In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe
CIV-2018-

Under	the Resource Management Act 1991 (**RMA**) and the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**)
In the matter of	an appeal against a decision of the Environment Court under section 299 of the RMA and section 156(4) of the LGATPA
Between	**Auckland Council** a unitary authority established under section 6 of the Local Government Auckland Council Act 2009
	Appellant
And	**Cabra Rural Developments Limited** a duly incorporated company having its registered office at Eaves Associates Limited, Top Floor, 3 Alice Avenue, Orewa, Auckland 0931
And	**Rahopara Farms Limited** a duly incorporated company having its registered office at 17 Kahikatea Flat Road, Rd 4, Albany, Auckland 0794
And	**SH 16 Limited** a duly incorporated company having its registered office at 17 Kahikatea Flat Road, Rd 4, Albany, Auckland 0794
	(continued over)

Notice of Appeal

Date: 3 July 2018

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And **Forest Habitats Limited**
a duly incorporated company having its registered office at 17 Kahikatea Flats Road, Dairy Flat, Auckland 0630

And **Rauhori Forests Limited**
a duly incorporated company having its registered office at 17 Kahikatea Flat Road, Rd 4, Albany, Auckland 0794

And **Monowai Properties Limited**
a duly incorporated company having its registered office at 17 Kahikatea Flat Road, Rd 4, Albany, Auckland 0794

And **Karepiro Investments Limited**
a duly incorporated company having its registered office at 17 Kahikatea Flat Road, Rd 4, Albany, Auckland 0794

And **Cato Bolam Consultants Limited**
a duly incorporated company having its registered office at 89 Central Park Drive, Henderson, Auckland 0610

And **David Mason**
of 211 Kaipara Flats Road, RD1, Warkworth, Auckland 0981

And **Better Living Landscapes Limited**
a duly incorporated company having its registered office at Hailes & Associates Limited, Cnr Baxter & Neville Streets, Warkworth, Auckland 0910

And **Parallax Consultants Limited (also known as Parallax Surveyors Limited)**
a duly incorporated company having its registered office at 54a Whitaker Road, Warkworth, Auckland 0910

And **Fluker Surveying Limited (also known as Fluker Surveyors Limited)**
a duly incorporated company having its registered office at Offices of Bellingham Wallace Limited, 470 Parnell Road, Parnell, Auckland 1052

And **Sayes In Trust Limited**
a duly incorporated company having its registered office at Apollo Accounting Ltd, 222 State Highway 17, Albany Village, Auckland

(continued over)

And	**Smithies Family Trust** of 1466 Weranui Road, RD1 Silverdale, Auckland 0994
And	**Zakara Investments Limited** a duly incorporated company having its registered office at 8th Floor, 57-59 Symonds Street, Auckland 1010
And	**Radiata Properties Limited** a duly incorporated company having its registered office at 180 State Highway 16, Whenuapai, Auckland 0814
And	**Terra Nova Planning Limited** a duly incorporated company having its registered office at 16 Florence Avenue, Orewa, Auckland 0931
	Respondents

To: The Registrar of the High Court at Auckland

And to: The Registrar of the Environment Court at Auckland

And to: The respondents and section 274 parties

This document notifies you that -

1 Auckland Council (**Council**) appeals against the whole of the decision of the Environment Court in *Cabra Rural Developments and others v Auckland Council* [2018] NZEnvC 90 (**Decision**), issued on 12 June 2018, upon the grounds that the Decision is wrong in law and upon the further grounds set out below.

Decision appealed against

2 The Decision allowed, in part, appeals by Cabra Rural Developments Limited and others against a decision made by the Council when considering the recommendations of the Auckland Unitary Plan Independent Hearings Panel (**IHP**) on provisions of the Auckland Unitary Plan (**AUP**) relating to regulatory incentive rural subdivision.

3 The provisions subject to appeal in the Environment Court included provisions in the Regional Policy Statement (**RPS**) Chapter of the AUP, regional and district plan objectives and policies, and district plan methods relating to in-situ and Transferable Rural Site Subdivision (**TRSS**) opportunities arising from the protection of significant indigenous vegetation and wetlands and from indigenous revegetation planting.

4 There were four sets of rural subdivision provisions before the Court, namely, the Council's provisions, the IHP's recommended provisions and two sets of provisions promoted by appellants Terra Nova Planning Limited (**Terra Nova**) and Cato Bolam and Mason and others (**Cato Bolam**).

5 The appellants challenged a number of the provisions the Council supported on the basis of 'scope', having regard to the interpretation of section 148(1)(b) of the LGATPA. The scope issues were the subject of a one day preliminary hearing on 3 November 2017 and the Court's decision dated 6 November 2017 (**Preliminary Decision**). The Court directed in its Preliminary Decision that the scope hearing was to be adjourned and heard as part of or at the conclusion of the substantive hearing.

6 The Council also raised scope issues in the plan provisions circulated by Terra Nova and Cato Bolam on the grounds that certain amendments sought by those parties were out of scope.

7 The Decision allowed the appeals to the extent that the IHP recommendations were substituted for the decisions of the Council, subject to two exceptions:

7.1 Changes made to the AUP made by the Council that were not appealed.

7.2 Changes to the AUP made by agreement of the parties.

Errors of law

First alleged error of law - failure to take into account and properly apply mandatory considerations under the RMA

8 The Environment Court failed to have regard to or sufficiently consider relevant provisions of Part 2 of the Resource Management Act 1991 (**RMA**), as required by sections 61(1)(b) and 74(1)(b) of the RMA.

9 The Environment Court erred in its interpretation of, and failed to give effect to, various provisions of the New Zealand Coastal Policy Statement 2010 (**NZCPS**), including by:

9.1 Misinterpreting and misapplying Policy 11 when it found the IHP provisions would better meet Policy 11 within the coastal environment.

9.2 Failing to consider whether the IHP provisions would give effect to other policies in the NZCPS, in particular Policy 13 and Policy 15, as required by sections 62(3) and 75(3)(b) of the RMA.

10 The Environment Court erred in its interpretation of the AUP and failed to give effect to various provisions of the RPS, as required by section 75(3)(c)of the RMA.

11 The Environment Court failed to have regard or sufficient regard to the actual and potential effects of rural subdivision on the environment, including any adverse cumulative effects, as required by section 76(3) of the RMA.

Second alleged error of law - misinterpretation and misapplication of provisions of the RMA, NZCPS and the AUP

12 The Environment Court erred in its interpretation of, and misapplied sections of, the RMA and the provisions of Chapter A1.7 Activity Status of the AUP when it found that:

12.1 Similar tests would apply whether a rural subdivision application was a non-complying, discretionary or restricted discretionary activity.

12.2 A restricted discretionary activity is no less onerous than a discretionary activity.

12.3 The critical factors applying to a rural subdivision consent in relation to effects would be the same, regardless of activity status.

12.4 The application of assessment criteria on a case by case basis were an appropriate way to address potential impacts of rural subdivision on landscape, natural character, rural character and amenity and the fragmentation of rural land, as opposed to the application of standards determining activity status.

13 The Environment Court erred in its interpretation of and misapplied Policy 1(2) of the NZCPS and Chapter B8 of the AUP when it found that the catchment of the Hauraki Gulf Maritime Park (**HGMP**) is the 'coastal environment' for the purposes of the AUP and that the majority of the Auckland region is within the coastal environment.

Third alleged error of law - coming to a conclusion without evidence or one to which on the evidence it could not reasonably have come to

14 The Environment Court came to a conclusion without evidence or one to which, on the evidence it could not reasonably have come to, in particular by finding or concluding that:

14.1 The catchment of the HGMP is the coastal environment for the purposes of the AUP, and that the majority of the Auckland region is within the coastal environment.

14.2 The IHP provisions should be preferred and reinserted when those provisions:

14.2.1 Would allow the same maximum number of new sites to be created for both in-situ and TRSS subdivision in the case of each rural subdivision method.

14.2.2 Do not explicitly provide for and express a clear preference for the transfer of rural sites to Countryside Living (**CSL**) zones.

14.3 Council witnesses Dr Fairgray and Ms Fuller failed to acknowledge that Mr Balderston's assessment of rural subdivision capacity was not either possible or an expected outcome, even over a 30 year period.

Fourth alleged error of law - failure to have regard to relevant considerations

15 The Environment Court failed to have regard to the following relevant considerations:

15.1 The only expert land and soil science evidence before the Court from Dr Fiona Curran-Cournane, which addressed the regionally significant issue of rural land fragmentation.

15.2 The provisions confirmed by the Court sought by Zakara Investments Limited and the Council in their joint memorandum annexed to the Decision as B were prepared on the basis of, and amended, the Council's provisions rather than the IHP's provisions.

Fifth alleged error of law - taking into account irrelevant considerations

16 The Environment Court erred by taking into account to the following irrelevant considerations:

16.1 A concern that the complexity of the AUP meant that minor changes in one part of the plan may have ripple changes in other places (the butterfly effect).

16.2 That the Court should not travel far from the provisions of the Council or IHP given it was not satisfied it had a fully accurate version of the AUP or had been referred to all of the various interrelated parts of that plan, the changes made to it and the appeals still outstanding.

16.3 Whether the IHP's recommendations supported the Council's decision on the AUP rural subdivision provisions.

Sixth alleged error of law - failure to give reasons commensurate with importance of decision

17 The Environment Court did not give reasons or sufficient reasons for its conclusions. The Decision falls short of the Environment Court's mandate to give reasons commensurate with the importance of the subject matter before it, including in relation to:

17.1 The Court's conclusions that the Council's RPS Objective B9.4.1(1) and B9.4.1(4) and Policies B9.4.2(1), B9.4.2(3) and B9.4.2(5) should be deleted or amended.

17.2 The Court's conclusions about the amendments that should be made to the objectives and policies in Chapter E39 Subdivision - Rural.

17.3 The parties' preferred regulatory incentive subdivision methods, including the standards.

Seventh alleged error of law - failure to determine issues in the proceeding

18 The Environment Court failed to determine whether a provision relating to the staging of donor sites to receiver sites for TRSS was within 'scope' and within the Court's jurisdiction, and instead left the issue to the parties to determine.

Questions of law

19 The questions of law to be determined on this appeal are:

19.1 Did the Environment Court fail to take into account and properly apply mandatory considerations under the RMA by:

19.1.1 Failing to have regard to or sufficiently consider Part 2 of the RMA, as required by sections 61(1)(b) and 74(1)(b) of the RMA?

19.1.2 Erring in its interpretation of and application of Policy 11 of the NZCPS within the coastal environment?

19.1.3 Failing to give effect to Policy 13 and Policy 15 of the NZCPS, as required by sections 62(3) and 75(3)(b) of the RMA?

19.1.4 Erring in its interpretation of the AUP, including in relation to the objectives, policies and methods relating to protection of significant indigenous biodiversity?

19.1.5 Failing to consider or sufficiently consider whether the IHP provisions would give effect to relevant provisions of the RPS, as required by section 75(3)(c) of the RMA?

19.1.6 Failing to have regard or sufficient regard to the actual and potential effects on the environment, including any adverse cumulative effects of rural subdivision, as required by section 76(3) of the RMA?

19.2 Did the Environment Court err in its interpretation of sections of the RMA and the AUP when it found that:

19.2.1 Similar tests would apply whether a rural subdivision application was a non-complying, discretionary or restricted discretionary activity?

19.2.2 A restricted discretionary activity is no less onerous than a discretionary activity?

19.2.3 The critical factors applying to a rural subdivision consent in relation to effects would be the same regardless of activity status?

19.2.4 The application of assessment criteria on a case by case basis were to be preferred for addressing potential significant adverse effects over standards determining activity status?

19.3 Did the Environment Court err in its interpretation of, and misapply, Policy 1(2) of the NZCPS and Chapter B8 of the AUP when it found that the catchment of the HGMP is the 'coastal environment' for the purposes of the AUP and that the majority of the Auckland region is within the coastal environment?

19.4 Did the Environment Court come to a conclusion without evidence or one to which, on the evidence, it could not reasonably have come, in particular in relation to:

19.4.1 The catchment of the HGMP as the coastal environment for the purposes of the AUP and the majority of the Auckland region being within the coastal environment?

19.4.2 Its finding that the IHP provisions should be preferred and reinserted, notwithstanding:

(a) Its conclusions as to a clear preference in the evidence for TRSS?

(b) Its conclusions that there should be a clear preference in the AUP for transferable rights to the CSL zone?

19.4.3 Its conclusions in relation to the evidence of Council witnesses regarding Mr Balderston's assessment of rural subdivision capacity?

19.5 Did the Environment Court fail to have regard to relevant considerations, including in relation to:

19.5.1 The Council's expert land and soil science evidence, which addressed the regionally significant issue of fragmentation?

19.5.2 The provisions it confirmed for Zakara Investments Limited, which were prepared on the basis of and amended the Council's provisions rather than the IHP's provisions?

19.6 Did the Environment Court err by having regard to the following irrelevant considerations:

19.6.1 Its concern about the complexity of the AUP?

19.6.2 Whether it had a fully accurate version of the AUP or had been referred to all of the various interrelated parts of the AUP, the changes made and appeals still outstanding?

19.6.3 Whether the IHP's recommendations supported the Council's decision on the AUP rural subdivision provisions?

19.7 Did the Environment Court fail to give reasons or sufficient reasons for its conclusions, including in relation to:

19.7.1 The Court's conclusions that the Council's RPS B9.4.1(1) and B9.4.1(4) and Policies B9.4.2(1), B9.4.2(3) and B9.4.2(5) should be deleted or amended?

19.7.2 The Court's conclusions about the amendments that should be made to the objectives and policies in Chapter E39 Subdivision - Rural?

19.7.3 The parties' preferred regulatory incentive subdivision methods, including the standards relating to type of feature, minimum feature sizes and caps on the maximum number of sites that could be created and whether revegetation planting should be continuous to existing SEAs?

19.8 Did the Environment Court fail to determine whether a provision relating to the staging of donor sites to receiver sites for TRSS was within 'scope' and within the Court's jurisdiction?

Grounds of appeal

20 The Decision was made on the basis of the errors of law described above. The errors were material to the Decision and the Environment Court's findings. The appeal should be allowed on the grounds that the Decision was made on a wrong legal basis.

21 The grounds of appeal relevant to each of the questions of law to be determined are set out below.

Did the Environment Court fail to take into account and properly apply mandatory considerations under the RMA

22 The Court's focus was on the protection of significant indigenous biological diversity to the exclusion of other relevant considerations.

23 The Court failed to have regard to or sufficient regard to Part 2 of the RMA, as required by section 61(1)(b) for the RPS provisions and 74(1)(b) of the RMA for the district plan provisions:

23.1 The Environment Court was required to assess the provisions having regard to the established statutory tests for plan documents, including Part 2.

23.2 The Court failed to squarely address whether the Council's RPS Objectives B9.4.1(1) and B9.4.1(4) and Policies B9.4.2(1), B9.4.2(3) and B9.4.2(5) were the most appropriate way to achieve the purpose of the RMA. It concluded that the IHP provisions should be preferred, which had the effect that those provisions were deleted or amended. However, the Court did not have regard to Part 2, as required by section 61(1)(b).

23.3 The only section in Part 2 referred to by the Environment Court in the context of its district plan assessment was section 6(c).[1] The Court did not consider other relevant sections of Part 2 including section 5, section 6(a) and (b) and section 7 (c) and (f).

24 The Court misapplied and failed to 'give effect' to the NZCPS as required by section 75(3) of the RMA:

24.1 The Decision accepted a district plan must give effect to the NZCPS.

24.2 In assessing the subdivision methods, the Court referred to Policy 11 of the NZCPS and considered that the active protection of Significant Ecological Areas (**SEAs**) under Schedule 3 to the AUP would better protect those areas under

[1] Decision at [299].

Policy 11.[2] The Court concluded the IHP provisions would provide better protection by requiring active steps in relation to vegetation protection.[3]

24.3 However, Policy 11 of the NZCPS does not require an activity such as rural subdivision to be undertaken in order to provide opportunities for indigenous vegetation to be protected.

24.4 The rural subdivision methods under consideration by the Court do not, in any event, provide automatic protection for indigenous biodiversity as any additional protection is still reliant on a person deciding to undertake a subdivision.

24.5 Policy 13 directs the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use, and development. It directs:

> (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
>
> (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;

24.6 Policy 15 includes similar directions relating to protection of natural features and natural landscapes of the coastal environment from inappropriate subdivision, use, and development. Both policies are strongly directive and provide something in the nature of an environmental bottom line.[4]

24.7 The Decision acknowledged in one paragraph that NZCPS Policies 13 and 15 were relevant to its determination but failed to squarely assess the provisions against those policies,

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[2] Decision at [301].

[3] Decision at [303].

[4] *Environment Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [132].

despite landscape evidence confirming that NZCPS policies 13 and 15 are relevant.

24.8 Although the Decision made a brief reference to NZCPS Policies 13 and 15, the Environment Court did not substantively engage with Policies 13 and 15 or attempt to reconcile Policies 11, 13 and 15 of the NZCPS.

25 The Court considered that at the core of the appeals were the objectives and policies for indigenous biodiversity and the overlay provisions including objectives and policies and rules for the SEA overlay.

26 It misinterpreted the AUP's approach to the protection of significant indigenous biodiversity. It also failed to give effect to the RPS as required by section 75(3) of the RMA. While the Decision acknowledges that a question to be considered is whether the proposal gives effect to the RPS, the Environment Court Decision does not provide any assessment of whether the provisions give effect to all relevant objectives and policies of the RPS.[5]

27 The Court failed, when considering the parties' proposed rules, to have regard to the actual and potential effects on the environment:

27.1 The Decision accepted the Court needed to consider the actual or potential effects on the environment under sections 76(3) of the RMA, including any particular adverse effects.

27.2 The Court recognised the primary potential for adverse effects related to in-situ subdivision. It also recognised the potential for landscape, natural character and rural character and amenity effects. However, the Court considered those need to

[5] The relevant provisions include Objective B8.2.1, Objectives B8.3.1(1), (2) and (6), Policy B8.3.2(2), Objective B9.2.1(4) and (5) and Policies B9.2.2(1) and (2), Objective 9.3.1(3) and Policy B9.3.2(3) Objective B9.4.1(3) and Policy B9.4.2(4).

be assessed on a case-by-case and site-by-site basis. The Court also did not consider that standards per se could properly achieve those outcomes.[6]

27.3 The Decision does not address cumulative effects and does not recognise that the opportunity to address cumulative effects at the resource consent stage is limited. The potential effects of rural subdivision need to be addressed at the plan stage, particularly where region-wide effects are in issue.

Did the Environment Court misinterpret and misapply provisions of the RMA and the AUP?

28 The Court erred in its interpretation of and misapplied the RMA and the AUP in relation to activity status:

28.1 The Environment Court considered that for restricted discretionary activities, discretionary activities or non-complying activities the critical factors applying to the consent in relation to effects would be the same.[7] It made a related finding that similar 'tests' would apply to a rural subdivision application whether the application was non-complying, discretionary or restricted discretionary.[8] The Court also determined that a restricted discretionary activity is no less onerous than a fully discretionary activity.[9] It concluded that the application of assessment criteria on a case by case basis were an appropriate way to address potential impacts of rural subdivision as opposed to the reliance on standards per se.[10]

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[6] Decision at [310].

[7] Decision at [254].

[8] Decision at [266].

[9] Decision at [272].

[10] Decision at [310].

28.2 In reaching these conclusions, the Environment Court failed to recognise the differences between activity statuses under sections 77A, 87A, 104, 104B, 104C and 104D of the RMA. The Court also failed to consider Chapter A1.7 Activity Status of the AUP, which describes the hierarchy of activity classes. In this regard, A1.7.3 states that restricted discretionary activities are generally anticipated in the existing environment and A1.7.5 indicates that activities are classed as non-complying where greater scrutiny is required for some reason.

28.3 The Court failed to recognise that the standards in the different sets of rules were directly relevant to the activity status of the subdivision methods, which in turn indicate whether subdivision and its potential effects are generally anticipated in the rural environment.

29 The Environment Court misinterpreted the AUP in relation to its findings regarding the catchment of the HGMP:

29.1 The Decision states that the Court was left in a quandary as to the spatial areas to which the NZCPS applied.[11] However, the Court also made a finding that the catchment of the HGMP shown on Figure 8.5.3.1 of the AUP is the coastal environment for the purposes of the AUP. The Court also found that the majority of the Auckland Region was within the coastal environment.[12]

29.2 On a proper reading of Policy 1(2) of the NZCPS and the AUP, there was no basis to support the conclusion that the HGMP catchment is the coastal environment for the purposes of the AUP.

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[11] Decision at [93].

[12] Decision at [274].

Did the Environment Court come to a conclusion without evidence or one to which, on the evidence it could not reasonably have come to?

30 There is no basis and no evidence to support the Environment Court's conclusions that the HGMPA catchment is the coastal environment for the purposes of the AUP or that the majority of the Auckland Region is in the coastal environment.

31 No party provided evidence on the identification and determination of the coastal environment for the purposes of the AUP. Policy 1(2) of the NZCPS also indicates that the coastal environment is to be determined by natural and physical elements, features and processes including landscape and landform and that this environment needs to be determined on a case-by-case basis.

32 The Decision noted the general agreement of the parties that the TRSS is the policy preference,[13] supported by evidence concerning the protection of productive land and impact on rural landscape and amenity. The Court concluded that there should be a clear preference in the plan for transferable rights to the CSL zone, based on the information and evidence before it.[14]

33 However, the Court also concluded that the IHP provisions should be reinserted. The IHP district plan methods allow the same maximum number of sites to be created for both in-situ and TRSS subdivision, compared to the Council provisions which include fewer sites able to be created for in-situ subdivision than for TRSS. The Court's provisions also contain RPS provisions that refer to the transfer of the residential development potential of rural sites 'from one place to another' rather than to the CSL zone and fail to ensure vertical integration of the RPS and district plan provisions relating to TRSS.

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[13] Decision at [237] and [324].

[14] Decision at [324].

34 The Environment Court concluded[15] that the Council's witnesses Dr Fairgray and Ms Fuller had misunderstood the Council's capacity modelling evidence, which clearly stated that plan enabled capacity modelling was not a yield calculation. There is no evidence and no basis to support the Court's conclusion.

Did the Environment Court fail to take into account other relevant considerations?

35 In its discussion of land fragmentation issues, the Decision does not refer to the Council's expert land and soil science evidence. That was the only land and soil science evidence before the Court and addressed the regional issue of managing subdivision to prevent undue fragmentation of rural sites.

36 The Court thereby failed to recognise that the Council's RPS and district plan objectives and policies addressing the fragmentation of rural land, including by sporadic and scattered subdivision, were necessary to achieve Part 2 of the RMA, give effect to the RPS, and address the adverse cumulative effects of rural subdivision.

37 The Court confirmed the provisions sought by Zakara Investments Limited and the Council annexed as B to its Decision. The Court was satisfied that there did not appear to be any conflict between the provisions that Zakara was seeking and the outcome of the substantive hearing on the balance of the matters.[16] In reaching this conclusion, the Court failed to recognise that the provisions included in Annexure B were based on the rules promoted by the Council and not the more enabling IHP provisions that the Court settled on.

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[15] Decision at [239] and [257].

[16] Decision at [12].

Did the Environment Court take into account irrelevant considerations?

38 In describing the outcome of the hearing the Environment Court stated that it was 'reluctant to travel far from the provisions of the Council or IHP.' The Court stated it was still not satisfied that it had a fully accurate version of the AUP and also had been referred to all of the various interrelated parts of the plan, the changes made to it and the appeals still outstanding. It also referred to its concern that the complexity of the AUP meant that minor changes in one part of the plan may have ripple changes in other places (the butterfly effect). These matters do not form part of the applicable statutory tests for the Court's consideration of the parties' AUP rural subdivision provisions. The Court erred in law by taking these irrelevant considerations into account.

39 The Court considered that the conclusions and reasons in the Council's decision were not supported either by reference to the IHP decision or by the factual matters underlying them. The Court considered the Council's decision appeared to stem from a misplaced understanding of the IHP-drafted objectives and policies in the first place. However, whether the Council's decision is supported by the IHP's recommendation is not a relevant matter as the Environment Court was required to determine which set of provisions was better on the basis of the evidence before it and the relevant statutory tests.

Did the Environment Court fail to give reasons commensurate with the importance of the decision?

40 The reasoning provided in the Decision is too sparse to support the Court's conclusions that the Council's RPS Objective B9.4.1(1) and B9.4.1(4) and supporting Policies B9.4.2(1), B9.4.2(3) and B9.4.2(5) relating to the protection and enhancement of significant indigenous biodiversity and the fragmentation of rural land should be deleted or amended.

41 The Court discussed the potential for fragmentation arising from in-situ subdivision[17] and, when evaluating the district plan provisions, stated it did not consider that the IHP provisions would allow for fragmentation.[18] However, the Decision does not analyse the Council's or IHP's RPS objectives and policies in a substantive way, by reference to the statutory tests in case law. The Decision did not expressly consider the implications of the deletion of the Council's objectives and policies or whether their deletion might result in a gap in the RPS or a disconnect in the cascade between the RPS and district plan provisions. In addition, the Court did not discuss the issue of land subdivision protecting and enhancing degraded land in its decision.

42 The Court discusses some of the differences between the parties proposed wording for the objectives and policies in Chapter E39 Subdivision - Rural but beyond that the Decision provides no discussion as to why the deletion or amendment of any specific objective or policy is to be preferred.

43 The Court also noted the parties' provisions differed significantly on how incentivised protection should be provided for, including in terms of standards and assessment criteria. However, the Decision provides no substantive analysis or reasoning as to why the IHP standards were preferred. The Decision does not address or provide a proper explanation of why the Council's standards, including in relation to the type of features eligible for subdivision, minimum feature sizes, and caps on the maximum number of sites that could be created, did not better meet the statutory criteria. This inadequate level of reasoning is not commensurate with the importance of the issues before the Court and their complexity.

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[17] Decision at [287].

[18] Decision at [327].

Did the Environment Court fail to determine issues in the proceeding?

44 The Court considered there was merit in amending the IHP provisions to provide for staging for TRSS as suggested by Cato Bolam[19] and concluded the IHP provisions, with a modification to staging would be more efficient[20] but the Decision also records the Court's concern as to whether or not the staging provision was the subject of appeal.[21]

45 The Council submitted in its legal submissions that the changes sought by Cato Bolam were not within scope as no right of appeal arose under section 156 of the LGATPA.

46 The Court directed the Council to circulate its proposed amended provisions, including proposed wording for staging[22] and in the tracked change version of provisions attached to the Decision at Appendix J, the Court included an amendment to Rule E39.6.4.6(2) to provide "The application may provide for the staging of transfers of donor sites to receiver sites." However, the footnote to the amended provision states:

> This is an amendment sought by appeal and we understand to be subject to an argument as to scope. It is included here as the Court can see the benefit of such a provision if the parties conclude that it is within scope and can be accommodated.

47 The Decision did not clearly determine whether the amendment was within scope and within the Court's jurisdiction but instead left the issue to the parties to resolve.

Relief Sought

48 The Council seeks the following relief:

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[19] Decision at [326].

[20] Decision at [329].

[21] Decision at [326].

[22] Decision at [349].

48.1 That the appeal be allowed and the decision of the Environment Court is set aside;

48.2 That the High Court substitute its own determination under Rule 21.14(a) of the High Court Rules 2016;

48.3 In the alternative, that the matter be remitted to the Environment Court under Rule 21.14(b) of the High Court Rules 2016; and

48.4 Costs.

Date: 3 July 2018

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D K Hartley
Counsel for Auckland Council

This document is filed by Diana Hartley of DLA Piper New Zealand, solicitor for the appellant.

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BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 90

IN THE MATTER	of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA)
AND	of the Resource Management Act 1991
IN THE MATTER	of the Rural Subdivision provisions of the in part proposed and in part Operative Auckland Unitary Plan
AND	of an appeal pursuant to s 156 of LGATPA
BETWEEN	CABRA RURAL DEVELOPMENTS LIMITED & ORS
	(ENV-2016-AKL-189)
	CATO BOLAM CONSULTANTS LIMITED
	(ENV-2016-AKL-206)
	RADIATA PROPERTIES LIMITED
	(ENV-2016-AKL-234)
	TERRA NOVA PLANNING LIMITED
	(ENV-2016-AKL-248)
	ZAKARA INVESTMENTS LIMITED
	(ENV-2016-AKL-216)
	MASON AND OTHERS
	(ENV-2016-AKL-207)
	SMITHIES FAMILY TRUST
	(ENV-2016-AKL-212)
	Appellants
AND	AUCKLAND COUNCIL
	Respondent

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Court:	Environment Judge JA Smith Environment Commissioner ACE Leijnen Environment Commissioner D Kernohan
Hearing:	at Auckland 19-23 and 26-29 March 2018 inclusive and site inspection on 5 April 2018
Appearances:	JM Savage for Cabra Rural Developments and Ors (**Cabra**) KRM Littlejohn and WD McKenzie for Cato Bolam, Mason and others (**Cato Bolam**) AGW Webb for Radiata Property Limited (**Radiata**) RM Bellingham for Terra Nova Planning Limited (**Terra Nova**) NM de Witt for Zakara Developments Limited (**Zakara**) JD Young for Omaha Park Limited (s 274 party) NSC Buxeda for Horticulture New Zealand and Federated Farmers of NZ Incorporated (leave to retire and abide decision of the Court) DK Hartley and AF Buchanan for Auckland Council (**the Council**)
No appearance for:	Smithies Family Trust (leave to retire and abide decision of the Court) Other s 274 parties who had given original notice
Date of Decision:	12 June 2018
Date of Issue:	12 JUN 2018

DECISION OF THE ENVIRONMENT COURT

A. The appeals are allowed to the extent that the Independent Hearing Panel (IHP) recommendation is to be substituted for the decisions of the Council subject to the following:

   (a) the changes to the Plan made by the Council that were not appealed;

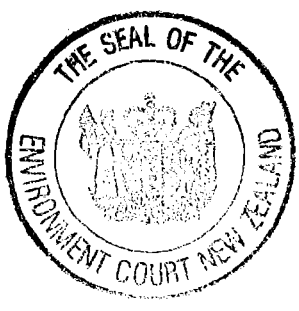
   (b) changes to the Plan made by agreement of the parties.

B. The Court annexes as "**J**" a general guide to amendments appropriate to the Plan. The Council is to circulate its proposed amended provisions, including:

   (a) provisions similar to "**J**";

   (b) agreed changes as appropriate;

   (c) proposed wording for staging (based on Ms Pegrume's evidence),



within 20 working days. Parties are to provide their comment within a further 15 working days. Council are to file and serve its preferred wording with the Court in a further 10 working days. Where there remains a difference, the Council memorandum shall set out the various wordings proposed, and its reasons for their preference.

C. Other parties are to provide their comments in five working days. The Court shall then consider whether to issue a final decision or hold a hearing on the wording.

D. The Court recognises that there should be improvements to the transferable rights subdivision system (**the TRSS**) to make this simpler to be utilised by both subdividers and donors. It makes recommendations for the type of changes that might be introduced through a plan change process. We conclude that such extensive changes are not justified in the current appeals, as:

    (a) they would not have been signalled to the public sufficiently in submissions;

    (b) the implications of such changes in terms of the balance of the plan have not been able to be understood or appreciated for the reasons set out in this decision.

E. The Court also considers that there is some merit to the concept of in-situ developments of four or more lots being required to undertake a Master Plan process. We have concluded that a status change goes beyond the scope of the current appeals, and may have consequences which we have not been able to fully ascertain given our limited evidence in relation to the comparison of plan provisions.

F. By way of guidance for any Change considered by the Council, we conclude:

    (a) that there should be a clear preference for the use of the TRSS in the Countryside Living zone where possible;

    (b) that SEA incentive subdivision provisions could relate to either a small

number of sites in-situ or for larger developments a Master Plan approach to ensure that the issues identified in this decision are addressed, including particularly:

(i) long term protection, enhancement and improvement of significant indigenous vegetation;

(ii) long term enhancement and improvement of other indigenous vegetation;

(iii) avoidance of the consequences of residential dwellings on indigenous vegetation (whether significant or otherwise);

(iv) avoidance of adverse effects on significant vegetation and significant effects on indigenous vegetation as a result of any developments;

(v) achieving appropriate access to the building site and separation to ensure that multiple objectives and policies of the Auckland Unitary Plan can be met.

H. This does not appear to be an appropriate case for costs. In the event that any party seeks to make an application, they are to file the same within twenty working days of the date of this decision; any response is to be filed within ten working days.

REASONS FOR DECISION

Introduction

[1] Ostensibly, this case relates to the subdivision rules that might apply to promote the protection of significant ecological areas concerning indigenous vegetation and wetlands within the Auckland Rural Areas. We shall refer to this as incentivised protection, given it creates rights to subdivide land.

[2] The appeals seek to reinstate the Independent Hearing Panel recommendations on these issues, and this includes reinstatement of certain objectives and policies within the Plan. The outcome of this hearing turns on the most appropriate standards and criteria for incentivised protection of SEAs and revegetation for restricted discretionary activity Rural Subdivision.

[3] These have been described by witnesses, and will be referred to in this decision as "Transferable Rural Site Subdivision (**TRSS**)" and the ability to develop further

subdivision lots on site (described as **in-situ development**). The parties are agreed that TRSS rights should only enable subdivision within the Countryside Living zone, and to that extent the parties are consistent with the Council decision (and the IHP decision).

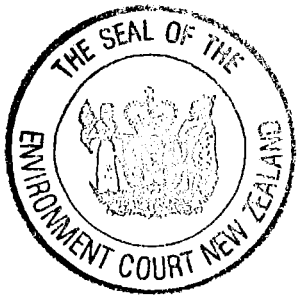
Subdivision in Rural zones from incentivized protection

[4] However, the parties differ significantly on how incentivised protection should be provided for, including in terms of standards and assessment criteria, and also in respect of any caps on the number of dwellings that can be inserted as part of those standards. We refer to Annexure **A** to this decision, which sets out in relatively brief terms the various positions of the parties before this hearing.[1]

[5] The Council's provisions are accepted to be more constraining than those of the IHP. In large part, the concern of the Council is that the adoption of the IHP provisions would lead to an untoward and uncontemplated level of subdivision within the Rural Area. Most importantly, they are concerned at the potential for continued subdivision development in the Rural Areas other than the Countryside Living Zone, and the consequential adverse impact on the rural productive land resource.

[6] The appellants, supported by s 274 parties, argue that estimates of take-up for these incentivised subdivision opportunities are significantly overestimated. In particular, they argue that the IHP provisions provide for significant areas of additional protection of significant ecological areas (including vegetation and wetlands) than those recognised in the Council provisions. In part, this is due to a greater ability to convert inchoate subdivision rights into development on the basis of identifying further significant ecological areas in accordance with the Plan, which may lead to further areas of SEA not currently identified in the Plan.

[7] In part, the significant distinction between the approach of the parties can be explained by a concern by all of the Council witnesses to limit rural growth (particularly in areas other than Countryside Living), on the basis that the SEA revegetation subdivision incentive was part of the subdivision rules, rather than part of the objective to protect indigenous vegetation. In the end, we did not understand any party to say that none of these matters were irrelevant. It was simply a question of emphasis on either growth controls or increasing the significant indigenous vegetation protection and revegetation.



[1] Ms Pegrume, evidence-in-chief, Tabs I and J (EB 1170 and EB 1180).

[8] These issues were significantly diffused and conflated due to provisions of the Local Government (Auckland Transitional Provisions) Act (LGATPA) that overlie those for appeal under the Resource Management Act 1991 (**RMA**), the actions of the Council in relation to its strategic growth, and the National Policy Statement on Urban Development (**NPSUD**). There appears to pervade the Council evidence a view that the Rural Area is in some way to be controlled for the purpose of urban growth, which issue we will discuss in more detail later in this decision.

The issues

[9] We have concluded that the case throws up a number of significant issues that will need to be addressed in turn. At the core of the case is the question of indigenous biodiversity objectives, policies and rules, including those arising within the coastal environment and therefore affected by the New Zealand Coastal Policy Statement (**NZCPS**). This has the potential for interaction with other objectives and policies within the Plan and there is no dispute in this case that this has been resolved by addressing significant ecological areas (**SEA**s) both terrestrial and marine, and by other provisions for general and indigenous vegetation more generally.

[10] There is a difference between the IHP and the Council position, based on the justification for these provisions, and which is more appropriate. As we have already noted, there is the potential for adopting a selection from each of the parties' position ("pick and mix"). This may have jurisdictional consequences on the requirements of the LGATPA in dealing with these appeals, and the status of the various processes under the planning documents. Finally, there is an interplay between the LGATPA and the RMA.

[11] The Council has adopted a full electronic approach for the Auckland Plan. This gives rise to a number of other issues relating to the status of relevant parts of the Unitary Plan at each stage of the process, and the legitimacy and certification of the parts relevant for the purposes of this hearing.

The Zakara position

[12] Zakara owns a considerable portion of Kawau Island, and as such has an interest in the SEA areas identified on that island. Apparently by oversight, having initially identified the SEA, the Council failed to follow through and formally identify the SEAs on Kawau Island in the AUP, and now concedes that this mapping should be included. By

the end of the hearing, we were satisfied that there did not appear to be any conflict between the provisions that Zakara was seeking and the outcome of the substantive hearing on the balance of the matters. Accordingly, we confirm the provisions sought by Zakara and the Council in their joint memorandum, and the Auckland Plan is to be amended as to planning maps on this basis forthwith. These are annexed as **B**.

The remaining parties

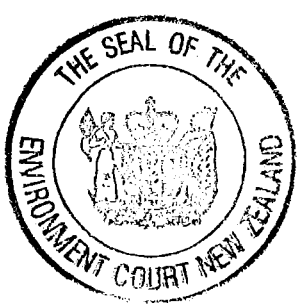
[13] A number of parties, who had shown an interest in this matter, did not wish to participate in the hearing and sought leave to retire on the basis that they would abide the decision of the Court. Leave was granted on the basis that these parties are bound by decisions both procedural and substantive made by the Court.

[14] Of the remaining appellants, Cabra, Cato Bolam, Radiata and Terra Nova agreed that the independent hearing panel's provisions were preferable to those of the Council. There was thereafter, however, a divergence, with some parties seeking variations to the IHP's decision (not all of which were more liberal than that decision). Several parties, including Radiata and Cato Bolam, suggested that the Court had the power to adopt a position including elements of both the Council and the IHP decision. Mr Savage, for Cabra, was concerned at the ability of the Court to go beyond each outcome by incorporating elements of other outcomes. This turns, in part, upon the precise wording of the LGATPA. In the end, we concluded that we should proceed to consider the evidence, acknowledging that if matters appeared on the merits to be appropriate, we would then have to consider whether we have the jurisdiction to impose them.

The issues

[15] Accordingly, we have approached the matter on the following basis:

(a) At the core of the case are the objectives and policies for indigenous biodiversity (Chapter B7 Natural Resources) and the overlay provisions, including objectives and policies for Significant Ecological Areas Overlay (terrestrial and marine) (D9) and relevant rules. This includes those arising in the coastal environment and therefore affected by the NZCPS. This has the potential for interaction with other objectives and policies within the plan and there is no dispute in this case that these matters have been addressed by the significant ecological areas provisions (SEA both terrestrial and marine) and



by also making other provisions for indigenous vegetation generally, for instance in Chapter E15 Vegetation management and biodiversity.

(b) The difference between the IHP and the Auckland Council position and the justification for subdivision of rural land, is based largely on the conservation and enhancement focused provisions, and which is more appropriate. As we have already noted, there is the potential for adopting a selection from each party's position, but this may have jurisdictional consequences.

(c) The requirements of the LGATPA as they relate to dealing with these appeals, and the status of the various plan processes under the planning documents, and the interplay between the LGATPA and the RMA.

(d) The complexities of the LGATPA and the status of various parts of the AUP is not assisted by the fact that Auckland Council has adopted a full electronic approach for the Unitary Plan. This gives rise to a number of other issues relating to relevant documents at each stage of the formulation process, and the legitimacy and certification of these documents for the purposes of this hearing and into the future. The process was unique, and the result is a Plan that is electronic rather than a physical document.

The Court's approach

[16] We adopt the following process.

A. The Plan process

[17] There is a preliminary issue as to the planning process adopted and the plan document resulting. We will address them by considering the plan process a follows:

(a) the LGATPA process;

(b) proposed Unitary Plan [**PAUP**];

(c) its interface with the RMA plan process and "approval" and operative status under each;

(d) how this coincides with the Plan and the appeals, particularly as it relates to versions of the Plan [**AUP**];

(e) the correct version of the AUP for the purposes of this hearing, how this is established and how the provisions of the Electronic Transactions Act 2002 impact upon the documents and the requirements before this Court.

