through the protection of indigenous vegetation; or
  - (c) the site is created through indigenous revegetation planting.

- (12) Enable the transfer of titles to sites in the Rural – Countryside Living Zone which are identified using the subdivision variation control on the planning maps.
- (13) Manage reverse sensitivity conflicts between rural lifestyle living and countryside living and rural production activities by the design and layout of subdivisions and locations of identified building areas and house sites.
- (14) Avoid the subdivision of minor dwellings and workers' accommodation from the parent site in the rural areas.

*Protection of indigenous vegetation and wetland and revegetation planting*

- (15) Enable limited in-situ subdivision through the protection of indigenous vegetation identified in the Significant Ecological Areas Overlay and indigenous revegetation planting.
- (16) Encourage the transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay and indigenous revegetation planting.
- (17) Require indigenous vegetation or wetland within a site being subdivided to be legally protected in perpetuity.
- (18) Provide limited opportunities for in-situ subdivision in rural areas while ensuring that:
  - (a) there will be significant environmental protection of indigenous vegetation;
  - (b) subdivision avoids the inappropriate proliferation and dispersal of development by limiting the number of sites created;
  - (c) subdivision avoids inappropriate development within areas of the Outstanding Natural Landscape Overlay, Outstanding Natural Character Overlay, High Natural Character Overlay and the coastal environment;
  - (d) adverse effects on rural and coastal character are avoided, remedied or mitigated;
  - (e) sites are of sufficient size to absorb and manage adverse effects within the site; and
  - (f) reverse sensitivity effects are managed in a way that does not compromise the viability of rural sites for continued production.
- (19) Avoid the subdivision of sites in the Quarry Buffer Area Overlay and in areas of significant mineral resources that would result in development that could compromise the operation of mineral extraction activities.

*Natural features and landscape*

(20) Require subdivision, including site boundaries and specified building areas and access, to:

- (a) recognise topography including steep slopes, natural features, ridgelines, aspect, water supplies, and existing vegetation;
- (b) avoid inappropriately located buildings and associated accessways including prominent locations as viewed from public places;
- (c) avoid adverse effects on riparian margins and protected natural features; and
- (d) avoid fragmentation of features and landscape in the Significant Ecological Areas Overlay, Outstanding Natural Character Overlay, High Natural Character Overlay, Outstanding Natural Landscapes Overlay, Outstanding Natural Features Overlay or Sites and Places of Significance to Mana Whenua Overlay, or areas between sites.

*Esplanade Reserves and Strips*

(21) Require esplanade reserves or strips when subdividing land adjoining the coast and other qualifying water-bodies.

(22) Avoid reducing the width of esplanade reserves or strips, or the waiving of the requirement to provide an esplanade reserve or strip, except where the following apply:

- (a) safe public access and recreational use is already possible and can be maintained for the future;
- (b) the maintenance and enhancement of the natural functioning and water quality of the adjoining sea, river or other water body will not be adversely affected;
- (c) the land and water-based habitats on and adjoining the subject land area will not be adversely affected;
- (d) the natural values, geological features and landscape features will not be adversely affected;
- (e) any Scheduled Historic Heritage Places and Sites and Places of Significance to Mana Whenua will not be adversely affected;
- (f) it can be demonstrated that the reduced width of the esplanade reserve or strip is sufficient to manage the risk of adverse effects resulting from natural hazards, taking into account the likely long-term effects of climate change;
- (g) it can be demonstrated that a full width esplanade reserve or strip is not required to maintain the natural character and amenity of the coastal environment;

- (h) a reduced width in certain locations can be offset by an increase in width in other locations or areas, which would result in a positive public benefit in terms of access and recreation;
  - (i) restrictions on public access are necessary to ensure a level of security for business activities in limited circumstances having regard to Policy B8.4.2(3) relating to public access in the coastal marine area; or
  - (j) direct access to the sea or other water body is required for a business activity in limited circumstances.
- (23) Require esplanade reserves rather than esplanade strips unless the following apply:
- (a) land has limited conservation and recreational value;
  - (b) conservation and historic heritage values that are present can be adequately protected in private ownership;
  - (c) opportunity to acquire an esplanade reserve is unlikely to arise but continuity of access is desirable;
  - (d) creation of esplanade strips can secure public benefits and resource management objectives without alienating land from private ownership;
  - (e) land is subject to natural hazards or stability issues taking into account the likely long term effects of climate change; or
  - (f) a marginal strip of at least 20 metres under the Conservation Act 1987 has not been set aside on land that is Treaty Settlement Land.

*Amenity*

- (24) Require subdivision to avoid creating ribbon development along public roads or multiple access points that may adversely affect the character or amenity values or the adequate functioning of rural roads.
- (25) Require accessways, public walkways and roads to be designed so rural and coastal character and amenity values are maintained or enhanced.
- (26) Restrict the location and design of sites and specified building areas to:
  - (a) integrate development with the existing landscape; and
  - (b) ensure the character and amenity values of adjacent sites and the locality are not adversely affected.
- (27) Require rural subdivision to avoid, remedy or mitigate adverse effects on the rural or coastal character and to complement the rural or coastal character of the area.

*Infrastructure*

- (28) Require infrastructure servicing rural subdivision to avoid, remedy or mitigate adverse effects on rural character and amenity.
- (29) Require all sites capable of containing a building, in areas where service connections are available to a public reticulated network, to be able to connect to the following networks:
- (a) wastewater;
  - (b) stormwater; and
  - (c) potable water.
- (30) Require all new sites capable of containing a building, in areas with no reticulated water supply, stormwater or wastewater network, to be of a size and shape that provides for:
- (a) the treatment and disposal of stormwater in a way that does not lead to significant adverse off-site effects including degraded water quality, erosion, land instability, creation or exacerbation of flooding;
  - (b) management of wastewater via an on-site wastewater treatment system, or approval to connect to a private wastewater network; and
  - (c) potable water.
- (31) Require subdivision to manage stormwater:
- (a) in accordance with any approved stormwater discharge consent or network discharge consent;
  - (b) in a manner consistent with stormwater management policies in E1 Water quality and integrated management;
  - (c) by applying an integrated stormwater management approach to the planning and design of development in accordance with stormwater management policies in E1 Water quality and integrated management;
  - (d) to protect natural streams and maintain the conveyance function of overland flow paths;
  - (e) to maintain or progressively improve water quality;
  - (f) to integrate drainage reserves and infrastructure with surrounding development and public open space networks; and
  - (g) in an integrated and cost-effective way.
- (32) Manage subdivision and development to avoid, remedy or mitigate adverse effects on infrastructure including reverse sensitivity effects, which may compromise the operation and capacity of existing or authorised infrastructure.

