

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 against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

AND

IN THE MATTER of Proposed Plan Hearing Topic(s) 081 (North)

BETWEEN **Silvertown Group Ltd** (previously **East Coast Farms Ltd**)

Appellant

AND **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL

Dated 16 September 2016

To: The Registrar
Environment Court
Auckland

1. Silvertown Group Ltd (SGL), appeals against part of a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. SGL has the right to appeal the Council's decision –
 - (a) under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter SGL addressed in our submission on the

proposed plan (submission number 7068 and further submission number 138). The Council agreed to errors in the IHP recommendations version, that has resulted in unintended provisions being included in the Proposed Plan:

3. We provide further details of the reasons for SGL's appeal below.
4. SGL is not a trade competitor for the purposes of section 308D of the RMA.
5. SGL received notice of the decision on 19 August 2016.
6. **PARTS OF THE COUNCIL'S DECISION APPEALED, REASONS AND RELIEF SOUGHT:**
 - a. The Council has accepted the Panel recommendations in relation to Hearing Topic 081 (Rodney Landscape Precinct) (Appendix 1) and the IHP Recommendations version of the PAUP.
 - b. SGL generally agrees with the IHP recommendations, but the IHP Recommendations version of the PAUP contains three significant errors, which Auckland Council appears to have agreed with, and which are in conflict with the IHP's recommendations report:
 - The property referred to is 31 Curly Avenue, not 32 Curley Ave;
 - The extent of mapped SEA on 31 Curly Avenue in the IHP Recommendations version of the PAUP has not been changed from the PAUP 2013, and includes a large area of low exotic weeds. Mapping by Council and SGL proposed the amendment of the SEA to remove this exotic vegetation and this is referred to in the IHP report.
 - The boundary of the Town Centre zone on 31 Curly Avenue has been enlarged to parallel the extension of Curley Avenue through this site by agreement between Auckland Council and SGL. Part of the Town Centre zone on SGL's site has an 18 metre Height Variation Control, but the extension does not appear to have this height control applied as it should to be consistent with the balance of the Zone applying to the site. This is an error that needs to be addressed.
 - c. Hearings Panel topic number(s) relevant to the decision or part of the decision are **081 Precincts North**.
 - d. These are matters that may be able to be addressed through Council's Clause 16 process, but SGL has no certainty that this will happen.
7. The reasons for the appeal are that the Auckland Council's decisions accept errors in the IHP recommendations version that are contrary to the IHP's recommendations report undermine the integrity of the Auckland Unitary Plan, and will result in unintended planning outcomes.

8. SGL seeks the following relief:

Issue	AC Decision
SEA extent on 31 Curley Avenue, Silverdale	Correct the SEA extent to correspond with the map and report agreed to by the IHP at the Rodney Landscape Hearing (sub-precinct H, Silverdale) – Attachment 2.
18 metre height control over Town Centre zone	Extend the Height Variation Control to apply to all of the Town Centre Zone on 31 Curley Avenue, Silverdale

9. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

10. We attach the following documents to this notice:

- (a) A copy of the relevant part of the decision;
- (b) A copy of evidence related to the 081 hearing and IHP recommendation;
- (c) A list of names and addresses of persons to be served with a copy of this notice.
- (d) A copy of SGL's submission.



Signature of person authorised to sign on behalf of
Appellant

16 September 2016

Address for service of Appellant: Terra Nova Planning Ltd
 Telephone: 09 4267007
 Fax/email: markbellingham@ tnp.co.nz
 Contact person: Mark Bellingham

APPENDIX A
RELEVANT PARTS OF IHP RECOMMENDATIONS DECISIONS ON
THE PAUP (19 AUGUST 2016)

535 Rodney Landscape Precinct

1. Summary of recommendations

The Panel supports the changes proposed by Auckland Council in response to submitters but disagrees with other points raised in the submissions. It removes Sub-precinct H, Silverdale, in response to a submission.

This precinct was heard in Topic 081.

2. Precinct description

The Rodney Landscape Precinct applies to various inland towns and coastal areas on and to the north of Whangaparāoa Peninsula. The purpose of the precinct is to vary zone land use, development and subdivision standards to protect significant ecological features, including significant ecological areas, native vegetation, notable ridgelines, natural gullies and water courses, and areas of high natural character. In addition, it includes controls on siting and design of buildings to reduce their visual prominence when viewed from public places and to account for land with physical constraints. It is made up of 10 sub-precincts which are described in the precinct provisions and identified on the planning maps.