[18] To this extent, we will be revisiting some of the issues addressed in the *London Pacific*[2] declaration in relation to the electronic Plan, but given the difficult particular issues that arise in relation to an appeal under the Unitary Plan.

B. The planning framework

[19] It is our intention in this regard to identify the relevant Policy Statements, Regional Policy Statement, the Regional Coastal Plan and other Plan statements before moving on to the land use provisions of the AUP. In this regard, we must consider the interface between the NZCPS (Policy 11 in particular), the Regional Policy Statement and the RMA as it relates to the AUP. We should note at this stage that no party suggested to this Court that the AUP was not consistent with or did not implement the NZCPS or other relevant documents, including the RMA. Nevertheless, in light of recent decisions, we will need to examine in more detail the various policies of the NZCPS and the RMA to understand their relevance to the issues before the Court.

C. The merits

[20] We will then need to assess the merits of the various propositions of the parties based upon the evidence before us and the Court's understanding of the issues is amplified by its inspection of the district, case law and submissions.

D. Section 32

[21] We then need to consider the provisions of s 32, particularly as it applies to the provisions in question. We acknowledge that the parties largely agree with the s 32 analysis, particularly the integrated analysis performed by the IHP, and it is essentially the difference between the relevant provisions sought in this hearing which we would need to evaluate. The Act requires us to assess which is most appropriate, and parties before the Court acknowledge that this could be also described as which provisions are better.

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[2] *London Pacific Family Trust v Auckland Council* [2017] NZEnvC 209.

E. Jurisdiction

[22] Having reached this position we would then need to assess whether there is any jurisdictional bar to the outcomes that have been generated through the merits and evaluation processes, and if necessary consider whether the Court can make corrections as omissions that are errors under s 292 or will need to undertake a further process under s 293. Depending on the outcome of the overall evaluation, such a process may or may not be necessary.

F. How to proceed

[23] The Court will then need to conclude on the process to be adopted, and what are the best steps. If appropriate, we may need to indicate what further steps should be undertaken, or give the parties an opportunity to finalise terms.

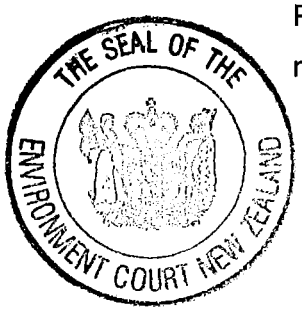
The process under the Local Government (Auckland Transitional Provisions) Act 2010

[24] The Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**), constitutes some 140 pages and 171 sections plus schedules. It sets out a truncated plan review process for the Auckland Unitary Plan. LGATPA section 1(1)(5) sets out that the Auckland Council is to prepare a proposed Combined Plan for Auckland that meets the requirements for a Regional Policy Statement, a Regional Plan including a Regional Coastal Plan, and a District Plan.

[25] Once the combined Plan was notified, the intent was to identify a Hearing Panel (the Independent Hearing Panel or IHP) which would call for and consider submissions and make recommendations to Auckland Council.

[26] There was no dispute before us that the combined Auckland Plan (known as the proposed Auckland Unitary Plan **PAUP**) had been prepared in accordance with this process, notified, and that submissions had been dealt with by the IHP within the timescale set within the legislation (ss 121-127).

[27] The hearing was conducted in accordance with the process set out in ss 127-143; the IHP was required to provide recommendations to the Council on the proposed Plan (ss 144-147). The Council was required to consider those recommendations and notify decisions on them. Section 148(1) provides:



> ...the Auckland Council must decide whether to accept or reject each recommendation of the hearings panel; and for each rejected recommendation decide an alternative solution which:
>
> (i) may or may not include elements of both the proposed plan as notified and the hearing panel's recommendation in respect of that part of the proposed plan; but
>
> (ii) must be within the scope of submissions.

[28] There was a strict time limit on this which, under s 148(4) was 20 working days. Having made a decision, in accordance with those sections, matters then pick up at s 152 of the Act which refers to "the proposed plan" once the Auckland Council publicly notifies its decisions on recommendations of the IHP under s 148(4)(a) s 152(1). The Proposed Plan is amended in accordance with those Council decisions, and is deemed to have been approved by the Council under clause 17(1) of Schedule 1 of the RMA on and from:

> (2)(b)
>
> (i) the date on which the appeal period expires if no appeals relating to that part of the proposed plan are made under s 155 of this part; and
>
> (ii) the date on which all appeals, including further appeals relating to that part of the proposed plan are determined if appeals are made under that section

[NOTE: ss 3 contains similar provisions in respect of the Coastal Marine Area (ss (4) in relation to designations or heritage orders) as does ss (5).]

[29] There can be no doubt, therefore, that the Unitary Plan, still referred to here as the proposed Plan (**the PAUP**) was deemed to be created by the decisions of the Council.

[30] Section 153 then applies, giving legal effect to rules, and adopts s 87A to 87G of the RMA with all necessary modifications to any rule contained in the proposed Plan. Thus, it is clear as a matter of law:

(a) that the decisions of the Council are not the proposed plan, but they do modify the proposed plan;

(b) the proposed plan consists of the document being the notified plan as modified by the Council decisions, which one assumes must then exist as a cohesive document, to have legal effect;

(c) that certain of the provisions of that plan take effect from the date of decision, and that that effect depends upon the application of sections 86A and 86G.

[31] In that regard, the RMA has a definition of 'Proposed Plan' in s 43AAC:

> 43AAC
> (1) In this Act, unless the context otherwise requires, **proposed plan**:-
> (a) means proposed plan or change ... but has not become operative in terms of clause 20 of that schedule and;
> (b) [not relevant for current purposes];
> (2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.

[32] As sections 87A to 86G apply, certain provisions have legal effect. The distinction between "approved" and "treated as operative" and "legal effect" is not clear. Section 87B appears to apply to notified plans, while s 86C again seems to relate to rescinded provisions and s 86D to Environment Court setting a different date for effect. Section 86E deals with local authorities identifying rules early or having a delayed effect. Accordingly, 87F and G seem to be the relevant provisions.

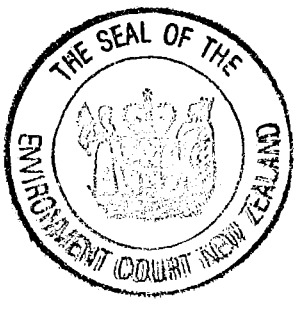
[33] Section 86F provides:

> (1) A rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if at the time for making submissions or lodging appeals on the rule has expired and in relation to the rule:
> (a) no submissions in opposition have been made or appeals have been lodged;
> (b) all submissions in opposition and appeals have been determined; or
> (c) all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.
> ...

[34] The exceptions in s 86G do not appear to apply.

[35] We are left, therefore, with a proposed plan where provisions that have not been subject to appeal, and are not in relation to the coastal area, (which requires Ministerial approval) must be "treated as operative". The distinction between "legal effect", "approved", "operative" and "treated as operative" is unclear, however it seems axiomatic that "legal effect", "approved" and "treated as operative" anticipates that there may be a further step taken by the Council under clause 20 of the First Schedule to the RMA. Nevertheless, the provision still has effect as if it were operative from that date.

[36] The PAUP may be appealed in limited circumstances described in s 155, with a right of appeal under s 156. At the time the appeal is filed, it could be fairly said that it is unlikely that any provisions of the plan would be operative, as the time for filing of appeals would not have concluded. Nevertheless, shortly after that date certain provisions within



the plan would be treated as operative, and s 152 deems that part of the plan is also approved under clause 17(1) of the First Schedule to the RMA. When this is a deemed approval, it does not appear to require the affixing of the seal of the local authority under clause 17(3) of the First Schedule to the RMA. This does not prevent the Council subsequently making the provisions not subject to any appeal operative by virtue of clause (20)(1) and (2), which we understand the Council to have done.

The Unitary Plan after the 2016 decisions

[37] So, in practical terms, prior to the filing of appeals the plan would have been the proposed plan in terms of the version of the PAUP as achieved by the amendments made by the Auckland Council decisions. This is known as the **Decisions Version** of August 2016.

[38] Parts of that plan were subsequently deemed to be "approved", "operative" or "treated as operative", and consequently made operative by the Council, being the **Auckland Unitary Plan (operative in part)**. This position was achieved by resolution GB 2016 22 on 8 November 2016. These provisions became operational on 15 November 2016.

[39] From that point on, it appears that further changes have been made to the AUP (operative in part) in light of:

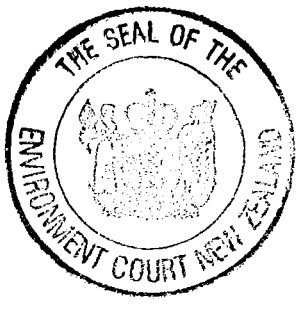
(a) amendments either ordered by the High Court or the Environment Court to resolve appeals; or

(b) as a result of changes to the plan notified by the Council but as yet unprocessed.

In substance, therefore, the decisions version of the Unitary Plan (PAUP: decisions version) should be the same as that made operative by the Council in November 2016.

[40] Mr Duguid, a Council officer, filed an affidavit confirming that the seal of the Council was affixed to the digital version of the plan, although the electronic citation given for that seal is not in the same position as the decisions version of the plan. Mr Duguid goes on to say:

> 6.19
> ...Since the Council first made parts of the Auckland Unitary Plan operative on 15 November



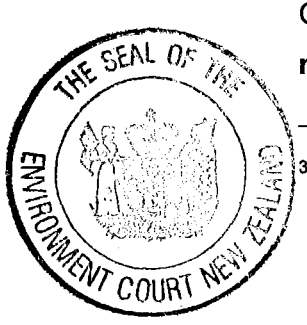
> 2016, the Council has since made further parts of the Auckland Unitary Plan operative on 19 October 2017 and 22 February 2018 and placed public notices in the New Zealand Herald. On 8 March 2018, the Council publicly notified a correction to the 22 February 2018 public notice.
>
> 6.20
> It has come to my attention that Council has not followed the correct approval process (required by clause 17(2)) in the sealing process required by clause 17(3) for the 15 June 2017 amendments to the Unitary Plan... However the Council sought to correct this through its approval on 10 October 2017 which approved the changes for the provisions that were made operative on 15 June and 19 October 2017.
>
> ...
>
> 6.22
> Further, the seal was not affixed to the Auckland Unitary Plan for the changes that were approved by the Council and made operative in accordance with clause 20 on 19 October 2017 and 22 February 2018. Council has urgently attended to sealing of the changes on 19 October 2017 and 22 February 2018.
>
> 6.23
> The legal version of the Auckland Unitary Plan is the current version dated 8 March 2018, which is available on the Council website at the following links... A text of the legal version of the Auckland Unitary Plan is also available on the electronic tablets that have been provided to the Court by the Council.

[41] The Court was concerned that this explanation did not enable us to know which provisions were the subject of appeal by the various appellants.

[42] More importantly, the assertion that the current version is the legal version does not seem to accord with the conclusions of the Court in *London Pacific*, where it noted that the version that it had received included a number of notified changes that had been made to the plan even though they were only notified.[3]

[43] This is reflected in the Samsung tablet that was provided to us, which was to contain the electronic version. Unfortunately, (after issues relating to access and the screen timing out within 5-10 seconds were resolved) the Court was then faced with an index issue.

[44] Within those indexes are a number of different plan versions and updates. The Court was unclear as to which one it was intended to refer to. The notified version (**PAUP notified**) is relevant only to the question of jurisdiction for submissions, while the



[3] *London Pacific*, above at paragraph [18].

recommendation version of the IHP is, of course, relevant for comparison purposes. However, it is difficult to find, within the versions given, the version decided by the Council. Mr Duguid's first affidavit does little to assist this, and the Court pointed out that it was still concerned as to whether or not the document met the purposes of the LGATPA and/or RMA legislation or the criteria of the Electronic Transactions Act 2002 referred to by Mr Duguid.

[45] More particularly, the citation given in the application for the website decision version of the plan was incorrect, and gave the Council decision itself rather than the decisions version. This was corrected in the later affidavit, and we have now been able to locate a copy of the Council Decisions Version. This does not appear to be on the tablet, nor, from the indexing used to find it, does it appear to be a document readily available to members of the public.

[46] Nevertheless, we acknowledge that, since the Council Decision Version, a number of variations have been made by the High Court and the Environment Court to that document. Counsel for all parties had agreed on a hard copy set of relevant provisions that were produced to the Court by Auckland Council. We were told that these represented the decisions version except where it was noted that there was a distinction.

[47] As it turned out, that assertion has proved to be incorrect. This is because certain changes to the decisions version have been made by the High Court and the Environment Court. It is only by chance that we became aware of some of the critical changes to the provisions made in the High Court by consent in the case of *Royal Forest & Bird Protection Society of NZ Incorporated v Auckland Council*.[4]

[48] None of the parties to that appeal to the High Court were involved in this appeal, but it relates to chapters D9, E15 and F2. In particular, it relates to a range of policies within the AUP for the management of SEAs, vegetation management and biodiversity, and the General Coastal Marine Zone, and whether these properly give effect to the NZCPS or the RPS. It is, therefore, directly relevant to the issues in this appeal.

[49] The High Court notes:

> [11] The third error of law alleged by RFB, which this settlement concerns, is that the Council made an error by adopting a range of policies within the Unitary Plan for the management of

[4] [2017] NZHC 980, Te Whata J.

SEAs, vegetation management and biodiversity, and activities within the coastal environment that are contradictory, and do not give effect to, the NZCPS or the RPS. More specifically, error of law is alleged on the basis that:

(a) Subsections 67(3)(b) and (c) of the RMA requires that a Regional Plan give effect to the NZCPS and RPA;

(b) The policies contained in Chapters D9, E15 and F2 cannot be reconciled in a manner that gives effect to the NZCPS (specifically Policy 11) or the RPS (specifically Policy B7.2.2(5)); and thus

(c) The Council, in adopting the suite of Policies in the Unitary Plan relating to the protection of the coastal environment and activities in the coastal environment without a specific requirement to avoid adverse effects on indigenous biodiversity, failed to give effect to:

(i) The NZCPS, in particular Policy 11; and

(ii) The RPS, in particular Policy B7.2.2(5).

[12] RFB submits that the RMA imposes a hierarchical, cascading scheme of policy documents with the NZCPS as the document at the top of this hierarchy.[4] RFB contends that the requirement to give effect to the NZCPS was settled by the Supreme Court in *King Salmon* in the following terms:[5]

> Essentially, the position since the *King Salmon* decision is that where there are relevant directive provisions in a higher order policy document, plan provisions are no longer framed by reference back to the provisions of Part 2 (except in cases of complete coverage, uncertainty of meaning or invalidity) but rather, the plan provisions must strictly implement the directive provisions. This does not necessarily mean that the plan provisions must mirror the higher order provisions. However, where the higher order provision mandates a particular management approach ("avoid adverse effects" or "avoid significant adverse effects" for example), plan provisions that provide for an alternative approach ("avoid, remedy or mitigate", for example) will not give effect to the higher order document.

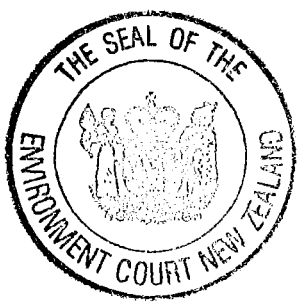
...

[17] The parties have reached agreement to amend Chapters D9, E15 and F2 of the Unitary Plan, and seek that the Court exercise its powers under r 20.19 of the High Court Rules 2016 to make the proposed amendments.

[4] Citing *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38, [2014] 1 NZLR 717 at [152].

[5] Citing also *Transpower New Zealand Limited v Auckland Council* [2017] NZHC 281 at [67]-68].

[50] As will become evident in the course of this hearing, we are now aware that nearly identical issues arise in respect of the actual methods in question in this case, and in the consideration of the purpose and provisions in relation to incentivising subdivision for the protection of SEAs, vegetation management and biodiversity. The Court went on



to identify specifically Royal Forest and Bird's concern regarding chapter D9.3:[5]

> [20] Specifically, RFB's concern regarding Chapter D9.3, which contains the objectives and policies for the SEA overlay, is that it does not contain clear policies requiring avoidance of adverse effects on Policy 11 values and sites. The amended wording, enabling the inclusion of D9.3(1)(a) and D9.3(9) and D9.3(10) is designed to explicitly require avoidance and also includes some specific effects-based sub-policies that were previously specified for non-significant sites in chapter E15, but which also apply within SEAs under the proposed amendments. In particular, amendments:
>
> (a) Explicitly requires avoidance of adverse effects in SEAs; and
>
> (b) Clarify the requirements of policy 11 apply in relation to other provisions in the chapter, namely D9.3(6) and the existing provisions D9.3(9), D9.3(11) and D9.3(12).
>
> [21] The concern in relation to Chapter E15 is that as a result of the IHP's reordering of the Council's proposal at hearing to include specific provisions requiring compliance with Policy 11, the only Policy11 specific policies are located in Chapter E15, and thus only apply outside scheduled SEAs. The changes to E15 are thus more technical in nature, ensuring consistency with the wording of Policy 11

[51] At paragraph [34] the High Court went on to note:[6]

> The Court of Appeal also noted, with respect orthodoxically, that the requirement to "avoid" adverse effects is contextual so that whether any new activity or development would amount to an adverse effect must be assessed in both the factual and broader policy context [sic].

and at paragraph [36]:

> In the present case, significantly the parties agree that the IHP recommendations in relation to chapters D9, E15 and F2 are deficient in terms of the NZCPS and RPS. I agree also that there appears to be an error on the face of the recommendations.

[52] After citing the relevant policies, particularly policy 11 of the NZCPS and RPS policy 7.2.2(5), the High Court stated:[7]

> [39] Yet the only provisions of the Unitary Plan that give effect to these policies are found in E15.3(9) and (10), provisions which the Council in its submissions to the IHP sought to have included in B4.3.4 of the PAUP. The effect of this is that there is no specific protection for indigenous biodiversity in coastal marine SEAs. As chapter 15.1 background to the Unitary Plan currently states...
>
> [relevantly,]

---

5 Paragraphs [20] and [21].

6 *Man o War Limited*, 2017 NZCA 24 at paragraph [65], [66], [67].

7 Above n 4.

> the rules that apply to the management of vegetation and biodiversity for areas both outside of and within scheduled Significant Ecological Areas – terrestrial are contained in this chapter.
> The rules that apply to vegetation management and biodiversity in the coastal marine area, including for areas identified as significant ecological areas – marine are contained in Chapter F Coastal.

[53] The High Court goes on to conclude that explicit provision for protection of specified elements of indigenous biodiversity was contemplated (at paragraphs [42] – [46]) and at paragraph [47] notes:

> With respect to the care taken by the IHP I could find no explicit policies in chapter D, the overlay section of the Unitary Plan, to secure the outcome foreshadowed in the above passages. In particular, the overlays relating to the SEAs found in chapter D9 contain no explicit policy to secure protection of significant indigenous biodiversity as envisaged above or in terms of the NZCPS or to avoid the adverse effects of subdivision, use and development in SEAs.

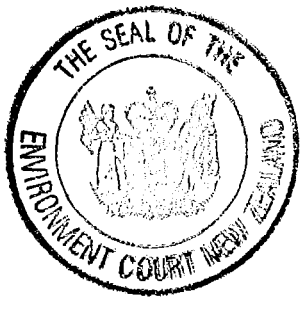
[54] The Court went on to make changes sought, and usefully has attached to it as Appendix A comparison of the various provisions that were altered as a result. That is annexed hereto as Annexure **C**.

[55] We cite the above decision in some detail given its importance to the matters of substance in this hearing. However, we also note that the High Court has issued a further decision relating to the identification of new areas to be included in the plan by way of SEA-M overlay.[8] The High Court proceeded on the assumption:

> [5] The Council developed a more detailed set of criteria for identifying new SEA-Ms in order, it claimed, to give better effect to Policy 9 of the New Zealand Coastal Policy Statement 2010. The revised criteria comprise six inclusion factors and four exclusion indicators.

[56] At paragraph [6] the Court goes on to discuss the exclusion indicators, listed as:

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



[8] *Royal Forest & Bird Protection Society of NZ Inc v Auckland Council*, [2017] NZHC 1606, Wylie J.

[57] The IHP had recommended the adoption of those criteria, leading to the appeal. At paragraph [13] the High Court summarised the Council's position and the issues:

> [13] With the benefit of hindsight the Council acknowledges that the exclusion indicators now contained in chapter L, Schedule 4 of the decisions version of the proposed Unitary Plan, as a result of recommendations made to it by the Independent Hearing Panel, could prevent some new areas of significant ecological value from being protected under the SEA-M overlay and that is a legal error. It further acknowledged that retention of the exclusion indicators and any resulting failure to identify SEA-Ms would:
>
> (a) not reflect the direction of s 6C of the Resource Management Act;
>
> (b) be inconsistent with the findings of the Court of Appeal in *Man o War Station Limited v Auckland Council*;
>
> (c) conflate ecological assessment with management considerations relating to human use or modification;
>
> (d) have the potential to result in the exclusion of areas that are required to be protected, or otherwise have their adverse effects managed under Policy 11 of the New Zealand Coastal Policy Statement;
>
> (e) create an inconsistency between the identification of new SEA-Ms and the identification of new significant ecological areas – terrestrial (SEA-Ts); and
>
> (f) conflict with Policies B7.2.2(3) and (4) of the proposed Unitary Plan.
>
> [14] Accordingly, the Council accepted it is appropriate to delete the exclusion factors from chapter L, schedule 4.

[58] At paragraphs [18] and following the Court went on to consider the questions of s 6(b) and (c). That discussion is germane to later parts of our decision and we quote it here:[9]

> [18] ... The Court held that the issue of whether the land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) requires an essentially factual assessment based upon the inherent quality of the landscape itself.
>
> [19] The structure of s 6(b) and (c) is the same. I agree with the Council that the same principle must apply to the identification of an area as a significant ecological area qualifying for protection under s 6(c). The exclusion indicators, dealing as they do with modified areas, have the potential to cut across s 6(c) and the findings made by the Court of Appeal in Man o War Station. An area may still qualify for protection under s 6(c), notwithstanding modification.

[59] At paragraph [24] the High Court goes on to some other pragmatic difficulties

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[9] *Man o War Station Limited v Auckland Council*, [2017] NZRMA 121.

with the adoption of exclusion indicators and notes in part:

> ...
>
> (b) the incorporation of exclusion indicators arguably conflicts with the directions contained in Policies B7.2.2(3) and (4) of the proposed Unitary Plan.

[60] The Court then adopted amendments to Schedule 4 to the Plan, which deleted the reference to exclusion factors in assessing Significant Ecological Areas - Marine. Again, we have cited this decision in some detail because of its relevance to parts of our decision later.

The relevance of these decisions to the plan provisions

[61] Of critical importance to the current proceedings is the fact that the changes made in both those decisions are incorporated in the hard copy version of the plan we have been given as if they are part of the Council's decisions version. There is no indication that they have been inserted as a result of the appeals.

[62] This is of critical importance given that it appears to us that many of the witnesses were using different versions of the plan in preparing their evidence. Witnesses such as Dr Bellingham, for example, advised us they had used the Decisions Version of the plan. Other witnesses apparently have relied upon the changes made after the appeals were filed and after July 2017, particularly to D9.3.

[63] These issues become very important in understanding the thrust of both the appeal, which was concerned as to what methods were adopted to protect significant ecological areas, and issues as to how these matters had been recognised in terms of the Plan. There was no indication in the Council's submissions that the Council had acknowledged to the High Court that the IHP decision contained an error of law and that further clarification was required in relation to the changes identified in Annexure **C**.

[64] Further, the Council had acknowledged in the High Court that the exclusion indicators in chapter L, schedule 4 could prevent some new areas of

> ...significant ecological value from being protected under the relevant overlay, and thus there was a legal error.

[65] Nor can it be said that the resolution of those two errors of law in the High Court proceedings are a complete answer to the concerns around protection of SEAs, given

the limited nature of the role of the High Court and, of course, this Court in relation to appeals. Given these errors of law, they may affect the methods and rules that implement them.

The Electronic Transactions Act

[66] This led us to review whether or not these versions of the plan represented a sufficient electronic version for the purposes of the Electronic Transactions Act 2002 as asserted by Mr Duguid.

[67] Clearly, it is possible, for the plan in this case, to be created and maintained in an electronic form. That is not the source of the Court's concern. The concern is whether or not the electronic Plan meets the requirements of the Electronic Transactions Act to:

(a) reliably assure the maintenance and integrity of the information; and

(b) maintain the information so that it is readily accessible.

and otherwise comply with the RMA and Schedule 1, clause 20.

[68] Critical sections in the Electronic Transactions Act are:

> Section 17 When integrity of information maintained
> For the purposes of this part, the integrity of information is maintained only if the information has remained complete and unaltered, other than the addition of any endorsement, or any material change that arises in the normal course of communication, storage or display.
>
> Section 25 Legal requirement to retain document or information that is in paper or other non-electronic form
> A legal requirement to retain information that is in paper or other non-electronic form is met by retaining an electronic form of the information if:
> (a) the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and
> (b) the information is readily accessible so as to be usable for subsequent reference.

[69] Section 26(b) reflects the same approach in respect of documents in electronic form.

[70] Section 29 deals with the production of information:

> Section 29 Legal requirement to provide or produce information that is in legal form
> A legal requirement to provide or produce information that is in electronic form is met by

providing or producing the information:

(a) in paper or other non-electronic form, but if the maintenance of the integrity of the information cannot be assured, the person who must provide or produce the information must:

(i) notify every person to whom the information is required to be provided or produced of that fact; and

(ii) if requested to do so, provide or produce the information in electronic form in accordance with paragraph (b); or

(b) in electronic form, whether by means of electronic communication or otherwise if,

(i) the form and means of the provision or the production of the information reliably assures the maintenance of the integrity of the information, given the purpose for which and the circumstances in which the information is required to be provided or produced; and

(ii) the information is readily accessible so as to be usable for subsequent reference; and

(iii) the person to whom the information is required to be provided or produced consents to the provision of production of the information in an electronic form, and if applicable by means of an electronic communication.

Thus, the same issues as to integrity and accessibility arise.

[71] In subsection 32:

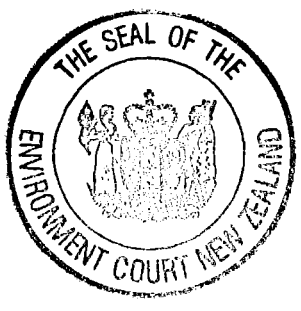
Originals

a legal requirement to compare a document with an original document may be met by comparing that document with an electronic form of the original document if the electronic form reliably assures the maintenance of the integrity of the document.

Reliability and integrity of the Plan

[72] We note that in *London Pacific*[10] the Court was concerned that the version produced to it included changes which had yet to be decided on by the Council, and had deleted original provisions. We were assured in this case that none of the provisions in question for this appeal were subject to any such change or alteration.

[73] Nevertheless, there are a number of alterations that have been made to the decisions version that was produced to us. These include alterations as the result of High Court decisions, and we have cited two examples. We are not aware if there are any others. Other alterations appear to have been made to the electronic form of the document and we are advised that the legal version of the Unitary Plan is the current



[10] *Auckland Council v London Pacific Family Trust* [2017] NZEnvC 209.

version dated 8 March 2018.[11] We have no evidence that this is the case, and we cannot at this stage be reliably assured that the copy of the document that has been introduced to us on the Samsung tablet is in fact the legal document (the current legal Auckland Unitary Plan operative in part).

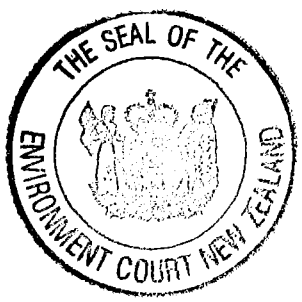
[74] Although we are satisfied we now have access to the Council Decisions Version of the Plan, those given to us in hard copy are amended. More particularly, the hard copy document that was produced to us by counsel does not note that some of those changes have been made to the Decisions Version as a result of other decisions, particularly of the High Court in two examples.

[75] We do acknowledge that we would have to have regard not only to the Auckland Council Decision Version, but also to other changes that may have been made to that Decisions Version as a result of appeals. That position is not made clear in the LGATPA legislation (s 156). Schedule 1 merely refers to the proposed plan and does not give any further elucidation. The definition in s 43AAC refers to a proposed plan, and states:

> (a) means proposed plan or variation of a proposed plan or change or a change to a plan proposed by a local authority that has been notified under clause 5 of the Schedule 1 (or given limited notification under clause 5(a) of that Schedule) but has not become operative in terms of clause 20 of that Schedule; and
>
> (b) includes a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1.

[76] Although this may, on its face, seem to be of little assistance, we have already noted that certain parts of this plan have become operative, and in our view that includes those parts that were not subject to any appeals to either the High Court or the Environment Court, and were made operative by the Council under clause 21. Other provisions that have been adopted by the High Court or Environment Court are deemed "legal effect", "approved", "treated as operative", and as operative variously under the various provisions we have referred to, including clause 21 of the 1st Schedule to the RMA.

[77] It therefore appears to us that the plan provisions we need to compare the appeals with are those that are the Council Decisions Version, as well as those provisions



[11] Affidavit of Mr Duguid, 21 March 2018, paragraph [6.23].

that have become operative or deemed operative under the auspices of Council clause 20(1) or the resolution of appeals. Unfortunately, the version of the plan that we have been given does not clarify which provisions are in each category.

[78] For current purposes, we conclude that we will have reference to both sets to understand both the pleadings, the witnesses' evidence (which is based on various versions) and the outcomes that must be considered by the Court. To say that this is a most unsatisfactory state from the Court's perspective is an understatement.

[79] Given that Counsel have agreed to the hard copy version we have received, we have concluded that that represents the Decisions Version with changes made by the High Court. This is, for the most part, operative under clause 21 to the 1st Schedule. The changes to Schedule 4 and D9.3 are changes made by the High Court and, as we will discuss, are clearly relevant to the core questions we have to conclude.

[80] We were unable to ascertain whether there are other changes. For current purposes, counsel seemed content that the hard copy version could be used for the purposes of comparison. We do so, subject to the caveat that certain important changes to schedule 4 and D9.3 were made as a result of an error of law appeal to the High Court.

[81] Our conclusion of this relies on an analysis of s 152(2)(ii) LGATPA, which relates to appeals that were resolved as part of the proposed plan and are deemed to be approved. Section 153 LGATPA brings in sections 86A to 86G RMA as we have already discussed, and the Plan now consists of those parts that:

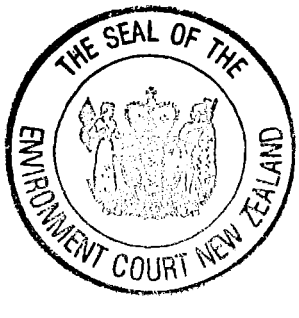
(a) are operative (under clause 20(1));

(b) are deemed to be approved, having effect or "treated as operative" under various other statutory provisions (including those appeals resolved in the High Court or Environment Court); and

(c) are subject to appeal and therefore still form part of a proposed plan.

Certification of the plan

[82] Finally, we note that the plan is required to be made operative by the Council by resolution and certification. Copies of various resolutions and certification were provided to the Court, although an acceptance was also included in the accompanying affidavit that certain of these steps had been missed in relation to later amendments.



[83] Given our conclusion in relation to the resolution of this appeal, we need not address this matter further at this stage but simply note that, where counsel do not agree to a form of document before the Court, it appears that the Plan produced to the Court to date may not be sufficiently reliable to assure the Court of its integrity under the Electronic Transactions Act 2002. This would be particularly true where it is required to be provided for the purposes of prosecution.

The RMA context

[84] Although the LGATPA has provided an alternative method of formulating and processing the plan, the intent is that it constitutes an RMA document subject to RMA considerations. As such, there was no dispute before this Court that it would need to be consistent with National Policy Statements, Part 2 of the Act and, where relevant, the NZCPS. Any consideration of provisions subject to appeal needs to be subject to examination under s 32 of the Act, and the provisions must meet the relevant RMA provisions, particularly sections 60-61 (regional policy statement), 62, 63 and following (in relation to regional plans), and 72 and following (in relation to the district plans).

[85] Given that this is a unified process, all three plan requirements are engaged. As was noted by the High Court, the process is essentially hierarchical, looking to the National Policy Statement first, then to the Regional Policy Statement, Regional Plans and District Plans. There was no dispute before us that the Auckland Unitary Plan has followed this process, and it is intended that the policy statements and regional plans are taken into account in the district plans. The District Plan must give effect to the National Policy Statement, New Zealand Coastal Policy Statement, any Regional Policy Statement, and it must not be consistent with the regional plan for any matter specified section 30(1).

[86] The structure of the Auckland Unitary Plan (Partly operative) is that the Regional Policy Statement is contained within chapter B. In the balance of the Plan the Regional Coastal Plan, regional plans and district plan are combined, but not explicitly identified within particular chapters. Instead, chapter A describes the way in which the relevant provisions are identified.

> The Council is required to identify the provisions in the plan that are:
>
> - regional policy statement;
> - regional coastal plan [**RCP**];
> - regional plan [**RP**]; and
> - district plan [**DP**].

[87] It goes on to describe the way in which this is done, the regional policy statement objectives and policies are separate to other objectives and policies in the plan, and are in chapter B. Beyond this, the identification of the particular objective, policy, method etc is identified at the end of each by the nomenclature as RCP, RP or DP.

[88] Some statements within the plan are not clearly identified within one category or another. These are stated at A1.4.2 as follows:

> Where the objectives and policies are district plan provisions only there is no tag.

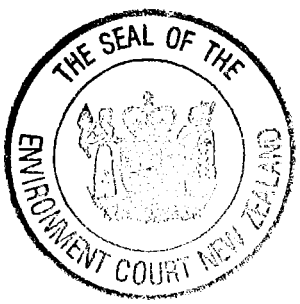
[89] However, beyond this, it appears that there are general statements such as background, issues identification, descriptions, and some that are not identified with any tag and may not be intended to only be applicable to district plans. For example, D9.1, chapter A Introduction, chapter J Definitions and chapter N Glossary of Māori Terms, which we assume are intended to be applicable to all statement and plans. Chapter C indicates clearly that the General Rules do not apply to the regional policy statement, but apply to the regional coastal plan, regional plan and district plan in their entirety.

The New Zealand Coastal Policy Statement

[90] The New Zealand Coastal Policy Statement applies to the coastal environment within the Auckland unitary area. However, there was a general lack of understanding as to the spatial extent of that coastal environment in the Auckland area. In relation to the Hauraki Gulf, the Court asked whether or not the catchment of the Hauraki Gulf area, under the Hauraki Gulf Management Park Act, (**HGMPA**) was applicable. No definitive answer was obtained from the parties.

[91] The Auckland Plan does include reference to the HGMPA, and attaches the map showing most of the Eastern catchment as Coastal environment. Arguably, the Council has adopted that area as the coastal environment in that part of Auckland.

[92] In relation to areas such as the Kaipara there are wide areas, including estuarine flats, that might be considered part of the coastal environment given their periodic seawater inundation in extreme events. The coastal environment is somewhat more readily identifiable in areas such as Awhitu peninsula and around Muriwai, but is problematic again within the Manukau harbour and in certain parts of the south-eastern region of the zone.



[93] Given the lack of any identification within the plan, and the general unwillingness of any witnesses or counsel to identify the coastal environment, we are left in something of a quandary as to the spatial areas to which the NZCPS applies.[12] It is likely to include all of such islands as Rangitoto, Kawau, and large parts of Waiheke.

Urban/Rural approach

[94] When analysing the provisions of the Unitary Plan we need to take into account that the plan is organised along an urban/rural dichotomy, represented by the Rural Urban Boundary (**RUB**). Given that the provisions that are the focus of this decision are rural provisions, we do not address the applicability of these provisions within urban areas at all. Nevertheless, we recognise that some overlays, including for those coastal environment significant ecological areas (SEAs), both terrestrial and marine, have applicability in both urban and rural areas.

[95] We were not given an exhaustive analysis of the NZCPSs, but it was acknowledged that all objectives and policies of that are brought into play, in part at least, through this unitary plan. Those of particular concern to this hearing related to Policies 11, 13, 14 and 15, although it must be acknowledged that the other provisions are identified in other objectives and policies in both the RPS and RP and DP.

Regional policy statement

[96] The RPS B1.4 – Issues of regional significance, brings into play these various objectives and policies from the NZCPS for the whole of the Auckland region, including urban growth and states:

1. urban growth and form;
2. infrastructure and energy;
3. built heritage;
4. natural heritage (landscapes, natural features, volcanic viewshafts and trees);
5. issues of significance to mana whenua;
6. natural resources;
7. the coastal environment;
8. the rural environment; and
9. environmental risk.

[12] Mr Serjeant confirmed the potential breach and variability of influencing factors. Transcript, beginning page 743.

[97] At B1.6 it goes on to address that there are both regulatory and non-regulatory methods that might be used to implement the Regional Policy Statement. It identifies mechanisms through the unitary plan as well as bylaws and statutory controls under other legislation. For current purposes that includes the potential for reserve management plans under the Reserves Act 1977. It then goes on to list a series of non-regulatory methods, including the Auckland Plan under the Local Government Auckland Council Act 2009, the Long Term Plan under the Local Government Act 2002 and transport plans. It discusses other non-regulatory plans and strategies.

[98] Of relevance to the question of SEAs is the Auckland Conservation Management Strategy and Conservation Management Plan, Parks and Open Spaces policies and plans, the Indigenous Biodiversity Strategy, Marine Spatial Planning documents, Regional Pest Management plans to name a few. It includes advocacy and education, monitoring and information gathering, and funding and assistance, including funding for restoration programmes and planting and funding for tree retention programmes.

[99] At B1.8 it notes that the RMA requires the RPS to state the environmental results anticipated, but does not go on to state what these environmental outcomes are. It does refer at B1.10 Monitoring policies and methods, and plan review. Nevertheless, there are no stated outcomes within those provisions.

[100] In B2.1 the plan identifies urban growth and form as an issue and B2.2.1 Objectives includes:

> (1) A quality compact urban form that enables all of the following:
>
> ...
>
> (f) (relevantly) better maintenance of rural character and rural productivity; and
>
> (g) reduced adverse environmental effects.
>
> (2) Urban growth is primarily accommodated within the urban area 2016 (as identified in Appendix 1A);
>
> ...
>
> 4. Urbanisation is contained within the rural urban boundary, towns and rural and coastal towns and villages;
>
> 5. The development of land within the rural urban boundary towns and rural coastal villages is integrated with the provision of appropriate infrastructure.

[101] These are reflected in policies which, although wide ranging, include some directly applicable to the rural area:

B2.2.2

(4) Promote urban growth and intensification within the urban area 2016 (as identified in Appendix 1A), enable urban growth and intensification within the rural urban boundary towns and rural and coastal towns and villages, and avoid urbanisation outside these areas.

[102] Interestingly, there is no direct policy in relation to the rural area itself (outside the RUB). The policies that follow in 2.3 and 2.4 appear to be applicable only within the urban area, and have no direct reference to the rural area at all. Even 2.6 (referring to rural and coastal towns and villages) is not intended to apply within the general rural areas.

[103] In B2.9 Explanation and Principal Reasons for Adoption, the focus is again on the built areas, including rural and coastal towns and villages, but there appears to be no direct comment on the general rural area at all. This leads us to the conclusion that B2 is focused around urban growth within the RUB. Similarly, B3 focusses again on infrastructure within the RUB, and has no direct reference to the rural area. B4, dealing with natural heritage, is intended to have general applicability throughout the region, although the examples given are largely within the RUB.

[104] The Waitakere Ranges Heritage Area is identified separately at B4.4 and does make a reference to the RUB as follows at Objective 5:

(5). The character, scale and intensity of subdivision use or development do not adversely affect the heritage features or contribute to urban growth outside the rural urban boundary.

It also refers, at Objective 6(c), to retaining rural character. Further, Policies (3) and (4) have a bearing on management of vegetation protection, habitat and water and soil resources.

[105] Moving to B5 Historic Heritage, this again may have applicability throughout the region, but there is no direct discussion of rural issues within it that we were able to identify. Similarly, Mana Whenua at 6.1 is applicable throughout the entire region, but has no particular provisions relating to the rural area separately. In saying this we recognise that many of the mana whenua values would relate to taonga within the rural area, including fresh water rivers and streams, wetlands and biodiversity. Nevertheless, we can see no direct policies applicable to SEAs as opposed to sites and places of significance to mana whenua in schedule 12.