(33) Enable subdivision for network utility purposes while avoiding, remedying or mitigating the adverse effects.

#### E39.4. Activity table

Tables E39.4.1 to E39.4.5 specify the activity status of subdividing land pursuant to section 11 of the Resource Management Act 1991.

For subdivision within the National Grid Corridor Overlay, the activity status for subdivision in the rural zones as listed in Tables E39.4.1 to E39.4.5 below will apply unless there are different provisions in D26 National Grid Corridor Overlay in which case the overlay provisions will take precedence.

For all other subdivision refer to E38 Subdivision – Urban.

An activity listed in Table E39.4.1 Subdivision for specified purposes may only comprise a specific element of a subdivision activity. The other elements of a subdivision may also be listed in Tables E39.4.2 Subdivision in rural zones, E39.4.3 Subdivision in Future Urban Zone, E39.4.4 Subdivision in Special Purpose – Quarry Zone and E39.4.5 Subdivision in Rural - Waitākere Foothills Zone and Rural – Waitākere Ranges Zone.

Where a proposed subdivision activity fits into activities listed in Table E39.4.1 and those listed in Tables E39.4.2, E39.4.3, E39.4.4, or E39.4.5, then the activity status listed for each activity in each table also applies.

Refer to D12 Waitākere Ranges Heritage Area Overlay for areas and sites subject to specific subdivisions provisions in the Waitākere Ranges Heritage Area.

**Table E39.4.1 Subdivision for specified purposes**

Activity		Activity status
(A1)	Lease in excess of 35 years of a building or part of a building where a cross-lease, company lease, or unit title subdivision is not involved	P
(A2)	Subdivision for a network utility	P
(A3)	Amendments to cross-lease or unit title, including additions and alterations to buildings, accessory buildings and areas for exclusive use by an owner or owners	C
(A4)	Boundary adjustments not exceeding 10 per cent of the original site area and meeting Standard E39.6.3.2	C
(A5)	Subdivision establishing an esplanade reserve	RD
(A6)	Subdivision establishing an esplanade strip	D
(A7)	Any reduction or waiver of esplanade reserves or strips	D
(A8)	Subdivision of land within any of the following natural hazard areas: <ul style="list-style-type: none"> <li>• one per cent annual exceedance probability floodplain;</li> <li>• coastal storm inundation one per cent annual exceedance probability;</li> </ul>	RD



	<ul style="list-style-type: none"> <li>coastal storm inundation one per cent annual exceedance probability plus 1 metre sea level rise;</li> <li>land which may be subject to coastal hazards; or</li> <li>land which may be subject to land instability.</li> </ul>	
(A9)	Any subdivision listed in this table not meeting standards in E39.6.1	D
(A10)	Boundary adjustments unable to comply with controlled activity rule and standards in E39.6.3.2 and E39.6.3	D

**Table E39.4.2 Subdivision in rural zones (excluding Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone)**

Activity		Activity status
(A11)	Subdivision for open spaces, reserves or road realignment	D
(A12)	Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone and Rural – Rural Conservation Zone complying with Standard E39.6.5.1	D
(A13)	Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone and Rural – Rural Conservation Zone not complying with Standard E39.6.5.1	NC
(A14)	Subdivision in the Rural – Countryside Living Zone complying with Standard E39.6.5.2	D
(A15)	Subdivision in the Rural – Countryside Living Zone not complying with Standard E39.6.5.2	NC
(A16)	In-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay, and complying with Standard E39.6.4.4	RD
(A17)	In-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.4	NC
(A18)	In-situ subdivision creating additional sites through establishing revegetation planting and complying with Standard E39.6.4.5	RD
(A19)	In-situ subdivision creating additional sites through establishing revegetation planting not complying with Standard E39.6.4.5	NC
(A20)	Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay complying with Standard E39.6.4.6	RD
(A21)	Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.6	NC
(A22)	Transferable rural sites subdivision through establishing revegetation planting complying with Standard E39.6.4.6	RD

(A23)	Transferable rural sites subdivision through establishing revegetative planting not complying with Standard E39.6.4.6	NC
(A24)	Transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area complying with Standard E39.6.4.7	RD
(A25)	Transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area not complying with Standard E39.6.4.7	NC
(A26)	Subdivision of the minor dwelling from the principal dwelling where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	Pr
(A27)	Any other subdivision not provided for in Tables E39.4.1 or E39.4.2	NC

**Table E39.4.3 Subdivision in Future Urban Zone**

Activity		Activity status
(A28)	Subdivision for open spaces, reserves or road realignment	D
(A29)	Any other subdivision not provided for in Table E39.4.1 or E39.4.3	NC

**Table E39.4.4 Subdivision in Special Purpose – Quarry Zone**

Activity		Activity status
(A30)	Any other subdivision not provided for in Table E39.4.1	D

**Table E39.4.5 Subdivision in Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone**

Activity		Activity status
(A31)	Subdivision in the Rural – Waitākere Foothills Zone creating site size with a minimum site size of 4ha complying with Standard E39.6.3.2	C
(A32)	Subdivision in the Rural – Waitākere Foothills Zone creating site size less than 4ha in site area and not complying with Standard E39.6.3.2, unless otherwise provided for in D12 Waitākere Ranges Heritage Area Overlay	D
(A33)	Subdivision in the Rural – Waitākere Ranges Zone creating a minimum net site area of 2ha and complying with Standard E39.6.5.3	D
(A34)	Subdivision in the Rural – Waitākere Ranges Zone creating a minimum net site area of 2ha not complying with Standard E39.6.5.3, unless otherwise provided for in D12 Waitākere Ranges Heritage Area Overlay	NC Pr

(A35)	Subdivision of the minor dwelling from the principal dwelling where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone	Pr
(A36)	Subdivision in the Rural – Waitākere Foothills Zone not otherwise provided for in Tables E39.4.1 and E39.4.5, unless otherwise provided for in D12 Waitākere Ranges Heritage Area Overlay	NC
(A37)	Any other subdivision not otherwise provided for in Tables E39.4.1 or E39.4.5	D

#### **E39.5. Notification**

- (1) An application for resource consent for a controlled activity listed in Table E39.4.1 or Table E39.4.5 will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.
- (2) Any application for resource consent for an activity listed in Tables E39.4.1 to E39.4.5 and which is not listed in E39.5(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

#### **E39.6. Standards**

Subdivision listed in Tables E39.4.1 to E39.4.5 must comply with the relevant standards in E39.6.1 General standards, and the relevant standards for permitted, controlled, restricted discretionary and discretionary activities in E39.6.2 to E39.6.5.