3. Key issues

The Council proposes to maintain the precinct with some amendments, as detailed below, in response to the submissions. At the hearings for the precinct evidence was received from Mark Bellingham and Jan Woodhouse on behalf of Todd Sylvester, Ashala Enterprises, Peter Snell Youth Village (New Zealand Sunday School Union), Pauline Fudge and Silvertown Group Ltd; from Chris Dickson; from Fiona Flay; and from Burnette McNicol and Melean Absolum on behalf of D A Aley Estate. Planner Mr Paul had reported on the submissions for Council with landscape and ecological support respectively from Ms Gilbert and Ms Myers.

Sub-precinct A, Wellsford is deleted because the land has no greater landscape values than the surrounding land. This was agreed prior to the hearing between Dr Bellingham and Council. That sub-precinct is replaced in the provisions by Sub-precinct A, Chenery Road. This acknowledges this coastal land can be developed at a higher density than allowed by the Residential - Large Lot Zone provisions, which would otherwise apply to it, without compromising landscape character. This action accepts the submission by Chris Dickson.

In relation to Sub-precinct C, Sandspit, discussion at the hearing confirmed for Ms Flay that the properties neighbouring her had the same zoning and that any proposal for subdivision would require resource consent consideration. Ms McNicol and Ms Absolum provided evidence in which amendments were sought to the assessment criteria for development. The Panel accepts some amendment for clarity but otherwise retains the provisions as being consistent with the objectives for the precinct.

Two further sites at the road entry or western edge of Sandspit are included in the sub-precinct. The site closest to the road entry is included as a consequential amendment to the addition of the adjoining site into the precinct. If not included it would be the only site on this part of the hillside with a different zoning. The inclusion of both these sites is because they

are part of the ridgeline above Sandspit and logically and physically form part of the sub-precinct along with other sites across this eastern side of the hill.

Sub-precinct F Coal Mine Bay is retained because it is considered by the Panel to be necessary to sufficiently protect the landscape and ecological values of these areas. This is supported by the Environment Court decision, *New Zealand Sunday School v Auckland Council (2012) EnvC 268*, and by the landscape and ecological evidence from Council. The Panel does, however, agree to some amendments to the provisions and to reduce the limit of the significant ecological area at Coal Mine Bay, based on the evidence for the submitters and for Council.

Sub-precinct H Silverdale was sought to be retained by Council, given it contains a large significant ecological area and is an area that is steep and readily visible from the south, including from the Hibiscus Coast Highway and the Silverdale Town Centre. This action is supported by the evidence of Ms Gilbert and Ms Woodhouse. Dr Bellingham, however, highlighted the small extent of the sub-precinct that covers seven properties bounded by different urban zones and lacking the landscape character and quality of vegetative cover in other areas within the precinct. In relation to the latter he pointed to the removal of the significant ecological area from part of the land, that being at 32 Curley Avenue. Further, the landscape and development context of this locality has changed in the 20 years since a local landscape precinct was placed on the site.

The Panel agrees with the evidence for the submitters and notes the local landscape values and the significant ecological area can be protected, while providing for development through the provisions of the proposed Auckland Unitary Plan Unitary Plan. The sub-precinct is therefore removed from the precinct. The appropriate zoning to then be applied to the site is Residential - Large Lot Zone in recognition of its steeper topography, proximity to commercial activities and it having some visual prominence.

The Panel notes that the purpose of the precinct is to provide for a lower intensity of subdivision than permitted in the underlying zones (Residential -Large Lot Zone and Residential - Rural and Coastal Settlement Zone) in order to protect significant landscape features. In addition, it includes controls on siting and design of buildings to reduce their visual prominence when viewed from public places. The Panel notes that these reasons for the precinct were not contested through submissions, other than in the context of a few of the ten sub-precincts.

Two consequential amendments have been made to this precinct. The first is to introduce provision for new buildings and structures accessory to pastoral farming, cropping and other non-intensive forms of land production, and additions to existing structures, up to 50m² as a permitted activity. This is to align the activity listing for this precinct with other parts of the Plan, and particularly the overlays applying to large parts of this precinct that offer the highest levels of landscape and character value protection within the Plan.

The second amendment is to remove consideration of the physical constraints of land from the precinct provisions. That matter is addressed elsewhere in the Plan, and is also covered by section 106 of the Resource Management Act 1991.

Other more minor changes are made to the provisions to improve their functionality and clarity.

4. Panel recommendations and reasons

The Panel, having had regard to the submissions, the evidence and sections 32 and 32AA of the Resource Management Act 1991, agrees that the precinct provisions as amended by Council in response to the submissions, and amended further by the deletion of Sub-precinct H Silverdale, the provision for buildings up to 50m² as a permitted activity, and by the removal of physical constraints considerations, are the most appropriate way to achieve the purpose of the precinct, the regional policy statement and the Resource Management Act 1991.