Chapter B7

[106] When we come to B7 Natural Resources, we move to the provision most directly related to natural resources in the policy statement – indigenous biodiversity. At B7.2.1 the Objectives state:

> (1) Areas of significant indigenous biodiversity value and terrestrial, fresh water, and coastal marine areas are protected from the adverse effects of subdivision, use and development.
> (2) Indigenous biodiversity is maintained through protection, restoration and enhancement in areas where ecological values are degraded or where development is occurring.

[107] We note that B7.2.2.1 does not directly reflect either NZCPS Policy 11 or s 6(c) of the Act. There appears to be an assumption that s 6(c) only protects from adverse effects of subdivision, use and development. There is no such constraint contained in either s 6(c) or in Policy 11. For significant indigenous biodiversity, the protection under s 6(c) must be recognised and provided for. Under Policy 11, (a) avoid adverse effects of activities on significant indigenous biodiversity, threatened indigenous taxa (i and ii), threatened or rare indigenous ecosystems and vegetation types in the coastal environment (iii), habitats of indigenous species at the limit of their natural range or naturally rare (iv), areas containing nationally significant examples of indigenous community type (v), and areas set aside for protection under other legislation (vi). We note that subsection (b) deals with indigenous biodiversity, but not with significant indigenous biodiversity separately. Policy 7.2.2 recognises the need to identify indigenous vegetation and habitats in accordance with the descriptors in Schedule 3. Importantly, sub-paragraph 2 notes:

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

[108] As we will note later, there does not appear to be any constraint or qualification on that statement and a parallel provision under subsection 3 applies for SEA – marine, with a requirement to include it under schedule 4 if it is significant. Subsection 5 reads:

> (5) Avoid adverse effects on areas listed in Schedule 3 of Significant Ecological Areas - Terrestrial Schedule and Schedule 4 Significant Ecological Areas - Marine Schedule.

[109] That appears to reflect more directly both NZCPS Policy 11 where applicable, and s 6(c) of the Act. Section 6(c) has a far more restrictive provision, while the NZCPS

has been interpreted and clarified for the coastal environment as to meeting s 6(c) for protection – i.e. taken the broad requirement to the particular.

[110] Then follow various objectives and policies, some of which on the face of it appear to conflict with the obligations under the NZCPS and s 6(c), i.e.

> **B 7.3.2 Policies** ...
>
> (1) ...
>
> (c) Controlling the use of land and discharges to *minimise the adverse effects.*
>
> (d) Avoiding development where it will *significantly increase adverse effects* on freshwater systems.
>
> ...
>
> **B7.4. Coastal water, freshwater and geothermal water**
>
> **B7.4.1. Objectives**
>
> (4) The adverse effect of point and non-point discharges in particular stormwater runoff and wastewater discharges on coastal waters, fresh water and geothermal water are minimised and existing adverse effects are progressively reduced.
>
> (5) The adverse effect from changes on or intensification of land use on coastal water and freshwater quality are avoided, remedied or mitigated.
>
> (emphasis added)

[111] Similar approaches apply throughout the policies. In Explanation and Principle Reasons for Adoption, the discussion relates to indigenous biodiversity, however it states in part:

> Areas of high ecological value have been identified as significant ecological areas using the significant factor set out in the schedules of the unitary plan (see Schedule 3...). The coastal marine area has not yet been comprehensively surveyed for the purpose of identifying marine significant ecological areas. Those that have been identified may under-represent the extent of significant marine communities and habitats present in the sub-tidal areas of the region. The objectives and policies seek to promote the protection of significant vegetation and fauna and the maintenance of indigenous biodiversity by:
>
> - evidence-based factors to identify areas of significant indigenous biodiversity;
> - identifying areas of ecological significance;
> - **promoting restoration efforts to improve the quality, functioning and extent of these areas**;
> - providing for mana whenua's role as owners of land with a high proportion of significant indigenous biodiversity and as kaitiaki of their rohe;
> - establishing a management approach which seeks to avoid adverse effects on or degradation of significant indigenous biodiversity and requires that where adverse effects do arise from activities, they are remedied, mitigated or offset;
> - providing for reasonable use by landowners;
> - recognising the particular pressure the coastal environment is under from use and development; and

- recognising that there are some uncertainties in the management of indigenous biodiversity for which a precautionary response is appropriate.

[emphasis added]

[112] Accordingly, it seems that, in relation to significant indigenous vegetation, the Policies seek to avoid adverse effects, but where they do arise they are remedied, mitigated or offset. It also seeks to promote restoration efforts. Similar discussions follow in respect of fresh water.

Chapter B8

[113] Chapter B8 discusses areas of outstanding and high natural character. It also identifies where coastal environmental areas with degraded natural character are to be restored or rehabilitated and areas of high and outstanding natural character are to be enhanced. Policy 4 seeks to "avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on natural character of the coastal environment not identified as outstanding...".

[114] This discussion of natural character does not seem to comprise any discussion of significant indigenous vegetation or fauna, or SEA either marine or terrestrial. We should note here that the Biodiversity aspect of natural character is not clearly identified here. While ecosystems (NZCPS Policy 11(a)(iii)), habitats (Policy 11(a)(iv)) and areas (Policy 11(a)(v) and (vi)) all refer to the biophysical context, there seems to be no recognition that these are part of (and, in places, synonymous with) natural character under Policy 13. NZCPS Policy 13 refers to areas (Policy 13 (1)(a), (b), (c) and (d) and 13(2)(f)). Further, biophysical and ecological (NZCPS Policy 13(2)(b)) must include flora and fauna, especially those under Policy 11. Similarly, Habitats and Areas must include the items under NZCPS Policy 13(2)(a) to (d) and (f) at least. The same can be said of interconnections with NZCPS Policies 14 and 15. For example, Restoration must include areas, ecosystems and habitats – Policy 14(a), (c)(i) – (v). Natural features and landscapes include 15(c)(v) vegetation native and exotic, and 15(c)(v9i) Transient values, including pressure of wildlife or other values at certain times of the day or year.

[115] B8.5 Managing the Hauraki Gulf is of interest because it does identify the Marine Gulf Park Act 2000, particularly use and development while maintaining or, where appropriate, enhancing the natural and physical resources of the islands, and in other areas the use of the Hauraki Gulf's natural and physical resources without resulting in further degradation of environmental quality. At B8.5.2. (9) the plan states:

(9) **Identify and protect** areas or habitats, particularly those unique to the Hauraki Gulf that are:

(a) significant to the ecological and biodiversity values of the Hauraki Gulf; and

(b) vulnerable to modification.

[emphasis added]

[116] There follows at figure 8.5.3.1 a diagram of the Hauraki Gulf Marine Park including the landward areas, both urban and rural, to the coastal boundary which represents something in the order of one third of the Auckland region. If that is the coastal environment for the purposes of the NZCPS, it will have significant impact given that the South Head, Awhitu peninsula, Manukau harbour and Kaipara areas will involve further coastal areas, leaving the majority of the land as coastal environment. As noted, this matter is unresolved by the plan.

[117] The reasons for adoption of the provisions of chapter B8 note that s 10 of the Hauraki Gulf Marine Park Act 2000 requires that the national significance and management directions in s 7 and 8 be treated as the NZCPS for the Hauraki Gulf. This elevates the interrelationship with the Hauraki Gulf, its islands, the catchments and the ability of the gulf to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands to matters of national significance.

[118] For current purposes we consider that this, accompanied by Figure 1 to B8.6 as to the coastal environment, clarifies that, for the purposes of this plan, the catchment of the Hauraki Gulf Marine Park is the coastal environment. Natural character is discussed, but in the context of character rather than any ecological values. Although there is a discussion of subdivision, use and development, it does not explicitly address significant ecological areas. In its discussion of managing the Hauraki Gulf, B8.6 (page 15) notes:

- supporting protection of areas of significant ecological value including linkages between land and sea; ...

Chapter B9

[119] B9 contains the statement in relation to the rural environment, and this notes that the rural parts of Auckland also contain important natural resources, including native bush, significant ecological areas and outstanding natural landscapes. It goes on to state:

> The outward expansion of urban areas and people's lifestyle choices in recreational activities place significant pressures on maintaining the amenity values and quality of the rural

environment in rural areas. Specific issues in the Auckland region are:

- protecting the finite resource of elite quality soils from urban expansion;
- managing subdivision to prevent undue fragmentation of large sites in ways that restrict rural production activities;
- addressing reverse sensitive effects which rural residential development can have on rural production activities; and
- managing the opportunities for countryside living in rural areas in ways that provide for rural residential development in close proximity to urban areas and the larger rural and coastal towns and villages, while minimizing the loss of rural production land.

[120] The Objectives in B9.2.1 and the associated Policies, and the provisions in respect of Rural subdivision are annexed hereto and marked "**D**". We have also included the principle reasons for adoption and we will not cite these in full. Nevertheless, they clearly relate to rural areas. Although there is a general avoid, remedy or mitigate provision to avoid significant adverse effects, the policies do not themselves address significant indigenous ecological areas. The Objective at **B9.4.1** of the Council Decisions Version of the plan notes that "(4) Land subdivision protects and enhances significant indigenous biodiversity." The following Policies include:

(1) Enable the permanent protection and enhancement of areas of significant indigenous biodiversity.

[121] Fragmentation is addressed in B9.4.2(3), allowing the transfer of residential potential from other rural areas to Countryside Living zones to reduce the impact of fragmentation of rural land from in-situ subdivision.

[122] These provisions, however, are subject to appeal, and form some of the key provisions in this case. Similarly, subsection (5) states:

(5) Provide the amalgamation and transfer of rural sites to Countryside Living zones to remedy the impact of past fragmentation of rural land from in-situ subdivision.

and the following:

B9.5. Principal reasons for adoption

The purpose of sustainable management includes safeguarding the life-supporting capacity of natural resources now and in the future. This includes protecting the productive potential of the land to provide for present and future generations as well as significant indigenous biodiversity. It is also to maintain and enhance the character of rural areas for their contribution to regional amenity values, particularly the landscape and natural character.

are also subject to appeal.

[123] Finally, the last paragraph of the reasons is also subject to appeal, providing:

> The subdivision policies also enable and encourage the transfer of the residential potential from sites in production rural zones to Countryside Living zones and for title boundaries to be amalgamated and a residential development right to be realised in Countryside Living zones.

Other Chapter B Policy Statement provisions

[124] We were not directed to anything in particular in B10 Environmental risk that is relevant to the current situation. Nor were we directed to any particular provisions in B11 Monitoring environmental results. Although there are provisions cross-referenced in Table 11.2 concerning infrastructure, transport and energy such as (B4.2.1(1)) in relation to outstanding natural features and landscapes, and views (B4.3.1(1)) and natural heritage, in natural resources (B7.2.1. Objectives) it is noted that:

> (1) Areas of significant indigenous biodiversity value in terrestrial, freshwater, and coastal marine areas are protected from the adverse effects of subdivision, use and development.

and B8.2.1 in the coastal environment again seeks to protect outstanding and high natural character from inappropriate subdivision, use and development. The indicators in Table B11.7 Coastal Environment are shown to be:

Reference	Objective	Indicators
B8.2.1(1)	Areas of the coastal environment with outstanding and high natural character are preserved and protected from inappropriate subdivision, use and development	The quality, integrity and distribution of scheduled significant ecological areas – marine are maintained or enhanced over time; The total area of the coastal environment with identified outstanding and high natural character is maintained or increased over time.

[125] There is no discussion as to how this is to be achieved, given that it is a discussion of outstanding and high natural character rather than SEAs per se. **B11.8 Rural environment (B9)** includes:

Reference	Objective	Indicators
B9.2.1(4)	Auckland's rural areas outside the Rural Urban Boundary, towns, and rural and coastal towns and villages are protected from inappropriate subdivision, urban use and development	No additional sites are created for non-rural production purposes over time.

[126] Similar provision is made for prime soil:

Reference	Objective	Indicators
B9.4.1(3)	Subdivision of rural land avoids, remedies or mitigates adverse effects on the character, amenity, natural character, landscape and biodiversity values of rural areas (including within the coastal environment) and provides resilience to effects of natural hazards	Identified values of rural areas are protected from inappropriate subdivision, use and development over time. The area of erosion-prone land that is rehabilitated and retired is increased.

Conclusion on the Policy Statement

[127] From this we are able to reach the following conclusions:

(a) the policy statement does identify the protection and enhancement of significant ecological areas/significant indigenous biodiversity;

(b) there is a confusion between this and section s 6(a) and s 6(e) issues in places where it discusses protection only from either significant adverse effects or alternatively adverse effects of subdivision, use and development;

(c) on balance, particularly reliant on B9.4.1(3), the plan anticipates subdivision within rural land, provided identified values are protected. This includes biodiversity values. It also recognises that the amount of erosion-prone land that should be rehabilitated or retired is increased.

[128] The RPS indicates that, over time, no additional sites should be created for non-rural production purposes. This would appear to support an ultimate capacity factor at some time reached, taking into account all options for subdivision, including its use as a tool for environmental enlargement and protection.

Application of the policy statement

[129] The policy statement provisions themselves must be read in light of the decision of the High Court in *Royal Forest & Bird Protection Society Inc v Auckland Council*.[13] Given the clear requirement for most of the land within the Auckland region to meet Policy 11 of the NZCPS (given the application of the HGMPA and the wide areas associated with the Manukau harbour, Kaipara harbour, South Head and Awhitu peninsula), we would understand that significant ecological areas are to be protected, and that the values of those areas are to be protected within any subdivision. Notwithstanding an

[13] See above at [1].

expectation that there would be no increase in non-productive uses of rural land, and that no additional sites are created for non-rural production purposes, this does not, on the face of it, exclude rural residential use.

[130] Overall, we understand that with these qualifications the policy statement can be read as being consistent with s 6(c) NZCPS and to the extent that it must address the local and coastal environment. There is a clear preference to avoid development on prime or elite soils, however there is no discussion about where these soils remain, and it is clear that the purpose of retaining the prime or elite soil is to continue to utilise its productive potential.

The Significant Ecological Areas Overlay – Chapter D9

[131] Chapter D9 constitutes the area the subject of the appeal before the High Court, and there have been some significant amendments within these provisions. The differences are set out in the decision in Appendix 6 B or C, extracted from the High Court decision.[14] The major differences being in D9.3(9)-(14) inclusive.

[132] Chapter D9 is not intended to be a policy statement and, although the status of the first explanatory provisions are not set out, the following are either (for the most part), coastal plan, regional plan or district plan matters. A note has also been added to the amended provisions to identify that the marine provisions are not operative until the Minister of Conservation has formally approved the regional coastal plan part of the Unitary Plan. The Background to this section clarifies the connection with B7.2 objectives of the RPS and importance of spatially identifying SEAs, thus establishing the connection to s 6(c) RMA.

[133] In D9.1.1 it is noted that the significant ecological areas are based on the Schedule 3 characteristics. Importantly, reading this provision, it does not refer to any particular mapping. As this Court has already noted, the High Court in the later *Forest & Bird* case[15] appears to have assumed that those categorisations were included so that sites could be assessed as meeting schedule 4 in respect of the marine area. This must also be applicable to the terrestrial areas.

[14] See above at [1].
[15] Above at [3].

[134] Certainly, there is nothing in this wording that indicates that only mapped areas can meet Schedule 3. D9.1.3, along with D9.1.1, have been amended to identify that there are fresh water bodies and riparian margins also addressed in chapter E3.

[135] We note that Objective D9.2(1) notes that areas of significant biodiversity value should be protected from adverse effects of subdivision, use and development, and in (2) are enhanced for significant ecological areas. We again make the comment that this may need to be modified by the requirements of Policy 11 in respect of the coastal environment (of which a large proportion of the Auckland region is).

[136] Policy D9.3(2) lists a series of potential adverse effects and D9.2(3) includes policy direction as to methods of enhancement, including; (b) control and eradication of plant and animal pests, (c) fencing of significant ecological areas to protect them from stock impacts and (d) legal protection of significant ecological areas through covenants or similar mechanisms. Policies address vegetation management (5), coastal vegetation (6) and infrastructure (8). NZCPS Policy 11 as addressed through the High Court decision is now encapsulated in Policies (9) and (10).

[137] In respect of SEAs in the terrestrial area, vegetation alteration or removal around existing buildings while controlled is permitted, and customary removal is permitted.[16] In relation to certain infrastructural activities,[17] vegetation removal is permitted. We understand that the High Court scope of analysis was confined to the objectives and policies. Thus, there may now be disparity in some cases between the two frameworks.

[138] It appears that the appeal has now resolved that activities within the marine area are not granted any particular status and therefore become non-complying, we suspect, rather than discretionary. Nevertheless, we have noted many places through the Auckland region where terrestrial SEAs are immediately adjacent to marine SEAs and are within the coastal environment. There seems to have been an assumption by the Council that the coastal marine area is equivalent to the coastal environment. This is clearly not based on either any statutory or case law. In the HGMPA area it appears clear that the Council have acknowledged the coastal environment in that area as is shown on the maps (the whole catchment).

[16] Chapter E15, Table E15.4.1.
[17] Chapter E26 Table E26.3.3.1.

Conclusions as to chapter D9

[139] We have concluded that chapter D9 as amended by the High Court is clearly intended to identify that sites meeting the criteria of Schedule 3 or 4 are significant ecological areas. We conclude that this wording includes areas that meet NZCPS Policy 11(a), particularly (iii) to (vi). There is no indication from that decision, or from the provisions we have cited, that the regional coastal plan or regional plan identified only areas that include significant indigenous vegetation as mapped within the district plan. Given the mandatory nature of s 6(c) and NZCPS Policy 11(a), and the essentially factual description of the sites meeting the SEA, we have concluded that any site meeting the SEA criteria is, in fact, a significant ecological area under the plan, whether or not it is mapped. However, the implementation methods may not follow this path, which we understand to be a principle matter of contention between the parties.

Mapping of SEAs

[140] A fundamental contention of the Council before this Court was that only those areas mapped as SEA in the District Plan constituted a significant ecological area. Given the concessions made by the Council witnesses under cross-examination and responding to questions of the Court, there is no doubt in our mind that that contention cannot be correct.

[141] In the latter half of 2017 the Council issued a document prepared by Singer and others, including Ms C Webb, who gave evidence to this Court. *Indigenous Terrestrial and Wetland Ecosystems of Auckland* includes a discussion of national ecosystem classification and the mapping of the Auckland ecosystems (**Ecosystems Report**). It utilises a system known as the *IUCN threat assessment of ecosystems*, and identifies the following benefits of such an approach:[18]

> Conservation: to help prioritise actions such as ecosystem protection, restoration and influencing land practices and as a means to reward good and improved ecosystem management.
>
> Land use planning: to highlight the risks faced by ecosystems and ecosystem services as important components of land use planning, for example clean water, maintenance of soil, fertility pollination and natural products.
>
> Improvement of governance and livelihoods: to link ecosystem services and livelihoods and explore how appropriate governance arrangements can improve ecosystem management and livelihood security.

[18] IUCN 2016

> Macro-economic planners: to provide a globally accepted standard that will enable planners to evaluate the risk and related economic costs of losing ecosystem services and, conversely, the potential economic benefits of improved management.

[142] We have carefully read this document, and conclude that it represents a significant collation of the accepted science and approaches to these indigenous ecosystems. It is based upon both international and local factual analysis. It is entirely consistent with the approach of the third and fourth schedules to the AUP, but is in significantly more detail than is possible to include within the AUP.

[143] Importantly, the guide describes 36 terrestrial and wetland ecosystems but not maritime. It uses the same classification system as that of the Department of Conservation natural heritage management system. This was endorsed by all ecologists appearing before us as an appropriate approach to the information contained within the AUP in ecological terms. Although it does not use words such as "significant indigenous vegetation" or "significant ecological areas", it represents a typing of all remaining terrestrial ecosystems in the Auckland area. It is clear that its intent is not to identify those that are significant directly, but it was accepted by witnesses before us that critically endangered, endangered and vulnerable thresholds, as well as collapse, were clearly of significance. Those that are either data-deficient or not evaluated (of which there are 3 within the Auckland region) may or not be significant depending on the outcomes of any evaluation. On a conservative basis, one would assume that these should be included in the meantime.

[144] The near-threatened categorisation represents ecosystems that almost meet the criteria for vulnerable, while those of least concern meet none of the qualitative criteria. Accordingly, of the 36 ecosystems in Auckland, only eight are not threatened or collapsed. Important points made in the document, and confirmed by witnesses, are that the extent of ecosystems within the Auckland region is now at a remnant level through much of the area, with the possible exceptions of Kawau and Rangitoto islands and parts of Hunua and the Waitakere ranges.

[145] We annex hereto a copy of the maps of the natural extent of vegetation in Auckland, being the pre-human diversity distribution and extent of ecosystems (**E**); and the current ecosystem extent (**F**). The current ecosystem extent is described within the Ecosystem Report and confirmed by witnesses as being less than 10 percent of the original extent of many of the ecosystem types. In a quantitative sense, it can be seen

that, outside the Hunua and Waitakere ranges, the majority of vegetation is situated either in the former Rodney district or around the Manukau district, with a small amount in the Awhitu peninsula.

[146] We were unable to fully compare the mapping in the Ecosystems Report with that contained within the Auckland unitary plan, but there do appear to be distinctions. Ms Fuller described that some 60 percent of the remaining indigenous vegetation was protected in the AUP through the mapping system. However, it is unclear whether she was referring to the current ecosystem extent in the Ecosystem Report or to some other information.

[147] We note that the SEAs – marine are not identified in this report and these need to be added to it. Although some coastal saline ecosystems are included, the report does not purport to address marine ecosystems generally. Those coastal saline areas are indicated under the SEA appear to be the landward edge of the marine area, as do the dune ecosystems these identified.

[148] The Ecosystem Report categorisation is broken up into the following areas:

WF – warm forests;
MF – mild forests;
WL – wetlands;
DN – active coastal sand dunes;
CL – cliffs;
SA – saline;
GT - geothermal;
CV – cave; and
VS – regenerating ecosystems.

[149] Of the forest systems, all but one are either endangered or critically endangered. WF 13 – Tawa kokohe rewarewa Hinau Parukau forest is listed as vulnerable. It appears that almost all of this area is included, or would normally qualify as, significant indigenous vegetation under the AUP criteria. There are two cliff ecosystems identified, one of which is vulnerable and would probably qualify as significant, whereas the other Hebe wharaki flaxland rockland is noted as of least concern. However, it appears as if at least some of these areas may have been included as significant indigenous vegetation in the SEA maps of the AUP.

[150] VS 1 has four groups, of which three are of the least concern, including broad-leafed species, scrub forest, manuka/kanuka scrub and kanaka scrub/forest. The Pohutakawa scrub forest is listed as endangered.

[151] Notwithstanding this, it was curious that many of the vulnerable areas or areas of at least concern, appear to have habitat of some significance – tomtit, geckos, tuataras, skinks and other fauna. There is a note in relation to VS 2 of invertebrates, amphibians, reptiles, birds and bats. It appears that many of these areas are included in the Ecological Report because of the habitat associated with the vegetation type.

[152] Of the wetland habitats, all are either endangered or critically endangered with the exception of WL 3 – bamboo, rush, greater wire brush and restiad rushland, which is noted as in collapse. There was no doubt that all of these areas would be significant in terms of the AUP.

[153] The saline areas include some areas of mangrove forest and scrub, but as we have noted these are relatively limited given that the Ecological Report does not intend to address these directly. These vary from some that are critically endangered (SA 7, SA 5) to endangered (SA 4) and mangrove forest and scrub (SA 1) which is of least concern. Nevertheless, in the AUP most of these areas would, again, probably be categorized as significant ecological areas given the associated species, in particular banded rail, bittern and migratory and NZ resident shorebirds. As Dr Bellingham described, some of these areas have both terrestrial and marine based elements and form important foraging and habitat areas for species such as the banded rail, which has been marginalised over other land.

[154] In relation to dune system, the two categories are either endangered or critically endangered, and would clearly qualify as SEA.

[155] In short, it appears to us, from the reading of the Ecosystem Report and from the evidence given to us by the witnesses, that almost all of the areas that are identified within this report would constitute SEA areas, and would also meet s 6(c) of the Act. Many would also meet NZCPS Policy 11(a).

[156] Witnesses for the Council and witnesses for the appellants gave evidence that there are areas of significant indigenous vegetation excluded from the mapped areas within the unitary plan. Many of those areas are identified (to the extent one can tell from the scale of these diagrams) within the Ecosystems Report.

Exclusion factors applied to the mapped areas

[157] The Court spent some time in trying to understand the process adopted by the council in selecting the SEAs. There is no evidence that exclusionary factors such as those used prior to the High Court appeal[19] in schedule 4 have ever been incorporated in the selection process under Schedule 3 (at least there was no evidence advanced to that effect). However, the evidence of the Council witnesses, particularly under cross-examination, was permeated by considerations of ranking SEA areas to form a representative sample. For example, Ms Fuller suggested that if further SEAs were included, this would mean others would have to be omitted or devalued.

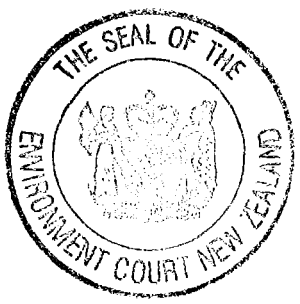
Schedule 3 and schedule 4

[158] Schedule 3 deals with significant ecological areas – terrestrial (SEA – terrestrial), and raises the same issues as those for the marine area. Firstly, it is clear that an area can be considered significant if it meets one of the criteria, i.e. one or more of the sub-factors 1-5. It does not need to meet all of these.

[159] It was, therefore, difficult for the Court to understand why issues of representativeness overcome issues of threat or rarity, diversity, stepping zones or uniqueness. This evidence appeared to derive from an argument that only 10 percent of each ecosystem type could be recognised. When it was pointed out that this related to each ecological district of Auckland, Ms Fuller confidently told the Court that ecologists had moved away from that approach.

[160] With respect, we conclude that the representativeness factor does not mean that, simply because the Waitakere and Hunua ranges comprise larger areas of particular ecological types, that these ecological types need not be represented in other ecological districts or places within the district.

[161] We attach Schedule 3 Significant Ecological Areas - Terrestrial as Annexure **G**, and we note that 1(a) refers to geographical spread and environmental gradients. Throughout the hearing the Court referred to this as ecotones. This represents the ecological change that occurs from wetland or estuarine areas through to ridge tops, and the way in which the ecosystem as a whole operates to support a broad range of habitats, flora and fauna.



[19] *Royal Forest & Bird Protection Society of NZ Inc v Auckland Council*, [2017] NZHC 1606, Wylie J.

[162] We saw no analysis that satisfied us that at least 10 percent of the natural extent of the habitat in each ecological district had been retained. For the most part, we conclude that many of these ecosystems are endangered or under threat because of the shortage of particular ecotones within each ecological district.

[163] We conclude that the words "at least 10 percent" do not indicate that this is the maximum, but that this is a **minimum**. We saw no evidence that any of the ecosystem types we had spoken of, even those of least concern, were at a quantitative level above 10 percent in all ecological districts or overall. To the contrary, we had evidence from most ecologists that modern ecological thinking was that 30 percent of the natural extent was an appropriate target.

[164] Excluding the islands, Waitakere and Hunua, we would describe the remaining ecosystems in the Auckland region as remnants and depauperate. Especially around the Manukau and Kaipara estuaries, we would have considered that there should be significantly greater indigenous vegetation coverage, even for the habitats of least concern, ie kanuka, manuka and mangrove. We note that, in the Ecosystem Report under threat status and rarity, one of the categories is that a land environment at category 4 is where less than 24 percent of indigenous vegetation remains. There was no suggestion that this figure had even been reached in the AUP, never mind exceeded. We also note that "natural extent" is defined within Schedule 3 to be the "historic, pre-human diversity, distribution and extent of ecosystems in Auckland" (see definition Schedule 3). Nor do we see any evidence to support an argument that areas which contain some exotic vegetation cannot constitute a significant ecological area. It may, for example, represent either a stepping stone, migration pathways and buffers, and have other elements of diversity or uniqueness. Most importantly for many of these areas, they may constitute habitat of important flora or fauna. This reality is clearly articulated in the NZCPS particularisation at Policy 11(b)(v) and (vi) for the coastal environment.

Are the application of these factors defensible?

[165] Both in respect of marine and terrestrial areas, we are in no doubt that the criteria in the AUP are robust and defensible in particular cases. The Ecosystem Report provides further detail than Schedules 3 and 4, however both documents are consistent. This does not mean that experts might not have a difference of opinion as to the importance of particular features, but these are matters (in our view) that would normally be resolved by joint statements. If there remains a dispute between ecological experts, the matter

could either be referred to the Court or the subject of an application for change by the Council leading to a contestable hearing. We were not taken by the argument that the mere fact that parties may disagree on the application of the criteria is a basis to exclude unmapped significant ecological areas.

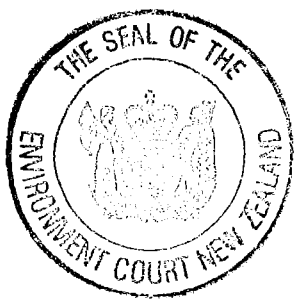
[166] We agree with the High Court decision that questions of significant ecological areas are a question of fact, and that these would be assessed in relation to the agreed criteria contained within the plan. Potential room for doubt is significantly reduced by the Ecosystem Report, which most ecologists would properly use as their starting point for assessment.

[167] Importantly, if new or different areas are found that are significant, then s 6(c), and in the coastal environment the NZCPS, requires their protection. We are in no doubt whatsoever that there are ecological areas which have not been identified or assessed in the SEA maps that are areas of significance.[20] This can relate to either fauna, ie bats, fish, bird life, which may not have been identified in the past, or flora – rare orchids, grasses, sedges etc – as yet unidentified. If areas of significance gain no protection because they have not been mapped, this would not only be contrary to the decisions of the High Court in relation to these issues, but also to the clear obligations under Policy 11 and Part 2 of the Act.

[168] In principle, these issues also apply to Schedule 4 Marine SEAs, as Policy 11(a) of the NZCPS must be given effect to.

Coastal environment and Part 2 of the Act

[169] Given the concessions made by the Council's witnesses on the first day, it appeared to the Court that one of the primary issues had been resolved in that there was a clear intent that further SEAs could be identified during the period of the plan. There was no particular requirement for this to occur by either a landowner or the Council, but clearly, where information came to their attention, or they were undertaking a review, then such values would be recognised and protected through a formal plan change process.



[20] See discussion of this in *NRC v Woodbank* [2016] NZDC 21395, Thompson J, where significant indigenous wetland was found and damaged during forestry clearance.

[170] The relevance of the issue is that where a party is seeking to obtain subdivision rights in terms of the plan on the basis of protecting indigenous vegetation, the Council has only calculated the potential yield on the basis of the mapped areas of the SEA – Terrestrial. It has not included the SEA – Marine areas, even if they are "land" under the Land Transfer Act, nor has it allowed for any further SEAs to be identified and then subdivision incentive sought in respect of that land.

[171] It was clear from the Council's case that the intention to maintain the SEAs only as the mapped areas, even if there are significant ecological areas meeting the criteria of Schedule 3 or schedule 4, is based around the growth and character objectives of the Regional Policy Statement and the various plans.

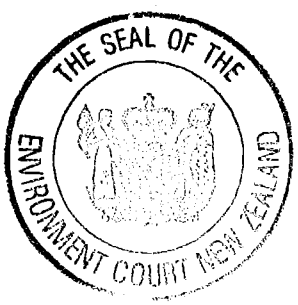
[172] We were unclear as to the exact connection, but the Council submitted that reliance primarily on the rural subdivision provisions to obtain biodiversity gains is not necessary. The Council submit that, in addition to the AUP rules relating to the SEA overlay and clearance of vegetation in other rural areas, there are a range of other non-regulatory methods for protecting indigenous biodiversity as explained by Ms Fuller in the hearing and in her evidence-in-chief. These include management of land for conservation purposes, prioritised support to biodiversity focus areas and funding support for planting and fencing including grants available to private landowners. Further, Ms Hartley for the Council submitted that the Council's provisions would incentivise the permanent legal protection of larger and more resilient features and ensure greater biodiversity gains. Furthermore, the Council was very much concerned about how much subdivision is likely to occur.

[173] To understand the extent of these issues it is necessary to examine other chapters of the AUP, including E11 – land disturbance, E15 – vegetation management and biodiversity and the rural subdivision chapter E39. We accept that the protection methods require a broad reading of the plan. However, the only incentive method we were shown is the rural subdivision method.

Implementation

[174] We now move to consider the various provisions that implement the higher order documents. These are contained within the E chapter of relating to:

(a) lakes, rivers, streams and wetlands (E3), land disturbance (E11);



(b) vegetation management and biodiversity (E15); and

(c) subdivision (E39).

We will then go on to discuss the provisions relating to rural zones as they relate to the issues before the Court in this case before moving to the merits of the various versions before us.

E3 – lakes, rivers, streams and wetlands

[175] The plan identifies at E3.1 a number of overlays, the most relevant being D9 – significant ecological areas overlay, which we have discussed in some detail already. Objective E3.2. (which is a regional plan provision) provides that:

(1) Auckland's lakes, rivers, streams and wetlands with high natural values are protected from degradation and permanent loss.
(2) Auckland's lakes, rivers streams and wetlands are restored, maintained or enhanced.
(3) Significant residual adverse effects on lakes, rivers, streams or wetlands that cannot be avoided, remedied or mitigated are offset where this will promote the purpose of the Resource Management Act 1991.
(4) Structures in, on, under or over the bed of a lake, river, stream and wetland are provided for where there are functional or operational needs for the structure to be in that location, or traverse that area.

[176] Given that a number of these features are likely to be within the coastal environment (and many we observed clearly were within the coastal environment) the NZCPS comes into play. Policy E3.3 (another regional plan provision) seeks to:

(1) Avoid significant adverse effects, and avoid where practical or otherwise remedy or mitigate other adverse effects of activities in, on, under or over the beds of lakes, rivers, streams or wetlands within a series of overlays:

including (importantly)

(d) Significant Ecological Areas Overlay; and
(e) Wetland Management Areas Overlay.

[177] In particular, Policy 3.3. (4) provides:

(4) Restoration and enhancement actions, which may form part of an offsetting proposal, for a specific activity should:
(a) be located as close as possible to the subject site;

(b) be like-for-like in terms of the type of freshwater system affected;
(c) preferably achieve no loss or a net gain in the natural values including ecological function of lakes, rivers, streams or wetlands; and
(d) consider the use of biodiversity offsetting as outlined in Appendix 8 – Biodiversity offsetting.

[178] The note then refers to particular guidance. Policies (10) and (11) relate to encouraging the planting of plants for restoration or enhancement, the maintenance or enhancement of amenity values, flood or erosion protection or stormwater runoff control provided it does not exacerbate flooding, particularly with the use of native plants.

[179] E3.3. (14) seeks to avoid more than minor adverse effects on fresh water and coastal water from livestock grazing. Importantly, E3.3, (15) seeks to protect riparian margins from inappropriate use and development, and promote their enhancement through all of the following: [sic]

(a) safeguard habitats for fish, plant and other aquatic species, particularly in rivers and streams with high ecological values;
(b) safeguard their aesthetic landscape and natural character values;
(c) safeguard the contribution of natural freshwater systems to the biodiversity resilience and integrity of ecosystems; and
(d) avoid or mitigate the effects of flooding, surface erosion, stormwater contamination, bank erosion and increased surface water temperature.

[180] There follows, at E3.4, an activity table providing for activities within the various overlays, including the significant ecological overlay. Some of these activities are clearly associated with the restoration or enhancement of such areas, ie conservation planting, fish passage culverts. There are also a series of activities that might be considered at the lower end of impact which are also permitted, such as:

Activities in, on, under or over the bed of lakes, rivers, streams (including intermittent stream) and wetlands	
(A10)	Channel clearance less than 100m complying with the standards in E3.6.1.5
...	
(A12)	Emergency works complying with the standards in E3.6.1.6
...	
(A14)	Pest plant removal complying with the standards in E3.6.1.8
(A15)	Mangrove seedling removal complying with standards E3.6.1.9
(A16)	Mangrove removal of up to 200m^2 immediately adjacent to existing lawful structures, infrastructure or drainage systems to enable their operation, use, maintenance, repair, and functioning complying with the standards in E3.6.4.1 – E3.6.1.9
...	
Works on structures lawfully existing on or before 30 September 2013 and [sic] the associated bed disturbance or depositing any substance, diversion of water and incidental temporary damming of water	
...	
(A23)	Channel clearance less than 100m complying with the standards in E3.6.1.12
...	

[181] Then there are others that are still permitted, but nevertheless may involve more extensive impacts such as:

New structures and the associated bed disturbance or depositing any substance, reclamation, diversion of water and incidental temporary damming of water	
...	
(A29)	Bridges or pipe bridges complying with standards 3.6.1.16 and corollaries for other types of activities
(A30)	New cables, ducts, lines or pipelines on structures lawfully existing on or before 30 September 2013 complying with the standards in E3.6.1.14
(A31)	New cables or lines that cross over a river or stream which do not require support structures in the watercourse complying with the standards in E3.6.1.17
(A32)	Culverts or fords less than 30m in length when measured parallel to the direction of water flow
...	
(A34)	Erosion control structures less than 30m in length when measured parallel to the direction of water flow complying with the standards in E3.6.1.14
...	
(A39)	Stormwater or wastewater outfall complying the standards in E3.6.1.14

[182] Beyond this there are several categories of permitted activities that, on the face of it, if conducted within the coastal environment at least would appear to conflict with Policy 11, and thus the decision of the High Court in *Royal Forest & Bird Protection Society of NZ Inc v Bay of Plenty Regional Council*.[21] This includes:

Livestock access	
(A51)	Livestock access to a lake, river or stream or wetland on production land that is grazed by a stocking rate equal to or exceeding 18 stock units/ha complying with the standards E3.6.1.25
...	
Surface water activities	
...	
(A57)	Beach and water recreation activities (including recreational fishing, shellfish gathering and gamebird hunting) that do not require the long-term reservation of any water surface, the bed of a lake, river or wetland for the exclusive use of that activity

[183] Beyond that there are many other activities that are identified as either restricted discretionary or discretionary activities that may, on the face of it, potentially have impacts greater than those discussed in the *Forest & Bird* decision. Some of the apparent impacts of the activities are mollified once one refers to the relevant standard. In E3.6.1, for example, the standard in relation to livestock access is in fact only a temporary access given that they must be excluded from the full extent of any lakes, rivers, streams and wetlands excluding intermittent stream reaches by five years after the rule becomes operative, and in respect of river or streams including any intermittent stream reaches by ten years after the rule becomes operative. As we understand it, this would include areas that have been identified as SEAs terrestrial or marine. Thus, it can be seen that a proportionate or graduated response has been taken.

[21] [2017]

E11 Land disturbance

[184] Moving to land disturbance, these again are Regional Plan provisions, in relation to which we were not directed to any particular provisions. Particular activities, including significant ecological area overlays, are addressed at Table 11.4.3. Even within SEAs there are a number of activities permitted, most of which would be considered to be either minimal or perpetuation of existing activities, i.e. A15 – earthworks for maintenance and repair, earthworks for installation of fences, walking tracks and burial of marine animals. An example of minimal land disturbance is A27 – up to 5 metres of land disturbance not otherwise listed (which is also listed at A29). There are a series of standards that also seek to minimise effects such that it could be said that these seek to avoid more than minimal or temporary effects or transient effects, even within the coastal environment. Thus, there may be an issue with these in respect of NZCPS Policy 11(a).

Chapter E15

[185] Moving to E15, this discusses vegetation in the broad sense of all vegetation within the region. It clearly identifies the objectives and policies of D9 in relation to significant ecological areas. Nevertheless, this chapter in itself is stated to apply:

> The *objectives and policies* in this chapter apply to the management of terrestrial and coastal vegetation and biodiversity values outside of scheduled significant ecological areas. Auckland Unitary Plan Operative in part

[186] However, it goes on to state:

> *The rules* that apply to the management of vegetation and biodiversity for areas both outside of and within scheduled significant ecological areas – terrestrial are contained in this chapter.

and further

> The *rules that apply* to vegetation management and biodiversity in the coastal marine area, including for areas identified as Significant Ecological Areas – Marine are contained in Chapter F Coastal.
>
> (emphasis added)

[187] The objectives and policies therefore are intended to apply only to terrestrial and coastal vegetation and biodiversity values outside of scheduled significant ecological areas. In particular, it is noted that this is not limited only to indigenous vegetation, although objectives 15.2 (1) and (2) both refer only to indigenous vegetation and biodiversity. Nevertheless, the policies seek to protect contiguous indigenous vegetation

cover and vegetation in sensitive environments, including coastal environment, riparian margins, wetlands and areas prone to natural hazards. Thus, whether the word indigenous is intended to apply to vegetation simplicita as well as vegetation cover is unclear. Nevertheless, policy (2) goes on to state:

> Manage the effects of activities to avoid significant adverse effects on biodiversity values as far as practicable, minimise significant adverse effects where avoidance is not practicable, and avoid, remedy or mitigate any other adverse effects on indigenous biological diversity and ecosystem services, including soil conservation, water quality and quantity management, and the mitigation of natural hazards.