##### **E39.6.1. General standards**

###### **E39.6.1.1. Specified building area**

- (1) A specified building area must be clearly identified on every site on a subdivision scheme plan on which a building is to be constructed.
- (2) Where the site contains an existing dwelling at the time the subdivision application is made, the specified building area must include:
  - (a) the location of the existing dwelling;
  - (b) indicate that the dwelling will be removed from the site; or
  - (c) the new location of the existing dwelling that will be relocated.
- (3) The specified building area must meet all of the following:
  - (a) include a single area of at least 2,000m<sup>2</sup> clear of all of the following:

- (i) all yards;
  - (ii) one per cent annual exceedance probability floodplain areas;
  - (iii) land affected by coastal storm inundation one per cent annual exceedance probability;
  - (iv) land affected by coastal storm inundation one per cent annual exceedance probability plus 1m sea level rise;
  - (v) land which may be subject to coastal hazards;
  - (vi) land which may be subject to land instability;
  - (vii) access to all proposed building platforms or areas; and
  - (viii) on-site private infrastructure required to service the intended use of the site.
- (b) be able to be linked by adequate and appropriate vehicle access to a formed public road;
- (c) be identified as the only place within the site where dwellings, any accessory buildings, and related parking and manoeuvring areas can be located; and
- (d) be located outside of the Quarry Buffer Area Overlay.

**E39.6.1.2. Access and entrance strips**

- (1) All proposed sites must be provided with legal and physical access to a road, unless they meet one of the following:
- (a) are being created for reserves, network utilities or road closure; or
  - (b) will be amalgamated with another site that already has legal and physical access to a road.

**E39.6.1.3. Services**

- (1) For all proposed sites capable of containing a building, or for cross-lease, unit title, strata title or company lease, each building must be designed and located so that provision is made for all of the following services:
- (a) collection, treatment and disposal of stormwater;
  - (b) collection, treatment and disposal of wastewater;
  - (c) water supply;
  - (d) electricity supply; and
  - (e) telecommunications.

- (2) Where no reticulated water supply is available, sufficient water supply and access to water supplies for firefighting purposes in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 must be provided.

**E39.6.1.4. Staging**

- (1) Where a subdivision is to be carried out in stages, the applicant must provide adequate detail of the proposed timetable and sequencing of the staging at the time they apply for the overall subdivision consent. This detail must include all of the following:
- (a) the time period over which the development is likely to take place;
  - (b) the areas of land subject to the proposed stages; and
  - (c) the balance area of the site remaining after the completion of each stage.

**E39.6.1.5. Overland flow paths**

- (1) All subdivision must be designed to incorporate overland flow paths existing on the site.
- (2) Stormwater must exit the site in a location that does not increase the risks of hazards to downstream properties.

**E39.6.1.6. Existing vegetation on the site**

- (1) All subdivision plans, excluding boundary adjustments subdivision plans, must show any of the following features that exist on, or on the boundary of, the land being subdivided:
- (a) any areas identified as an Significant Ecological Area in the D9 Significant Ecological Areas Overlay; or
  - (b) any other areas of indigenous vegetation, wetlands, waterways, streams, rivers and lakes.

**E39.6.2. Standards – permitted activities**

Subdivision listed as a permitted activity in Table E39.4.1 Subdivision for specified purposes must comply with the relevant standards in E39.6.1 General standards, and E39.6.2 Standards – permitted activities.

**E39.6.2.1. Lease in excess of 35 years of a building or part of a building where a cross-lease, company lease or unit title subdivision is not involved**

- (1) The subject building must be lawfully established.

- (2) The boundaries of the proposed sites must follow existing or proposed walls, ceilings and floors.
- (3) The scheme plan must show the proposed sites in relation to the exterior of the building and provide upper and lower elevations in terms of a datum to be established.
- (4) Each lease area must have either frontage to a legal road or allow for access through common areas to a legal road.

**E39.6.2.2. Subdivision for a network utility**

- (1) The network utility activity must meet one of the following:
  - (a) be a permitted activity pursuant to E26 Infrastructure; or
  - (b) have all resource consents or notices of requirements approved.
- (2) A covenant or consent notice must be required to state that land that is no longer required for the network utility after it disestablishes, must be amalgamated with the adjoining land.
- (3) The balance sites must comply with the relevant overlays, Auckland-wide and zone standards, other than the minimum site size, unless resource consent has been granted for any infringements.
- (4) Sites must have access to a legal road through an appropriate legal mechanism.

**E39.6.3. Standards - controlled activities**

Subdivision listed as a controlled activity in Table E39.4.1 Subdivision for specified purposes and Table E39.4.5 Subdivision in Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone must comply with the relevant standards in E39.6.1 General standards and in E39.6.3 Standards – controlled activities.

**E39.6.3.1. Amendments to cross-lease or unit title, including additions and alterations to buildings, accessory buildings and areas for exclusive use by an owner or owners**

- (1) All buildings must meet one of the following:
  - (a) have existing use rights;
  - (b) comply with the relevant overlays, Auckland-wide and zone standards;  
or
  - (c) be in accordance with an approved land use resource consent.
- (2) All areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or other such purpose.

- (3) Subdivision consent affecting a building or any part of a building, any proposed covenant, unit or accessory unit boundary, must not result in any infringements of any relevant overlays, Auckland-wide and zone rules.
- (4) Parking spaces must not be created as principal units, unless provided for by a resource consent, and only created as accessory units or common areas when associated with an approved use or activity.
- (5) All service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism.

**E39.6.3.2. Boundary adjustments that do not exceed 10 per cent of the original site size**

- (1) All sites prior to the boundary adjustment must be contained within the same zone.
- (2) All service connections and on-site infrastructure must be located within the boundary of the site they serve, or have legal rights provided by an appropriate legal mechanism.
- (3) All sites must remain compliant with the applicable minimum site area and minimum average site area for the relevant zones.
- (4) Boundary adjustments must not result in the creation of additional titles.
- (5) If any boundary adjustment under this control creates the potential for additional subdivision or dwellings over and above what was possible for each site prior to the boundary adjustment a legal covenant or consent notice under s. 221 of the RMA is to be registered on the titles prohibiting;
  - (a) any further subdivision; and/or
  - (b) new dwellings.