5. Reference documents

Auckland Council

[081b AK Cncl - Rodney - Precincts \(Rodney Landscape\) - \(E Paul\) - Planning](#) (26 January 2016)

[081b Ak Cncl - Rodney - Precincts \(Rodney Landscape\) - \(B Gilbert\) - Landscape - REBUTTAL](#) (28 February 2016)

[081b Ak Cncl - Rodney - Precincts \(Rodney Landscape\) - \(S Myers\) - Ecology - REBUTTAL](#) (26 February 2016)

[081 Ak Cncl - Precincts - CLOSING REMARKS – Volume 1 – Specific Precincts - Attachments A-F - Updated - 19 May 2016](#) (19 May 2016) (Attachment B, page 49-53)

[081 Ak Cncl - Precincts - CLOSING REMARKS – Volume 2 – Revised Precinct Provisions and Maps – Attachments A-E - Updated - 19 May 2016](#) (19 May 2016) (Attachment A, pages 122-129)

Ashala Enterprises Ltd and others

[081 Ashala Enterprises Ltd \(M Bellingham\) - Planning - Updated 23 Feb 2016](#) (23 February 2016)

Estate DA Aley

[081 Estate DA Aley \(Melean Absolum\) - Landscape](#) (14 February 2016)

[081 Estate DA Aley \(B Micnicol\) - Planning](#) (14 February 2016)

Other submitters

[081 Chris Dickson \(S Peake\) - Landscape](#) (12 February 2016)

[081 Fiona G Flay](#) (24 February 2016)

APPENDIX B**NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE**

<i>Name</i>	<i>Address</i>
Auckland Council	Private Bag 92300 Victoria Street West Auckland 1142 Attn: Unitary Plan Appeals Team

APPENDIX C
SUBMISSION BY SILVERTOWN GROUP LTD (PREVIOUSLY EAST COAST FARMS LTD) PLANNING LTD
ON THE PAUP

Submission to Proposed Auckland Unitary Plan:

31 Curley Ave, Silverdale

Scope of the Submission

This submission is on behalf of East Coast Farms Ltd in respect of their property at 31 Curley Avenue, Silverdale. The subject site is legally described as Allot 700 Psh Of Waiwera SO 28577, Pt Allot M153 Psh Of Waiwera SO 976, has an area of 8.7ha. The northern 4.7ha is in the Rodney Landscape sub-precinct H and the southern 4ha is in the Silverdale Town Centre zone in the PAUP (**Figure 1**).



Figure 1: Location of 31 Curley Avenue, Silverdale

The Operative Plan maps identify the site upper part of the site as Residential (Landscape Protection) and the lower part as Retail Service Zone (the same as the Pak n Save site across the river).

The Draft Unitary Plan zoned the upper part of the site Single House Zone, and the lower part of the site Town Centre. East Coast Farms supported those zonings, but sought a minor change to the northern extent of the Town Centre Zone, as the Department of Conservation wished to exchange part of the Silverdale Scenic Reserve for part of 31 Curley Ave with higher ecological values. East Coast Farms has a draft land exchange agreement with DOC, but the final boundaries of the land exchange are dependent on the outcome of the Unitary Plan.

Additionally Auckland Transport has identified Curley Ave as a collector road for development in the locality. AT has proposed a minor change to the alignment of the Curley Ave extension through the site as it currently appears in the Built Environment Indicative Road Overlay in the PAUP as notified. This has required a minor change to the northern extent of the Town Centre Zone on the site.

The submitter was surprised that the PAUP rezoned the upper part of the site as Rodney Landscape sub-precinct H with an underlying Large Lot Zone with 8000m² minimum sites as opposed to the 600 m² indicated in the draft plan. Most of this land is eminently suitable for Single House development with the additional checks and balances that could be applied by extending the Silverdale North sub-precinct B overlay and the balance would otherwise be protected under the Reserves Act as was outlined in the Draft Unitary Plan submissions.

The site has been subject to extensive planning through the Rodney District Plan 2000 process and more recently with the Draft Unitary Plan. This submission seeks to ensure that the provisions of the Unitary Plan are consistent workable for the on-going developments around the Silverdale Town Centre.

Relief Sought

1. Support the Town Centre Zone for the southern part of the site, subject to a realignment of Curley Avenue extension and a consequential change to the northern boundary of the Town Centre Zone (Points 2 & 3).
2. Realign the extension of Curley Avenue in the Built Environment Indicative Road Overlay to follow the road-line proposed by Auckland Transport. This new route follows the contour across the head of a gully and will have less adverse effects on the site and the Weiti River.
3. Realign the northern boundary of the Town Centre Zone with the new alignment of Curley Avenue, to continue the 70m band of Town Centre Zone on the northern side of the road (**Figure 3**).
4. Replace the Large Lot Rodney Landscape Sub-precinct H with the Single House Zone - Silverdale North Sub-precinct B. We submit that this is more appropriate for this locality.