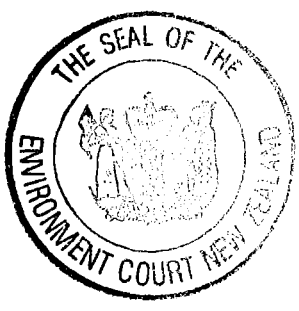
[188] Overall, we can only conclude that the intent here is to address *indigenous* vegetation and biodiversity. However, sub-paragraph (4) on the face of it might apply to all vegetation and biodiversity (exotic as well as indigenous) given it states:

> (4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following:
>
> (a) using transferable rural site subdivision to protect areas in Schedule 3 Significant Ecological Areas – Terrestrial Schedule;
>
> (b) requiring legal protection, ecological restoration and active management techniques in areas set aside for the purposes of mitigation or offsetting adverse effects on indigenous biodiversity; or
>
> (c) linking biodiversity outcomes to other aspects of the development such as the provision of infrastructure and open space.

[189] We note firstly that E15.3 (4)(a) is subject to appeal. In broad terms, this is the provision that allows for the transferable rural site subdivision to protect areas that meet the factors of B7.2.2(1) and Schedule 3 Significant Ecological Areas – Terrestrial Schedule. This provision was in the IHP recommendations and was adopted by the Council. Given that there has been no change of wording, we agree with the Auckland Council that there can be no basis for a change to this policy, given that the Council adopted the IHP wording. By virtue of s 156, no right of appeal to the Environment Court can arise.

[190] It is clear, therefore, that whether there is any merit to Significant Ecological Areas - Marine being included, this is not addressed by Policy (4)(a). Whether it can be changed as a consequence of other changes made within the Plan is a matter we may address if that issue arises later in the decision.

[191] Nevertheless, E15.3 (4)(a) to (c) provide, on a policy basis, for transferable rural site subdivision:



(b) requires legal protection, ecological restoration and active management techniques in areas set aside for the purposes of mitigating or offsetting adverse effects on indigenous biodiversity.

This is reinforced by:

(c) linking biodiversity outcomes to other aspects of the development such as the provision of infrastructure and open space.

[192] Conceptually, therefore, we conclude that (a) provides a policy basis for transferable rural site subdivision for the protection of Schedule 3 Significant Ecological Areas and B7.2.2(1). We note that there is no reference in this provision to whether those areas are mapped within the Plan or not. In relation to in-situ development, there is a policy basis arising from (b) and/or (c) that may enable in-situ subdivision to be a method to require the legal protection, ecological restoration and active management techniques. Nevertheless, this is not explicit within (4)(b) and (c) themselves.

[193] The balance of polices are also relevant, including particularly Policy (9) of avoiding activities in the coastal environment where they will "result in more that transitory or minor adverse effects" and on the wording of the sub-paragraphs therein we are satisfied that this must include SEA – Marine and also SEA – Terrestrial where these occur within the coastal environment. The issue, though, is that all of these are NZCPS Policy 11(a) matters that are avoid policy not limited to transitory or minor transitory or minor. It appears this is an instance where the High Court *Royal Forest and Bird* decision is yet to be integrated into the Plan provisions.

[194] Further, policy (10) goes on to protect from significant adverse effects (NZCPS Policy 11(b)):

(a) areas of predominantly indigenous vegetation;

(b) habitats that are important during vulnerable life stages of indigenous species;

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

(d) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes including fish spawning, pupping and nursery areas;

(e) habitat, including areas and routes, important to migratory species;

(f) ecological corridors, and areas important for linking or maintaining biological values; or

(g) water quality such that the natural ecological functioning of the area is adversely effected.

[195] From this we clearly conclude that notwithstanding an area may not demonstrate the factors for an SEA, the policy seeks to avoid significant adverse effects, and avoid remedy or mitigate other adverse effects, on these activities. Importantly, the various factors under (10)(a) to (g) are not cumulative. For example, habitat of an indigenous species under (d) may not be an area of predominantly indigenous vegetation under (a). In E15.4 the Plan goes on to address the activity table for vegetation management in all zones. It notes that vegetation removal in the coastal marine area is covered by chapter F, vegetation removal in the beds of lakes, rivers and streams by E3, use and development for infrastructure by E26, and gulf islands subject to the Auckland Council District Plan: Hauraki Gulf Islands.

[196] The application of the table is complex and is covered by E15.4, page 4 of Part E15. We annex that marked as **H**. This application is problematic given the provisions of s 76(4)(a) of the Act. On the face of it, it purports to specify the activity status for vegetation management, notwithstanding 76(4A), (4b) and (4C). Reference to the table, E15.4.1 shows that many of the issues relate to trees ((A1), (A2), (A4)). Even where vegetation is described generally, that clearly is intended to be worded to address trees. (A20), (A21) and (A22) make this clear.

[197] When we move to table E15.4.2, this relates to areas in overlays, which would be ONL, ONF, SEA and HNC. Again, on the face of it, it is clear that this is intended to control, as part of vegetation removal, trees, ie see (A33) – emergency tree works; (A37) – conservation planting; (A41) – tree trimming. Section 76(4A) RMA and following provides:

> (4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan,—
>
> (a) the tree or trees are described; and
>
> (b) the allotment is specifically identified by street address or legal description of the land or both.
>
> (4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on 2 or more urban environment allotments only if— in a schedule to the plan,—
>
> (a) the allotments are adjacent to each other; and
>
> (b) the trees on the allotments together form a group of trees; and
>
> (c) in a schedule to the plan,—
>
> (i) the group of trees is described; and
>
> (ii) the allotments are specifically identified by street address or legal description of the land, or both.
>
> (4C) In subsections (4A) and (4B),—
>
> **group of trees** means a cluster, grove, or line of trees
>
> **urban environment allotment** or **allotment** means an allotment within the meaning

of section 218—

(a) that is no greater than 4 000 m2; and

(b) that is connected to a reticulated water supply system and a reticulated sewerage system; and

(c) on which there is a building used for industrial or commercial purposes or as a dwelling house; and

(d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.

(4D) To avoid doubt, subsections (4A) and (4B) apply—

(a) regardless of whether the tree, trees, or group of trees is, or the allotment or allotments are, also identified on a map in the plan; and

(b) regardless of whether the allotment or allotments are also clad with bush or other vegetation.

[198] Two key points need to be made out of this:

(i) it is unclear as to whether or not this provision could apply to urban land where the land is no greater than 4,000m^2 and connected to a reticulated water system and sewerage system and is industrial, commercial or a dwelling house; and

(ii) that the constraints in s 76(4A) and (4B) do not apply to rural properties where they meet the above criteria.

[199] For current purposes, the provisions would probably apply to the majority of areas within the General Rural zone and most of those within the Countryside Living area. We make this statement based upon the fact that rural and coastal towns are now included in specific zonings. Rural and Coastal towns within the urban areas may qualify within subsection (4B), (a) to (c), thus the application of any tree and limitations on tree removal or trimming may not apply. Given that the issue has not been addressed specifically before us, and this Court has no jurisdiction, we make no further comment as to the vires of those provisions, but they appear problematic.

[200] For example, within the General Rural area, strict application of the rules as drafted would suggest that exotic vegetation would be equally covered by table 15.4.1. Where consents are required, E15.7 includes matters of control, assessment criteria generally and for restricted discretionary activities and further, at 15.8.2. Importantly, these include issues such as landscape, natural features, natural character values and amenity values (15.8.2(d) and (e). This is also a matter of discretion under 15.8.1(d) and (e) (f) coastal.

Other provisions

[201] A copy of Chapter F – coastal was not provided to the Court and we acknowledge that the marina zone, mooring zone, minor port zone, ferry terminal zone and defence zone are not relevant for current purposes. F1 contains some descriptive matters, and a copy of this sheet was provided to the Court and, relevantly, provides that the general coastal marine zone is the majority of Auckland's coastal marine area.

All activities not otherwise provided for.

[202] Chapter F goes on to state at F2.1:

> Notwithstanding the spatial extent of the coastal – general coastal marine zone its objectives, policies and rules apply to all coastal zones and coastal precincts unless otherwise provided for in the specific zone or precinct. If an overlay applies to the area where an activity is proposed, the provisions of the overlay will also apply, including any overlay rule that applies to the activity.
>
> The purpose of the general coastal marine zone is to provide for use and development in the coastal marine area, in particular those forms of use and development that have a functional or operational need to be undertaken or located in the coastal marine area while:
>
> - enabling people and communities to provide for their social and economic wellbeing through the appropriate use and development of the coastal marine area; and
> - enabling the construction; operation, maintenance and upgrading of infrastructure within the coastal marine area (that cannot be practically located on land) where it has a functional or operational need;
> - protecting natural character, landscape values and natural features;
> - maintaining and enhancing water quality and the life supporting capacity of the marine environment;
> - protecting significant ecological values;
> - protecting historic values; and
> - recognise and providing for mana whenua values in accordance with tikanga Māori;
> - maintaining and enhancing public access open space recreational use amenity values and access to and along the coastal marine area;
> - not increasing the risk of subdivision, use and development being adversely affected by coastal hazards; and
> - managing conflicts between activities within the coastal marine area.

[203] Overlays do apply, for instance, from chapter D and, in particular relevance for this case, D9 Significant Ecological Areas overlay, although quite clearly outstanding natural character and high natural character overlays and historic heritage overlay,

outstanding natural feature and outstanding natural landscape overlays would all still apply.

[204] F2.2.2 goes on to discuss objectives, with policies following F2.2.3 relating to reclamation and drainage. F2.3 discusses deposition and disposal of material with objectives F2.3.2 and policies F2.3.3.

[205] Dredging follows at F2.4.1 with objectives F2.4.2 and polices, and disturbance of the foreshore and sea bed F2.5.1 with objectives and policies F2.5.2 and F2.5.3.

[206] To this extent there is some recognition of the potential for adverse effect on ecological values, and particularly effects on feeding, spawning and migratory patterns of marine and coastal fauna, including bird roosting, nesting and feeding, stability of coastal features such as dunes and coastal vegetation (F2.5.3 (4)(a) and (b)) and avoiding disturbance of the foreshore and sea bed that may result in (6(a) significant changes to natural coastal processes that may affect surf breaks and (6(b)) cause or exacerbate coastal erosion. There follow similar provisions for mineral extraction (F2.6). At (F2.7) there is discussion of mangrove management. It is recognised that there are concerns about mangroves but that these must be weighed with the important ecological and biological values of mangroves.

[207] Objective F2.7.2(1) notes the ecological value of mangroves is recognised and mangroves are retained in areas where they have significant ecological value, and (2) mangroves are retained in areas where they perform an important role in mitigating coastal hazards. (3) states "restore or maintain natural character and ecological values including significant wading bird areas, public access, navigation, riparian access and amenity values" and reduce sediment deposition under (4).

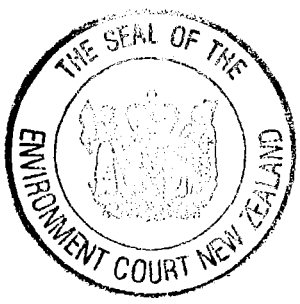
[208] Policy F2.7.3 (1) provides:

> 1. To avoid the removal of mangroves through any of the following:
>
> (a) areas having significant ecological or natural character values of which mangroves are in important component or in other areas where mangroves can provide significant ecological values;
>
> (b) areas of active coastal erosion where mangroves have historically provided a buffer against coastal processes causing erosion; or
>
> (c) areas where sediments contain high levels of contaminants at risk of being re-suspended.

[209] At subsection 3 this policy does provide for removal of mangroves in certain circumstances, but subsection (4) requires it to meet a number of criteria. F2.8 deals with vegetation – removal of exotic species and pacific oyster shell. D2.9 deals with vegetation planting in the coastal marine area, while F2.10 deals with use, damming and diverting of coastal waters and F2.11 deals with discharges. F2.12 deals with untreated sewerage from vessels and F2.13 is concerned with discharges from biofouling and vessel maintenance.

[210] F2.14 is more directly relevant to this hearing in that it deals with use, development and occupation in the coastal marine area. It notes the presumption of public use and access and how this is balanced against the values within these areas. Nevertheless, it does not explicitly address issues of significant ecological areas. The closest that it comes is at F2.14.3 Polices 5 (d), which requires any activity to avoid, remedy or mitigate any adverse effects on water quality and ecological values and (e) coastal processes including erosion. There follows policies on aquaculture and structures, which again discuss the need to avoid, remedy or mitigate adverse effects, including in significant ecological areas Marine 1 and 2, local vessel activities, underwater noise. In short, there is little that specifically addresses the significant ecological areas until we reach the activity tables at F2.19. Almost all activities within the table relating to SEA marine 1 or 2 are either discretionary or restricted discretionary, with a number of activities being non-complying. Exotic vegetation alteration or removal and vegetation removal alteration or removal for routine operation, repairs and maintenance within 3m of existing building structures, motorways, roads are provided for. Activity (A44), however, excludes from the removal provisions mangroves, sea grass or salt marsh. Mangrove seedling removal is a permitted activity in both the M1.

[211] Although it is listed within SEA M 2 and HNC, it is not clear what the words mean. Is SEA M1 only in areas listed in Schedule 4 Significant Ecological Areas Marine Schedule or Appendix 5 wading bird areas? Activity (A46) provides for mangrove removal in appendix 5 wading bird areas as a full discretionary activity. There appears to be some wording missing from the provisions. Although there is an extensive list in relation to particular activities, most appear to be either restricted discretionary, discretionary or non-complying. Most other exceptions are for infrastructure or emergency activities or for monitoring. Nevertheless, it must be said that the range of tables in this case is particularly complex and their application to any particular case is not clear. Again, all permitted activities are subject to standards. Permitted, controlled and restricted discretionary activities are subject to standards at F2.21, with only



coincidental reference to significant ecological area.

[212] While there are complex and extensive standards relating to a whole series of issues that we raised earlier, it is difficult to see any outcome beyond a requirement that, generally, effects on overlays should be transient. Matters of control for controlled activities follow at F22 along with other assessment criteria, the impact upon significant ecological areas, outstanding natural features, outstanding natural landscapes, are all matters that need to be taken into account. F2.23 allows for restricted discretionary activities addressing the scope of assessment, and setting out applicable assessment criteria. Given the comprehensiveness of these provisions, it is difficult to see what particular factors would not be included within either the restricted discretionary or discretionary activity. (In fact, most of them appear to be covered under the controlled activity criteria also.) We note in particular that the witnesses did not identify this provision as germane to the appeals. We accept that the rules in relation to it are generic, and essentially turn on the activity tables where there is little explanation given for the status of the activities.

Chapter H19 – Rural Zones

[213] We now turn to the question of the rural zones and subdivision within them. In understanding how the rural zone works, Chapter H19 is relevant. We understand the provisions to which we now refer are settled. In this case we have used the word "general rule" to apply to the rural production zone, mixed rural zone, rural coastal zone and, potentially, in certain circumstances, to the rural conservation zone. The Countryside Living zone is addressed directly in the Plan at H19.7. Part 19.2 deals with the objectives and policies for all rural zones, which includes the Countryside Living zone. Of the general objectives, numbers 3 and 4 are relevant: 3. Elite soil is protected and prime soil is managed for potential rural production; and 4. Rural lifestyle development avoids fragmentation of productive land.

[214] The policies follow at 19.2.2. The land resource is recognised in policy 19.2.2(1) and this flows through into the elite and prime soils in 19.2.2(3) and (4). At (5), the policies provide:

> Enable a range of rural production activities and a limited range of other activities in rural areas by:
>
> (a) separating potentially incompatible activities such as rural production and rural lifestyle living into different zones;

(b) avoiding or restricting rural subdivision for activities not associated with rural production other than in area than those subdivision provided for in E39 subdivision rural;

(c) managing the effects on rural areas so that:

(i) essential infrastructure can be funded, coordinated, provided for in a timely, integrated, efficient and appropriate manner; and

(ii) reverse sensitivity effects do not constrain rural production activities.

[215] The Objectives at H19.2.3 address rural character, amenity and biodiversity values. They include:

(1) The character, amenity values and biodiversity values of rural areas are maintained or enhanced while accommodating the localised character of different parts of these areas and the dynamic nature of rural production activities; and

(2) new areas of significant indigenous biodiversity are protected and enhanced.

[216] The Policies that follow these objectives in H19.2.4 seek to achieve a character, scale and intensity in location that is in keeping with the rural character (19.2.4(1) and 19.2.4(2) recognising features typical of the rural environments, which would not normally give rise to issues of reverse sensitivity.

[217] H19.2.4(3) provides:

Enable opportunities to protect existing Significant Ecological Areas, or provide opportunities to enhance or restore areas to areas meeting criteria of Significant Ecological Areas.

[218] Whilst the Rural Production Zone is intended for rural production activities, rural industries and services while maintaining the rural character and amenity values, it does note at objective 19.3.2(2) that the production capability of the land is maintained and protected from inappropriate subdivision, use and development. The policies follow through with the provision for productive activities, and there is no explicit policy relating to residential activity in the zone.

[219] The mixed rural zone recognises rural production on smaller rural sites and non-residential activities on a scale compatible with these generally smaller sites. The Objectives at H19.4.2 are:

(1) The existing subdivision pattern is used by a range of rural production activities and non-residential activities that support them.

(2) The continuation of rural production and associated non-residential activities in the zone is not adversely affected by inappropriate rural lifestyle activity;

(3) Rural character and amenity values of the zone are maintained while anticipating a mix of rural production, non-residential and rural lifestyle activities.

[220] Again, the policies do not directly provide for residential activities, but Policy H19.4 (2)(c), in managing reverse sensitivity seeks to limit further subdivision for new rural lifestyle sites.

[221] The purpose of the Rural Coastal Zone (H19.5) is to retain and enhance the rural character and amenity values, local coastal character and biodiversity values of rural areas along Auckland's harbours, estuaries and coastline. It also seeks to manage the effects of existing scattered rural lifestyle development. It recognises that much of the zone has outstanding natural character, high natural character, outstanding natural landscape and Significant Ecological Areas overlays. It also notes the pressure for coastal town and village settlement, further rural lifestyle opportunities, recreational tourism and visitor activities. Here, the rural production activities are enabled while "managing adverse effects on rural character and amenity values, landscape, biodiversity values and mana whenua cultural heritage values." Objective 19.5.2(2) allows for recreational and non-residential services that maintain and enhance rural and coastal character, amenity values, landscape and biodiversity values. Relevantly, Objective (4) provides: "Rural lifestyle subdivision is limited across the zone." The Policies that follow at H19.5.3 recognise this move from rural production activities to more emphasis on rural character amenity values, landscape and biodiversity values. At Policy (4) it does discourage rural production in certain circumstances. At Policy (5) it provides:

> Maintain the rural and coastal character and amenity values in the coastal environment by controlling the number, location, size and visual impact of dwellings and other non-residential buildings and their curtilege and access ways.

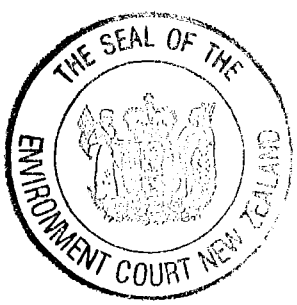
[222] Policy H19.5.3 (6) has particular design features to avoid ridgelines, minimise building platforms and avoiding coastal yards and riparian margins. The plan goes on to discuss particular areas within the coastal zone. No witness addressed these, and we do not need to take this any further at this stage. Nevertheless, they would be relevant to particular developments within those areas.

Rural subdivision – E39

[223] We now come to deal with the question of subdivision and the incentive provisions provided within the Plan. E39 is intended to address subdivision both in the Rural zones, the rural Waitakere Foothills zone and Rural Waitakere Ranges zone, the Future Urban Zone and the Special Purpose Quarry Zone. For current purposes, we note that urban subdivision generally is dealt with in E38 of the Plan.

[224] The objectives essentially follow the comprehensive citations we have given and require land subdivided to achieve the objectives of the zone, the relevant overlays and the Auckland-wide provisions. Secondly, land is to be subdivided in a matter that provides for the long-term needs of the community, and minimises any adverse effects of future development on the environment. E39.2.(8) provides that subdivision should maintain or enhance the natural features and landscape that contribute to the character and amenity values of the areas.

[225] We now come to key Objectives the subject of this appeal, being E39.2 (9), (10), (12) and (14). In establishing the most appropriate provisions for this Plan we need to keep in mind the superior documents which we have discussed in some detail, including the Regional Policy Statement, the Regional Plan and even the settled objectives and policies of the other parts of the District Plan. In summary, the provisions of E39.2 (9) relate to amalgamation of titles; (10)(c) avoiding inappropriate, random and wide dispersal of rural lifestyle lots throughout rural and coastal areas; (12) primarily limiting subdivision to Rural – Countryside Living Zones, and to sites created by protecting or creating significant areas of indigenous vegetation or wetlands; (14)(a) limited in-situ subdivision through protection of significant indigenous vegetation or indigenous revegetation planting; or (b) transfer of titles through the production of indigenous vegetation and wetlands and/or through indigenous revegetation planting to Countryside Living Zones. Annexure **I** has the different versions of these provisions, as we have referred here to the Decisions Version, and it is necessary, as we go on, to refer to the IHP version and appellants' requests. Annexure **I** (prepared by Mr Mosley[22]) shows that the significant issues relate to Objectives E39.2 (10)(c) and (14). There is a lesser issue in relation to Objective E39.2 (12) seeking to insert the word "protecting, **restoring** or creating significant areas of indigenous vegetation or wetlands". Overall, in respect of (10)(c) the question is whether or not there is a need for a further reference to avoid



[22] Mr Mosley, evidence-in-chief, Attachment G EB0631.

contributing to the inappropriate, random and wide dispersal of rural lifestyle lots, given the other objectives and policies we've already identified. In relation to Objective (14), the question is whether there can be more appropriate wording to more properly reflect the objectives and policies of the Plan and superior documents we have discussed. These issues are taken up later in policies where Policy (11), as recommended by IHP, imposes a general restriction to relate to subdivision only. The Council wording, however, would restrict this policy to addressing in-situ subdivision. The removal of the word "restorative" is consequent upon a change to Objective 39.2 (12) made by the Council.

[226] Similarly, Policy E39.3 (15) turns on questions of extent of in-situ subdivision compared with that for transfer of titles, with the use of the phrase limiting the opportunity to identified Significant Ecological Areas in the overlay as opposed to the reference to other significant ecological areas meeting B7.2.2 and Schedule 3. Consequent changes in (18) relate to the extent of opportunity and the use of the word "restoration".

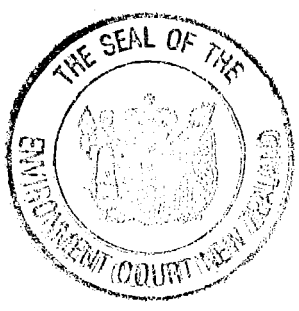
[227] The Council has adopted the IHP recommendation for E39.3 (17), which encourages protection of indigenous vegetation and wetland per se, where the appellants would have this limited to the feature which has been used to leverage the subdivision.

[228] The differences addressed in the objectives and policies then lead through to the implementation methods in the rules, and in particular to Activity Table E39.4.2 and specifically to activities (A16) to (A23).

[229] Thereafter, the only other change sought by some of the appellants relates to the question of staging at standard 39.6.1.4 and the various criteria.

The issue on staging

[230] It was acknowledged by the parties towards the end of the hearing that there was a difficulty conceptually with requiring a donor site to be subject to conditions of consent for a subdivision on another property. The Council has essentially been requiring a concurrent application for consent to create the transferable right, and attaching each application for such a right to an application for subdivision. Given that the protection of significant ecological areas (or other areas for that matter) of a property are a permitted activity, it is difficult to see on what basis a resource consent would be required. The former Rodney Council apparently required an application for subdivision at the donor site which was never intended to be formalised. Nevertheless, it required a survey and,



if consent was granted, it was then merged again by uplifting the proposal, with the full title remaining intact, once the transfer was complete. From the evidence Mr Mosley gave, the Council is trying to adopt a simpler proposition, but this requires a matching of every donor with every receiver. There are a number of significant problems with this approach.

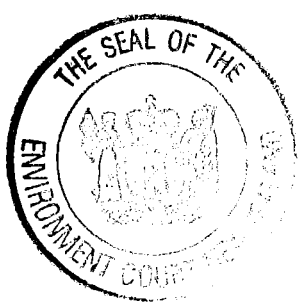
[231] Within the Countryside Living Zone it is unlikely that there would be more than two or three titles created per existing lot as a result of subdivision. However, some of the larger SEAs may generate a significant number of transferable rights. The practical difficulties as to the issues that arise in trying to identify the number of receiver parties, especially given the requirement of the subdivider to undertake the subdivision as quickly as possible to sell the properties to secure the funding relied upon by the donor, were given by witnesses. On the other hand, the donor has the difficulty that they will not be prepared to pay for the significant costs of fencing, improvement and/or pest control or management until they are sure that they will be able to derive a transferable right.

[232] We are told that this has created a considerable impediment, notwithstanding the appellant's evidence that many of the parties with SEAs large enough to generate significant protection areas would prefer to create transferable rights. Mr Mosley's response to this proposition was that Council was not a bank and that it would create an administrative nightmare for the Council in retaining consent rights which were later expunged as individual property owners received subdivision rights.

[233] We heard considerable evidence on this matter, and it appears unclear to us what the practical difficulty is. Provided there was some form of certification process necessary before a donor could utilise the sites, and that every application for subdivision would need to identify an agreement to surrender one of those as part of the process for subdivision, ie before a 224 certificate, this would be possible. Nevertheless, we acknowledge that the provisions as currently drafted do not address this matter in any particular detail beyond the staging provision identified at E39.6.1.4. That, of course, relates to the subdivision itself whereas here it is intended that the donor of the transferable subdivision incentive would be able to stage the release of those donor sites. We discuss this matter in more detail subsequently in this decision.

Standards and Assessment criteria

[234] Although there is a great deal of rewording that can be seen from Ms Pegrume's



evidence, in particular, the issue largely turns on the question of in-situ vs transferable rights, and also the maximum yield that might be obtained. Essentially, all appellants seek, at least, the re-imposition of the IHP's ratio approach with no maximums. Beyond the repeated requirement in relation to sites meeting the criteria of Schedule 3, rather than the mapped overlay area alone the parties recognised that any assessment would need to be addressed by a suitably qualified and experienced person, as required for Plans set out in E39.6.4.4 (10)(b).

[235] Finally, there was some further discussion in evidence about the buffering areas, and the standards that must be met by these. Some of the other minor changes sought relate to the depth of buffer planting and the extent of buffer area, and identification of some further standards at E39.6.4.4, 6.4.5 and 6.4.6, including requirement for contiguous planting. Overall, the primary focus was as to whether or not the provisions should first focus on those areas meeting the criteria for SEAs, and then on those that do not meet them in full but could be restored to meet those over a reasonable period of time. It appeared that the majority of witnesses before the Court acknowledged that it was most difficult to achieve appropriate outcomes where there was no existing indigenous vegetation or natural features that would support such indigenous vegetation.

Assessment of the evidence

[236] In support of the various positions of the parties on the objectives and policies, the evidence was, in a sense, being reverse engineered, as it placed significant focus on the implementation methods centred on the following main topic areas:

- The efficacy of ecological assessment.
- Impact analysis on the basis of enabled quantum of new sites enabled by reference to the enabling methods (GIS capacity and economic capacity analyses) and the impact on growth policy;
- The efficacy of the methods themselves, including:
    - SEA mapped v or in combination with SEA conforming attributes;
    - In-situ v transferrable rural site subdivision TRSS quantum;
    - Locational requirements for revegetation as an opportunity to leverage subdivision (contiguous or not).

[237] Overall, there was general agreement that the TRSS is the policy preference, and should be an attractive leverage compared to others as this is more likely to be more broadly aligned with the general rural objectives and policies of the AUP (at all levels). This was largely supported by evidence concerning the protection of the productive land resource and impact on rural landscape and amenity.

[238] We do not intend to undertake a witness by witness assessment of evidence in this matter. Overall, we are unanimous in our view that the ecological evidence for the appellant's witnesses was sound and based upon accepted and orthodox ecological approach. We also note that Ms Webb, who gave evidence for the Council, was a party to the Ecosystems Report of Auckland document, which all ecologists agreed was as authoritative as could be expected. We have used that, together with the ecologist for the appellant's evidence as a comparator to assess the evidence on ecological matters.

[239] So far as the growth issues are concerned, we consider that the fundamental failure of the witnesses Dr Fairgray and Ms Fuller to acknowledge Mr Balderton's clear statement, that his assessment of capacity was not either possible or expected outcome even over a 30-year period, leads us to put little weight on their evidence. We prefer the evidence of Mr Thompson, although in practical terms, our view is that no witness has been able to properly assess the likely outputs of this regime over the life of this Plan or over the following 30 years.

[240] No evidence was produced to us to show that the capacity that might be achieved from all discretionary activities being granted had ever been achieved in New Zealand, and certainly not in Auckland. The suggestion that all new developments in Auckland were based upon maximizing the household yield has no basis in fact we have been able to ascertain. Although it is clear that integrated developments, such as Hobsonville, are more likely to achieve significant yields, the majority of residential housing in New Zealand is still organised by individual landowners or small building companies. That is evident in driving through areas such as Albany, Oteha Valley and the like. We note that the trend in building size in New Zealand has been increasing in recent decades. Although there is a tendency to smaller section size, this does not appear to have reflected in a reduction in size of individual dwellings.

[241] Two other significant factors are relevant to us in relation to the prospect of yield within the Auckland region. Dr Fairgray, in his evidence, indicated that there was a target in the spatial plan for new subdivisions in the rural area of 2,500 in the general other

Rural areas and 3,500 in the Countryside Living zone (which is also regarded as a particular type of rural zone) between 2012 and 2021. The witnesses acknowledged statistics in the order of 2,300 for a period between around 2006 and 2017 (around 11 years). It was also acknowledged that applications for subdivision consent in the last few years had dropped rather than increased.

[242] We accept as a fact that the yield of subdivision for residential housing in rural zones within the last five years has been well short of the predicted 6,000 by 2021, and would require something in the order of 4,000 homes to be built over the next 3 years. This would represent a quadrupling of the output over the following years to 2021.

[243] The second major difficulty is the evidence produced by the Council showing the rural consents actually granted by the Council since the Decisions Version of the AUP became available. No witness referred any further to this document, although it has been produced. This document confirmed that 34 have been granted since 2016.

Analysis of the Council outcomes since August 2016

[244] The Court required, and received late in the hearing, a copy of the rural consent applications and processing from 19 August 2016 to 20 March 2018. For current purposes, and to try and get some understanding of the actual outcomes in terms of the current Council consent provisions, we have assumed this covers an 18-months period. The decisions version has been applied, but of course the question of its weighting (compared with the previous plan provisions where there is an appeal) is, as yet, unclear.

[245] We make the following comments in relation to this information. Firstly, that the information produced to us is unclear. Many of the activities for which application has been made do not show the status of the activity, especially when it is bundled. We suspect a number of those activities are non-complying, but for the sake of this hearing we have assumed that all of those for which no activity status is listed are either restricted discretionary or discretionary (there being no permitted or controlled activity status for subdivision). Secondly, the information does not take a uniform approach to the number of lots created, and we have had to make assumptions as to whether or not there is an additional yield for subdivision purposes from many of the applications. For example, the most common example is boundary adjustments, where no indication is given as to whether a further lot is created. Also, many of the applications may be for both the creation of the transferable lot and its associated subdivision consent. Because of the

difficulty in ascertaining the distinction, we have assumed that all those that have been granted and enable a calculation of yield, are, in fact, separate applications, although some may be interconnected.

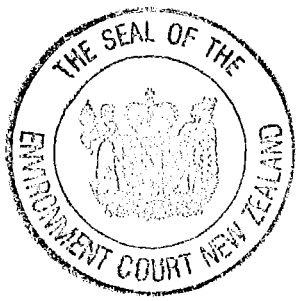
[246] Finally, we must say that the way in which the information has been produced to us does not give us any confidence that the Council is maintaining any ongoing monitoring of the consents granted under the various categories of the plan to enable a factual ground testing of the assumptions made in its yield calculations.

[247] The fact that no witness for the Council had prepared any analysis of this creates an ongoing concern. The information also does not always display the number of new lots created. This is especially true in respect of some of the larger consents such as that at Haig Road, Redvale, where various lot numbers are referred to but there is no overall calculation as to the number of lots. We have had to assume lot numbers in the order of 80 for this non-complying activity, which was granted.

[248] Further, some applications are shown as granted, others are shown as complete, and the difference is unclear to us. Again, out of caution we have assumed that only those stated as granted have a resource consent, and have ignored other consent decision indications. We do note that, of the applications filed, 228 were granted, many are unprocessed, but only two appear to have been declined. Whether this includes the Kumeu site[23] and the Ahureka site[24] is not easily ascertained from the information provided.

Consents granted

[249] Of the 228 consents granted, approximately 470 lots were created. In reaching this conclusion we have had to undertake an "overs and unders" assessment, given that information as to the number of additional subdivision lots created is not always clear in the information provided. However, using the same methodology for approach, it appears that approximately 181 of those lots were granted as non-complying activities, and 290 (approximately) as either restricted discretionary, discretionary or inominate activities.



[23] *Kumeu Properties Limited v Auckland Council*, [2018] NZEnvC 027.
[24] *Ahureka Trustees no 2 Ltd v Auckland Council*, [2017] NZEnvC 205.

Conclusions as to actual yield under the Council provisions

[250] Firstly, there are a number of matters that need to be taken from the figures that are provided to us:

- Some of the subdivisions are as a result of the significant incentive for amalgamation of titles in the Franklin area. This has an expected total yield of approximately 800 lots, and is likely to be the first preferred method of subdivision transferable rights as it involves minimal cost;

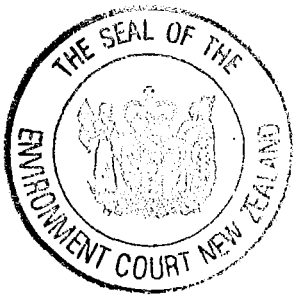
- The Council's preferred provisions have been applied to date, and yield a figure of approximately 320 lots per annum. If this rate continues (does not include suppressed development and the amalgamation provisions) then this would yield around 3,200 over ten years, or something in the order of 10,000 over a 30 year period;

- Given that nearly 40 percent of all the consents granted were for non-complying activity status, it can be seen that the non-complying activity status is still being utilised by a great many of the applications, and could represent approximately 4,000 of the development potential under the Council-preferred provisions over the next 30 years.

[251] As a result, it can be seen that the yield calculation figures for the plan operation by the Council are not useful and related to the rules when it comes to the question of how activity status affects either applications or outcomes. The referral of the non-complying consents would change the annual yield to about 200 per annum, or 6,000 over 30 years.

Would the IHP provisions significantly change the yield within the rural area?

[252] The largest applications that were made, for example Haig Road, Redvale – 80; Clevedon-Kawakawa Road, Clevedon – 10; Urquhart Road, Papakura – 16; Monument Road, Clevedon – 10 (116 in total) were non-complying activities. These were granted notwithstanding their intensity and status. This must give rise to the question as to what approaches were taken in those circumstances towards SEA areas and indigenous vegetation.



[253] Although we are unable to tell from the data that has been provided, it appears that these non-complying consents were all in-situ subdivisions. The question then turns

upon whether or not restricted discretionary status would have a significantly different outcome. Given the range of matters that are included for assessment within restricted discretionary status, and the particular standards applying to achieve that status, we have reached the conclusion that the outcomes would be little different if the IHP provisions applied rather than the current district provisions. In reaching this conclusion we note:

(a) that Auckland Council has granted many non-complying subdivision consents for in-situ development;

(b) for non-complying applicants, the application of the standards and criteria are less certain. In the case of both non-complying or restricted discretionary, issues as to rural character and amenity, natural character and features and significant ecological areas are applicable;

(c) that we must conclude that the Council have been able to grant consents on the basis that the effects on the environment are no more than minor, probably through the imposition of conditions and covenants to reach protection of the same items covered under restricted discretionary status. It is unclear to us as to whether the numerous standards and criteria have been considered and addressed.

[254] For restricted discretionary, discretionary or non-complying activities the critical factors applying to the consent in relation to effects would be the same. Given the objectives and policies we have already outlined from the Regional Policy Statement through, it appears that there may be many cases where non-complying applications can also show that they are not contrary to such objectives and policies, particularly relying on:

(a) protection of natural character or features;

(b) the enhancement and protection of significant ecological features and other indigenous vegetation and/or habitats; and

(c) maintaining the rural character and amenity anticipated in terms of the plan.

[255] In our view, this would be achieved in both the case of a non-complying application or a restricted discretionary application for an in-situ development by demonstrating through a Master Plan process (as recommended by several witnesses) and a comprehensive approach to covenanting and separation, that the various objectives of the plan can be met.

Conclusion as to yield

[256] We have concluded that the current Council provisions are likely to achieve a yield of around 300-350 per year, below the predicted rate anticipated in the Auckland Spatial Plan 2012 (i.e. 6,000 between 2012 and 2021 inclusive). We have concluded that the IHP provisions, depending on their particular wording, might achieve a slightly higher figure of between 350 – 450 per year. Importantly, we do not consider that either set of provisions is more likely to achieve significantly greater levels of development in the other rural areas for in-situ development subdivision than the other. This is because the critical criteria would still apply to restricted discretionary or non-complying activities.

[257] Overall, we have concluded that the Council's assumption of yield based upon a computer analysis of areas has no basis in fact or actual outcomes. In fact, we have concluded that the evidence of other Council witnesses, particularly Dr Fairgray and Ms Fuller, misunderstood Mr Balderton's evidence which clearly stated it was not a yield calculation.

[258] We note that the Council has the power to introduce a change or may review these provisions, depending on the outcomes over the period of the plan. We would anticipate that in the initial period there is likely to be a relatively high take-up, particularly in relation to transferable rights for amalgamation of titles. However, that capacity is likely to be exhausted by 2021, and from that point we consider that the rate of growth is likely to settle at or below the estimates we have given.

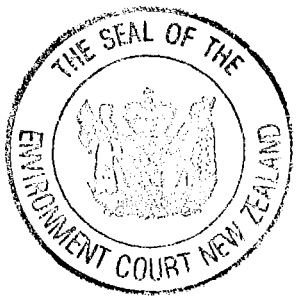
[259] One of the principal reasons we reach this conclusion is that there is an assumption by the Council that property owners would seek to develop other rural land in preference to transferring rights to the Countryside Living zone. We accept that the cost of creating lots in the general rural area is likely to be significant, and has proved to be less attractive to the market generally than areas closer to the main centres. A major example of a recent consent the subject of hearing before this Court is *Matakana Trail Trust v Auckland Council*.[25] In that case, the Council had granted consent for the creation of 130 lots within the rural zone on the basis of the re-vegetation of a former pine forest into indigenous vegetation in the order of 1,300ha. The company involved was a large forestry company that had been operating this forest until a significant proportion of it was taken for the Puhoi to Warkworth motorway. The country is particularly difficult and of

[25] [2017] NZEnvC 149

little arable value. It also has a Department of Conservation walkway nearby as well as various other trails adjacent to or going through the site. Although the appeal itself deals with matters of public access through the site, it was clear that the Council had granted the consent taking into account the minor effects of the activity and the significant rehabilitation involved. Nevertheless, the costs of the rehabilitation were so significant that the process had to be staged, and there was a comprehensive assessment of all environmental impacts including a Master Plan process and a significant range of conditions.