**E39.6.4. Standards – restricted discretionary activities**

Subdivision listed as a restricted discretionary activity in Table E39.4.1 Subdivision for specified purposes or Table E39.4.2 Subdivision in rural zones must comply with the relevant standards set out in E39.6.1 General standards and E39.6.4 Standards – restricted discretionary activities unless otherwise specified.

**E39.6.4.1. Subdivision establishing an esplanade reserve**

- (1) Any subdivision involving the creation of sites less than 4 hectare which adjoins the line of the mean high water springs, or the bank of a river or stream 3 metres or more in width, or any lake, must provide a minimum 20 metre wide esplanade reserve in accordance with section 230 of the

Resource Management Act 1991. This must be shown on the application plan and the subsequent land transfer plan.

- (2) The esplanade reserve must be measured in a landward direction at 90 degrees to the line of mean high water springs, or the bank of a river, stream or the margin of any lake.
- (3) Standards E39.6.4.1(1) and (2) do not apply to the subdivision of Treaty Settlement Land where a marginal strip of at least 20 metres has been set aside under the Conservation Act 1987.

**E39.6.4.2. Subdivision of a site within the one per cent annual exceedance probability floodplain**

- (1) Each proposed site within the one per cent floodplain that is to contain a more vulnerable activity must meet one of the following:
  - (a) contain a specified building area that meets the requirements of Standard E39.6.1 General standards; or
  - (b) be in accordance with a land use consent that authorises development or building in the floodplain.

**E39.6.4.3. Subdivision of land which may be subject to coastal hazards**

- (1) Each proposed site on land which may be subject to coastal hazards must demonstrate that all of the relevant areas/features in (a) to (c) below are located outside of any land subject to coastal hazards:
  - (a) a specified building area that meets the requirements of Standard E39.6.1 General standards;
  - (b) access to all proposed building platforms or areas; and
  - (c) on-site private infrastructure required to service the intended use of the site.

**E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay**

Refer to Appendix 15 Subdivision information and process for further information in relation to in-situ subdivisions.

- (1) The indigenous vegetation to be protected must be identified in the Significant Ecological Areas Overlay.
- (2) The maximum number of sites created from the protection of an indigenous vegetation must comply with Table E39.6.4.4.1



**Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation identified in the Significant Ecological Areas Overlay**

Areas of indigenous vegetation to be protected	Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision	Maximum number of rural residential sites that may be created for in-situ subdivision
5ha – 9.9999ha	1	1
10ha – 14.9999ha	2	2
15ha – 20ha	3	3 (maximum)
For every 10ha increment of SEA (indigenous vegetation) which is protected beyond the protection of 20ha	No maximum	

- (3) A 20 metre buffer is to be applied to the perimeter of the indigenous vegetation and included as part of the protected area.
- (4) The additional sites must be created on the same site as the indigenous vegetation subject to protection.
- Note: Standard E39.6.4.6 provides a separate subdivision option to enable the transfer of additional lots created via Standard E39.6.4.4.
- (5) The additional sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.
- (6) Any indigenous vegetation proposed to be legally protected in accordance with Appendix 15 Subdivision information and process must be identified on the subdivision scheme plan.
- (7) Areas of indigenous vegetation to be legally protected as part of the proposed subdivision must not already be subject to legal protection.
- (8) Areas of indigenous vegetation to be legally protected as part of the proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under this Plan or a previous district plan.

(9) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or wetland.

(10) All applications must include all of the following:

(a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation and buffer area remain protected in perpetuity. Refer to legal protection mechanism to protect indigenous vegetation, wetland or revegetation planting as set out in Appendix 15 Subdivision information and process for further information;

(b) the plans required in E39.6.4.4(10)(a) must be prepared by a suitably qualified and experienced person.

(11) Indigenous vegetation to be protected must be made subject to a legal protection mechanism meeting all of the following:

(a) protection of all the indigenous vegetation and buffer existing on the site at the time the application is made, even if this means protecting vegetation or a wetland larger than the minimum qualifying area; and

(b) consistent with the legal protection mechanism to protect indigenous vegetation, wetland or revegetation planting as set out in Appendix 15 Subdivision information and process.

(12) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:

(a) the establishment of secure stock exclusion;

(b) the maintenance of the indigenous vegetation must ensure that all invasive plant pests are eradicated

(c) the maintenance of the indigenous vegetation must ensure animal and plant pest control occurs.

**E39.6.4.5. In-situ subdivision creating additional sites through establishing indigenous revegetation planting**

(1) Any established revegetation planting must meet all of the following:

(a) not be located on land containing elite soil or prime soil;

(b) be located outside any Outstanding Natural Character, High Natural Character or Outstanding Natural Landscape overlays; and

(c) be contiguous with existing indigenous vegetation identified in the Significant Ecological Area Overlay.

(d) the criteria as set out in Appendix 16 Guideline for native revegetation plantings.

- (2) The maximum number of new sites created through establishing revegetation planting must comply with Table E39.6.4.5.1.

**Table E39.6.4.5.1 Maximum number of new sites from establishing native revegetation planting (to be added to existing indigenous vegetation identified in the Significant Ecological Area Overlay) subject to protection**

Minimum area of established native revegetation planting (to be added to an existing indigenous vegetation identified in the Significant Ecological Area Overlay) subject to protection	Maximum number of new sites for Transferable Rural Site Subdivision	Maximum number of new sites for in-situ subdivision
5ha – 9.9999ha	1	1
10ha – 14.9999ha	2	2
15ha or more	3 (maximum)	3 (maximum)

- (3) Any new site must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.

- (4) Any established revegetation planting proposed must be legally protected.

- (5) Areas subject to revegetation planting must be subject to a legal protection mechanism that:

- (a) protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any revegetation planting; and
- (b) meets the requirements as set out in Appendix 15 Subdivision information and process.

- (6) All applications must include all of the following:

- (a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation and buffer area remain protected in perpetuity. Refer to the legal protection mechanism to protect indigenous vegetation, wetland or revegetation planting as set out in Appendix 15 Subdivision information and process for further information;
- (b) a planting plan for revegetation planting which outlines the restoration measures proposed to be carried out within or adjacent to the indigenous vegetation proposed to be protected in accordance with Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings ; and

(c) the plans required in E39.6.4.5(6)(a) and (b) must be prepared by a suitably qualified and experienced person.

(7) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:

(a) the establishment of secure stock exclusion;

(b) the maintenance of plantings that must occur until the plantings have reached a sufficient maturity to be self-sustaining, and have reached 80 per cent canopy closure. The survival rate must ensure a minimum 90 per cent of the original density and species;

(c) the maintenance of plantings must include the ongoing replacement of plants that do not survive;

(d) the maintenance of plantings must ensure that all invasive plant pests are eradicated from the planting site both at the time of planting and on an on-going basis to ensure adequate growth; and

(e) the maintenance of plantings must ensure animal and plant pest control occurs.

(8) The subdivision resource consent must be made subject to a condition that requires the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation to be protected.

**E39.6.4.6. Transferable rural site subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or transferable rural sites subdivision through establishing revegetation planting**

Refer to Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings for further information on transferable rural sites subdivisions and revegetation planting.

(1) All transferable rural sites subdivisions applications involving protection of indigenous vegetation must meet all of the standards that are applicable for:

(a) the protection of indigenous vegetation identified in the Significant Ecological Areas Overlay as set out in Standard E39.6.4.4; or

(b) the creation of sites through establishing revegetation planting as set out in Standard E39.6.4.5.

(2) All transferable rural site subdivision applications involving protection of wetlands must meet:

- (a) Clauses 1 and 3-12 in E39.6.4.4 as if references to indigenous vegetation are references to wetlands;
- (b) The maximum number of new sites created through the protection of wetlands must comply with Table E39.6.4.6.1.

**Table E39.6.4.6.1 Maximum number of new sites to be created from the protection of wetland identified in the Significant Ecological Areas Overlay**

Area of wetland to be protected	Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision	Maximum number of rural residential sites that may be created for in-situ subdivision
Minimum 5,000m <sup>2</sup>	1	No in-situ subdivision
1,000m <sup>2</sup> – 1.9999ha	2 (maximum)	

- (3) A donor site (being the site with the indigenous vegetation, wetland or the revegetation planting to be protected) must not be the same site as a receiver site.
- (4) The receiver site must be located within a Rural – Countryside Living Zone and be identified as an eligible receiver site by the subdivision variation control on the planning maps.
- (5) Sites being subdivided must have a minimum net site area and average net site area that complies with the transferable rural sites subdivision in the Rural – Countryside Living Zone as set out in Table E39.6.5.2.1 Minimum and average net site areas.
- (6) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the receiver site or sites to be deposited after, and not before, the protective covenant has been legally registered against the title containing the covenanted indigenous vegetation or wetland as applicable.

**E39.6.4.7. Transferable rural site subdivision through the amalgamation of donor sites, including sites identified in Appendix 14 Land amalgamation incentivised area**

- (1) Prior to amalgamation of donor sites, all applications for amalgamation of donor sites must meet the following:
  - (a) donor sites must be abutting;

- (b) one of the two donor sites must not contain a dwelling unless the resulting amalgamated site is permitted by this Plan to have more than one dwelling;
  - (c) donor sites must be zoned either Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone or Rural - Rural Conservation Zone;
  - (d) the land must contain at least 90 per cent elite soil or prime soil. The applicant must provide a detailed Land Use Capability (LUC) soil assessment confirming that donor sites contain at least 90 per cent elite land or prime land. The assessment must be prepared by a suitably qualified and experienced person;
  - (e) each site must have a net site area of between 1 and 20 hectares;
  - (f) sites must have been in existence, or be shown on an approved scheme plan of subdivision; and
  - (g) sites must not comprise part or all of a closed road, road severance, or designation.
- (2) Following amalgamation of donor sites, all donor sites must meet all of the following:
- (a) be held in a single certificate of title;
  - (b) rescinded in such a way that replacement titles cannot be reissued;
  - (c) made subject to a legal protection mechanism that states all of the following:
    - (i) the residential development rights attaching to the donor sites have been used to create a transferable rural sites subdivision under the Plan and must not accommodate any further residential development unless it is allowed as a permitted activity subject to the relevant zone rules or by the granting of a resource consent;
    - (ii) the new site cannot be further subdivided other than by amalgamation with another qualifying site or by boundary adjustment; and
    - (iii) the new site has no further potential to be used for the purpose of a transferable rural sites subdivision.
- (3) Following amalgamation of donor sites, all receiver sites must meet all of the following:

- (a) be subdivided into no more sites than those permitted by Table E39.6.4.7.1 Maximum number of new sites for transfer from the amalgamation of sites;

**Table E39.6.4.7.1 Maximum number of new sites for transfer from the amalgamation of sites**

<b>Transferable rural sites subdivision by way of amalgamation</b>	
<b>Criteria</b>	<b>Maximum Number of new sites for transfer</b>
Amalgamation of two eligible donor sites as identified in Appendix 14 Land amalgamation incentivised area and complying with Standard E39.6.4.7(1)	Two new sites for every two donor sites amalgamated
Amalgamation of two eligible donor sites outside the land amalgamation incentivised area and complying with Standard E39.6.4.7(1)	One new site for every two donor sites amalgamated

- (b) the donor site must not be the same site as a receiver site;
- (c) be located within sites zoned as Rural – Countryside Living Zone and be identified as an eligible receiver site by the Subdivision Variation Control on the planning maps;
- (d) have a minimum net site area complying with the minimum net site area and average net site area with transferable rural sites subdivision as set out in Table E39.6.5.2.1 Minimum and average net site areas;
- (e) be made subject to a condition of subdivision consent that requires the subdivision plan creating the receiver site or sites to be deposited after, and not before, the plan of subdivision for the amalgamation of donor sites has been deposited.

**E39.6.5. Standards – discretionary activities**

Subdivision listed as a discretionary activity in Table E39.4.2 and Table E39.4.2.5 must comply with the relevant standards in E39.6.1 General standards and E39.6.5 Standards – discretionary activities.

**E39.6.5.1. Subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone, and Rural – Rural Conservation Zone**

- (1) Subdivision in these rural zones must meet the minimum average site size and minimum site size requirement as set out in Table E39.6.5.1.1 Minimum average site size and minimum site size for subdivision.

**Table E39.6.5.1.1 Minimum average site size and minimum site size for subdivision**

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

**E39.6.5.2. Subdivision in the Rural – Countryside Living Zone**

(1) Subdivision in the Rural – Countryside Living Zone must meet all of the following:

- (a) proposed site sizes and average net site areas must comply with the minimum net site areas specified in Table E39.6.5.2.1 Minimum and average net site areas;
- (b) the average net site area of all sites following subdivision must be calculated per subdivision scheme plan, and no credits will be carried forward to future subdivision scheme plans;
- (c) the minimum frontage for all front sites must be 15 metres; and
- (d) the minimum frontage for rear sites must be 6 metres.