[260] Another project that had been refused by the Council was put before us in the proceedings as an example. It relates to one of the appellants (Cabra Developments) who are seeking to undertake a development near Waiwera on Monowai Road, known as Palliser Downs. That site involves a significant area of SEA already identified in the plan, and other areas that, Cabra Developments asserted, met the SEA standards in Schedule 3. It was adjacent to another development (Monowai Properties) which also has existing covenanted vegetation and SEAs upon it. Again, the approach adopted for the subdivision application had been a comprehensive assessment of relevant environmental issues, particularly related to character, amenity and significant vegetation. The end result was a refusal of consent which is currently subject to an appeal. The merits of that application are not an issue for this Court, we merely identify that that application for in-situ development involves a detailed assessment by relevant experts over a whole range of issues raised by the plan, and adopts a Master Plan comprehensive consent approach also.

[261] A final example is the *Omaha Park Limited*[26] decision of this Court. This proposal involved the protection of a large area of very high quality SEA (including kauri) known as Hubbards Bush, and protection and enhancement of other areas of indigenous vegetation over a relatively large site. It sought to establish residential housing on the Omaha Beach side of the ridge, and rural living sites over parts of the balance. The consent was refused by the Council and the refusal upheld in the Environment Court. This again demonstrates a comprehensive approach (including evidence from Mr Stephen Brown, the Council's witness in this case) that it met the natural character, amenity and rural character of the then plan, which Mr Brown confirmed at this hearing.



[26] *Omaha Park Limited v Rodney District Council*, [2010] NZEnvC 265.

[262] The Council correctly points out that this Master Planning approach is not required by the Plan, and therefore this detailed approach is not an outcome that is required for consent applications. Having regard to the many and various factors that we have already identified in some considerable length in this decision, we are in no doubt whatsoever that in-situ development generally, and larger developments in particular, will require a comprehensive approach to environmental issues, including natural character, outstanding natural landscapes and features, and significant ecological areas – irrespective of a specific master plan requirement. Whether required by the Plan or not, this is a practical outcome for assessment of a proposal to address all the relevant objectives and policies of the Plan.

[263] We also heard evidence from a number of experts who practice in this area and who indicated that the general preference of persons living in rural areas (rather than developers) is to create transferable rights and retain the land under their sole control. For a farmer, there are good reasons why they would seek to do this.

[264] Further, we accept the evidence of the expert witnesses that landowners are generally reluctant to commit the considerable funds to protection and rehabilitation without some form of compensation. We acknowledge that many have done so either through QEII covenants or by simply fencing areas off. One of the issues that was clear to us from our overall helicopter visit of the region is the enormous difference the fencing off of indigenous vegetation areas makes. Where riparian areas or SEAs have been fenced, it is usual to see dense or emergent native vegetation after around 5-6 years. In areas where stock are still allowed access into the area, edge effects still dominate, and as could clearly be seen, the overall density of the vegetation is lower.

[265] We agree with the experts that if a way can be found to create transferable rights for the general farming community in the rural area these are likely to be preferred to either selling the land as a whole or undertaking the significant costs of a comprehensive subdivision.

[266] Overall, we have concluded that there should be a clear preference in the plan for transferable rights to the Countryside Living Zone, but that applications for in-situ development have occurred notwithstanding they are non-complying. Similar tests would apply whether the application was non-complying, discretionary or restricted discretionary. Overall, the issues as to whether rural character and amenity are maintained, and that the protection of the natural character, productive soils, landscape

features and ecological areas can be maintained and enhanced through the application are the common thresholds.

[267] In this regard, the suggestion that in-situ development would enable housing to be placed right next to SEAs is surprising to this Court. Given the history of case law in this area under the previous plans, and the criteria of this Plan, it is difficult to see how the placement of residential areas next to areas of significance could meet either the objectives or policies of the Plan or have no more than minimal effects.

[268] When taking into account the presence of introduced animals (dogs and cats) and plants, the application of the current provisions would require separation from SEAs sufficient to satisfy the Council (or the Court on appeal) that the overall objectives and policies of the Plan were being met. In practical terms, nothing in this appeal would affect the application of those criteria whatever the status of the application. The Council (and this Court on appeal) clearly has the ability to refuse such a consent.

[269] Finally, we note that the recent changes to the RMA have meant that appeals from subdivision consents can only be made if the application is for a non-complying activity. Section 120(1)A provides:

> However there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to one or more of the following, but no other activities:
>
> (a) a boundary activity, unless the boundary activity is a non-complying activity;
>
> (b) a subdivision unless the subdivision is a non-complying activity; and
>
> (c) a residential activity as defined in s 95A(6) unless the residential activity is a non-complying activity.

Accordingly, for subdivisions, the consistent application of the Plan is a matter for the Council and is not capable of review in this Court unless it is for a con-complying activity. We are also mindful that, given the constraints to the applicant under 120(1)A, purposeful, non-complying applications may deliberately be proposed to provide an opportunity for review of a Council decision.

[270] It was clear to the Court that there was a reluctance on the part of the Council to exercise its discretions under the restricted discretionary or discretionary category, but preferred to rely on standards or rules. With respect, this cannot be a correct interpretation of the Council's obligations under the Resource Management Act or under their Plan. The discretions in respect of the restricted discretionary activities and

discretionary activities for subdivision are real and meaningful. They need to be applied in a consistent way by the Council. There is a requirement for a resource consent to be obtained under the RMA. The Council has adopted the RDA status. This requires it to exercise the discretions contained within the assessment criteria in every applicable case. It cannot avoid that obligation by relying on standards and rules to qualify the activity as restricted discretionary or discretionary and not exercise its assessment powers properly.

[271] As is clear from the analysis of the actual consents granted, non-complying applications constitute a significant current proportion of the Council's granted consents. The reasons for declinature are not always clear in the cases that have come before the Court to date. Some refusals, such as *Ahureka Trustees*[27] were confirmed by the Court, but are now subject to appeal. Other refusals, such as *Kumeu Properties Limited*,[28] are less clear. In that case, there seemed to be an indication by many witnesses that restricted activities were just routinely granted. We note that even the creation of a subdivision based on transferable rights is a restricted discretionary activity, and assessment criteria specifically include the requirement to maintain rural character and amenity and meet the relevant objectives and policies, in this case particularly relating to the various overlays.

[272] If the subdivision does not meet the criteria, the Council has the obligation to decline. A RDA[29] is no less onerous than a fully discretionary activity. The advantage of it, though, is that the issues for consideration have been identified and are clearly articulated and, in a way confined, so both the applicant and the Council are clear on what is at stake.

[273] We have unanimously reached the conclusion that neither of the proposals put before us, or any variation thereof, better achieves the growth objectives for the Council. Further, we consider that the Council's conclusions as to pressure on rural sites was based on fallacious conclusions as to yield from Mr Balderstone's information, and a failure to properly monitor and examine the outcomes that had been achieved either under the Rodney district plan provisions, other district plan provisions or under the AUP Council provisions to date.

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27 *Ahureka Trustees No 2 Ltd v Auckland Council*, [2017] NZEnvC 205.
28 *Kiwi Property Trust Limited v Auckland Council*, [2018] NZEnvC 27.
29 Restricted discretionary activity.

The protection of significant indigenous vegetation

[274] It is clear from a consideration of all the objectives and policies and our earlier comments that the IHP provisions may have the effect of encouraging the protection of more SEAs under Schedule 3 of the Plan. Given that the majority of Auckland region is within the coastal environment, it must follow that such provisions would better achieve NZCPS Policy 11(a) and the overall policies of the New Zealand Coastal Plan.

[275] The question, then, whether or not incentivising subdivision would have a collateral effect of improving upon those values, is a matter that was already addressed in both Plans in terms of the assessment criteria and the restricted discretionary or discretionary status. Our unanimous conclusion is that the IHP provisions, or possibly a variation thereof, would better achieve the protection of significant ecological areas (Schedule 3) and better meet s 6(c) where applicable and Policy 11 of the NZCPS within the coastal environment.

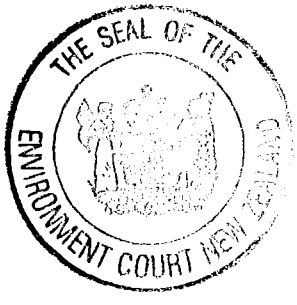
Section 32

[276] Having reached this point, we now go on to assess the provisions and variations thereon in terms of the analysis required under s 32AA. Given that the majority of provisions are agreed, it is the testing of the particular changes or variations between the parties that needs to be addressed under s 32AA.

[277] In concluding which are the most appropriate provisions to achieve the purpose of the Act, we must examine the options for achieving the objectives and efficiency and effectiveness of those provisions at a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects.

[278] Subsection 32(2) requires us to deal with benefits and costs of the environmental, economic, social and cultural effects, economic growth (provided or reduced), employment anticipated to be provided or reduced, and assess the risk of acting or not acting. We do not understand any particular requirements under subsection (3) or (4) that are engaged.

[279] We intend to adopt the various guidance tests set out in *Colonial Vineyard v Marlborough District Council*[30] and deal with the issues as follows:



[30] [2004] NZEnvC 55 at paragraph [17].

(a) Council carrying out functions and purpose of the Act (s 74(1));

(b) accord with Part 2 of the RMA (s 74(1)(b));

(c) give effect to a National Policy Statement (s 75(3)(a));

(d) give effect to the Regional Policy Statement (s 53(3)(c));

(e) the actual or potential effects on the environment, including any particular adverse effects (s 76(3));

(f) the appropriateness for achieving the objectives and policies of the AUP regarding efficiency and effectiveness, including benefits and costs; and

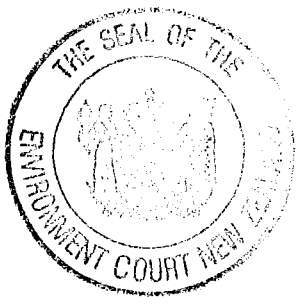
(g) the risk of acting or not acting.

We will deal with each of these in turn.

Council carrying out its functions and purpose of the Act (s 74(1))

[280] The Council in this case has both Regional and District Council functions (sections 30 and 31 apply). Specifically; in relation to these appeals and the subdivision of rural land and protection of indigenous biodiversity, the following areas are relevant:

> **30 Functions of regional councils under this Act**
>
> (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
>
> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
>
> (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
>
> (ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region:
>
> (c) the control of the use of land for the purpose of—
>
> (i) soil conservation:
>
> (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
>
> ...
>
> (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
>
> ...
>
> (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
>
> (i) land and associated natural and physical resources:



...

(v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards:

...

(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

...

31 Functions of territorial authorities under this Act

(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

...

(iii) the maintenance of indigenous biological diversity:

...

(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

[281] These provisions empower the Council to adopt the suite of objectives and policies that we have referred to which occur in various related chapters throughout the AUP. So, the objectives and policies that we have been asked to consider certainly deal with matters the Council must address. However, they must meet the purposes set out in Part 2 of the Act, which we will address next.

[282] We note for completeness (due to the content of certain evidence) that sections 30(1)(ba) and 30(1)(aa), which deal with urban capacity and growth management, are not relevant here. We have included the reference to these sections because several witnesses and submissions referred to enablement targets in the Auckland Spatial Plan. The rural area is outside the Rural Urban Boundary (RUB). Urban capacity is not a matter that is relevant to the rural chapters of the plan or rules in question. There is a difference between a target and the understanding of a desirable upper limit of enablement. This we believe to be something of a red herring in the evidence, and one we will take no further. We have addressed this evidence elsewhere, and have not found it to be helpful.

[283] The rules we have been referred to are the methods which have been adopted to achieve the objectives and policies following through the hierarchy of documents. We are dealing with the particularization which is the function of the district plan. We can see

nothing in s 30 to prevent a rule that incentivises certain actions rather than prevents them, or a combination of the two methods that we find through the rural subdivision rules and, say, Chapter E15 *Vegetation management and biodiversity.*

[284] The broader issues surrounding the appropriate management of the rural land resource and soils were generally agreed between the parties. There are subdivision and land use controls in place to limit lot sizes and unnecessary fragmentation. The amalgamation transferable right is part of this initiative.

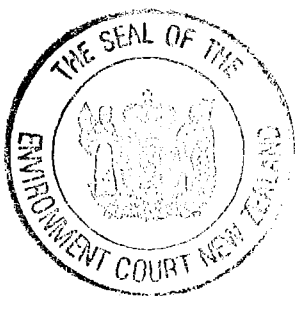
[285] The dichotomy occurs, though, when subdivision allowing a relatively small lot (one which would normally be encouraged to be transferred out of the general rural area) is used to incentivise biodiversity objectives. In this way, the incentive tool associated with biodiversity advantages is a rather unique method.

[286] The method that transfers the lot advantage out of the general rural area is clearly supported by the general objectives and policies for the rural area and biodiversity. This is because the subdivision occurs outside the productive area, within the Countryside Living zone.

[287] However, an anomaly occurs when in-situ subdivision is used as an incentive, because further smaller parcels of land (fragmentation of general rural land) result. This does not sit comfortably with the main focus of objectives and policies for rural land and its functionality.

[288] Thus, there is a blending of two very important foci of the objectives and policies, and the Council is required to balance both.

[289] On a positive note, there is clear evidence that the incentive regime has positive benefits for biodiversity and resource management more widely, such as land stabilisation and water quality. We are satisfied from the evidence of the expert witnesses for the appellants, in particular Dr Bellingham and Ms Pegrume, that the incentivisation of protection has led to better outcomes for the environment in the medium to long term. Although we acknowledge there have been failures, we see these predominantly based around vegetation of depauperate areas that have not sustained indigenous vegetation for some time. Even with the several examples we saw of this, there was evidence over the longer term (7-10 years) that the indigenous vegetation did reestablish and did naturalise.



[290] Examples are the De Andre site and the Arrigato sites, both of which were some of the early revegetation sites. Over the last 15 years, Judge Smith has visited these sites on a number of occasions and has noticed a gradual but steady improvement in the quality of this vegetation. The Court noted that some parts of the Arrigato site (those in the gullies adjacent to other areas of indigenous vegetation) appear to have nearly reached a stage of natural succession (or close to it). Judge Smith noted the De Andre site is now showing greater biodiversity than it did in the earlier stages (essentially monoculture manuka/kanuka), and exotic pest intrusions are gradually reducing to the level that they are minimal in extent. However, many other sites we have visited where fencing has occurred around indigenous vegetation has seen a significant improvement compared to nearby unfenced vegetation, and we noted a number of wetlands in our overflight where fencing and pest plant control appears to have achieved a relatively naturalised process within a shorter period of time. For example, Judge Smith and Commissioner Kernohan flew over this area around 2010 for parallel Rodney District Plan provisions, and some of these wetlands have been enhanced since that time.

[291] Similarly, the Court noted that in areas of fencing the estuarine to ridge ecotones seemed to be reestablishing relatively quickly. We cannot say exactly how long these have been in place, but in several places the distinction between farmed land and that fenced off from farming in the estuarine areas was extremely marked.

[292] We note that the Council's s 32 report (which had no author's name) asserted that the outcomes had been poor. This is certainly not the evidence the Court has heard in this case or in other cases. Our overflight confirmed that the protection of ecological areas, and even the creation of new ecological areas, particularly based around depauperate areas within gullies and wetlands, have had considerable success. In many cases we were able to see the potential for interconnection between ecological features to create corridors well inland on river outlets to the sea, and within gully catchments and water catchments as a whole. While many of these areas still had intrusions by exotic vegetation, for example pines, most appeared to be relatively intact and with canopy closure. As we have already mentioned, fencing marked a significant distinction between the sites.

[293] Accordingly, we reach a contrary conclusion to the original s 32 report and prefer the evidence of the ecologists for the appellants on this issue. We note in particular that neither Ms Webb nor Ms Fuller had undertaken a detailed examination of the various rehabilitated areas, nor did they purport to assess the level of outcome as the result of

the protection of those areas.

[294] Ms Webb did note several examples of revegetation where there had been intrusion by weed species and the like. We did see several examples within the Franklin area where there seemed to be poorer outcomes than those in Rodney. These may be due to:

(a) poorer site selection for rehabilitation;

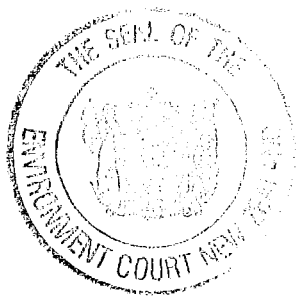
(b) a lack of appropriate pest and plant control; or

(c) failure to either impose or supervise consent conditions.

[295] We did note, even in the areas of poor outcome in Franklin, that fencing off of the area alone seemed to have a long term beneficial effect as natural processes began to dominate. However, we are unable to judge whether or not any of the areas of indigenous vegetation we observed within fenced lines had been entirely regenerated on a bare site or simply reinforced by the fencing and control mechanisms. We agree entirely with Mr Ranger, Senior Restoration Ecologist with Wildland Consultants Limited, who gave evidence that outcomes were dependent upon a proper revegetation plan and maintenance over a period of time to canopy closure. We have assumed that any conditions of consent, in relation to revegetation, require this, and this is reinforced by Appendix 15 of the district provisions of the AUP.

[296] The Council witnesses seemed to be suggesting that a council unwillingness or inability to monitor performance of conditions is a reason that this approach should not be adopted. The Council's obligations are to enforce the provisions of its Plan, and particularly in relation to resource consents it has granted. The fact that it may not have done so in the past cannot be a basis to avoid inclusion of provisions within the Plan provided they are reasonable.

[297] Clearly, in considering whether consent should be granted for revegetation, the Council would need to be satisfied that the conditions of consent would be performed or could be enforced by the Council. We have noted, for example, in recent cases that the Council has required a bond and has been prepared to utilise this. (See *Morningstar Development Limited v Auckland Council*[31] – a declaration decision)



[31] [2017] NZEnvC 200.

[298] We have, therefore, concluded that the provisions of the Council, the IHP or an intermediate position, are all carrying out functions and purposes of the Act. The issue turns upon whether the IHP provisions, while providing better maintenance of indigenous biological diversity by encouraging further areas, may have a countervailing adverse impact of allowing residential incursion into those areas.

In accordance with s 74(1)(b) of the RMA

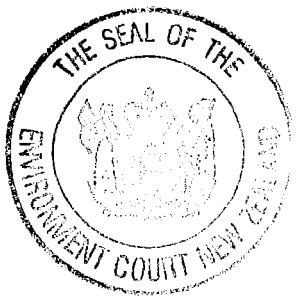
[299] Either provision would accord with Part 2. The question in this case is which is more appropriate or better. Overall, the question turns upon whether or not the Council is able to refuse consent or impose conditions to ensure that protection and enhancement of indigenous vegetation occurs, and that rural character and amenity is also preserved. In the end, we conclude that it is a question of whether the Council's particular rules are required, as opposed to the exercise of the discretions on consent. The IHP recommendations appear to deliver a more incentivised outcome.

Give effect to a National Policy Statement (s 75(3)(a))

[300] Given the failure of the Unitary Plan to identify the coastal environment beyond the HGMPA provisions, we are left to try and assess what area of the Auckland region would be covered by NZCPS Policy 11.

[301] There are also difficulties as to whether or not s 6(c) would militate a different outcome in those areas not within the coastal environment. Whilst this plan adopts a proportionate response to Policy 11, it is clear that the active protection of significant ecological areas under Schedule 3, particularly by fencing, pest control and weed control, would represent enhancement under the policies of NZCPS, and better protect those areas under Policy 11.

[302] In the end, it is difficult to see how other provisions within the Plan could provide an enhancement of ecological areas, particularly those meeting Schedule 3. Given the reference in a number of places to overlays, rather than Schedule 3, the protection under the Council's provisions appears to be relatively limited. For those areas that meet Schedule 3 but are not within the overlays, they are left to the general indigenous vegetation rules that may provide more limited protection than envisaged (especially within urban areas). Even in the rural area the ingress of stock is not prevented for at least five years, and possibly as long as 10 years depending on the interpretation of the relevant provisions.



[303] On balance, we conclude that the IHP provisions would provide better protection by requiring active steps in relation to the protection of vegetation, and supporting these by registered covenants where subdivision is in prospect. Where it provides an opportunity for transferable rights, it appears that the Council has decided in its policy to utilise the Countryside Living zone to absorb future growth capacity by allowing significantly greater subdivision. Nevertheless, we recognise that there are potential adverse impacts involved in this if it provides an opportunity for in-situ development. For in-situ development, whether as non-complying or restricted discretionary, the exercise of the Council's discretions in regard to the objectives and policies would require controls (through consent conditions) to be imposed to ensure that the values of Schedule 3 areas are not compromised, and the outcomes anticipated by the plan for protection are achieved.

Give effect to a Regional Policy Statement and consistency with Regional Plan (s 75(3)(c) and s 75(4)

[304] It is clear that the regional policy statement promotes protection and enhancement through subdivision. On this basis, it follows that further subdivision within the Countryside Living zones in exchange for either amalgamation of titles or protection of significant ecological areas gives effect to it. The statement does not preclude in-situ subdivision. Although the regional plan does not encourage subdivision within the other rural areas, it recognises that there will be further subdivision, but clearly sets its face, in doing so, to achieve certain, more particularised objectives: an avoidance of fragmentation of productive land, prime and elite soils in particular, and subdivision is to achieve other objectives of the plan such as securing Schedule 3 SEA areas, ONL and outstanding natural character areas and the like. Overall, both the Council and IHP approaches, and any variation thereof, are intending to achieve much the same outcome. The question is the balance between subdivision within the rural area, and controls being imposed to achieve appropriate outcomes.

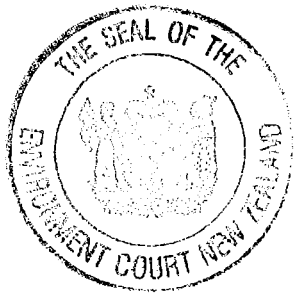
[305] For example, whilst we acknowledge Mr Stephen Brown's evidence in relation to outstanding natural character, landscapes, natural character and amenity and rural character, these are matters that may or may not be achieved depending on the nature of the consent granted. Many of the examples given to us by Mr Brown were for two or three homes. In the Court's experience, some of these relate to permitted activities where two homes can be established on one site. Others relate to multiple titles where houses are grouped together at the adjacent corner of properties to create a cluster. Still

others represent applications for consent that may be non-complying. Examples are Toplof Road and Mars Hill. Both of these were processed and approved by the Council as meeting the provisions of the relevant plans. We note in particular that Mr Brown supported the application of *Omaha Park Limited* for subdivision on the basis of a Master Plan and a carefully thought-out landscape and protective regime.

[306] Overall, we have concluded that these type of issues need to be addressed on a case-by-case basis, and on proper assessment. For example, although Mr Brown criticised the Toplof Road example, our viewing of the site whilst demonstrating the features he noticed, showed that it was deeply bisected country where views into the site were particularly limited. It is also evident that the clearance that has occurred for the creation of this subdivision is likely to be modified as houses are being constructed and planting occurs around them. The use of ridges in this area (and in Mars Hill) demonstrates more the practicality that the only areas that are accessible are via the ridges, which are usually on established farm roads.

[307] We suspect part of the divergence of evidence between the parties is that the methodology adopted by the IHP for the AUP, and the integrated approach from top to bottom, is not fully understood. This is partially a problem of combining a Regional Planning Statement, Regional Plan and District Plan in the one document, and the need to apply a variety of chapters and overlays approach to that policy framework. Chapter B is the RPS. In summary, more related to these appeals, the B1 issues of regional significance, include urban growth (B2), infrastructure (B3), natural heritage (eg landscapes and natural features) (B4), natural resources (eg biodiversity) (B7), the coastal environment (B8) and the rural environment (B9).

[308] While it is appropriate to focus on chapter (B9), all of the others have some relevance, and one cannot be read in isolation of the other. If Ms Pegrume is correct, and we were not told she wasn't, the Council's response to the subject provisions for rural subdivision has been a bottom-up one. That is, through its decision (Paragraph 42 – Topic 064) to reject certain matters in Chapter E39, a District Plan provision (Council decisions Attachment A), and then make consequential changes to Chapter B9 (and Appendix 15). Some of the consequential changes are obvious, as they relate to the removal of the IHP's acceptance of areas qualifying with the SEA factor in Schedule 3 as being the basis for entertaining a prospect of rural subdivision. However, others are reverse driven, and it has been necessary for us to go back and follow the top-down logic of the unitary plan to understand the IHP's reasons. Focussing on the way the Council



has, for its consequential changes, ignored relevant directives of other chapters as we have canvassed earlier in this decision.

[309] Helpfully, the IHP identified the need to make this approach clear early on in its decision making, and we were provided with relevant points following that reasoned process. We are of the view, clearly articulated in the IHP guidance, that the Council held a strong, preconceived position on subdivision of the rural area that the IHP did not agree with. This surfaced early on, with an Interim Guidance (RPS Topic 011) issued by the IHP. The IHP Overview Report at part 8.2 Core Provisions specifically, addresses the regional policy statement and amendments it recommended include removal from the Natural Heritage chapter of Biodiversity to the Natural Resources chapter (B7). Specifically, in respect of Chapter B9 (Rural RPS), the IHP stated the "policies on rural subdivision are amended to enable some additional opportunities consistent with the character of the rural environment and in a manner that does not allow urbanisation in rural zones." Our reading of the policy framework from the top down as an integrated package helps us to comfortably agree with the IHP approach and reasoning.

Actual or potential effects on the environment, including any particular adverse effects

[310] A great deal of this decision has been trying to assess the particular effects of the various wording variations. We have concluded that there are significant potential benefits from protecting Schedule 3 areas. We have concluded that the primary potential for adverse effect relates to in-situ subdivision, where there is the potential for resulting development to introduce, within Schedule 3 areas, elements that could create adverse effects on the long term viability of the SEAs (eg. domestic pets). We also recognise that there is the potential for impacts upon landscapes, features, natural character, rural character and amenity. Those need to be assessed on a case-by-case basis and refused where those matters are not addressed. We do not consider that standards per se can properly achieve those outcomes. In every case, consideration to these issues needs to take place on a site by site basis, and an assessment made.

[311] In short, the standards imposed by the Unitary Plan are not standards on permitted activities, but merely standards to qualify the activity. Discretion on the critical issues of assessment criteria must be made by the Council in every case. On the current status of legislation, for restricted discretionary and discretionary activities there is no right of appeal, and therefore the Council's decisions on those issues will be final. From the assessment of AUP consents granted since August 2016 it is clear that non-

complying activity still constitutes a significant proportion of the applications considered and granted by Council. It is difficult to see the distinctions in relation to the assessment of the critical issues between restricted discretionary, discretionary and non-complying. In particular, those relating to landscapes, features, natural character, rural character and amenity are explicit within the restricted discretionary and discretionary criteria and would, in any event, be required under the objectives and policies of the plan as well as under the NZCPS and Part 2 of the RMA.

Appropriateness for achieving the objectives and policies of the AUP regarding efficiency and effectiveness and including benefits and costs

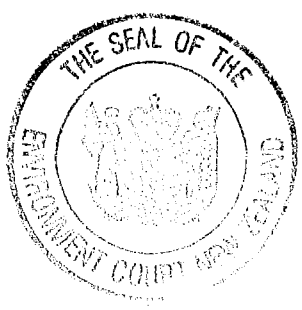
[312] We have concluded that the advantage of a restricted discretionary regime in this case is that it would focus the parties on the various assessment criteria in achieving the environmental outcomes anticipated under the district plan, regional plan, policy statement, NZCPS and Act.

[313] Both the Council or IHP provisions seek, as a preference, to encourage transferable rights of subdivision out of the rural area. The Council suggests that, at the current time, this is achieved by making in-situ development more difficult, thus encouraging people to try and utilise transferable rights. Unfortunately, it appears that the problem with transferable rights is a systemic one, relating to the time differences between developing the protected area and the requirement of the subdivider to proceed with the subdivision as soon as possible, and the fact that donors and recipients must unite. Making alternatives more difficult takes the focus away from encouraging transferable rights to encouraging in-situ subdivision and applications for non-complying consent.

[314] However, all of these effects relate more to the operation of the plan than they do to potential effects on the environment.

[315] More directly, the Council's concern with the IHP provisions is discussed in the Council decision in August 2016, the panel's recommendation on topic 064 – subdivision rural at 42.2 of its decision. It noted:

> The Council has rejected the panel's recommendations in relation to hearing topic 064 (subdivision – rural) as listed below with the accompanying reasons, alternative solutions and s 32A evaluation where necessary:
>
> - The inclusion of objectives, policies and rules that enable sporadic and scattered rural subdivision.



Reasons: the panel's recommendation on topic 064 – subdivision rural at 42.2 of its decision. It noted:

The council has rejected the panel's recommendations in relation to hearing topic 064 (subdivision – rural) as listed below, with the accompanying reasons, alternative solutions and s 32A evaluation where necessary:

(a) The inclusion of objectives, policies and rules that enable sporadic and scattered rural subdivision

Reasons:

(i) The panel-recommended provisions will enable inappropriate subdivision of the rural area through a proliferation of rural residential lots across the production-focussed rural zones (resulting in loss of rural production, reverse sensitivity, rural character and amenity and potential additional demands on infrastructure in remote locations);

(ii) The provisions undermine the Auckland plan's strategic direction for rural areas;

(iii) The provisions do not support the concept of the compact city that inherently has as a benefit the retention and protection of rural areas (rather than their subdivision for rural residential uses);

(iv) The provisions do not make it clear that the focus of rural lifestyle living is the Countryside Living zone;

(b) The inclusion of provisions that allow for minimal environmental benefits to be accepted in exchange for rural residential subdivision

Reasons:

(i) The provisions would enable potentially inappropriate subdivision of the rural area with minimal environmental gains;

(ii) The provisions enable subdivision of sites with significant ecological area (SEA) factors as opposed to identified SEAs. The SEA factors are not suitable to be used for rural subdivision assessment as they:

- were made for a different purpose (assessing significance for vegetation protection, not for assessing whether the ecological value of the area would mitigate rural subdivision);
- were designed to be applied in a single comprehensive manner across the region, not in isolation on a case-by-case basis;
- site-by-site assessment in isolation would result in over-estimation of the significance of sites.

[316] As is evident from the reasoning of the Court to date, we consider that neither of these conclusions are supported either by reference to the IHP decision or by the factual matters underlying them. The report appears to stem from a misplaced understanding of the IHP-drafted objectives and policies in the first place. As we have made clear, the aims to amalgamate titles and retain prime and elite soils are clear throughout both the regional policy statement, the regional coastal and regional plan, as

well as the District Plan. Furthermore, issues in relation to rural production, reverse sensitivity, rural character and amenity and potential additional demands on infrastructure in remote locations are all matters of specific discretion within restricted discretionary and discretionary activities, and thus the plan does not enable these things at all.

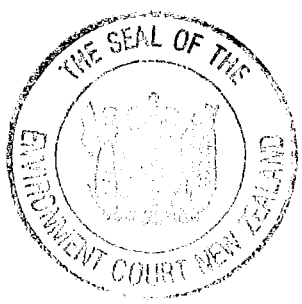
[317] In fact, the application of the provisions of the Plan would lead to ensuring that these issues are protected in any consideration of a resource consent application. The Council reason number (b) is confused. The SEA factors identify an SEA which the Council has then mapped. The schedule is not the assessment criterion for the approval of a subdivision. The assessment criteria beyond this are what matters. The reasoning does not seem to take into account of the significant ecological areas that may not be mapped but must be protected. In short, we can see no basis within the IHP decision for the conclusions reached by the Council, and there is no further explanation. Given that Mr Mosley's position was essentially the same, we assume that this may have been a recommendation from Mr Mosley that the Council simply did not have time to debate, but must either accept or reject. To put it bluntly, there is a clear lack of understanding of the integration and pathway that the IHP has adopted through the hierarchy of policy to activity thresholds and assessment criteria.

[318] In relation to minimal benefits referred to, this essentially seems to be based on an assertion that the SEA factors of Schedule 3, if met, do not provide any benefit in terms of the Act. As we have already noted both under s 6(c) of the Act and under NZCPS Policy 11, protection of these matters must be provided for, and in the case of most properties within the coastal environment (the majority of SEAs) this includes an obligation to avoid adverse effects.

[319] We notice the connection of the statements made here with the matters that were the subject of a legal appeal to the High Court. Although we appreciate the High Court decisions were not about the validity of the decisions of the Council, it is nevertheless clear from those decisions that the SEA factors were recognised as an appropriate methodology to recognise ecological significance under Policy 11 and s 6(c).

[320] As the High Court noted in [2017] NZHC 980:

> [36] In the present case, significantly, the parties agree that the IHP recommendations in relation to chapters D9, E15 and F2 are deficient in terms of the NZCPS and RPS. I agree also that there appears to be an error on the face of the recommendations.



...

[39] Yet the only provisions of the Unitary Plan that give effect to these policies are found in E15.3(9) and (10), provisions which the Council in its submissions to the IHP sought to have included in B4.3.4 of the AUP. The effect of this is that there is no specific protection for indigenous biodiversity and coastal marine SEAs. As Chapter E15.1 – Background to the Unitary Plan currently states:

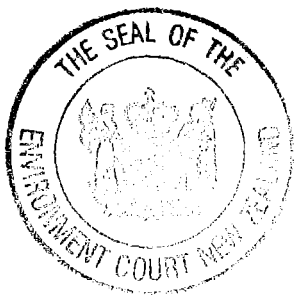
> The objectives and policies that apply to scheduled significant ecological areas for both outside of and within scheduled significant ecological areas – terrestrial are contained in this chapter.
>
> The rules that apply to the management of vegetation and biodiversity for areas both outside of and within scheduled significant ecological areas – terrestrial are contained in this chapter.
>
> The rules that apply to vegetation management and biodiversity in the coastal marine area, including for areas identified as Significant Ecological Areas – Marine are contained in Chapter F Coastal.

[40] The absence, however, of any equivalent provisions in Chapters D9 and F2 means that compliance with Policy 11 is not achieved in relation to coastal marine SEAs.

[41] Annexed to this judgment is a table making a comparison between the status quo and the proposed amendments. This serves to highlight the absence of provisions explicitly giving effect to Policy 11 NZCPS and Policy B7.2.2 outside of Chapter E15.

[321] In short, we have unanimously concluded that the potential adverse effects on Schedule 3 SEAs, (and those already mapped within the plan) through ongoing rural activities is only partially addressed through the Plan. More direct and significant protection and enhancement and restoration can be gained through the incentivisation provided by subdivision. We have also unanimously concluded that any potential adverse effects from the introduction of subdivision within the area are already addressed by the numerous objectives and policies, as well as the relevant assessment criteria. In our view, consent should not be granted in those circumstances where inappropriate impacts on rural production, reverse sensitivity, rural character and amenity, and potential additional demands on infrastructure in remote locations, arise. Furthermore, we would anticipate that any application could not derogate from natural character, outstanding landscapes and features, rural character and amenity. Accordingly, those effects can and must properly be taken into account when considering any application for consent.

Appropriateness for achieving the objectives and policies of the AUP regarding efficiency and effectiveness, including benefits and costs



[322] We consider that the potential to protect and enhance the indigenous vegetation within the Auckland region represents not only an achievement of direct RMA, NZCPS,

Regional Policy Statement and Regional Plan and District Plan requirements, but can be achieved in an effective manner. Although the Council do have funds available to enhance planting and protection throughout the region, it was clear to us from our visit that there are tens of thousands of hectares which still require steps to be taken to secure their future. The cost of doing so for farmers, or for the Council, would be prohibitive. This is clear from Mr Ranger's evidence during questioning.

[323] The incentivised subdivision provides a unique opportunity to further the broader RMA policy and plan requirements at potentially reasonable cost to a private individual for broad public/environmental gain. In this regard, the incentivised subdivision means that the cost of protecting these items is recovered by the right for subdivision.

[324] We agree that the various documents seek to prefer that such subdivision occur within the Countryside Living zones. No appellant demurred from this position. Unfortunately, all of the propositions before us suffer from the same difficulty in relation to providing a clearer and simpler path for the creation of transferable rights.

[325] Having heard from Mr Serjeant and the study he has undertaken, it would appear to us that the Council should undertake a change to make the process of creating transferable rights far simpler by:

(a) providing a mechanism to provide certification that the rights are available, eg permitted activity status to enhance SEA values, with the benefit of securing a certificate of compliance;

(b) providing a certification process upon reaching the availability for one to transfer a subdivision right; and

(c) enabling the subdivision enabled to be transferred to more than one user over a reasonable period of time (say five years). We also wonder at a wider recipient zone, but acknowledge that the evidence we received supports the CSL (enlarged area as a result of the IHP package) being available for many years.

[326] At the present time, the situation is somewhat inefficient, but both the IHP and Council provisions suffer from this. We have concluded to this extent that there is some merit in the change suggested by Ms Pegrume for staging. Whether this will overcome the issues we have identified we do not know, but at least it would provide some

mechanism for parties to seek to release transferable rights in stages (perhaps to multiple developers over a period of time). It is clear that any person seeking to rely upon the transferable right would need to produce the certification and the agreement of the transferor; furthermore, the Council would need to amend any consents granted as each stage is achieved to make it clear that the development permitted as transferable rights has been undertaken. We do not see this as a difficult or an insurmountable issue, although we agree with the appellants that a simpler system for creation and transfer of these rights would make the TRSS system more likely to be used on a regular basis, especially for larger transfers.

[327] We do not consider that the IHP provisions would allow for fragmentation or inappropriate subdivision. Any application for in-situ development outside the Countryside Living zone must be scrutinised, and will require detailed evidence addressing a number of significant issues in terms of the various supporting documents. As we have noted, this is already occurring as non-complying activities, with the majority of those having been granted.

[328] Nevertheless, the parties are agreed that there are a limited number of sites within the Auckland region that are available for larger developments, and we see the impact of these provisions as being relatively limited compared with the existing situation where non-complying activities are applied for and granted. There are also practical financial constraints ably demonstrated by the evidence of Ms Pegrume and Mr Ranger.

[329] We have concluded that the use of the approach under the restricted discretionary activity will assist Council in focusing on the critical issues we have identified relating to overlays, elite soils, rural production, rural character and amenity and provision of infrastructure. Overall, we have concluded that the IHP provisions, with a modification to staging, are more efficient in achieving the outcomes of the Plans in that:

(a) they are focused on achieving the outcomes in respect of overlays and rural character and amenity we have discussed;

(b) there is the potential for increases in indigenous biodiversity through the region;

(c) enhancement of connection between existing biodiversity sites, pathways and ecotones is supported; and

(d) long-term protection of significant indigenous biodiversity can be achieved.

[330] Provided subdivisions can be achieved without affecting the overlay or rural production character and amenity issues, they should be considered on their merits. In our view, this is a more efficient process than relying on applicants preparing extensive applications for non-complying use in circumstances where most, but not all, of those applications are granted (often subject to modification or additional conditions).

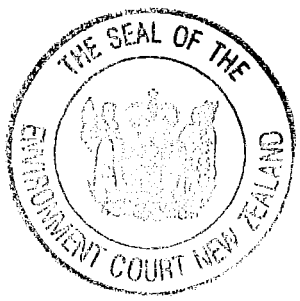
Risk of acting or not acting

[331] In this regard, the Council suggests that by having a more restrictive regime we would preserve the land for the potential for rural use. A substantial change was made by the IHP to move the RUB from an RPS to a District Plan provision. This change reflected the Auckland Council as a unitary authority. There was no potential for contention to arise between a regional and territorial authority.[32] The change that was accepted by the Council substantially altered the nature of the RUB. The IHP expected this shift to "have important consequences". It enabled the line of the RUB to be relocated by way of a private plan change. Without this, the RUB could only be relocated by a change to the RPS, which only the Council or a Minister of the Crown can initiate. The IHP concluded that:

> The Rural Urban Boundary must be considered together with the use of the Future Urban zone as a transitional stage from greenfield land to urbanization. The future Urban zone help identify potential growth areas in advance and protects such areas from ad hoc or piecemeal developments which could compromise sub-regional or structure planning.

[332] This change seems to have influenced a tone in the Council evidence which we noted, whereby the Council appeared to consider a significant risk to rural land is imposed and there is a need to strongly discourage subdivision in the rural zone. It seems that with the RUB having the potential to be moved through plan change, there was some perceived risk to the veracity of the combined objectives and policies addressing urban growth and the need for rural land resources to be utilised for productive purposes.

[333] Members of the Court have been involved in various hearings of matters concerning the AUP provisions that might take the "control" for change away from the



[32] IHP report to Auckland Council Overview of recommendations on the proposed Auckland Unitary Plan 22 July 2016 [8.2] Preliminary Hearing Vol CBV0384 – CB0387

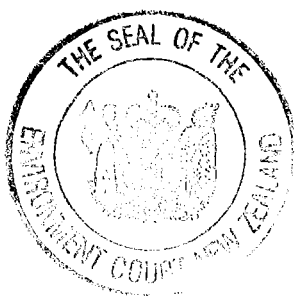
Council. While not specifically raised as an issue in this case, the concept appears to be a position the Council holds from a number of perspectives.