Transferable rural site subdivision receiver sites must be located in the Rural – Countryside Living Zone locations listed in Table E39.6.5.2.1 Minimum and average net site areas and be identified as eligible receiver sites by the Subdivision Variation Control on the planning maps.

In this table, N/A means the transferable rural site subdivision mechanism is not provided for in that particular location.

**Table E39.6.5.2.1 Minimum and minimum average net site areas**

Location of Rural – Countryside Living Zone	Minimum net site area and average net site area without transferable rural site subdivision	Minimum net site area and average net site area with transferable rural site subdivision
Rural – Countryside Living Zone areas not identified below	Minimum: 2ha	N/A
Wellsford Kaukapakapa Helensville	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
Warkworth	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha



Matakana Kumeu - Huapai Paremoremo - Albany Heights	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
Algies Bay	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
Puhoi Parakai	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Average: 1ha
Waimauku	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
South Rodney	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
Whitford (excluding precinct and Caldwell's Road)	Minimum: 2ha Minimum average: 4ha	N/A
Whitford – Caldwell's Road	Minimum: 1ha Minimum average: 2ha	N/A
Papakura	Minimum: 1ha	N/A
Point Wells	Minimum: 5,000m <sup>2</sup> Minimum average: 7,500m <sup>2</sup>	N/A
Runciman	Minimum: 2ha	Minimum: 8,000m <sup>2</sup> Minimum average: 1ha
Swanson (outside precinct)	Minimum: 4ha	N/A
Okura East	Minimum: 4ha	N/A

#### **E39.6.5.3. Subdivision in Rural – Waitākere Ranges Zone**

- (1) The average site size must be greater than 4 hectares.
- (2) The average site size must be calculated over the net site area of the site as it existed as of 14 October 1995.
- (3) The minimum net site area must be 2 hectares.
- (4) The subdivision must not create any new road.
- (5) Subdivision must not create development or establishment of buildings within land areas identified in the Significant Ecological Areas Overlay.

#### **E39.7. Assessment – controlled activities**

##### **E39.7.1. Matters of control**

The Council will reserve its control to the following matters when assessing a controlled activity resource consent application:

- (1) all controlled activities:

- (a) compliance with an approved resource consent except for boundary adjustment subdivision;
- (b) the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces;
- (c) the effects of infrastructure provision; and
- (d) the effects on historic heritage and cultural heritage items.

**E39.7.2. Assessment criteria**

The Council will consider the relevant assessment criteria for controlled activities from the list below:

(1) all controlled activities:

- (a) compliance with an approved resource consent except for boundary adjustment subdivision:
  - (i) refer to Policy E39.3(6);
- (b) the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:
  - (i) the extent to which the design, size, shape, gradient and location of any site including access, existing buildings, manoeuvring areas and outdoor living space affect the safety of pedestrians and cyclists and other users of the space or access;
  - (ii) whether the sites created are able to accommodate development in accordance with the relevant Auckland-wide and zone rules; and
  - (iii) refer to Policy E39.3(25), (26) and (27);
- (c) the effects of infrastructure provision:
  - (i) whether provision is made for infrastructure including creation of common areas over parts of the parent site that require access by more than one site within the subdivision; and
  - (ii) refer to Policy E39.3(28) and (32).
- (d) the effects on historic heritage and cultural heritage items:
  - (i) whether the protection or avoidance of any Scheduled Historic Heritage Place, or Site and Places of Significance to Mana Whenua is ensured; and
  - (ii) refer to Policy E39.3(4).

(2) Subdivision in the Rural – Waitākere Foothills Zone:

- (a) Policies E39.3(1), (4), (6), (10), (11), (13), (16), (17), (20), (25) and (28) – (33).

#### **E39.8. Assessment – restricted discretionary activities**

##### **E39.8.1. Matters of discretion**

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application:

- (1) subdivision of a site within the one per cent annual exceedance probability floodplain:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to flood hazard events.
- (2) subdivision of a site subject to coastal storm inundation one per cent annual exceedance probability or coastal storm inundation one per cent annual exceedance probability plus 1 metre sea level rise:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events.
- (3) subdivision of a site subject to coastal hazards:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal hazards.
- (4) subdivision of sites subject to land instability including those areas defined in the Plan as "land which may be subject to land instability", or other unstable soils as identified through a specific site assessment:
  - (a) the effects of remediating the land instability hazard and the effect of the hazard on the intended use.
- (5) subdivision establishing an esplanade reserve:
  - (a) the effect of the design, purpose and location of any esplanade reserve established by subdivision in terms of public access, and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features.
- (6) in-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay; in-situ subdivision creating additional sites through establishing revegetation planting:
  - (a) effects associated with the following matters, having regard to the need to ensure that environmental benefits including the long term protection of Significant Ecological Areas, do not unnecessarily compromise other elements of rural character and amenity:

- (i) the number of sites created, site size, building platforms locations, access;
  - (ii) the rural character, landscapes and amenity;
  - (iii) the location of the indigenous vegetation and/or revegetation planting relative to proposed new sites and to existing vegetation;
  - (iv) the quality of the indigenous vegetation and/or revegetation planting to be protected;
  - (v) the compliance with Auckland-wide rules;
  - (vi) any management plans for the ongoing protection and management of indigenous vegetation or revegetation planting;
  - (vii) the provision of adequate access to existing and new infrastructure and provision of appropriate management of effects of stormwater;
  - (viii) the legal protection for indigenous vegetation or revegetation planting;
  - (ix) any reverse sensitivity effects; and
  - (x) the location of identified building areas platforms relative to areas of significant mineral resources.
- (7) transferable rural site subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; transferable rural site subdivision through establishing revegetation planting:
- (a) effects associated with the following matters, having regard to the need to ensure that environmental benefits including the long term protection of Significant Ecological Areas, do not unnecessarily compromise other elements of rural character and amenity:
    - (i) the matters listed in E39.8.1(6)(a)(i) to (x);
    - (ii) the number and size of new sites created on the receiver sites and compliance with minimum and average net site areas in the Rural – Countryside Living Zone; and
    - (iii) the timing and co-ordination of the protection of indigenous vegetation, wetland and revegetation planting on donor site relative to the creation of new sites on the receiver site.
- (8) transferable rural site subdivision through the amalgamation of donor sites, including those sites identified in Appendix 14 Land amalgamation incentivised area:
- (a) effects associated with the below matters, having regard to the need to ensure the long term protection of elite soils and their availability for rural production purposes, without compromising other elements of rural character and amenity, or rural resources:

- (i) the matters listed in E39.8.1(6)(a)(i) to (x);
- (ii) the location and the soil qualities of the donor sites;
- (iii) the degree to which new sites created from receiver sites comply with the Auckland-wide rules;
- (iv) the suitability of the transferred sites for rural residential purposes having regard to the objectives, policies and rules for the Rural – Countryside Living Zone.