[334] If the RUB can change by private plan change, such an application would be the subject of a thorough analysis and full review. All the relevant policy framework of the AUP and the RMA would come into play. That is the mechanism of the RMA, and ensures such decisions are made in an informed and considered manner. Similarly, if an application is lodged to subdivide under a restricted or fully discretionary status of application, the decision should be the subject of a thorough analysis and will be informed by the relevant parts of the AUP. The Council has the power to decline. There is no risk.

[335] It seems that the Council would rather have a green-light red-light scenario than an orange, where judgement is required and proceeding is uncertain and requires careful evaluation. That orange light scenario is a key concept in the RMA, because matters concerning environmental management are rarely green or red. The tools of the trade require appropriate evaluation to achieve the purposes and principles of the legislation. This is especially so when evaluation of several natural environmental factors is required, a situation particularly relevant to understanding and protecting and enhancing biodiversity.

[336] We are satisfied that the IHP considered this is their decision making. Unfortunately, the relevant Council's decision to reject the IHP recommendations in respect of topic 064 carried no proper reasoning to support rather bold assertions. We understand that may well be a product of the process, and the huge amount of effort and severe timeframe the Council was obliged to operate under to deliver its verdict. However, having read the various considered rationale from top to bottom for the parts of the AUP that apply in this case, we are satisfied with the IHP recommendations.

[337] We do not accept that it is appropriate to manage the use of the rural area on the implicit or explicit assumption that it may one day become part of the urban area. As we understand the Auckland plan, the boundaries between the rural and urban will, in the medium term, become entrenched, with the intention that subdivision beyond those areas is unlikely. It may be that certain of the satellite towns and villages may be subject to expansion in due course, but we understand the long term intent to intensify use within the urban area to cater for future growth



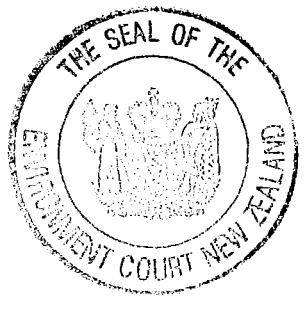
[338] We have unanimously concluded that, in fact, one of the risks of not acting to provide for incentivised biodiversity protection and enhancement by way of subdivision within the rural area, is that this may lead to the impression or actuality of a continuation of expansion of urban activities into the rural zones without justified environmental benefits.

[339] More importantly for the Court, we are concerned that the generally depauperate nature of indigenous vegetation and biodiversity generally, including wetlands, throughout Auckland is likely to continue without intervention. We have concluded that the incentivisation within Rodney, and to a lesser extent in the Manukau area, has at least reduced the level of reduction in significant indigenous vegetation, and has improved the existing stands of indigenous vegetation and resulted in wetland gain. We consider that the data showing the number of developments that have been achieved over the last 30 years as a result of this are such as to show that the incentivisation has not been sufficient to lead to a significant increase in the protection of or creation of indigenous vegetation areas (take-up rates or around 220 lots per year).

[340] As we noted during the hearing, the provision of 10,000 lots in the rural area on the basis of revegetation would lead to the creation of some 50,000ha of SEA. Even then, this would only represent something in the order of 15-20 percent of the land area when coupled with the existing vegetation. There is no evidence that that type of yield is possible. Protecting existing SEAs that meet the Schedule 3 criteria, the best that might be hoped is for something in the order of 20-20,000ha. Nevertheless, as we have indicated, we consider that all subdivision incentives (including amalgamation, transferable rights and in-situ) are unlikely to amount to more than 450 per year or 4,500 lots over the next 10 years. The creation of a further 10,000ha of vegetation would be a significant achievement over those provisions, and is most unlikely to be achieved.

[341] More practically, we would anticipate that there would be defragmentation of prime and elite soils (around 800 lots); further subdivision within the Countryside Living zones (say 3,000 lots, including amalgamation lots) and up to 1,500 for wetlands revegetation of indigenous vegetation not meeting Schedule 3 and revegetation.

[342] If 2,500-3,000ha of revegetation is achieved, that would be a significant gain in this region. More importantly, it would add to the resilience and long-term future of the indigenous vegetation that is currently marginalised. In our view, the risk of not providing positive incentivisation is the risk of loss of important indigenous vegetation and wetland



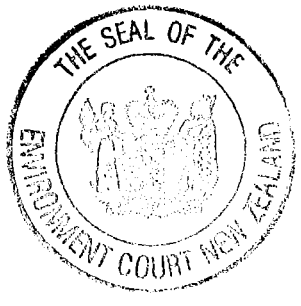
representative of the former natural condition.

[343] It is clear that these provisions will not in themselves achieve any increase approaching the 30 percent suggested to us as now being considered appropriate by ecologists. Nevertheless, it may see us gradually climb up to and above 10 percent of the original natural vegetation. More importantly, it will give resilience by providing other protected areas throughout the Auckland region beyond the Waitakeres (compromised by kauri dieback) and the Hunua ranges. Such diversity may be critical to ecological protection in the medium to long term, with climate change and sea level rise.

Outcome

[344] Having considered the various factors, including the RMA and NZCPS factors, together with the Regional Policy Statement and all other matters, we must now give effect to those appropriately through the most appropriate provisions available to us. A number of compromises were suggested to us of various types. We have indicated that one seems to address, at least in part, concerns about the creation of a more positive preference for TRSS as relates to staging. Beyond that, a number of other suggestions were made both as to status and wording within various provisions. Several particular wordings were agreed between the parties as being capable of change, for instance Policy E39, Council version is now accepted; and in Policy E39.11(b) the word "significant" is now added to better reflect the intention of the IHP and the Council.

[345] Beyond that, and the change to staging, we are concerned that the complexity of the AUP means that minor changes in one part of the plan may have ripple changes in other places. (The butterfly effect.) Given that we are still not satisfied that we have a fully accurate version of the Plan, nor have we been referred to all of the various interrelated parts of that Plan, the changes made and the appeals still outstanding, we are reluctant to travel far from the provisions of the Council or the IHP. Overall, we note that the IHP did indicate that their changes were to be taken as a whole and represented a holistic approach to the planning issues in Auckland. Everything we have seen through the course of this case reinforces that position. As we have noted, we conclude that the Council decision failed to understand the integrated nature of those policy statements and other Plan provisions or the effect of those throughout the Plan. As such, we conclude that the Council failed to understand that the incentivisation of protection addressed a matter of significant importance in terms of the RMA, the NZCPS and in terms of the relevant Policy and Plan documents.



[346] Accordingly, we have concluded that the purpose of the Act and policy statements and the superior documents are best met by reinstating the objectives, policies and methods of the IHP decision that were altered by the Council (with minor improvements agreed to drafting). The one exception to this is the alteration of the staging position to strengthen the position of the TRSS. In that regard, there was some argument as to whether or not this was within the scope of the appeal. In our view, it better meets the intent of the IHP and is consequential upon the other decisions we have made. Nevertheless, we are concerned as to whether or not this was actually the subject of appeal.

[347] The Court has prepared a draft of the amendments resulting from the decision to assist the parties work through what is a complex layering of provisions. This is attached as Annexure **J**. This is provided to assist with the directions below, where some changes are sourced from various evidence sets before the Court. It is intended that Annexure **J** is a guide only.

Directions

[348] **The appeals are allowed to the extent that the Independent Hearing Panel (IHP) recommendation is to be substituted for the decisions of the Council subject to the following:**

(a) the changes to the Plan made by the Council that were not appealed;

(b) changes to the Plan made by agreement of the parties.

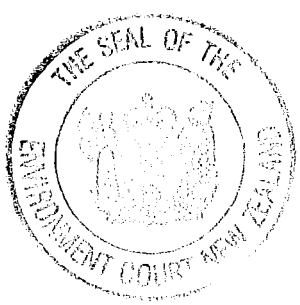
[349] The Court annexes as "J" a general guide to amendments appropriate to the Plan. The Council is to circulate its proposed amended provisions, including:

(c) provisions similar to "J";

(d) agreed changes as appropriate;

(e) proposed wording for staging (based on Ms Pegrume's evidence)

within 20 working days. Parties are to provide their comment within a further 15 working days. Council are to file and serve its preferred wording with the Court in a further 10 working days. Where there remains a difference, the Council



memorandum shall set out the various wordings proposed, and its reasons for their preference.

[350] **Other parties are to provide their comments in five working days. The Court shall then consider whether to issue a final decision or hold a hearing on the wording.**

[351] The Court recognises that there should be improvements to the transferable rights subdivision system (**the TRSS**) to make this simpler to be utilised by both subdividers and donors. It makes recommendations for the type of changes that might be introduced through a plan change process. We conclude that such extensive changes are not justified in the current appeals, as:

(a) they would not have been signalled to the public sufficiently in submissions;

(b) the implications of such changes in terms of the balance of the plan have not been able to be understood or appreciated for the reasons set out in this decision.

[352] The Court also considers that there is some merit to the concept of in-situ developments of four or more lots being required to undertake a Master Plan process. Cato Bolam submitted that this might be achieved by way of changing the status of this activity to discretionary rather than restricted discretionary. We have concluded that this goes beyond the scope of the current appeals, and may have consequences which we have not been able to fully ascertain given our limited evidence in relation to the comparison of plan provisions.

[353] We have concluded in both respects that the IHP provisions are to be preferred for the reasons set out in this decision, including our s 32 analysis, until such time as a plan change can be introduced to address the issues raised in this decision.

[354] By way of guidance for any change, we conclude:

(a) that there should be a clear preference for the use of the TRSS in the Countryside Living zone where possible;

(b) that SEA incentive subdivision provisions could relate to either a small number of sites in-situ or for larger developments a Master Plan approach to ensure

that the issues identified in this decision are addressed, including particularly:

(i) long term protection, enhancement and improvement of significant indigenous vegetation;

(ii) long term enhancement and improvement of other indigenous vegetation;

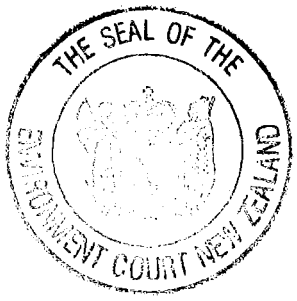
(iii) avoidance of the consequences of residential dwellings on indigenous vegetation (whether significant or otherwise);

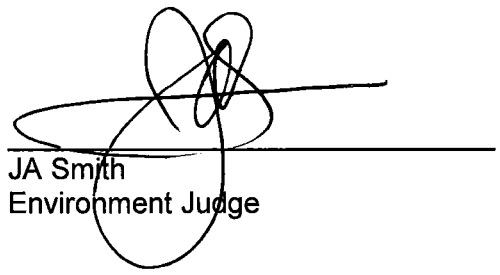
(iv) avoidance of adverse effects on significant vegetation and significant effects on indigenous vegetation as a result of any developments;

(v) achieving appropriate access to the building site and separation to ensure that multiple objectives and policies of the Auckland Unitary Plan can be met.

[355] This does not appear to be an appropriate case for costs. In the event that any party seeks to make an application, they are to file the same within **twenty working days** of the date of this decision; any response is to be filed within **ten working days**.

For the court:





JA Smith
Environment Judge

Annexure **A** = The various positions of the parties before this hearing – Ms Pegrume's evidence-in-chief, Tabs I and J EB 1170 and EB 1180. Paragraph [4].

Annexure **B** = Zakara/ Council agreed joint memorandum. Paragraph [12].

Annexure **C** High Court decision extract: *Royal Forest & Bird Protection Society of NZ Inc v Auckland Council,* [2017] NZHC 1606, Wylie J, Appendix A. Paragraphs [54], [63].

Annexure **D** Chapter B9 AUP. Paragraph [120].

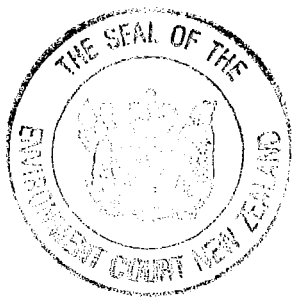
Annexure **E & F** Maps from the Indigenous Terrestrial and Wetland Ecosystems of Auckland report showing pre-human and current extent of diversity distribution and ecosystem. Paragraph [145]

Annexure **G** Schedule 3 – Significant Ecological Areas – Terrestrial. Paragraph [161].

Annexure **H** E15.4, Activity Table. Paragraph [196].

Annexure **I** Different versions of E39 provisions, Mr Mosley, evidence in chief, Attachment G. Paragraph [225].

Annexure **J** Relevant plan provisions with IHP recommendations reinserted. Paragraph [347].



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ATTACHMENT E - SUMMARY OF KEY DIFFERENCES BETWEEN COUNCIL'S AND APPELLANTS' RURAL SUBDIVISION RULES

NB This table is intended to provide a high level brief summary of the key differences in approach and does not attempt to replicate the wording contained in the Auckland Council (AC) and IHP provisions or precise relief sought by the appellants. It does not address all aspects of the provisions

Protection of indigenous vegetation - in situ subdivision (Table E39.6.4.4.1 Council provisions)

	Council hearing provisions	IHP*[1]	Zakara	Terra Nova	Cato Bolam/ Mason & others**[2]	Catos/Mason
Minimum feature size for 1st site	5ha	2ha	2ha	2ha	2ha	2Ha
Feature type/location	Indigenous vegetation Significant Ecological Areas (**SEA**) Overlay	Indigenous vegetation SEA Overlay or meeting SEA factors in B7.2.2(1)	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA factors	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA factors	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA 'factors' (referring to compliance with Standard E39.6.4)	Not pursuing fauna habitat
Extent of vegetation to be protected	All existing vegetation on site at time of application	All existing vegetation on site at time of application	Area of existing vegetation or fauna habitat used to enable subdivision on site	Area of existing vegetation or fauna habitat used to enable subdivision on site	Area of existing vegetation or fauna habitat used to enable subdivision	Not pursuing fauna habitat
Cap	3 maximum for 15-20ha	12 maximum for 102-111.99ha	Same as AC - 3 maximum for 15-20ha	Same as AC - 3 maximum for 15-20ha	Same as AC - 3 maximum for 15-20ha	Same as IHP but beyond 3 Maximum becomes Discretionary
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD as per IHP but becomes D for threshold beyond 3 CAP and standards not met

[1] *Cabra Rural Developments, Smithies Family Trust and Radiata Properties and Omaha Park Limited seek reinstatement of IHP provisions or provisions to similar effect.

[2] ** Smithies Family Trust and Radiata Properties also seek as an alternative to the IHP recommended provisions the Cato Bolam/Mason and others provisions.

Protection of indigenous vegetation - TRSS (Table E39.6.4.4.1 Council provisions)

	Council	IHP	Zakara	Terra Nova	Cato Bolam/ Mason & others	Cato and Mason
Minimum feature size for 1st site	5ha	2ha	2ha	2ha	2ha	2Ha
Feature type/location	Indigenous vegetation SEA Overlay	Indigenous vegetation SEA Overlay or meeting SEA factors in B7.2.2(1)	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA factors (referring to new standard E39.6.4.4A)	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA factors (referring to new standard E39.6.4.4A)	Indigenous vegetation or fauna habitat SEA Overlay or meeting SEA 'factors' (referring to compliance with Standard E39.6.4)	Not pursuing fauna habitat Meeting SEA factors in B7.2.2 (1)
Extent of vegetation to be protected	All existing vegetation on site at time of application **Notified Decision version includes 20 metre buffer on bush**	All existing vegetation and 20m buffer on site at time of application	Area of existing vegetation or fauna habitat used to enable subdivision	Area of existing vegetation or fauna habitat used to enable subdivision	Area of existing vegetation or fauna habitat used to enable subdivision	NOT protecting bush or wetlands NOT meeting the SEA standard. Intend to delete buffer off bush
Cap	No maximum. 1 additional site for every 10ha increment of SEA vegetation beyond protection of 20ha	12 maximum for 102-111.99ha	Same as AC - No maximum. 1 additional site for every 10ha increment of SEA vegetation or fauna habitat beyond protection of 20ha	Same as AC - No maximum. 1 additional site for every 10ha increment of SEA vegetation or fauna habitat beyond protection of 20ha	Same as AC - No maximum. 1 additional site for every 10ha increment of SEA vegetation or fauna habitat beyond protection of 20ha	Same as IHP No cap for TRSS
Staging	--Rule 39.6.1.4 Allows staging but has no provision to stage Donor site as this is not a subdivision on the Donor Site	--Rule 39.6.1.4 Allows staging but has no provision to stage Donor site as this is not a subdivision on the Donor Site	Application may provide for staged subdivision of receiver sites	Application may provide for staged release of donor sites/ staged subdivision of receiver sites	Application may provide for staged subdivision of receiver sites	Staging required to be functional for rule workability
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	As TRSS RD with no cap

Protection of wetland - in situ subdivision (Table E39.6.4.4.2 Council provisions)

	Council	IHP	Zakara	Terra Nova	Cato Bolam/ Mason & others	Cato & Mason
Minimum feature size for 1st site	0.5ha.	5,000m²	0.5ha	0.5ha	5,000m²	5000m² (same as².5ha)
Feature type/location	Wetland SEA Overlay	Wetland SEA Overlay or meeting SEA factors in B7.2.2(1)	Wetland SEA Overlay or meeting SEA factors	Wetland SEA Overlay or meeting SEA factors	Wetland SEA Overlay or meeting SEA 'factors' (referring to compliance with Standard E39.6.4.4)	Wetland Same as IHP
Extent of wetland to be protected	All existing wetland and buffer on site at time of application **Council Decisions version has no buffer DEcsions version requires all Indigenous vegetation to be protected**	All existing wetland and buffer on site at time of application **IHP version has no wetland buffers IHP requires all indigenous vegetation to be protected**	Area of existing wetland and buffer used to enable subdivision	Area of existing wetland and buffer used to enable subdivision	Area of existing wetland and buffer used to enable subdivision	**Buffer area added to requirement but not part of calculated area. Based on SEA wetland only to be protected. Note UP relies of RMA definition of wetland**
Cap	1 maximum for 0.5ha-0.999ha	No maximum. 9 sites for 25ha plus 1 additional site for each 5ha of wetland above 30ha	Same as IHP	Same as AC - 1 maximum for 0.5ha-0.999ha	3 maximum for 2.0ha-3.999ha	**Beyond the 3 maximum Discretionary based on IHP table but 5 Ha for each additional site**
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	**RD for up to 3 sites insitu becoming D for more than 3 sites insitu**

Protection of wetland - TRSS (Table E39.6.4.4.2 Council provisions)

	Council	IHP	Zakara	Terra Nova	Cato Bolam/ Mason & others	Cato/ Mason
Minimum feature size for 1st site	0.5ha.	5,000m^2	0.5ha	0.5ha	5,000m^2	5000m^2
Feature type/location	Wetland SEA Overlay	Wetland SEA Overlay or meeting SEA factors in B7.2.2(1)	Wetland SEA Overlay or meeting SEA factors	Wetland SEA Overlay or meeting SEA factors	Wetland SEA Overlay or meeting SEA 'factors' (referring to compliance with Standard E39.6.4.4)	Wetland meeting factors In B7.2.2(1)
Extent of wetland to be protected	All existing wetland and buffer on site at time of application	All existing wetland and buffer on site at time of application	Area of existing wetland and buffer used to enable subdivision	Area of existing wetland and buffer used to enable subdivision	Area of existing wetland and buffer used to enable subdivision	Buffer area added to requirement but not part of calculated area. Based on SEA wetland only to be protected. Note UP relies of RMA definition of wetland
Cap	3 maximum for 2ha or greater	No maximum. 9 sites for 25ha plus 1 additional site for each 5ha of wetland above 30ha	Same as IHP	Similar to IHP though uses slightly differently thresholds. 8 sites for 25ha and 1 additional site for each 5ha of wetland above 25ha	No maximum. 1 additional site for each 4ha increment of wetland beyond 3.99ha	Beyond the 3 maximum Discretionary based on IHP table but 5 Ha for each additional site
Staging	-Rule 39.6.1.4 Allows staging but has no provision to stage Donor site as this is not a subdivision on the Donor Site	-	Application may provide for staged subdivision of receiver sites	Application may provide for staged release of donor sites/ staged subdivision of receiver sites	Application may provide for staged subdivision of receiver sites	Staging to enable timed release of donor areas to multiple receiver areas
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD where standards complied with D where Standard E39.6.4.4(2) thresholds and feature size not complied with Otherwise NC	RD up to 3 sites then Discretionary beyond 3 sites following table

Revegetation planting - in situ subdivision (Table E39.6.4.5.1 Council provisions)

	Council	IHP	Zakara**3	Terra Nova	Cato Bolam/ Mason & others	Cato Bolam
Minimum feature size for 1st site	5ha	5ha	-	5ha	5ha	
Feature type/location	Indigenous revegetation planting	Indigenous revegetation planting Based on Appendix 16 purpose of planting (16.3, 1a) Includes restoration as part of revegetation in rules, assessment criteria and Obs and Pols	-	Indigenous revegetation and wetlands planting	Indigenous revegetation and wetlands planting	To give effect to Appendix 16.3 1 a allow for other options as set out in the rule, May includes connection to . SEA (map or factors) stream corridor planting Hill planting for erosion control *the purpose of the planting, which could include: hill country erosion control, stream bank erosion, habitat control, habitat restoration, ecological corridor creation, buffer planting to protect the edges of exiting bush and/or water quality enhancement;*
	Contiguous with existing indigenous vegetation in SEA Overlay (Terrestrial Schedule) Deletes restoration out of wording of rules, assessment criteria, obs and pols Does not allow 16.311a to be given effect to.		-	Contiguous with existing indigenous vegetation or wetland in SEA Overlay or significant indigenous vegetation or wetland which meets factors Contiguous = within 100m for indigenous vegetation and abutting for wetland	Contiguous with existing indigenous vegetation or wetland in SEA Overlay or indigenous vegetation or wetland which meets factors Contiguous = within 100m for indigenous vegetation and abutting for wetland	Includes landuse rule to allow for planting to occur for TRSS purposes ahead of use as donor. Landuse rule will meet the table with first 3 lots RD or D beyond that Intend it to include ONLs for TRSS as RD or D in accordance with the RPS policy on this matter

					Also includes where a valid Conservation planting consent is obtained under Activity (A15A) in new Table H19.8.1. No reference to thresholds but may be oversight - see comments re TRSS below	
Extent of vegetation to be protected	All existing vegetation on site at time of application as well as additional area subject to planting	All existing vegetation on site at time of application as well as additional area subject to planting	-	All existing significant vegetation on site at time of application as well as additional area subject to planting	Area of existing vegetation used to enable subdivision on site as well as additional area subject to planting	If utilizing restoration then those areas being utilized along with planting area and SEA (assessed or mapped)
Cap	Maximum of 3 sites for 15ha or more	No maximum. 1 site for every additional 5ha	-	Maximum of 3 sites for 15ha or more	Maximum of 3 sites for 15ha	3 lot cap as RL then D
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	-	RD where standards complied with D where Conservation	RD where standards or Conservation planting consent complied with	Conservation planting consent intended for TRSS not for insitu

[3] **Zakara has indicated it has no interest in the revegetation planting provisions.

	Council	IHP	Zakara**[3]	Terra Nova	Cato Bolam/ Mason & others	Cato and Mason
				planting consent or Standard E39.6.4.5.1(b), (c) or 2 not complied with (contiguous requirement & thresholds/ feature size) Otherwise NC	D where Conservation planting consent or Standard E39.6.4.5.1(b), (c) or 2 not complied with (contiguous requirement & thresholds/ feature size) Otherwise NC	Conservaion planting consent not intended for TRSS

Revegetation planting - TRSS (Table E39.6.4.5.1 Council provisions)

	Council	IHP	Zakara	Terra Nova	Cato Bolam/ Mason & others	Cato and Mason
Minimum feature size for 1st site	5ha	5ha	-	5ha	5ha	
Feature type/location	Indigenous revegetation planting	Indigenous revegetation planting	-	Indigenous revegetation, and wetlands planting	Indigenous revegetation and wetlands planting	To give effect to Appendix 16.3 1 a allow for other options as set out in the rule, May includes connection to SEA (map or factors) stream corridor planting Hill planting for erosion control *the purpose of the planting, which could include: hill country erosion control, stream bank erosion, habitat control, habitat restoration, ecological corridor creation, buffer planting to protect the edges of exiting bush and/or water quality enhancement;*
	Contiguous with existing indigenous vegetation SEA Overlay (Terrestrial Schedule) Deletes restoration out of wording of rules, assessment criteria, obs and pols Does not allow 16.311a to be given effect to.		-	Contiguous with existing indigenous vegetation or wetland in SEA Overlay or significant indigenous vegetation or wetland which meets factors Contiguous = within 100m for indigenous vegetation and abutting for wetland	Contiguous with existing indigenous vegetation or wetland in SEA Overlay or indigenous vegetation or wetland which meets factors Contiguous = within 100m for indigenous vegetation and abutting for wetland	Includes landuse rule to allow for planting to occ. for TRSS purposes ahead of use as donor. Landuse rule will meet the table with first 3 lots RD or D beyond that Intend it to include ONLs for TRSS as RD or D in accordance with the RPS policy on this matter

					Also includes where a valid Conservation planting consent is obtained under Activity (A15A) in new Table H19.8.1. Requirement to comply with E39.6.4.6 thresholds but no contiguous requirement	
Extent of vegetation to be protected	All existing vegetation on site at time of application as well as additional area subject to planting	All existing vegetation on site at time of application as well as additional area subject to planting	-	All existing significant vegetation on site at time of application as well as additional area subject to planting	Area of existing vegetation used to enable subdivision on site as well as additional area subject to planting	**If utilizing restoration then those areas being utilized along with planting area and SEA (assessed or mapped)**
Cap	Maximum of 3 sites for 15 ha or more	No maximum. 1 site for every additional 5ha	-	No maximum. 3 sites for 15ha and 1 additional site for every 5ha increment of indigenous vegetation planting beyond 15ha	No maximum. 3 sites for 15ha and 1 additional site for every 5ha increment of indigenous vegetation planting beyond 15ha	**3 lot cap as RD then D**
Staging	**--Rule 39.6.1.4 Allows staging but has no provision to stage Donor site as this is not a subdivision on the Donor Site**	-	-	Application	Application	**Staging to enable timed release of donor areas to multiple receiver areas**

	Council	IHP	Zakara	Terra Nova	Cato Bolam/ Mason & others	
				may provide for staged release of donor sites/ staged subdivision of receiver sites	may provide for staged subdivision of receiver sites	
Activity status	RD where standards are complied with NC where standards not complied with	RD where standards are complied with NC where standards not complied with	-	Same as AC (possibly an oversight)	RD where standards or Conservation planting consent complied with D where Standard E39.6.4.5.1(b), (c) or 2 not complied with (contiguous requirement & thresholds/ feature size) Otherwise NC	RD up to 3 sites then Discretionary beyond 3 sites following table Includes landuse rule to allow for planting to occur for TRSS purposes ahead of use as donor. Landuse rule will meet the table with first 3 lots RD or D beyond that Intend it to include ONLs for TRSS as RD or D in accordance with the RPS policy on this matter

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In the Environment Court of New Zealand
Auckland Registry
I Te Kōti Taiao O Aotearoa
Tāmaki Makaurau Rohe
ENV-2016-304-000111

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(1) of the LGATPA
Between	**Cabra Rural Developments Limited & Others**
	(ENV-2016-AKL-000189)
And	**Cato Bolam Consultants Limited**
	(ENV-2016-AKL-000206)
And	**Mason & Others**
	(ENV-2016-AKL-000207)
And	**Smithies Family Trust**
	(ENV-2016-AKL-000212)

(Continued on next page)

Joint memorandum of counsel for Auckland Council and Zakara Investments Limited concerning proposed site specific rural subdivision provisions

Date: 15 March 2018

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MAY IT PLEASE THE COURT

Introduction

1 As the Court is aware, the Environment Court appeals about the Auckland Unitary Plan (**AUP**) rural subdivision provisions have been set down for hearing in the week commencing Monday 19 March 2018. Zakara Investments Limited (**Zakara**) (ENV-2016-AKL-000216) is one of the seven remaining appellants.

2 The rebuttal evidence of Auckland Council's (**Council**) witnesses Mr Barry Mosley and Ms Jennifer Fuller (filed in the Court on 5 March 2018 with the rest of the parties' evidence), indicated that discussions were occurring between Council's and Zakara's representatives. This was with a view to seeing if a site specific solution to Zakara's concerns could be found.

3 The purpose of this memorandum is to respectfully advise the Court and the parties in advance of the hearing, that Zakara and the Council have now reached agreement about the substance of some site specific rural subdivision provisions that address the issues that were raised in Zakara's notice of appeal dated 16 November 2016.

Background to the proposed site specific solution

4 The AUP provisions to be determined by the Court include in-situ and Transferable Rural Site Subdivision (**TRSS**) rural subdivision methods relating to the protection of wetlands and indigenous vegetation.

5 The Council's proposed methods require wetlands and indigenous vegetation eligible for such subdivision opportunities to be identified in the AUP Significant Ecological Areas (**SEA**) - Terrestrial Schedule (**SEA Overlay**). In their notices of appeal, the parties taking part in the hearing, including Zakara, seek subdivision opportunities for the protection of areas meeting the factors for identifying SEAs in the SEA

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Overlay, in addition to wetlands and indigenous vegetation currently scheduled in the SEA Overlay.

6 Zakara owns land on Kawau Island that contains indigenous vegetation and wetlands that Zakara's and the Council's ecologists consider should have been included in the SEA Overlay. The background as to how those wetlands and indigenous vegetation were not included in the SEA Overlay is explained in the rebuttal evidence of Ms Fuller.[1]

7 By way of brief overview, the draft Auckland Unitary Plan (**DAUP**) released for non-statutory consultation included an SEA over the entire Kawau Island. Between the release of the DAUP and production of the PAUP, there was an update to the position of Mean High Water Springs, which affected identification of SEAs as Marine or Terrestrial, and this resulted in the Kawau Island SEA being inadvertently deleted.

8 The error was not picked up prior to the notification of the Proposed Auckland Unitary Plan. The Council agreed to lodge a submission seeking the addition of an SEA on Kawau Island. However, due to a direction of the Auckland Unitary Plan Independent Hearings Panel to not include new SEAs in the SEA Overlay where there was landowner opposition (which was the case with some areas of Kawau Island), an SEA on Kawau Island was not included in the SEA Overlay.

9 As Ms Fuller sets out in her rebuttal evidence, the circumstances around the omission of an SEA on Kawau Island are unique.[2] It is for this reason that the Council and Zakara consider that site specific provisions providing subdivision opportunities for Zakara's land on Kawau Island would be appropriate.

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[1] Jenny Fuller, Rebuttal Evidence, paragraphs 10 to 13 (filed 5 March 2018).

[2] Jenny Fuller, Rebuttal Evidence, paragraphs 10 to 13(filed 5 March 2018).

Overview of the proposed site specific solution for Zakara's land

10 The Council's and Zakara's proposed changes to the text of the Council's provisions for the hearing that provide site specific opportunities for Zakara are set out in **Appendix 1** to this memorandum. The changes proposed are shown in red text.

11 The intent of the amended provisions is to enable in-situ and TRSS subdivision opportunities on two parcels of land owned by Zakara on Kawau Island and to place Zakara in the same position with respect to subdivision opportunities as if the freshwater wetlands and indigenous vegetation on that land had been included in the AUP SEA Overlay.

12 As the wetlands and indigenous vegetation on Zakara's land are not currently included in the SEA Overlay, the extent of the wetlands and indigenous vegetation that are agreed between Council's ecologist and Zakara have been mapped. The map is attached as **Appendix 2** to this memorandum and is also proposed to be included in Chapter E39 of the AUP with the text providing for the site specific subdivision opportunity.

13 The maximum number of potential in-situ and TRSS subdivision opportunities that would arise from the protection of wetlands and indigenous vegetation on Zakara's land has been calculated on basis of the qualifying size thresholds and limits on numbers of sites set out in Chapter E39 Subdivision - Rural of the Council's provisions.

14 The site specific rules for the Zakara land that are proposed to be included in Table E39.4.2 Subdivision in rural zones specifically refer to the map depicting the extent of eligible wetlands and indigenous vegetation and the maximum number of subdivision opportunities that have been calculated from their protection.

15 A number of other consequential changes are proposed to Policy E15.3(4)(a) in Chapter E15 Vegetation management & biodiversity and, to Policies E39.3(15) and (16), the E39.6 standards, the E39.8.1 Matters

of discretion and the E39.8.2 Assessment criteria in Chapter E39 Subdivision - Rural.

The parties' positions at the hearing commencing on 19 March 2018

16 Counsel for Zakara and the Council seek to advise the Court that they consider the site specific solution they propose for the Zakara land to be within the scope of submissions and Zakara's notice of appeal and that the provisions are supported by both parties' expert planning and ecology witnesses.

17 On 24 November 2017, Zakara filed provisions with the Court that it intended to support at the hearing of the appeals. In light of the agreement that has been reached, Zakara now intends to appear at the hearing in support of the amended provisions attached to this memorandum. On the basis of the present agreement, Zakara also does not intend to pursue the scope issues that it previously raised at the preliminary hearing of scope on 3 November 2017.

18 Should the Court determine that the Council's provisions as amended to provide site specific subdivision opportunities for Zakara's land are not appropriate, Zakara's position is that the 'SEA factors in Policy B7.2.2(1) approach' in the IHP provisions would address its concerns.

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19 Zakara's and the Council's witnesses will be available to answer any questions that the Court may have in relation to the proposed provisions attached to this memorandum at the hearing of the appeals. However, neither party intends to cross-examine each others' witnesses (with the exception of counsel for the Council in relation to Dr Bellingham who has also prepared a separate statement of evidence on behalf of another appellant, Terra Nova Planning Limited).

Date: 15 March 2018

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D K Hartley / A F Buchanan
Counsel for Auckland Council

C Somerville-Frost /N de Wit
Counsel for Zakara Investments Limited

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APPENDIX 1

Auckland Council and Zakara Investments Ltd supported amendments to Auckland Council's provisions dated 14 March 2018

Changes following mediation for the rural subdivision appeals hearings: Additions underlined, deletions ~~struckthrough~~

Additional changes for Zakara Investments Ltd site-specific subdivision solution: Additions underlined, deletions ~~struckthrough~~

E15. Vegtation management and biodiversity

E15.3 Policies

(4) Protect, restore and enhance biodiversity when undertaking new use and development through any of the following:

(a) using transferable rural site subdivision to protect areas in Schedule 3 Significant Ecological Areas – Terrestrial Schedule or shown on Map [X] ...

E39. Subdivision – Rural

E39.3 Policies

(15) Enable limited in-situ subdivision through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or shown on Map [X] and indigenous replanting.

(16) Encourage the transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or shown on Map [X] and indigenous revegetation planting.

E39.4 Activity table

...

Table E39.4.1 Subdivision for specified purposes

...

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

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Activity		Activity status
(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 0	NC
(A14)	...	
(A15)	...	
(A16)	In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland 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 or wetland identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.4	NC
(Ax2)	In-situ subdivision creating additional sites through protection of indigenous vegetation or freshwater wetland shown on Map [X] up to a maximum of [6] sites from protection of indigenous vegetation and [2] sites from protection of freshwater wetland complying with Standards E39.6.4.4(2) to (12) on land described as at 14 March 2018 as Lot 1 Deposited Plan 173316, Deposited Plan 25125 and Deposited Plan 7067 (CFR NA106B/436) and Part Island of Kawau (CFR NA55B/931)	RD
(Ax3)	In-situ subdivision creating additional sites through protection of indigenous vegetation or freshwater wetland shown on Map [X] on land described at 14 March 2018 as Lot 1 Deposited Plan 173316, Deposited Plan 25125 and Deposited Plan 7067 (CFR NA106B/436) and Part Island of Kawau (CFR NA55B/931) not complying with Standards E39.6.4.4(2) to (12)	NC
(A18)	...	
(A19)	...	
(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
(Ax4)	Transferable rural sites subdivision through protection of indigenous vegetation or freshwater wetland shown on Map [X] up to a maximum of [76] sites from protection of	RD

	indigenous vegetation and [6] sites from protection of freshwater wetland complying with Standard E39.6.4.6 (except that Standard E39.6.4.4(1) does not apply) on land described as at 14 March 2018 as Lot 1 Deposited Plan 173316, Deposited Plan 25125 and Deposited Plan 7067 (CFR NA106B/436) and Part Island of Kawau (CFR NA55B/931)	
(Ax5)	Transferable rural sites subdivision through protection of indigenous vegetation or freshwater wetland shown on Map [X] on land described at 14 March 2018 as Lot 1 Deposited Plan 173316, Deposited Plan 25125 and Deposited Plan 7067 (CFR NA106B/436) and Part Island of Kawau (CFR NA55B/931) not complying with Standard E39.6.4.6 (except that Standard E39.6.4.4(1) does not apply)	NC
(A22)	...	
(A23)	...	

...

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 (except as otherwise provided in Standard E39.6.5.1(2)), 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^2 clear of all of the following:

(i) all yards;

(ii) one per cent annual exceedance probability floodplain areas;

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

...

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.

...

E39.6.4 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

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the relevant standards set out in E39.6.1 General standards and E39.6.4 Standards – restricted discretionary activities unless otherwise specified.

E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map [X]

Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation identified in Significant Ecological Areas Overlay or shown on Map [X]

~~T~~The 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	1 additional site with no maximum	

Table E39.6.4.4.2 Maximum number of new sites to be created from the protection of wetland identified in the Significant Ecological Areas Overlay or shown on Map [X]

***This table has been relocated from section E39.6.4.6**

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^2~~ 0.5ha – 0.9999ha	1	~~No in-situ subdivision~~ 1
~~1,000m^2 –~~	2	No additional in-situ subdivision

~~1.9999ha~~ 1 – 1.9999ha		
2ha or greater	3	No additional in-situ subdivision

For each increment of indigenous vegetation or wetland to be protected, either in-situ or Transferable Rural Site Subdivision may be used, but not both. Where the area of indigenous vegetation or wetland to be protected enables more than one site to be created then a combination of in-situ and Transferable Rural Site Subdivision can be used.

For example:

- **Protection of 40ha of indigenous vegetation could allow the creation of 3 in-situ sites and 2 transferable rural sites.**
- **Protection of 1.5ha of wetlands could allow the creation of 1 in-situ site and 1 transferable rural site.**

If Rules (Ax2) or (Ax3) are used to create in-situ sites through protection of indigenous vegetation or freshwater wetland, the number of in-situ sites created must be subtracted from the maximum number of sites that may be created for Transferable Rural Site Subdivision under Rules (Ax4) or (Ax5).

If Rules (Ax4) or (Ax5) are used to create Transferable Rural Site Subdivision sites through protection of indigenous vegetation or freshwater wetland, any number of sites created over 70 through the protection of indigenous vegetation or any number of sites created over 4 through the protection of freshwater wetland must be subtracted from the maximum number of in-situ sites that may be created under Rules (Ax2) or (Ax3).

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

(1) The indigenous vegetation or wetland to be protected must be identified in the Significant Ecological Areas Overlay (Terrestrial Schedule).

(2) The maximum number of sites created from the protection of ~~an~~ indigenous vegetation or wetland must comply with Tables E39.6.4.4.1 and E39.6.4.4.2 respectively.

(3) A 20 metre buffer is to be applied to the perimeter of the ~~indigenous vegetation~~ wetland and included as part of the protected area.

(4) The additional sites must be created on the same site as the indigenous vegetation or wetland 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 or wetland 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 or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection.

(8) Areas of indigenous vegetation or wetland 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 or wetland 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 or wetland to be protected must be made subject to a legal protection mechanism meeting all of the following:

(a) protection of all the indigenous vegetation or wetland 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 or wetland must ensure that all invasive plant pests are eradicated

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

...

E39.6.4.6 Transferable rural site subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map [X] 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 or wetlands must meet all of the standards that are applicable for:

(a) the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or shown on Map [X] 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 E39.6.4.4.2.~~

- Table E39.6.4.6.1 has been removed from this section and relocated to section E39.6.4.4.

(2) 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.

(3) 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.

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(4) 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.

(5) 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.

...

E39.6.5 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

(2) Subdivision of the land described as at 14 March 2018 as Lot 1 Deposited Plan 173316, Deposited Plan 25125 and Deposited Plan 7067 (CFR NA106B/436) and Part Island of Kawau (CFR NA55B/931):

(a) Is not required to comply with General Standards E39.6.1.1 to E39.6.1.5 where the subdivision resource consent is made subject to a legal mechanism to ensure no dwellings can be established on the new sites created (although this mechanism shall not affect the establishment of dwellings on the balance parent site);

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(b) Shall be deemed to meet the access requirements in Standards E39.6.1.1(3)(b) and E39.6.1.2 if access by sea to the proposed sites is provided.

...

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:

...

(6) in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map [X]; 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 or areas shown on Map [X], 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, wetland and/or revegetation planting relative to proposed new sites and to existing vegetation;

(iv) the quality of the indigenous vegetation, wetland 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, wetland 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, wetland 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 or shown on Map [X]; 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 or areas shown on Map [X], 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:

(6) in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay Overlay or shown on Map [X]; 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 Overlay or shown on Map [X]; 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).

...

Appendix 15 Subdivision information and process

15.1. Introduction

This appendix includes additional information for subdivision resource consent applications. Refer to the Council's website for further information on how to apply for subdivision resource consent.

All references to the Significant Ecological Area Overlay in this Appendix should be read as also including the areas on Map [X].


Indigenous

Appendix A: Royal Forest & Bird Protection Society Incorporated v Auckland Council – Proposed Amendments

New Zealand Coastal Policy Statement	*Regional Policy Statement – as found in the current Auckland Unitary Plan*	*Auckland Unitary Plan – Decisions Version*	*Auckland Unitary Plan – Proposed Amendments (additions underlined)*
Policy 11: Indigenous biological diversity (biodiversity) To protect indigenous biological diversity in the coastal environment: a. avoid adverse effects of activities on: i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened; iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare; v. areas containing nationally significant examples of indigenous community types; and vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on: i. areas of predominantly indigenous vegetation in the coastal environment; ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species; iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh; iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes; v. habitats, including areas and routes, important to migratory species; and vi. ecological corridors, and areas important for linking or maintaining biological	**B7. Toitū te whenua, toitū te taiao – Natural resources** ... **B7.2. Indigenous biodiversity** ... **B7.2.2. Policies** ... (5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.	**D9. Significant Ecological Areas Overlay** ... **D9.3. Policies** *Managing effects on significant ecological areas – terrestrial and marine* (1) Manage the effects of activities on the indigenous biodiversity values of areas identified as significant ecological areas by: (a) avoiding adverse effects as far as practicable, and where avoidance is not practicable, minimising adverse effects on the identified values; (b) remedying adverse effects on the identified values where they cannot be avoided; (c) mitigating adverse effects on the identified values where they cannot be avoided or remediated; and (d) considering the appropriateness of offsetting any residual adverse effects that are significant and where they have not been able to be mitigated, through protection, restoration and enhancement measures, having regard to Appendix 8 Biodiversity offsetting. ... *Vegetation management* ... (6) Avoid as far as practicable the removal of vegetation and loss of biodiversity in significant ecological areas from the construction of building platforms, access ways or infrastructure, through: (a) using any existing cleared areas on a site to accommodate new development in the first instance; (b) assessing any practicable alternative locations and/or methods that would reduce the need for vegetation removal or land disturbance; (c) retaining indigenous vegetation and natural features which contribute to the ecological significance of a site, taking into account any loss that may be unavoidable to create a single building platform for a dwelling and associated services, access and car parking on a site; (d) designing and locating dwellings and other structures to reduce future demands to clear or damage areas of significant indigenous biodiversity, for example to provide sunlight or protect property;	**D9. Significant Ecological Areas Overlay** ... **D9.3. Policies** *Managing effects on significant ecological areas – terrestrial and marine* (1) Manage the effects of activities on the indigenous biodiversity values of areas identified as significant ecological areas by: (a) Avoiding adverse effects on indigenous biodiversity in the coastal environment to the extent stated in Policies D9.3(9) and (10); (b) avoiding other adverse effects as far as practicable, and where avoidance is not practicable, minimising adverse effects on the identified values; (c) remedying adverse effects on the identified values where they cannot be avoided; (d) mitigating adverse effects on the identified values where they cannot be avoided or remediated; and (e) considering the appropriateness of offsetting any residual adverse effects that are significant and where they have not been able to be mitigated, through protection, restoration and enhancement measures, having regard to Appendix 8 Biodiversity offsetting. ... *Vegetation management* ... (6) While also applying Policies D9.3(9) and (10) in the coastal environment, avoid as far as practicable the removal of vegetation and loss of biodiversity in significant ecological areas from the construction of building platforms, access ways or infrastructure, through: ... [NOTE: (9) & (10) ARE NEW] (9) Avoid activities in the coastal environment where they will result in any of the following: (a) non-transitory or more than minor adverse effects on: (i) threatened or at risk indigenous species (including Maui's Dolphin and Bryde's Whale); (ii) the habitats of indigenous species that are at the limit of their natural range or which are naturally rare; (iii) threatened or rare indigenous ecosystems and vegetation types, including naturally rare ecosystems and vegetation types; (iv) areas containing nationally significant examples of indigenous ecosystems or indigenous community types; or (v) areas set aside for full or partial protection of indigenous biodiversity under other legislation, including the West Coast North Island Marine Mammal Sanctuary. (b) any regular or sustained disturbance of migratory bird roosting,

values identified under this policy.

(e) avoiding as far as practicable any changes in hydrology which could adversely affect indigenous biodiversity values;

(f) implementing measures to maintain existing water quality and not increase the amount of sediment entering natural waterways, wetlands and groundwater; and

(g) using techniques that minimise the effects of construction and development on vegetation and biodiversity and the introduction and spread of animal and plant pests.

...

(8) Manage the adverse effects from the use, maintenance, upgrade and development of infrastructure in accordance with the policies above, recognising that it is not always practicable to locate and design infrastructure to avoid significant ecological areas.

Protecting significant ecological areas in the coastal environment

(9) Avoid, subdivision, use and development in the coastal environment where it will result in any of the following:

(a) the permanent use or occupation of the foreshore and seabed to the extent that the values, function or processes associated with any Significant Ecological Area – Marine is significantly reduced;

(b) any change to physical processes that would destroy, modify, or damage any natural feature or values identified for a Significant Ecological Area – Marine in more than a minor way; or

(c) fragmentation of the values of a Significant Ecological Area – Marine to the extent that its physical integrity is lost.

(10) Manage the adverse effects of use and development on the values of Significant Ecological Areas – Marine, in addition to the policies above, taking into account all of the following:

(a) the extent to which existing use and development already, and in combination with any proposal, impacts on the habitat, or impedes the operation of ecological and physical processes;

(b) the extent to which there are similar habitat types within other Significant Ecological Areas – Marine in the same harbour or estuary or, where the significant ecological area -marine is located on open coast, within the same vicinity; and

(c) whether the viability of habitats of regionally or nationally threatened plants or animals is adversely affected, including the impact on the species population and nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes; or

(c) the deposition of material at levels which would adversely affect the natural ecological functioning of the area.

(10) Avoid (while giving effect to Policy D9.3(9) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:

(a) areas of predominantly indigenous vegetation;
(b) habitats that are important during the vulnerable life stages of indigenous species;
(c) indigenous ecosystems and habitats that are found only in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
(d) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes including fish spawning, pupping and nursery areas;
(e) habitats, including areas and routes, important to migratory species;
(f) ecological corridors, and areas important for linking or maintaining biological values; or
(g) water quality such that the natural ecological functioning of the area is adversely affected.

[CONSEQUENTIALLY RENUMBER EXISTING POLICY (9) AS (11) AND SO FORTH]

(11) In addition to Policies D9.3(9) and (10), avoid structures in Significant Ecological Areas – Marine 1 (SEA-M1) except where a structure is necessary for any of the following purposes:

(e) scientific and research purposes, or for public education, and will enhance the understanding and long-term protection of the significant ecological area;

(f) navigation and safety;

(g) habitat maintenance and enhancement; or

(h) to benefit the regional and national community, including structures for significant infrastructure where there is no reasonable or practicable alternative location on land, or elsewhere in the coastal marine area outside of a Significant Ecological Area – Marine 1(SEA-M1).

...

[NOTE: FORMERLY (11)]

(13) In addition to Policies D9.3(9) and (10), avoid structures in Significant Ecological Areas – Marine 1 (SEA-M1) except where a structure is necessary for any of the following purposes: ...

[NOTE: FORMERLY (12)]

(14) In addition to Policies D9.3(9) and (10), avoid the extension to, or alteration of, any existing lawful structure in Significant Ecological Areas – Marine 1 (SEA-M1) unless all of the following can be demonstrated:

		location. (11) Avoid structures in Significant Ecological Areas – Marine 1 (SEA-M1) except where a structure is necessary for any of the following purposes: (a) scientific and research purposes, or for public education, and will enhance the understanding and long-term protection of the significant ecological area; (b) navigation and safety; (c) habitat maintenance and enhancement; or (d) to benefit the regional and national community, including structures for significant infrastructure where there is no reasonable or practicable alternative location on land, or elsewhere in the coastal marine area outside of a Significant Ecological Area – Marine 1(SEA-M1). (12) Avoid the extension to, or alteration of, any existing lawful structure in Significant (12)Ecological Areas – Marine 1 (SEA-M1) unless all of the following can be demonstrated: (a) that the existing structure has no significant adverse effects on the values and ecological and physical processes operating in the significant ecological area; (b) that the extension or alteration will not involve significant disturbance of foreshore or seabed, clearance of indigenous vegetation, or significantly increase the need to dredge in order to obtain access to the structure; and (c) that the purpose of the extension cannot practicably be met by a land-based alternative.	
Policy 11: Indigenous biological diversity (biodiversity) To protect indigenous biological diversity in the coastal environment: a. avoid adverse effects of activities on: i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened; iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;	**B7. Toitū te whenua, toitū te taiao – Natural resources** ... **B7.2. Indigenous biodiversity** ... **B7.2.2. Policies** ... (5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.	**E15. Vegetation management and biodiversity** ... **E15.3. Policies** ... (9) Avoid activities in the coastal environment where they will result in any of the following: (a) non-transitory or more than minor adverse effects on: (i) threatened or at risk indigenous species (including Maui's Dolphin and Bryde's Whale); (ii) the habitats of species that are at the limit of their natural range or which are naturally rare; (iii) threatened or rare ecosystems, including naturally rare ecosystems; (iv) areas containing nationally significant examples of indigenous ecosystems or indigenous community types; or	**E15. Vegetation management and biodiversity** ... **E15.3 Policies** ... (9) Avoid activities in the coastal environment where they will result in any of the following: (a) non-transitory or more than minor adverse effects on: (i) threatened or at risk indigenous species (including Maui's Dolphin and Bryde's Whale); (ii) the habitats of indigenous species that are at the limit of their natural range or which are naturally rare; (iii) threatened or rare indigenous ecosystems and vegetation types, including naturally rare ecosystems and vegetation types; ... (b) any regular or sustained disturbance of migratory bird roosting,

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

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

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

i. areas of predominantly indigenous vegetation in the coastal environment;

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

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

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

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

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

(v) areas set aside for full or partial protection of indigenous biodiversity under other legislation, including the West Coast North Island Marine Mammal Sanctuary.

(b) any regular or sustained disturbance of migratory bird roosting, nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes, or result in permanent abandonment of an area;

(c) the deposition of material at levels which would adversely affect the natural ecological functioning of the area; or

(d) fragmentation of the values of the area to the extent that its physical integrity is lost.

(10) Avoid (while giving effect to Policy E15(8) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:

(a) areas of predominantly indigenous vegetation;

(b) habitats that are important during the vulnerable life stages of indigenous species;

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

(d) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes including fish spawning, pupping and nursery areas;

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

(f) ecological corridors, and areas important for linking or maintaining biological values; or

(g) water quality such that the natural ecological functioning of the area is adversely affected.

E15.4. Activity table

Table E15.4.1 Activity table specifies the activity status of vegetation management activities in all zones, other than:

- vegetation removal in the coastal marine area where the rules in Chapter F Coastal apply;
- vegetation removal in the beds of lakes, rivers, streams and wetlands where the rules in E3 Lakes, rivers, streams and wetlands apply;
- use and development for infrastructure where the rules in E26 Infrastructure apply; and
- the Hauraki Gulf Islands that are subject to the Auckland Council District Plan – Hauraki Gulf Islands section where

nesting and feeding areas that is likely to noticeably reduce the level of use of an area for these purposes~~, or result in permanent abandonment of an area~~;

...

(10) Avoid (while giving effect to Policy E15(~~8~~9) above) activities in the coastal environment which result in significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities, on:

...

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

...

[INSERT THE FOLLOWING TEXT DIRECTLY ABOVE ACTIVITY TABLE E15.4.1]:

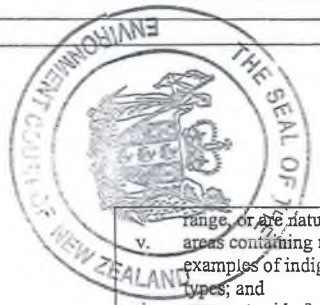
The rules in Tables E15.4.1 and E15.4.2 implement the policies in D9.3 and E15.3. The plan does not include rules (either regional or district) that require areas of vegetation (whether identified as a Significant Ecological Area-Terrestrial or otherwise) to be fenced in order to implement the policies in D9.3 and E15.3. Fencing requirements may arise though in the following circumstances:

(a) Fencing being required to avoid, remedy, or mitigate or proposed to offset an effect on the environment related to a particular proposal, including as a condition of resource consent or a condition of subdivision consent;

(b) The operation of rules regarding livestock access in the coastal marine area (Table F2.19.4 Activity Table A38, A39 and A40); or

(c) The operation of rules regarding livestock access to a lake, river or stream, or wetland (Table E3.4.1 Activity Table A51 and A52).

		the rules of that district plan apply. Table E15.4.1 Activity table specifies the activity status of vegetation management pursuant to section 9(2) for all land not held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991. Table E15.4.1 Activity table also specifies the activity status of vegetation management pursuant to section 9(3) for land held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991. Table E15.4.2 Activity table specifies the activity status of vegetation management pursuant to section 9(2) for SEA – T and section 9(3) for ONF, HNC, ONC, ONL for all land not held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991. Table E15.4.2 Activity table also specifies the activity status of vegetation management pursuant to section 9(3) for land held or managed under the Conservation Act 1987 or any other act specified in Schedule 1 of that Act (other than land held for administrative purposes) of the Resource Management Act 1991. For the purposes of these rules, all distances from water bodies must be measured in a horizontal plane from the edge of the bed of the river or stream, permanent or intermittent, or lake water body. **Table E15.4.1 Activity table - Auckland-wide vegetation and biodiversity management rules** [TABLE] ...	
Policy 11: Indigenous biological diversity (biodiversity) To protect indigenous biological diversity in the coastal environment: a. avoid adverse effects of activities on: i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened; iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; iv. habitats of indigenous species where the species are at the limit of their natural	**B7. Toitū te whenua, toitū te taiao – Natural resources** ... **B7.2. Indigenous biodiversity** ... **B7.2.2. Policies** ... (5) Avoid adverse effects on areas listed in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule and Schedule 4 Significant Ecological Areas – Marine Schedule.	**F2. Coastal – General Coastal Marine Zone** ... **F2.2. Drainage, reclamation and declamation** ... **F2.2.3. Policies** (1) Avoid reclamation and drainage in the coastal marine area except where all of the following apply: (a) the reclamation will provide significant regional or national benefit; (b) there are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area; (c) efficient use will be made of the coastal marine area by using the minimum area necessary to provide for the	**F2. Coastal – General Coastal Marine Zone** ... **F2.2. Drainage, reclamation and declamation** ... **F2.2.3. Policies** (1) Avoid reclamation and drainage in the coastal marine area except where all of the following apply: (a) the reclamation will provide significant regional or national benefit; (b) there are no practicable alternative ways of providing for the activity, including locating it on land outside the coastal marine area; (c) efficient use will be made of the coastal marine area by using the minimum area necessary to provide for the proposed use, or to enable drainage; and ~~(d) significant adverse effects on sites scheduled in the D17 Historic~~



range, or are naturally rare; v. areas containing nationally significant examples of indigenous community types; and vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on: i. areas of predominantly indigenous vegetation in the coastal environment; ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species; iii. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh; iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes; v. habitats, including areas and routes, important to migratory species; and vi. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.		proposed use, or to enable drainage; and (d) significant adverse effects on sites scheduled in the D17 Historic Heritage Overlay or D21 Sites and Places of Significance to Mana Whenua Overlay are avoided or mitigated. ... **F2.3. Depositing and disposal of material** ... **F2.3.3 Policies** ... (4) Avoid the disposal of material in the coastal marine area where it will have significant adverse effects on any of the following: (a) sites scheduled in the D17 Historic Heritage Overlay or scheduled in the D21 Sites and Places of Significance to Mana Whenua Overlay; or (b) significant surf breaks identified in Appendix 4 Surf breaks. ... **F2.16. Structures** ... **F2.16.3. Policies** ... *Ensuring structures are appropriately located and designed* (6) Require structures to be located to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the values of areas identified as: (a) D9 Significant Ecological Areas Overlay – Marine 1 and 2; (b) D17 Historic Heritage Overlay; (c) D21 Sites and Places of Significance to Mana Whenua Overlay; (d) D11 Outstanding Natural Character and High Natural Character overlays; (e) D10 Outstanding Natural Features Overlay; and Outstanding Natural Landscapes Overlay; and (f) significant surf breaks identified in Appendix 4 Surf breaks, including the recreation, amenity and economic values, and taking into account any effects on coastal processes, currents, water levels, seabed morphology and swell corridors that contribute to significant surf breaks.	~~Heritage Overlay or D21 Sites and Places of Significance to Mana Whenua Overlay are avoided or mitigated.~~ [NOTE: (2) IS NEW] ~~(2)~~ Where reclamation or drainage is proposed that affects an overlay, manage effects in accordance with the overlay policies. [CONSEQUENTIALLY RENUMBER EXISTING POLICY (2) AS (3) AND SO FORTH] ... **F2.16. Structures** ... **F2.16.3. Policies** ... *Ensuring structures are appropriately located and designed* (6) Require structures to be located to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the values of areas identified as: ~~(a) D9 Significant Ecological Areas Overlay – Marine 1 and 2;~~ (a) D17 Historic Heritage Overlay; (b) D21 Sites and Places of Significance to Mana Whenua Overlay; (c) D11 Outstanding Natural Character and High Natural Character overlays; (d) D10 Outstanding Natural Features Overlay; and Outstanding Natural Landscapes Overlay; and (e) significant surf breaks identified in Appendix 4 Surf breaks, including the recreation, amenity and economic values, and taking into account any effects on coastal processes, currents, water levels, seabed morphology and swell corridors that contribute to significant surf breaks.

B9. Toitū te tuawhenua- Rural environment

Me tupu te ora ki te tuawhenua

Grow your livelihood inland

B9.1. Issues

The Auckland region is not just the location of New Zealand's largest city. Most of the Auckland region's land is rural and contains extensive, productive and valuable areas used for farming (agriculture, horticulture and grazing), rural service industries), forestry and rural recreation. The rural parts of Auckland also contain important natural resources, including native bush, significant ecological areas and outstanding natural landscapes. The contributions made by rural areas and rural communities to the well-being of the region must be acknowledged and enabled.

The outward expansion of urban areas and people's lifestyle choices and recreational activities place significant pressures on maintaining the amenity values and the quality of the environment in rural areas. Specific issues in the Auckland region are:

- protecting the finite resource of elite quality soils from urban expansion;
- managing subdivision to prevent undue fragmentation of large sites in ways that restrict rural production activities;
- addressing reverse sensitivity effects which rural-residential development can have on rural production activities; and
- managing the opportunities for countryside living in rural areas in ways that provide for rural-residential development in close proximity to urban areas and the larger rural and coastal towns and villages while minimising the loss of rural production land.

B9.2. Rural activities

B9.2.1. Objectives

(1) Rural areas make a significant contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand.

(2) Areas of land containing elite soil are protected for the purpose of food supply from inappropriate subdivision, urban use and development.

(3) Rural production and other activities that support rural communities are enabled while the character, amenity, landscape and biodiversity values of rural areas, including within the coastal environment, are maintained.

(4) Auckland's rural areas outside the Rural Urban Boundary and rural and coastal towns and villages are protected from inappropriate subdivision, urban use and development.

(5) Auckland's rural areas inside the Rural Urban Boundary are not compromised for future urbanisation by inappropriate subdivision, use and development.

D2

B9.2.2. Policies

(1) Enable a diverse range of activities while avoiding significant adverse effects on and urbanisation of rural areas, including within the coastal environment, and avoiding, remedying, or mitigating other adverse effects on rural character, amenity, landscape and biodiversity values.

(2) Minimise the potential for reverse sensitivity effects by:

(a) preventing sensitive activities (such as countryside living) from establishing in areas where rural production activities could be adversely affected; or

(b) requiring sensitive activities (such as new countryside living) to adopt on-site methods to avoid reverse sensitivity effects on rural production activities; and

(c) avoiding subdivision and development that would result in incompatible uses or sensitive activities (such as countryside living) being introduced into areas containing mineral resources for future extraction.

(3) Encourage improved land management practices in rural production areas to progressively reduce and contain adverse environmental effects.

B9.3. Land with high productive potential

B9.3.1. Objectives

(1) Land containing elite soils is protected through land management practices to maintain its capability, flexibility and accessibility for primary production.

(2) Land containing prime soil is managed to enable its capability, flexibility and accessibility for primary production.

(3) The productive potential of land that does not contain elite or prime soil is recognised.

B9.3.2. Policies

(1) Avoid new countryside living subdivision, use and development on land containing elite soil and discourage them on land containing prime soil.

(2) Encourage activities that do not depend on using land containing elite and prime soil to locate outside these areas.

(3) Recognise the productive potential of land that does not contain elite or prime soil and encourage the continued use of this land for rural production.

(4) Provide for non-soil dependent rural enterprises (including post-harvest facilities) on land containing elite or prime soil where there are economic and operational benefits associated with concentrating such enterprises in specific rural localities.

(5) Encourage land management practices that retain the physical and chemical capability of rural soils.

B9.4. Rural subdivision

B9.4.1. Objectives

[1][ENV-189];[2][ENV-206]; [3][ENV-207];[4][ENV-212]; [6][ENV-216];[10][ENV-248]

(1) Further fragmentation of rural land by sporadic and scattered subdivision for urban and rural lifestyle living purposes is prevented.

(2) Subdivision does not undermine the productive potential of land containing elite soils.

(3) Subdivision of rural land avoids, remedies or mitigates adverse effects on the character, amenity, natural character, landscape and biodiversity values of rural areas (including within the coastal environment), and provides resilience to effects of natural hazards.

[1][ENV-189];[2][ENV-206];[3][ENV-207]; [4][ENV -212];[6][ENV-216]; [10][ENV-248]

(4) Land subdivision protects and enhances significant indigenous biodiversity.

B9.4.2. Policies

[1][ENV-189];[2][ENV-206]; [3][ENV-207];[4][ENV-212]; [6][ENV-216]; [9][ENV-234];[10][ENV-248]

(1) Enable the permanent protection and enhancement of areas of significant indigenous biodiversity.

(2) Enable subdivision for the following purposes:

(a) the creation of parks and reserves, including esplanade reserves;

(b) the establishment and operation of infrastructure;

(c) rural production purposes;

(d) marae, papakāinga, urupā and other activities that support Māori relationships with their land where this land is managed by the Te Ture Whenua Māori Land Act 1993; and

(e) special circumstances that provide for significant benefit to the local rural community, and that cannot be met through the use of existing titles.

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[1][ENV-2016-AKL-000189: Cabra Rural Developments Limited and Others]
[2][ENV-2016-AKL-000206: Cato Bolam Consultants Limited]
[3][ENV-2016-AKL-000207: David Mason, Better Living Landscapes Ltd, Parallax Surveyors Ltd, Fluker Surveyors Ltd, and Sayes In Trust Ltd]
[4][ENV-2016-AKL-000212: Smithies Family Trust]
[6][ENV-2016-AKL-000216: Zakara Investments Limited]
[9][ENV-2016-AKL-000234: Radiata Properties Limited]
[10][ENV-2016-AKL-000248: Terra Nova Planning Limited]

D4

[1][ENV-189];[2][ENV-206];
[3][ENV-207];[4][ENV-212];
[6][ENV-216];
[9][ENV-234];[10][ENV-248]

(3) Provide for and encourage the transfer of the residential development potential of rural sites to Countryside Living zones to reduce the impact of fragmentation of rural land from in-situ subdivision, as well as the rearrangement of site boundaries to:

(a) promote the productivity of rural land;

(b) manage the adverse effects of population growth across all rural areas;

(c) improve environmental outcomes associated with the protection of identified areas of high natural values;

(d) improve the management of reverse sensitivity conflicts; and

(e) avoid unplanned demand for infrastructure in remote areas, or across areas of scattered development.

(4) Provide for new rural lifestyle subdivision in locations and at scales and densities so as to:

(a) avoid areas that would undermine the integrity of the Rural Urban Boundary or compromise the expansion of the satellite towns of Warkworth and Pukekohe, and rural and coastal towns and villages;

(b) protect areas where natural and physical resources have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character;

(c) avoid land containing elite soil;

(d) avoid where practicable land containing prime soil;

(e) avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;

(f) maintain or enhance landscape, rural and, where relevant, coastal, character and amenity values;

(g) avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and

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[1][ENV-2016-AKL-000189: Cabra Rural Developments Limited and Others]
[2][ENV-2016-AKL-000206: Cato Bolam Consultants Limited]
[3][ENV-2016-AKL-000207: David Mason, Better Living Landscapes Ltd, Parallax Surveyors Ltd, Fluker Surveyors Ltd, and Sayes In Trust Ltd]
[4][ENV-2016-AKL-000212: Smithies Family Trust]
[6][ENV-2016-AKL-000216: Zakara Investments Limited]
[9][ENV-2016-AKL-000234: Radiata Properties Limited]
[10][ENV-2016-AKL-000248: Terra Nova Planning Limited]

D5

(h) safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

[1][ENV-189];[2][ENV-206];
[3][ENV-207];[4][ENV-212];
[6][ENV-216];
[9][ENV-234];[10][ENV-248]

(5) Provide the amalgamation and transfer of rural sites to Countryside Living zones to remedy the impact of past fragmentation of rural land from in-situ subdivision.

B9.5. Principal reasons for adoption

[1][ENV-189];[4][ENV-212];
[6][ENV-216];
[10][ENV-248]

The purpose of sustainable management includes safeguarding the life-supporting capacity of natural resources now and in the future. This includes protecting the productive potential of the land to provide for present and future generations as well as significant indigenous biodiversity. It is also to maintain or enhance the character of rural areas for their contribution to regional amenity values, particularly the landscape and natural character.

Rural and coastal towns and villages, and areas zoned for countryside living, play an important role in enabling people to live, work and play in rural areas. They also can accommodate a portion of Auckland's growth.

Auckland, especially areas in Franklin, has land of high productive potential for farming classified as elite land (Land Use Capability Class 1) and prime land (Land Use Capability Classes 2 and 3). This land is mapped on the Land Use Capability maps. The priority in these areas is to maintain the potential for these high quality soils to be used for agricultural purposes, rather than activities that are not dependent on soil quality.

There are other areas of rural Auckland that support specialised horticultural production which are not on Class 1, 2 or 3 soils. These areas have other advantages such as climate, drainage, water availability or established infrastructure that are equally beneficial as soil quality. No matter what type of rural production occurs, retaining land with high productive potential for primary production provides flexibility to improve economic performance, sustainably manage land resources and enable communities to pursue sustainable lifestyles.

Significant areas of land with high productive potential have been lost to the expansion of urban areas and countryside living development. While countryside living opportunities need to be concentrated around the Rural Urban Boundary, they should also be located out of the way of any future urban expansion. As a consequence there will be a loss of some productive land. Countryside living produces a pattern of relatively small sites that are impractical for primary production due to their size and the expectations of owners and occupiers. New countryside living subdivision is directed away from elite and prime land and from other rural areas with recognised local production advantages.

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[1][ENV-2016-AKL-000189: Cabra Rural Developments Limited and Others]
[2][ENV-2016-AKL-000206: Cato Bolam Consultants Limited]
[3][ENV-2016-AKL-000207: David Mason, Better Living Landscapes Ltd, Parallax Surveyors Ltd, Fluker Surveyors Ltd, and Sayes In Trust Ltd]
[4][ENV-2016-AKL-000212: Smithies Family Trust]
[6][ENV-2016-AKL-000216: Zakara Investments Limited]
[9][ENV-2016-AKL-000234: Radiata Properties Limited]
[10][ENV-2016-AKL-000248: Terra Nova Planning Limited]

D6

The provisions of the Unitary Plan include provisions that assist in managing activities and their effects on the rural environment to retain and use its productive potential, biodiversity values, rural character and amenity values. This involves recognising that a rural lifestyle is attractive to many people so that countryside living is enabled in identified areas, while also recognising the importance of protecting the productive potential of rural land as well as its rural amenity values.

The policies seek to ensure that uses and subdivision do not undermine or significantly compromise the productive potential of Auckland's rural areas, while maintaining those qualities which the community values. The policies therefore prevent urban growth and restrict inappropriate activities from certain locations.

[1][ENV-189];[4][ENV-212];
[6][ENV-216];
[10][ENV-248]

The subdivision policies also enable and encourage the transfer of the residential development potential from sites in productive rural zones to Countryside Living Zones, and for title boundaries to be amalgamated and a residential development right to be realised in Countryside Living Zones.

[1][ENV-2016-AKL-000189: Cabra Rural Developments Limited and Others]
[4][ENV-2016-AKL-000212: Smithies Family Trust]
[6][ENV-2016-AKL-000216: Zakara Investments Limited]
[10][ENV-2016-AKL-000248: Terra Nova Planning Limited]

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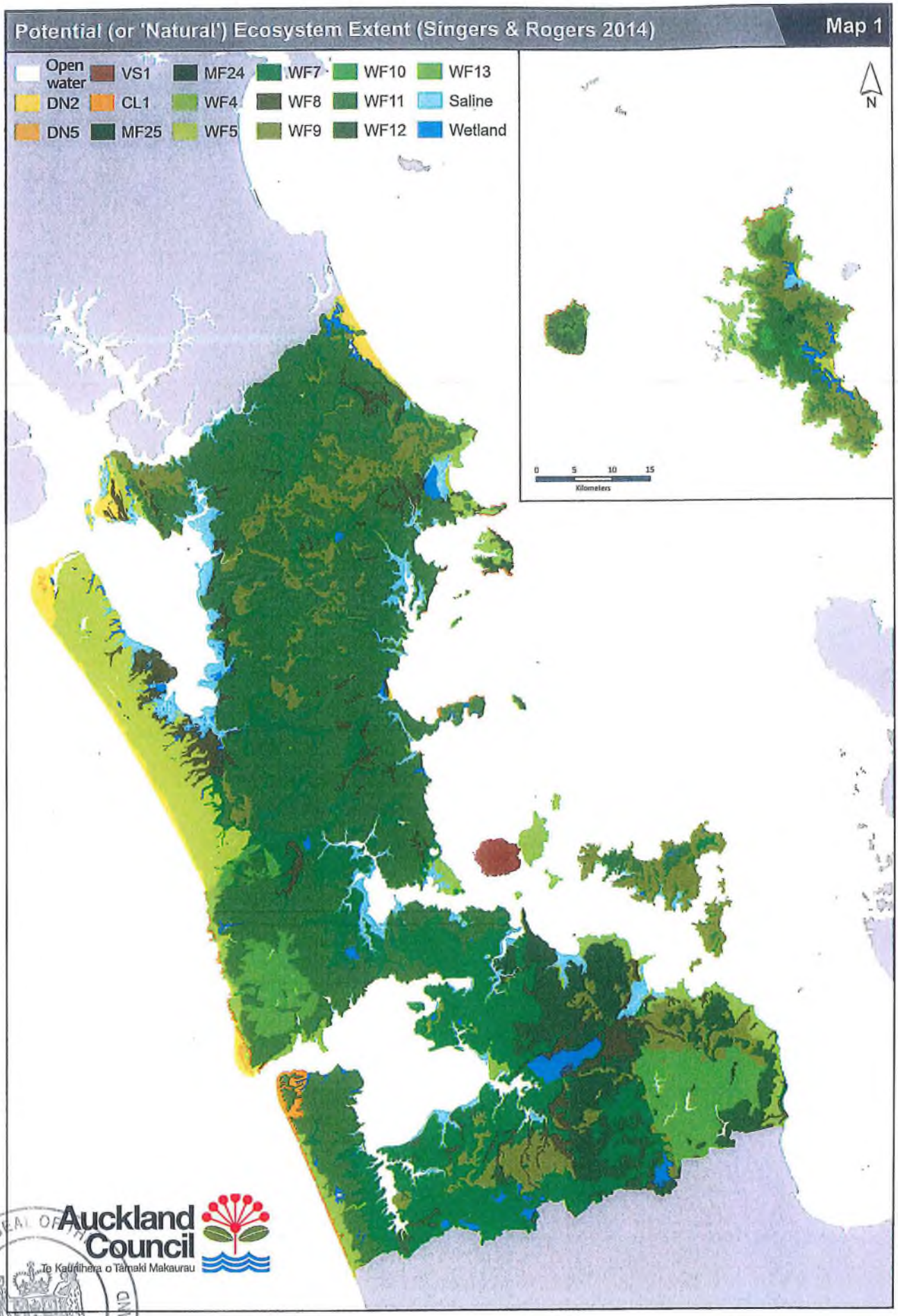

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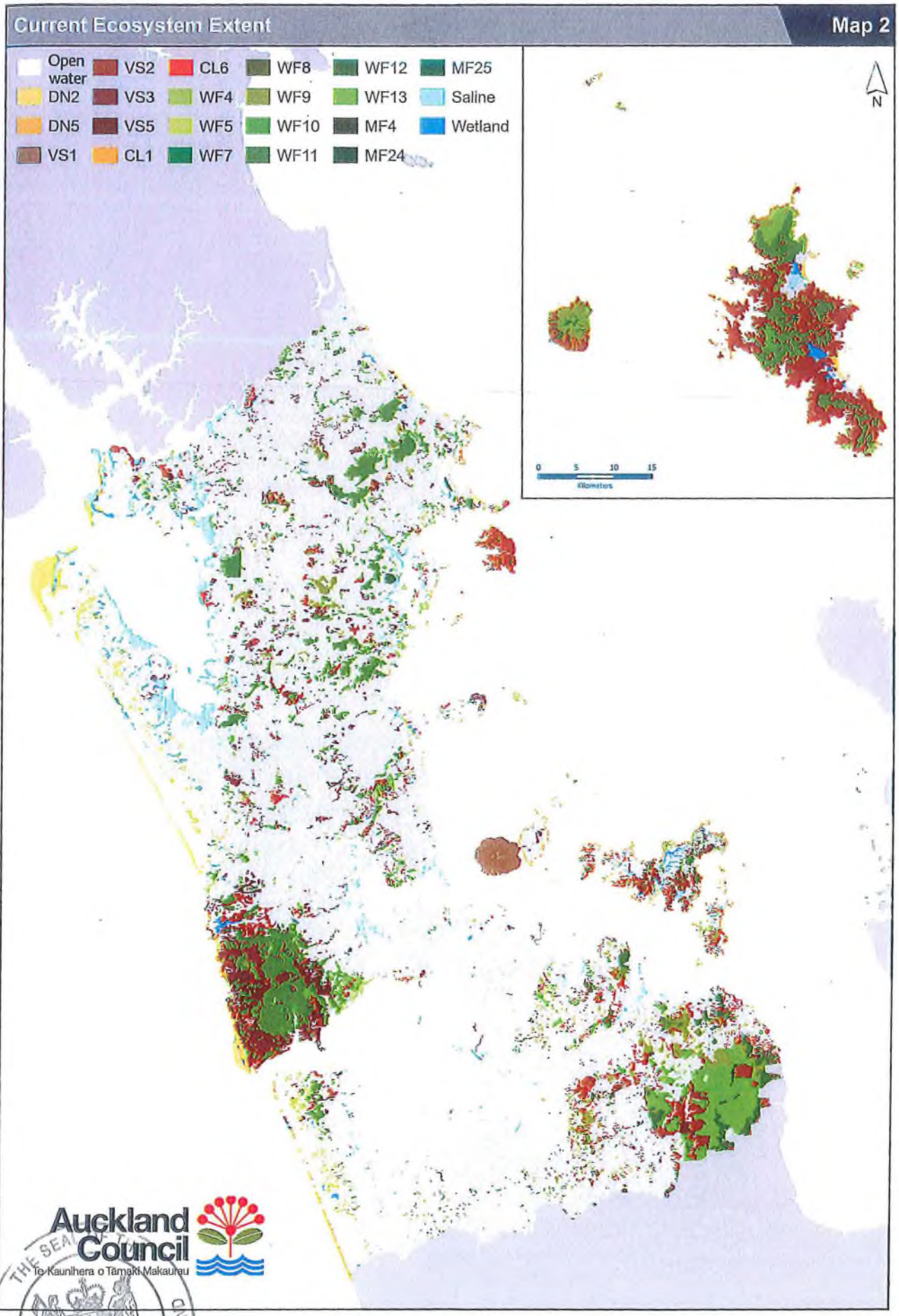

Auckland Council
Te Kaunihera o Tāmaki Makaurau

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Schedule 3 Significant Ecological Areas – Terrestrial Schedule

Factors for assessing ecological value [rps]

An area shall be considered to have significant ecological value if it meets one or more the sub-factors 1 to 5 below. These factors are also referred to in B7.2.2(1).

These factors have been used to determine the areas included in Schedule 3 Significant Ecological Areas – Terrestrial Schedule, and will be used to assess proposed future additions to the schedule.

Factors:

(1) REPRESENTATIVENESS

Sub-factor:

(a) It is an example of an indigenous ecosystem (including both mature and successional stages), that contributes to the inclusion of at least 10% of the natural extent[1] of each of Auckland's original ecosystem types[2] in each ecological district of Auckland (starting with the largest, most natural and intact, most geographically spread) and reflecting the environmental gradients of the region, and is characteristic or typical of the natural ecosystem diversity of the ecological district and/or Auckland.

(2) THREAT STATUS AND RARITY

Sub-factors:

(a) It is an indigenous habitat, community or ecosystem that occurs naturally in Auckland and has been assessed (using the IUCN threat classification system) to be threatened, based on evidence and expert advice (including Holdaway et al. Status assessment of NZ naturally uncommon ecosystems[3]).

(b) It is a habitat that supports occurrences of a plant, animal or fungi that has been assessed by the Department of Conservation and determined to have a national conservation status of threatened or at risk; or

(i) it is assessed as having a regional threatened conservation status including Regionally Critical, Endangered and Vulnerable and Serious and Gradual Decline.

(c) It is indigenous vegetation that occurs in Land Environments New Zealand Category IV where less than 20% remains.

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[1] "Natural extent" is intended to mean a combination of our understanding of the historic pre-human diversity, distribution and extent of ecosystems in Auckland and what we would expect this to be given past and current environmental drivers.

[2] The Department of Conservation's ecosystem classification system described over 135 ecosystems in New Zealand (Singers and Rogers in press). Of these 35 ecosystems are known to have occurred in Auckland and these are what is meant by original ecosystems. They include the more recent indigenous dominated shrub and scrublands that have evolved as a result of human modification of the landscape.

[3] Status Assessment of New Zealand's Naturally Uncommon Ecosystems, ROBERT J. HOLDAWAY, SUSAN K. WISER and PETER A. WILLIAMS. Conservation Biology. Volume 26, Issue 4, pages 619–629, August 2012

(d) It is any indigenous vegetation or habitat of indigenous fauna that occurs within an indigenous wetland or dune ecosystem.

(e) It is a habitat that supports an occurrence of a plant, animal or fungi that is locally rare; or

(i) it has been assessed by the Department of Conservation and determined to have a national conservation status of Naturally Uncommon, Range Restricted or Relict.

(3) DIVERSITY

Sub-factors:

(a) It is any indigenous vegetation that extends across at least one environmental gradient resulting in a sequence that supports more than one indigenous habitat, community or ecosystem type e.g., an indigenous estuary to an indigenous freshwater wetland.

(b) It supports the expected indigenous ecosystem diversity for the habitat(s).

(c) It is an indigenous habitat type that supports a typical species richness or species assemblage for its type.