**E39.8.2. Assessment criteria**

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- (1) subdivision of a site within the one per cent annual exceedance probability floodplain and flood prone areas:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to flood hazard events:
    - (i) whether measures are proposed to ensure the long term protection of flood plain conveyance functions;
    - (ii) whether the location and design of development including building platforms and access ways are located to avoid the hazard;
    - (iii) the extent to which changes to the landform and the design of mitigation structures/features are necessary for the subdivision; and
    - (iv) refer to Policy E39.3(2).
- (2) subdivision of a site subject to coastal storm inundation one per cent annual exceedance probability and coastal storm inundation one per cent annual exceedance probability plus 1 metre sea level rise:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events:
    - (i) whether the location and design of development including proposed and existing building platforms and access ways include the ability to relocate uses within the proposed site area;
    - (ii) whether the use of defences to protect the land and any buildings or structures on the land from coastal storm inundation are necessary;
    - (iii) whether there is any residual risk posed by coastal storm inundation to the site(s) associated with any existing or proposed coastal defences;
    - (iv) whether there are effects on landscape values resulting from associated built and/or land form modifications required to provide for the intended use of the site; and
    - (v) Policy E39.3(2).

- (3) subdivision of site subject to coastal hazards:
  - (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal hazards:
    - (i) whether public access to the coast is affected;
    - (ii) the extent to which the installation of hard protection structures to be utilised to protect the site or its uses from coastal erosion hazards over at least a 100 year timeframe are necessary; and
    - (iii) Policy E39.3(2).
- (4) subdivision of sites subject to land instability including those areas defined in the Plan as "land which may be subject to land instability", or other unstable soils as identified through a specific site assessment:
  - (a) the effects of remediating the land instability hazard and the effect of the hazard on the intended use:
    - (i) the extent to which the proposed sites are stable and suitable;
    - (ii) the extent to which the site instability will affect the intended use, including the provision for onsite infrastructure (where applicable) and accessways; and
    - (iii) Policy E39.3(2).
- (5) subdivision establishing an esplanade reserve:
  - (a) the effect of the design, purpose and location of any esplanade reserve established by subdivision in terms of public access, and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features:
    - (i) the extent to which the design purpose and location of the esplanade reserve enables public access and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features; and
    - (ii) Policies E39.3(1), (21), (22) and (23).
- (6) in-situ subdivision creating additional sites through protection of indigenous vegetation identified in the Significant Ecological Areas Overlay; in-situ subdivision creating additional sites through establishing revegetation planting:
  - (a) Policies E39.3(1), (15), (16), (17), (18), (24) – (27) and (29) to (31).
- (7) transferable rural sites subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; transferable rural sites subdivision through establishing revegetation planting:

(a) Policies E39.3(1), (11), (12), (13), (15), (16), (17), (18), (24) – (27) and (29) to (31).

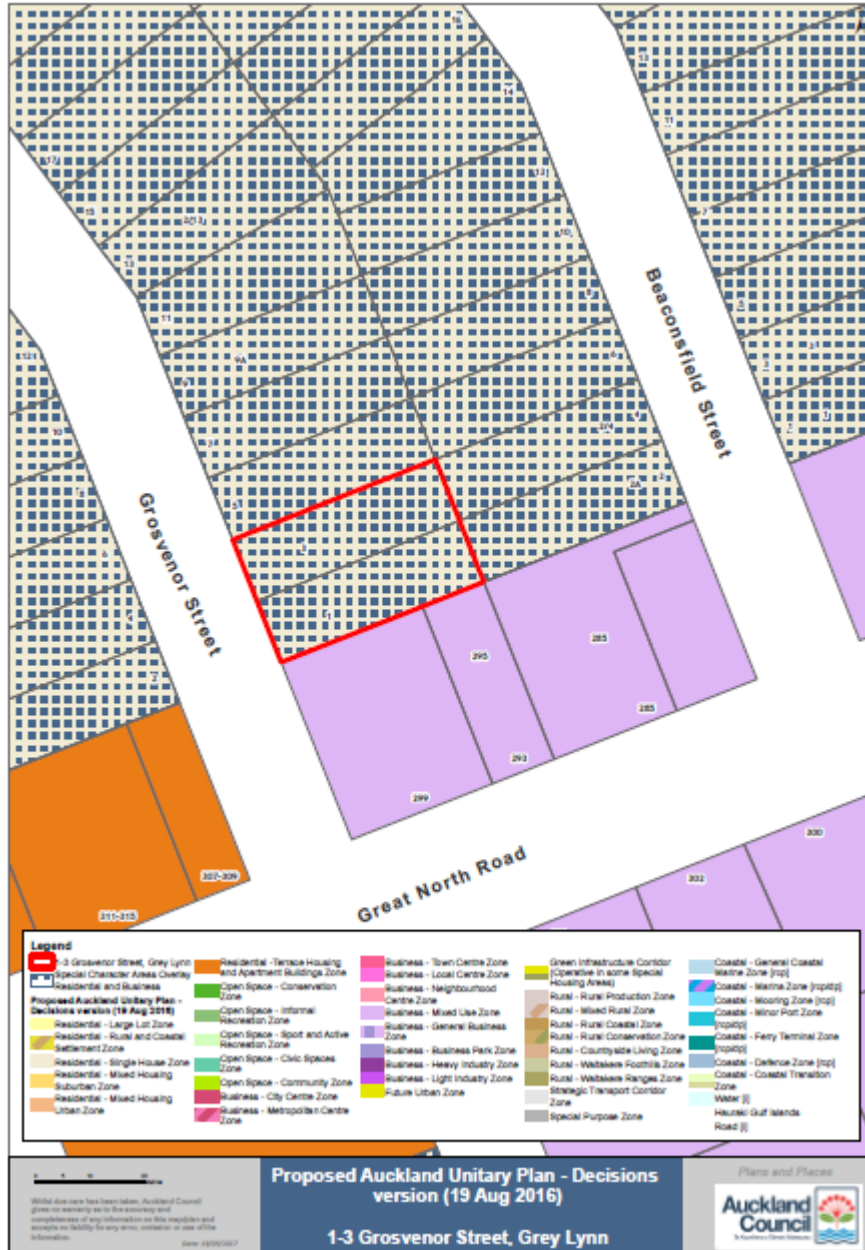
(8) transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area:

(a) Policies E39.3(1), (3), (9), (11), (12), (13), (15), (16), (17), (18) and (29) to (31).

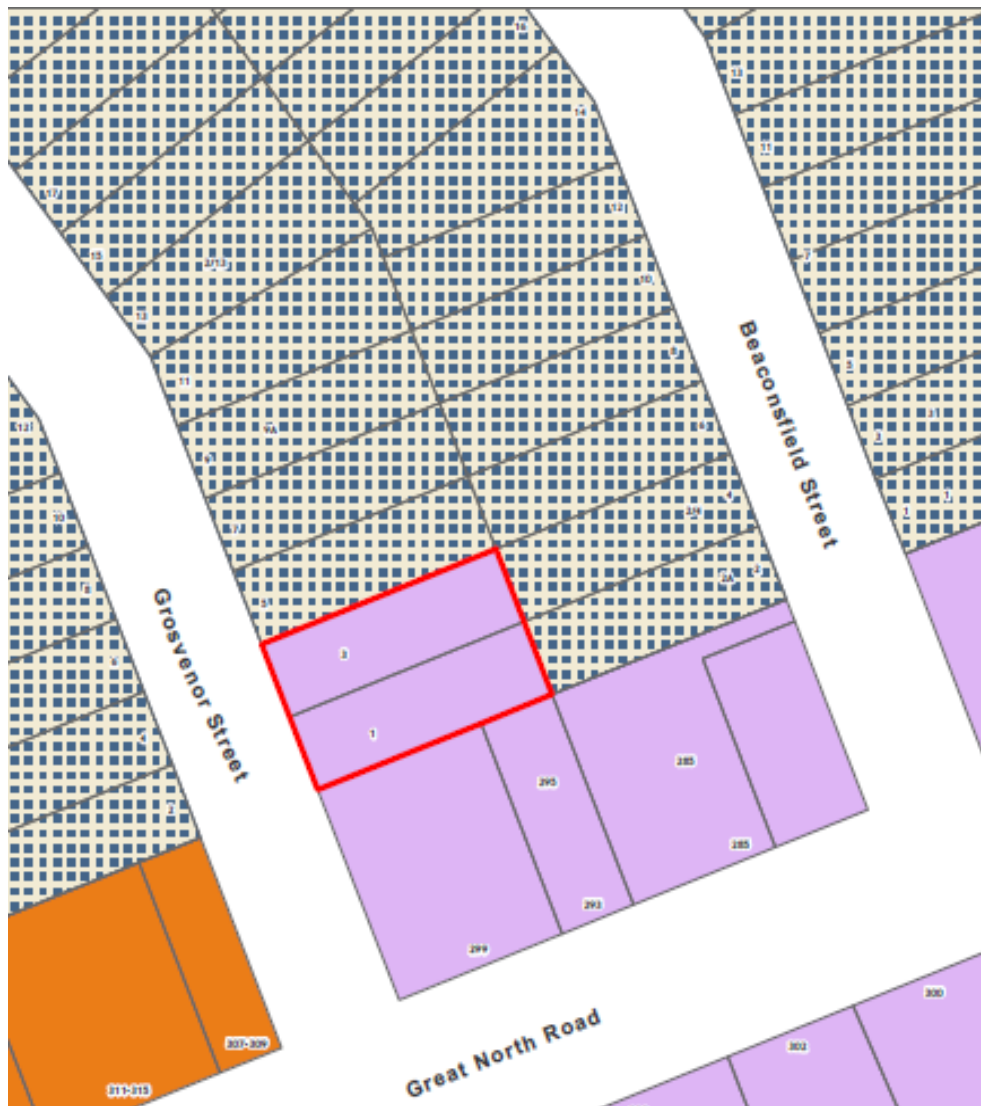
**E39.9. Special information requirements**

There are no special information requirements in this section.

# APPENDIX B







Legend			
	1-3 Grosvenor Street, Grey Lynn Special Character Area Overlay Residential and Business Zone		Residential - Terrace Housing and Apartment Buildings Zone
	Proposed Auckland Utility Plan - Decisions version (19 Aug 2016)		Open Space - Conservation Zone
	Residential - Large Lot Zone		Open Space - Informal Recreation Zone
	Residential - Rural and Coastal Settlement Zone		Open Space - Sport and Active Recreation Zone
	Residential - Single House Zone		Open Space - Civic Spaces Zone
	Residential - Mixed Housing Suburban Zone		Open Space - Community Zone
	Residential - Mixed Housing Urban Zone		Business - City Centre Zone
	Business - Metropolitan Centre Zone		Business - Town Centre Zone
	Business - Local Centre Zone		Business - Neighbourhood Centre Zone
	Business - Mixed Use Zone		Business - General Business Zone
	Business - Business Park Zone		Business - Heavy Industry Zone
	Business - Light Industry Zone		Business - Future Urban Zone
	Green Infrastructure Corridor (Operative in some special Housing Areas)		Rural - Rural Production Zone
	Rural - Rural Production Zone		Rural - Mixed Rural Zone
	Rural - Rural Coastal Zone		Rural - Rural Coastal Zone
	Rural - Rural Conservation Zone		Rural - Countryside Living Zone
	Rural - Countryside Living Zone		Rural - Waitakere Foothills Zone
	Rural - Waitakere Ranges Zone		Rural - Waitakere Ranges Zone
	Strategic Transport Corridor Zone		Special Purpose Zone
	Coastal - General Coastal Marine Zone (top)		Coastal - Marine Zone (top)
	Coastal - Mooring Zone (top)		Coastal - Mooring Zone (top)
	Coastal - Minor Port Zone (top)		Coastal - Ferry Terminal Zone (top)
	Coastal - Defence Zone (top)		Coastal - Coastal Transition Zone
	Water (top)		Water (top)
	Hauraki Gulf Islands		Hauraki Gulf Islands
	Road (top)		Road (top)