(4) STEPPING-STONES, MIGRATION PATHWAYS AND BUFFERS

Sub-factors:

(a) It is an example of an indigenous ecosystem, or habitat of indigenous fauna that is used by any native species permanently or intermittently for an essential part of their life cycle (e.g. known to facilitate the movement of indigenous species across the landscape, haul-out site for marine mammals) and therefore makes an important contribution to the resilience and ecological integrity of surrounding areas.

(b) It is an example of an ecosystem, indigenous vegetation or habitat of indigenous fauna, that is immediately adjacent to, and provides protection for, indigenous biodiversity in an existing protected natural area (established for the purposes of biodiversity protection); or

(i) it is an area identified as significant under the 'threat status and rarity' or 'uniqueness' factor. This includes areas of vegetation (that may be native or exotic) that buffer a known significant site. It does not include buffers to the buffers.

(c) It is part of a network of sites that cumulatively provide important habitat for indigenous fauna or when aggregated make an important contribution to the provision of a particular ecosystem in the landscape.

(d) It is a site which makes an important contribution to the resilience and ecological integrity of surrounding areas.

(5) UNIQUENESS OR DISTINCTIVENESS

Sub-factors:

(a) It is habitat for a plant, animal or fungi that is endemic to the Auckland region (i.e. not found anywhere else).

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

(c) It is an indigenous ecosystem or a habitat that supports occurrences of a plant, animal or fungi that are near-endemic (i.e., where the only other occurrence(s) is within 100km of the council boundary).

(d) It is a habitat that supports occurrences of a plant, animal or fungi that is the type locality for that taxon.

(e) It is important as an intact sequence or outstanding condition in the region.

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

(g) It is a habitat that supports occurrences of a plant, animal or fungi that are at (or near) their national distributional limit.

(b) The operation of rules regarding livestock access in the coastal marine area (Table F2.19.4 Activity Table (A38), (A39) and (A40)); or

(c) The operation of rules regarding livestock access to a lake, river or stream, or wetland (Table E3.4.1 Activity Table (A51) and (A52)).

Table E15.4.1 Activity table - Auckland-wide vegetation and biodiversity management rules

PC 4
s86B (3) Immediate legal effect (See modifications)

Activity		Activity status
Use		
[New text to be inserted]		
(A1)	Biosecurity tree works	P
(A2)	Dead wood removal	P
(A3)	Vegetation pruning, alteration or removal for customary use	P
(A4)	Emergency tree works	P
(A5)	Forestry and farming activities as existing at 30 September 2013	P
(A6)	Pest plant removal	P
(A7)	Conservation planting	P
(A8)	Vegetation alteration or removal for routine maintenance within 3m of existing buildings	P
(A9)	Vegetation alteration or removal for routine operation, maintenance and repair of existing tracks, lawns, gardens, fences, shelterbelts and other lawfully established activities	P
[New text to be inserted]		
(A10)	Vegetation alteration or removal, including cumulative removal on a site over a 10-year period, of greater than 250m^2 of indigenous vegetation that: (a) is contiguous vegetation on a site or sites existing on 30 September 2013; and (b) is outside the rural urban boundary	RD
(A11)	Vegetation alteration or removal within a Wetland Management Areas Overlay	D
(A12)	Vegetation alteration or removal of any vegetation within a Natural Stream Management Areas Overlay	RD
(A13)	Vegetation alteration or removal within 50m of the shore of a lake within a Natural Lake Management Areas Overlay	RD
(A14)	Vegetation alteration or removal within 30m of the shore of a lake within an Urban Lake Management Areas Overlay	RD
(A15)	Vegetation alteration or removal within 20m of rural lakes	RD
(A16)	Vegetation alteration or removal within 20m of rural streams, other than those in Rural – Rural Production Zone and Rural – Mixed Rural Zone	RD
(A17)	Vegetation alteration or removal within 10m of rural streams in the Rural – Rural Production Zone and Rural – Mixed	RD

H2

PC 4
s86B (3) Immediate legal effect (See modifications)

	Rural Zone	
(A18)	Vegetation alteration or removal within 20m of a natural wetland, in the bed of a river or stream (permanent or intermittent), or lake	RD
(A19)	Vegetation alteration or removal within 10m of urban streams	RD
[New text to be inserted]		
(A20)	Vegetation alteration or removal of greater than 25m^2 of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, within 50m of mean high water springs in the Rural –Rural Production Zone, Rural –Mixed Rural Zone, Rural –Rural Coastal Zone, Rural –Rural Conservation Zone and Rural – Countryside Living Zone or Future Urban Zone	RD
(A21)	Vegetation alteration or removal of greater than 25m^2 of contiguous vegetation or tree alteration or tree removal of any indigenous tree over 3m in height within 20m of mean high water springs in all zones other than in a Rural – Rural Production Zone, Rural – Mixed Rural Zone, Rural – Rural Coastal Zone, Rural – Rural Conservation Zone and Rural – Countryside Living Zone or Future Urban Zone	RD
(A22)	Vegetation alteration or removal of greater than 25m^2 of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, that is within: (a) a horizontal distance of 20m from the top of any cliff with; (b) a slope angle steeper than 1 in 3 (18 degrees); and (c) within 150m of mean high water springs	RD
(A23)	Permitted and controlled activities in Table E15.4.1 that do not comply with one or more of the standards in E15.6	RD
[New text to be inserted]		

H 3

Table E15.4.2 Vegetation and biodiversity management in overlays [other than the significant ecological areas in the in coastal marine area – SEA-M]

Activity		SEA -T [rp]	ONF										HNC	ONC	ONL
			A1	A	V1	V2	B	C	D	E	F1	F2			
	General														
(A24)	Permitted, controlled and restricted discretionary activities in Table E15.4.2 that do not comply with one or more of the standards in E15.6	D	D	D	D	D	D	D	D	D	D	D	D	D	D
	Use														
(A25)	Vegetation alteration or removal of up to than 25m^2 of any contiguous indigenous vegetation	NA	P	P	P	P	P	P	P	P	NA	NA	NA	NA	NA
(A26)	Vegetation alteration or removal of greater than 25m^2 of any contiguous indigenous vegetation	NA	RD	RD	RD	RD	RD	RD	RD	RD	NA	NA	NA	NA	NA
(A27)	Vegetation alteration or removal of up to 50m^2 of any contiguous indigenous vegetation	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P	P	P
(A28)	Vegetation alteration or removal of greater than 50m^2 of any contiguous indigenous vegetation	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	RD	RD	RD
(A29)	Vegetation alteration or	C	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

	removal within a SEA for a building platform and access way for one dwelling per site														
(A30)	Vegetation alteration or removal within a SEA on Māori land or treaty settlement land for: (a) one marae complex per site; (b) up to 30 dwellings per site; (c) activities associated with a marae complex and with papakāinga	C	RD	RD	RD	RD	RD	RD	RD	RD	NA	NA	RD	RD	RD
(A31)	Biosecurity tree works	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A32)	Deadwood removal	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A33)	Emergency tree works	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A34)	Vegetation alteration or removal for customary use	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A35)	Forestry and farming activities as existing at 30 September 2013	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A36)	Pest plant removal	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A37)	Conservation planting	P	P	P	P	P	P	P	P	P	P	NA	P	P	P
(A38)	Vegetation alteration or removal for	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P

H5

	routine maintenance within 3m of existing dwelling														
(A39)	Vegetation alteration or removal for routine maintenance within 3m of existing buildings greater than 100m^2 gross floor area	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A40)	Vegetation alteration or removal for routine maintenance within 1m of other existing buildings	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A41)	Tree trimming	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
(A42)	Vegetation alteration or removal for routine operation, maintenance and repair of existing tracks, lawns, gardens, fences and other lawfully established activities	P	P	P	P	P	P	P	P	P	NA	NA	P	P	P
(A43)	Any vegetation alteration or removal not otherwise provided for	D	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

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E15. Vegetation management and biodiversity **E15.3. Policies [rcp/rp/dp]** (4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following: (a) using transferable rural site subdivision to protect areas ~~that meet the one or more of the factors referred to in B7.2.2(1) and~~ in Schedule 3 Significant Ecological Areas -Terrestrial Schedule; ...	**E15. Vegetation management and biodiversity** **E15.3. Policies [rcp/rp/dp]** (4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following: (a) using transferable rural site subdivision to protect areas that meet the one or more of the factors referred to in B7.2.2(1) and in Schedule 3Significant Ecological Areas -Terrestrial Schedule; ...	**E15. Vegetation management and biodiversity** **E15.3. Policies [rcp/rp/dp]** (4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following: (a) using in situ and transferable rural site subdivision to protect areas identified in the Significant Ecological Areas Overlay or that meet the ~~in Schedule 3~~ Significant Ecological Areas - ~~Terrestrial Schedule~~ factors; ...	**E15. Vegetation management and biodiversity** **E15.3. Policies [rcp/rp/dp]** (4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following: (a) using in situ and transferable rural site subdivision to protect areas identified in the Significant Ecological Areas Overlay or that meet the ~~in Schedule 3~~ Significant Ecological Areas - ~~Terrestrial Schedule~~ factors; ...	**Chapter E15** Reinstate IHP policies
E39.2. Objectives (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 areas of lower productive potential in~~ certain Rural – Countryside Living Zone areas.	**E39.2. Objectives** (9) The productive potential of rural land is enhanced through the amalgamation of (9) smaller existing land holdings sites, particularly for sites identified in Appendix 14 Land amalgamation incentivised area, and the transfer of titles to areas of lower productive potential in certain Rural – Countryside Living Zone areas.	-	-	-
E39.2. Objectives (10) Fragmentation of rural production land by: (a) subdivision of land containing elite soil is avoided; ~~and~~ (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.	**E39.2. Objectives** (10) Fragmentation of rural production land by: (a) subdivision of land containing elite soil is avoided; and (b) subdivision of land containing prime soil is avoided where practicable.	**E39. Subdivision – Rural** **E39.2. Objectives** (10) Fragmentation of rural production land by: (a) subdivision of land containing elite soil is avoided; and ~~(b)~~ subdivision of land containing prime soil is avoided where practicable~~; and~~ ~~(c)(b) subdivision of land avoids contributing to the inappropriate, random and wide dispersal of rural lifestyle lots throughout rural and coastal areas~~.	**E39. Subdivision – Rural** **E39.2. Objectives** (10) Fragmentation of rural production land by: (a) subdivision of land containing elite soil is avoided; and ~~(b)~~ subdivision of land containing prime soil is avoided where practicable~~; and~~ ~~(c)(b) subdivision of land avoids contributing to the inappropriate, random and wide dispersal of rural lifestyle lots throughout rural and coastal areas~~.	**E39. Subdivision – Rural** **E39.2. Objectives** (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.~~

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E39.2. Objectives (12) Rural lifestyle subdivision is primarily limited to the Rural – Countryside Living Zone, and to sites created by protecting, ~~restoring~~ or creating significant areas of indigenous vegetation or wetlands.	**E39.2. Objectives** (12) Rural lifestyle subdivision is primarily limited to the Rural –Countryside Living Zone, and to sites created by protecting, restoring or creating significant areas of indigenous vegetation or wetlands.			**E39. Subdivision – Rural** **E39.2. Objectives** (12) Rural lifestyle subdivision is primarily limited to the Rural –Countryside Living Zone, and to sites created by protecting, restoring or creating significant areas of indigenous vegetation or wetlands.
E39.2. Objectives (14) Subdivision is provided for by either: (a) Limited in-situ subdivision ~~or by~~ through the protection of significant indigenous vegetation or wetlands and/or through indigenous revegetation planting; or (b) Transfer of titles, through the protection ~~or enhancement~~ of indigenous vegetation or ~~and~~ wetlands and/or through indigenous revegetation planting to Countryside Living zones.	**E39.2. Objectives** (14) Subdivision is provided for, either in-situ or by transfer of titles, through the protection or enhancement of indigenous vegetation and wetlands and/or through restorative or indigenous revegetation planting.	**E39. Subdivision – Rural** **E39.2. Objectives** (14) Subdivision is provided for ~~by~~ either: ~~Limited~~ in-situ ~~subdivision through the protection of significant indigenous vegetation or wetlands and/or through indigenous revegetation planting;~~ or by the t~~T~~ransfer of titles to Countryside Living zones, through the protection of indigenous vegetation, fauna habitat or ~~and~~ wetlands and/or through indigenous revegetation planting ~~to Countryside Living zones~~.	**E39. Subdivision – Rural** **E39.2. Objectives** (14) Subdivision is provided for ~~by~~ either: ~~Limited~~ in-situ ~~subdivision through the protection of significant indigenous vegetation or wetlands and/or through indigenous revegetation planting;~~ or by the t~~T~~ransfer of titles to Countryside Living zones, through the protection of indigenous vegetation, fauna habitat or ~~and~~ wetlands and/or through indigenous revegetation planting ~~to Countryside Living zones~~.	**E39. Subdivision – Rural** **E39.2. Objectives** (14) Subdivision is provided for ~~by either:~~ in-situ or by the transfer of titles to Countryside Living zones, through the protection of indigenous vegetation, fauna habitat or wetlands and/or through indigenous revegetation, restoration or enhancement planting. ~~(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.~~
E39.3. Policies (3) Manage rural subdivision and boundary adjustments to facilitate more efficient use of land for rural production activities by: ... (b) providing for the transfer of titles to ~~areas of lower productive potential, in particular areas zoned~~ certain Rural – Countryside Living Zones. ...	**E39.3. Policies** (3) Manage rural subdivision and boundary adjustments to facilitate more efficient use of land for rural production activities by: ... (b) providing for the transfer of titles to areas of lower productive potential, in particular areas zoned Rural –Countryside Living Zone. ...	-	-	-
E39.3. Policies	**E39.3. Policies**	**E39.3. Policies**	**E39.3. Policies**	**E39.3. Policies**

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Auckland Council Hearings provisions version sought by Auckland Council	IHP recommended provisions sought by Cabra Rural Developments Ltd & Others (also sought by Radiata Properties Ltd, Smithies Family Trust and Omaha Park Ltd)	Version of provisions sought by Zakara Investments Ltd	Version of provisions sought by Terra Nova	Version of provisions sought by Cato Bolam and Mason & Others (also sought by Radiata Properties Ltd and Smithies Family Trust in the alternative)
(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 ~~or enhancement~~ of indigenous vegetation or wetlands; or (c) the site is created through ~~restorative or~~ indigenous revegetation planting.	(11) Restrict 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 or enhancement of indigenous vegetation and wetlands; or (c) the site is created through restorative or indigenous revegetation planting.	(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, fauna habitat or wetlands; or (c) the site is created through indigenous revegetation planting.	(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, fauna habitat or wetlands; or (c) the site is created through indigenous revegetation, restoration or enhancement planting.	(11) Restrict in-situ subdivision for rural lifestyle living to where: (a) the site is located in the Rural – Countryside Living Zone; or (b) the site is created through the protection of indigenous vegetation, fauna habitat or wetlands; or (c) the site is created through indigenous revegetation, restoration or enhancement planting.
E39.3. Policies *Protection of indigenous vegetation and wetland and revegetation planting* (15) Enable limited in-situ subdivision ~~or the transfer of titles~~ through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay and indigenous revegetation planting ~~or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule~~.	**E39.3. Policies** *Protection of indigenous vegetation and wetland* (15) Enable in-situ subdivision or the transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule.	**E39.3. Policies** *Protection of indigenous vegetation and wetland and revegetation planting* (15) Enable ~~limited~~ in-situ subdivision or the transfer of titles through the protection of indigenous vegetation, fauna habitat or wetlands identified in the Significant Ecological Areas Overlay or other significant ecological areas of equivalent standard, and indigenous revegetation planting.	**E39.3. Policies** *Protection of indigenous vegetation and wetland and revegetation planting* (15) Enable ~~limited~~ in-situ subdivision or the transfer of titles through the protection of indigenous vegetation, fauna habitat or wetlands identified in the Significant Ecological Areas Overlay or other significant ecological areas of equivalent standard, and indigenous revegetation planting.	**E39.3. Policies** *Protection of indigenous vegetation and wetland and revegetation planting* (15) Enable ~~limited~~ in-situ subdivision or the transfer of titles through the protection of indigenous vegetation, fauna habitat or wetlands identified in the Significant Ecological Areas Overlay or other significant ecological areas of equivalent standard, and indigenous revegetation restoration or enhancement planting.
E39.3. Policies (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.	**E39.3. Policies** ***Similar policy was part of IHP's Policy E39.3(15), which also referred to the Significant Ecological Areas factors and descriptors as above.***	**E39.3. Policies** (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.~~	**E39.3. Policies** (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.~~	**E39.3. Policies** (16) Encourage the transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or other significant ecological areas of equivalent standard, and indigenous revegetation planting.
E39.3. Policies (17) Require indigenous vegetation or wetland within a site being subdivided to be legally protected in perpetuity.	**E39.3. Policies** (16) Require indigenous vegetation or wetland within a site being subdivided to be legally protected in perpetuity.	**E39.3. Policies** (17) Require the area of indigenous vegetation or wetland which has been used to enable subdivision within a site ~~being subdivided~~ to be legally protected in perpetuity.	**E39.3. Policies** (17) Require the area of indigenous vegetation or wetland which has been used to enable subdivision within a site ~~being subdivided~~ to be legally protected in perpetuity.	**E39.3. Policies** (17) Require legal protection in perpetuity of the area of indigenous vegetation, fauna habitat or wetland which has been used to enable ~~within~~ a site to be~~ing~~ subdivided ~~to be legally protected in perpetuity~~.

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E39.3. Policies (18) Provide limited opportunities for in-situ subdivision in rural areas while ensuring that: (a) there will be significant environmental protection ~~or restoration~~ of indigenous vegetation or wetlands; ...	**E39.3. Policies** (17) Provide opportunities for in-situ subdivision in rural areas while ensuring that: (a) there will be significant environmental protection or restoration of indigenous vegetation; ...	**E39.3. Policies** (18) Provide ~~limited~~ opportunities for in-situ subdivision in rural areas while ensuring that: (a) there will be significant environmental protection of indigenous vegetation, fauna habitat or wetlands; ...	**E39.3. Policies** (18) Provide ~~limited~~ opportunities for in-situ subdivision in rural areas while ensuring that: (a) there will be significant environmental protection of indigenous vegetation, fauna habitat or wetlands; ...	**E39.3. Policies** (18) Provide ~~limited~~ opportunities for in-situ subdivision in rural areas while ensuring that: (a) there will be significant environmental protection restoration or enhancement of indigenous vegetation; ...

ANNEXURE J

CONCLUSIONS AS TO CONFIRMATION OF PROVISIONS

Court Note:

It is accepted that there will be some minor inaccuracies in the drafting recorded here as a result of:

a) Changes made by resolution of courts in relation to other appeals

b) While the court adopts primarily the IHP version, there are some provisions that have been agreed between the parties or more properly reflect the intended outcome. For instance, the evidence was clear that the subdivision transfer was expected to occur within the Rural-Countryside Living Zone. We have attempted to indicate where these situations occur. The capture of these changes might contain some small degree of inaccuracy as the court was required to pull together various drafting of provisions from several evidence sources.

c) It is expected that any inaccuracies will be highlighted by the parties and raised with the court so that a final version can be confirmed for inclusion in the AUP.

B9. Toitū te tuawhenua- Rural environment

Me tupu te ora ki te tuawhenua

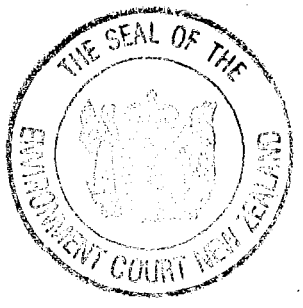
Grow your livelihood inland

B9.1. Issues

The Auckland region is not just the location of New Zealand's largest city. Most of the Auckland region's land is rural and contains extensive, productive and valuable areas used for farming (agriculture, horticulture and grazing), rural service industries), forestry and rural recreation. The rural parts of Auckland also contain important natural resources, including native bush, significant ecological areas and outstanding natural landscapes. The contributions made by rural areas and rural communities to the well-being of the region must be acknowledged and enabled.

The outward expansion of urban areas and people's lifestyle choices and recreational activities place significant pressures on maintaining the amenity values and the quality of the environment in rural areas. Specific issues in the Auckland region are:

- protecting the finite resource of elite quality soils from urban expansion;
- managing subdivision to prevent undue fragmentation of large sites in ways that restrict rural production activities;
- addressing reverse sensitivity effects which rural-residential development can have on rural production activities; and
- managing the opportunities for countryside living in rural areas in ways that provide for rural-residential development in close proximity to urban areas and the larger rural and coastal towns and villages while minimising the loss of rural production land.



B9.2. Rural activities

B9.2.1. Objectives

(1) Rural areas make a significant contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand.

(2) Areas of land containing elite soil are protected for the purpose of food supply from inappropriate subdivision, urban use and development.

(3) Rural production and other activities that support rural communities are enabled while the character, amenity, landscape and biodiversity values of rural areas, including within the coastal environment, are maintained.

(4) Auckland's rural areas outside the Rural Urban Boundary and rural and coastal towns and villages are protected from inappropriate subdivision, urban use and development.

(5) Auckland's rural areas inside the Rural Urban Boundary are not compromised for future urbanisation by inappropriate subdivision, use and development.

B9.2.2. Policies

(1) Enable a diverse range of activities while avoiding significant adverse effects on and urbanisation of rural areas, including within the coastal environment, and avoiding, remedying, or mitigating other adverse effects on rural character, amenity, landscape and biodiversity values.

(2) Minimise the potential for reverse sensitivity effects by:

(a) preventing sensitive activities (such as countryside living) from establishing in areas where rural production activities could be adversely affected; or

(b) requiring sensitive activities (such as new countryside living) to adopt onsite methods to avoid reverse sensitivity effects on rural production activities; and

(c) avoiding subdivision and development that would result in incompatible uses or sensitive activities (such as countryside living) being introduced into areas containing mineral resources for future extraction.

(3) Encourage improved land management practices in rural production areas to progressively reduce and contain adverse environmental effects.

B9.3. Land with high productive potential

B9.3.1. Objectives

(1) Land containing elite soils is protected through land management practices to maintain its capability, flexibility and accessibility for primary production.

(2) Land containing prime soil is managed to enable its capability, flexibility and accessibility for primary production.

(3) The productive potential of land that does not contain elite or prime soil is recognised.

B9.3.2. Policies

(1) Avoid new countryside living subdivision, use and development on land containing elite soil and discourage them on land containing prime soil.

(2) Encourage activities that do not depend on using land containing elite and prime soil to locate outside these areas.

(3) Recognise the productive potential of land that does not contain elite or prime soil and encourage the continued use of this land for rural production.

(4) Provide for non-soil dependent rural enterprises (including post-harvest facilities) on land containing elite or prime soil where there are economic and operational benefits associated with concentrating such enterprises in specific rural localities.

(5) Encourage land management practices that retain the physical and chemical capability of rural soils.

B9.4. Rural subdivision

B9.4.1. Objectives

(1) ~~Further fragmentation of rural land by sporadic and scattered subdivision for urban and rural lifestyle living purposes is prevented.~~

(2) Subdivision does not undermine the productive potential of land containing elite soils.

(3) Subdivision of rural land avoids, remedies or mitigates adverse effects on the character, amenity, natural character, landscape and biodiversity values of rural areas (including within the coastal environment), and provides resilience to effects of natural hazards.

(4) Land subdivision protects and enhances significant indigenous biodiversity **and degraded land**.

B9.4.2. Policies

(1) Enable the permanent protection and enhancement of areas of significant indigenous biodiversity **and rehabilitation of degraded land through subdivision**.

(2) Enable subdivision for the following purposes:

(a) the creation of parks and reserves, including esplanade reserves;

(b) the establishment and operation of infrastructure;

(c) rural production purposes;

(d) marae, papakāinga, urupā and other activities that support Māori relationships with their land where this land is managed by the Te Ture Whenua Māori Land Act 1993; and

(e) special circumstances that provide for significant benefit to the local rural community, and that cannot be met through the use of existing titles.

(3) Provide for and encourage the transfer of the residential development potential of rural sites **from one place to another, as well as the rearrangement of site boundaries**. ~~to Countryside Living zones to reduce the impact of fragmentation of rural land from in-situ subdivision, as well as the rearrangement of site boundaries to:~~

~~(a) promote the productivity of rural land;~~

~~(b) manage the adverse effects of population growth across all rural areas;~~

~~(c) improve environmental outcomes associated with the protection of identified areas of high natural values;~~

~~(d) improve the management of reverse sensitivity conflicts; and~~

~~(e) avoid unplanned demand for infrastructure in remote areas, or across areas of scattered development.~~

(4) Provide for new rural lifestyle subdivision in locations and at scales and densities so as to:

(a) avoid areas that would undermine the integrity of the Rural Urban Boundary or compromise the expansion of the satellite towns of Warkworth and Pukekohe, and rural and coastal towns and villages;

(b) protect areas where natural and physical resources have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character;

(c) avoid land containing elite soil;

(d) avoid where practicable land containing prime soil;

(e) avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;

(f) maintain or enhance landscape, rural and, where relevant, coastal, character and amenity values;

(g) avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and

(h) safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

(5) **Encourage the amalgamation and transfer of rural sites to areas that can best support them.** ~~**Provide the amalgamation and transfer of rural sites to Countryside Living zones to remedy the impact of past fragmentation of rural land from in-situ subdivision.**~~

B9.5. Principal reasons for adoption

The purpose of sustainable management includes safeguarding the life-supporting capacity of natural resources now and in the future. This includes protecting the productive potential of the land to provide for present and future generations as well as ~~**significant**~~ indigenous biodiversity. It is also to maintain or enhance the character of rural areas for their contribution to regional amenity values, particularly the landscape and natural character.

Rural and coastal towns and villages, and areas zoned for countryside living, play an important role in enabling people to live, work and play in rural areas. They also can accommodate a portion of Auckland's growth.

Auckland, especially areas in Franklin, has land of high productive potential for farming classified as elite land (Land Use Capability Class 1) and prime land (Land Use Capability Classes 2 and 3). This land is mapped on the Land Use Capability maps. The priority in these areas is to maintain the potential for these high quality soils to be used for agricultural purposes, rather than activities that are not dependent on soil quality.

There are other areas of rural Auckland that support specialised horticultural production which are not on Class 1, 2 or 3 soils. These areas have other advantages such as climate, drainage, water availability or established infrastructure that are equally beneficial as soil quality. No matter what type of rural production occurs, retaining land with high productive potential for primary production provides flexibility to improve economic performance, sustainably manage land resources and enable communities to pursue sustainable lifestyles.

Significant areas of land with high productive potential have been lost to the expansion of urban areas and countryside living development. While countryside living opportunities need to be concentrated around the Rural Urban Boundary, they should also be located out of the way of any future urban expansion. As a consequence there will be a loss of some productive land. Countryside living produces a pattern of relatively small sites that are impractical for primary production due to their size and the expectations of owners and occupiers. New countryside living subdivision is directed away from elite and prime land and from other rural areas with recognised local production advantages.

The provisions of the Unitary Plan include provisions that assist in managing activities and their effects on the rural environment to retain and use its productive potential, biodiversity values, rural character and amenity values. This involves recognising that a rural lifestyle is attractive to many people so that countryside living is enabled in identified areas, while also recognising the importance of protecting the productive potential of rural land as well as its rural amenity values.

The policies seek to ensure that uses and subdivision do not undermine or significantly compromise the productive potential of Auckland's rural areas, while maintaining those qualities which the community values. The policies therefore prevent urban growth and restrict inappropriate activities from certain locations.

The subdivision policies also enable and encourage the transfer of the residential development potential **of new and existing** ~~**from**~~ sites **from one place to another, and for title boundaries to be adjusted or relocated to locations where they will more usefully enable rural development potential to be realised.** ~~**in productive rural zones to Countryside Living Zones,and for title boundaries to be amalgamated and a residential development right to be realised in Countryside Living Zones.**~~

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; **and**
    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) created by protecting, **restoring** 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:~~ **either in-situ or by transfer of titles to the Rural-Countryside Living Zone[33], through the protection or enhancement of indigenous vegetation and wetlands and/or through restorative or indigenous revegetation planting.**

~~**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[34]** Rural – Countryside Living Zones.[35]

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.

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[33] This insert from Appellant (Pegrume EIC Attachment J EB1190) but reflects evidence of intended focus

[34] Understood to be IHP version not recorded in Pegrume EIC

[35] This drafting not IHP but is Council resolved version and now agreed with the parities and supported in evidence.

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 **or enhancement** of **significant**[36] indigenous vegetation **and wetlands**; or

c) the site is created through **restorative or** 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 **or the transfer of titles** through the protection of indigenous vegetation **or wetlands** identified in the Significant Ecological Areas Overlay **or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule** ~~**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 **or restoration** 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;

[36] "significant" added by appellant and clarifies alignment with the rules (Pegrume EIC Attachment J EB1192).

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.....

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.

.....

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

(A16)	In-situ subdivision creating additional sites through protection of indigenous vegetation **or wetland** 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 **or wetland** identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.4	NC
(A?)	**In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and complying with Standard E39.6.4.4**	**RD**
(A?)	**In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and 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
(A?)	**Transferable rural sites subdivision through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and compiying with Standard E39.6.4.4**	**RD**

(A?)	**Transferable rural sites subdivision through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and not complying with Standard E39.6.4.4**	**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	NC

.....

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.

.....

E39.6.3.2. 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.[37]

.....

[37] This section appears to be inserted by the Council and is not in the IHP recommendation. Some amendments were shown in Ms Pegrume's Attachment J EB1207. These changes were not a particular focus of the hearing and should be addressed in response to the Courts directions.

Court Note:

The Court notes that the approaches to the drafting of the Standards are slightly different between the IHP version and the Council Decision version. The IHP has adopted a more aligned arrangement to fit with the activity table and grouping of like activities. The difference occurs in part by the addition of the ability to rely on SEAs fitting the identified factors rather than being confined to the mapped SEAs. Thus, we have found it challenging to indicate the integration of the Court's decision in our draft below. We anticipate that there will be a need to check and cross reference accordingly to ensure the IHP version which we rely upon is properly integrated into the AUP document. We are also aware that other changes may have occurred which are not captured in the version of the AUP we are reliant upon and this is a matter the Council will need to attend to in securing a correct and certified draft of the Plan.

E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; and in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay meeting the Significant Ecological Area factor identified in Policy B7.2.2(1)

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

1) The indigenous vegetation **or wetland** to be protected must **either** be:

   a) identified in the Significant Ecological Areas Overlay; **or**

   b) **must be assessed by a suitably qualified and experienced person (e.g. for example, ecologist) who must determine that it meets one or more of the Significant Ecological Areas factors identified in Policy B7.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas – Terrestrial Schedule. A report by that person must be prepared and must be submitted to support the application.**

2) The maximum number of sites created from the protection of an indigenous vegetation **or wetland** must comply with Table E39.6.4.4.1 **and Table E39.6.4.4.2**

Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation either identified in Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

~~the 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~~	

Areas of indigenous vegetation or wetland to be protected	Maximum number of rural residential sites that may be created
Minimum of 2.0ha	1
2.0001ha – 11.9999ha	2
12.0ha- 21.9999ha	3
22.0ha – 31.9999ha	4
32.0ha – 41.9999ha	5
42.0ha – 51.9999ha	6
52.0ha – 61.9999ha	7
62.0ha – 71.9999ha	8
72.0ha – 81.9999ha	9
82.0ha – 91.9999ha	10
92.0ha – 101.9999ha	11
102.0ha – 111.9999ha	12

Table E39.6.4.4.2 Maximum number of new sites to be created from the protection of wetland either identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Area of wetland to be protected	Maximum number of rural residential sites that may be created
Minimum 5,000m2	1
5,001m2 – 1.9999ha	2
2.001ha – 3.9999ha	3
4.001ha – 7.9999ha	4
8.0ha – 11.9999ha	5
12.0ha – 15.9999ha	6
16.0ha – 19.9999ha	7
20.0ha – 24.9999ha	8
25.0ha or more	9 plus one additional site for each 5ha of wetland above 30ha

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 **in-situ**[38] 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 **in-situ**[6] sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.

6) Any indigenous vegetation **or wetland** 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 **or wetland** to be legally protected as part of the proposed subdivision must not already be subject to legal protection.

8) Areas of indigenous vegetation **or wetland** 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.

[38] A Council amendment but useful in clarification of this provision

10) All applications must include all of the following:

a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation **or wetland** 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 planting plan for restorative planting must follow the specifications as set out in Appendix 15 Subdivision information and process that specifies any restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wetland proposed to be protected; and

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

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

a) protection of all the indigenous vegetation **or wetland** 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**~~

b) the maintenance of plantings, which must occur until the plantings have reached a sufficient maturity to be self-sustaining, and have been in the ground for at least three years for wetlands, or have reached 80 per cent canopy closure for other ecosystem types. 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 ongoing basis to ensure adequate growth; and

e) 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~~ native 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.**~~

(c) the criteria as set out in **Appendix 15 Subdivision information and process and**[39] Appendix 16 Guideline for native revegetation plantings.

[39] Amendment by Council which seems to assist in clarification of requirement – not in dispute

(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)~~

Minimum area of established native revegetation planting subject to protection	**Maximum number of new sites**
5ha	**1**
Every additional 5ha	**1**

(3) Any new **in-situ**[6] 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 ~~area of~~ existing indigenous vegetation on the site ~~used to enable the subdivision~~ **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 protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1); 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 **or wetlands** must meet all of the standards that are applicable for:

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

b) the protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) as set out in Standard E39.6.4.4; or

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

(2) 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. The application may provide for the staging of transfers of donor sites to receiver sites.[40]

(3) 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.

(4) 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.

(5) 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

[40] This is an amendment sought by appeal and we understand to be subject to an argument as to scope. It is included here as the court can see the benefit of such a provision if the parties conclude that it is within scope and can be accommodated.

following:

(a) donor sites must be abutting;

(b) one of the two donor sites must not contain .....

.....

NOTE: E39.7 and E39.8 will require relevant assessment criteria to be consequential amended to refer to correct policy references/numbering.

E39.8. Assessment – restricted discretionary activities Matters of discretion E39.8.1.

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 two per cent .....
.....

(6) in-situ subdivision creating additional sites through protection of indigenous vegetation **or wetland** identified in the Significant Ecological Areas Overlay; **in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay areas but meeting the Significant Ecological Area factors in Policy B7.2.2(1)** as set out in Standard E39.6.4.4[41]**; 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:

.....

(vi) any management plans for the ongoing protection and management of indigenous vegetation, **wetland** or ~~**revegetation**~~ **restorative** planting;

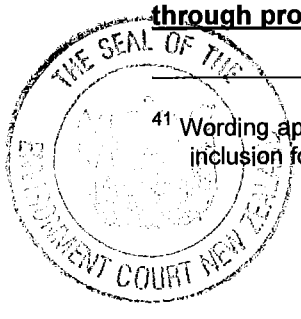
.....

(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 creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors in Policy B7.2.2(1))** as set out in Standard E39.6.4.4[9] ; **or** transferable rural sites subdivision through establishing revegetation planting: .....
.....

E39.8.2. Assessment criteria

.....

(6) in-situ subdivision creating additional sites through protection of indigenous vegetation **or wetland** identified in the Significant Ecological Areas Overlay; **in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant**



[41] Wording appearing in Pegrume Attachment which does not appear in IHP version but seems to be a practical inclusion for clarification purposes.

Ecological Areas Overlay areas but meeting the Significant Ecological Area factors in Policy B7.2.2(1) as set out in Standard E39.6.4.4[9] ; in-situ subdivision creating additional sites through establishing revegetation planting:

(a) Policies E39.3(1), (15), (16), ... **NOTE: correct policy numbering to be inserted as applicable**

(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 creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors in Policy B7.2.2(1) as set out in Standard E39.6.4.4[9] ;** transferable rural sites subdivision through establishing revegetation planting:

(a) Policies E39.3(1), (11), ... **NOTE: correct policy numbering to be inserted as applicable**

.....

Consequential changes to the H19.7 Rural-Countryside Living zone if required.

Appendix 15 Subdivision information and process

Appendix 15 Subdivision information and process

15.1. Introduction

This appendix includes additional information for subdivision resource consent applications. Refer to the Council's website for further information on how to apply for subdivision resource consent.

15.2. Vesting of Assets

1) Where vesting of any new asset is proposed as part of a subdivision, applicants are strongly encouraged to undertake a pre-application meeting with Council early in the design stages to agree parameters. The pre-application meeting will involve specialists from the relevant council controlled organisations with interests in any proposed future asset.

2) In respect of new road assets, the 'concept design' (i.e. width and general layout) of any road intended to be vested in the Council will be assessed against the relevant provisions of E38 Subdivision - Urban and E39 Subdivision - Rural and any relevant codes of practice or engineering standards applicable at the time of the subdivision consent application. If a road is approved as part of a subdivision consent, the concept design (i.e. width and general layout) is deemed appropriate for vesting. The 'detailed design and asset specifications' (i.e. pavement thickness etc.) of the road will be considered during the subsequent engineering approvals process.

15.3. Transferable rural site subdivision

15.3.1. Process

1) A Transferable Rural Site Subdivision (TRSS) is the transfer of the rural - residential development potential of rural sites from one location to the Countryside Living Zone through a subdivision process. This process may be carried out in the following ways:

(a) through the protection of indigenous vegetation or wetland **either** identified in the D9 Significant Ecological Areas Overlay **or meeting Significant Ecological Areas factors as set out in the regional policy statement,** and established revegetation planting meeting relevant criteria; or

(b) through the amalgamation of donor sites: amalgamating two existing and abutting rural zoned sites (excluding a Rural - Countryside Living Zone site), and transferring the development potential of the 'amalgamated' site to the Countryside Living Zone.

2) The new or additional site is located in Rural - Countryside Living zoned sites identified on the planning maps by the Subdivision Variation Control.

3) The process is the same if more than two donor sites are amalgamated, or if more than one block of qualifying indigenous vegetation or wetland is protected.

Table 15.3.1.1 Transferable rural site subdivision process

Step	**Transferable rural site subdivision process through the amalgamation of donor sites**	**Transferable rural site subdivision process through the protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay <u>or meeting the Significant Ecological Areas factors</u> or established revegetation planting meeting relevant criteria**
1	Identify the following: a. two donor sites abutting each other, one of which is vacant; b. a site zoned Rural - Countryside Living Zone identified as suitable as a receiver site for TRSS – see Table E39.6.5.2.1 Minimum and minimum average net site areas in E39 Subdivision - Rural	Identify the following: a. an area of indigenous vegetation or wetland (on the donor site) that: - is identified in the Significant Ecological Areas overlay; <u>- meets the Significant Ecological Areas factors set out in Policy B7.2.2(1); or</u> - is established with revegetation planting meeting relevant criteria. b. a site zoned Rural - Countryside Living Zone identified as suitable as a receiver site for TRSS – see Table E39.6.5.2.1 Minimum and minimum average net site areas in E39 Subdivision - Rural.
Step	**Transferable rural site subdivision process through the amalgamation of donor sites**	**Transferable rural site subdivision process through the protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay <u>or meeting the Significant Ecological Areas factors set out in the regional policy statement</u> or established revegetation planting meeting relevant criteria**

2	Application made to Council: a. to amalgamate two donor sites into one new site; and b. to subdivide the receiver site.	Application made to Council: a. subdivide the property containing indigenous vegetation, wetland or revegetation planting to create the residential development opportunity; and b. transfer the residential development opportunity to the receiver site in a Countryside Living Zone.
3	Gain subdivision consent approval	Gain subdivision consent approval
4	Comply with consent conditions	Comply with consent conditions
5	Apply to Land Information New Zealand to: a. issue one new certificate of title in place of the original donor sites; and b. issue two new certificates of title for the new sites created from the receiver site after the title for the donor sites has been issued.	Apply to Land Information New Zealand to: a. attach an appropriate legal protection mechanism to the donor site for the protection of the indigenous vegetation, wetland or revegetation planting; and b. issue two new certificates of title for the new sites created from the receiver site.

15.3.2. Explanation of terms

1) A donor site may be one of the following:

(a) two abutting rural sites being amalgamated;

(b) a rural site containing rural-residential development potential created from one of the following situations:

(i) a site containing indigenous vegetation or wetland identified in the D9 Significant Ecological Areas Overlay;

(ii) A site containing an indigenous vegetation area or wetland meeting the Significant Ecological Areas factors as identified in Policy B7.2.2(1) or;

(iii) a site establishing revegetation planting.

A receiver site is a Rural - Countryside Living zoned site identified on the (2)planning maps by the Subdivision Variation Control.

.....

15.5. Legal protection mechanism to protect indigenous vegetation, wetland or revegetated planting: To be IHP wording.