The PAUP states that the purpose of the Rodney Landscape sub-precinct H is *“to provide for lower intensity subdivision than that permitted in the underlying zones in order to protect significant landscape features, including areas of ecological significance, native vegetation, notable ridge lines, natural gullies and water courses, physical constraints and areas of significant natural character.”* East Coast Farms note that this locality is not identified in the PAUP maps as having any significant landscape or natural character values, only that it is a Significant Ecological Area, and much of the SEA is not in the landscape precinct e.g. the Silverdale Scenic Reserve.

East Coast Farms submits that the Rodney Landscape Precinct is redundant for this locality as:

- The landscape precinct covers only a small part of what remains of the indigenous forest-covered Wainui Rd ridge.
- The forest cover has been cleared from the northern side of Wainui Rd and the most prominent landscape feature is the pines on the DOC Silverdale Scenic Reserve.
- The lower southern slope and western extent of the indigenous-forested slope, which is a significant part of the local natural landscape of this locality is outside of the land zoned as landscape precinct (**Figure 2**).

- Clearly the Council intends to manage any significant effects on local landscape through the framework plan and consent conditions.

An extension of the Single House Zone - Silverdale North Sub-precinct B is more appropriate than the landscape precinct proposed in the PAUP. The indigenous forest/shrubland in the proposed SEA and may need to be reassessed, so that ecological values and local landscape values can be appropriately protected and managed through the Framework Plan required for this precinct, or conditions of consent for activities at this locality.

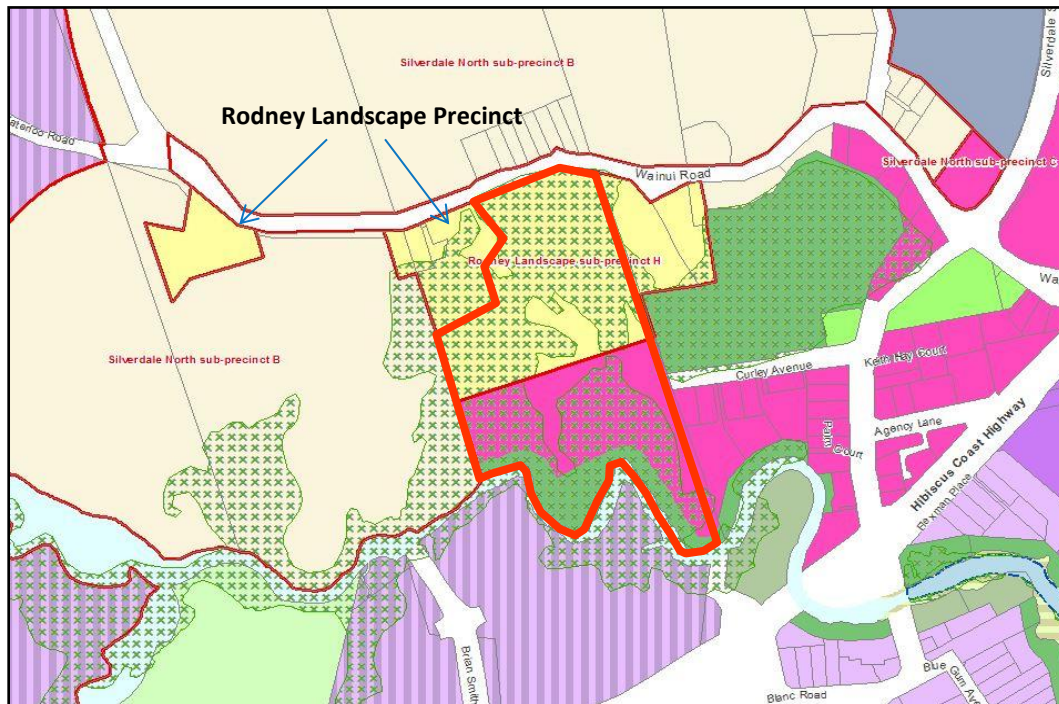


Figure 2: Wainui SEA T2180 and the extent of the Rodney Landscape Precinct

Relevant Specific Provisions

- Auckland Unitary Plan Maps for 31 Curly Avenue, Silverdale Scenic Reserve and Rodney Landscape Sub-precinct H, Silverdale
 - Change the alignment of the Curley Ave extension to the route preferred by Auckland Transport (Figure 2).
 - Extend the Town Centre Zone to a band 70m north of the realigned Curley Ave extension.
 - Replace the Public Open Space Conservation Zone over the southern part of the Silverdale Scenic Reserve with Town Centre Zone (Figure 3).

- Replace all of the Rodney Landscape Sub-precinct H with Single House Zone Silverdale North Sub-precinct B (Figure 3).

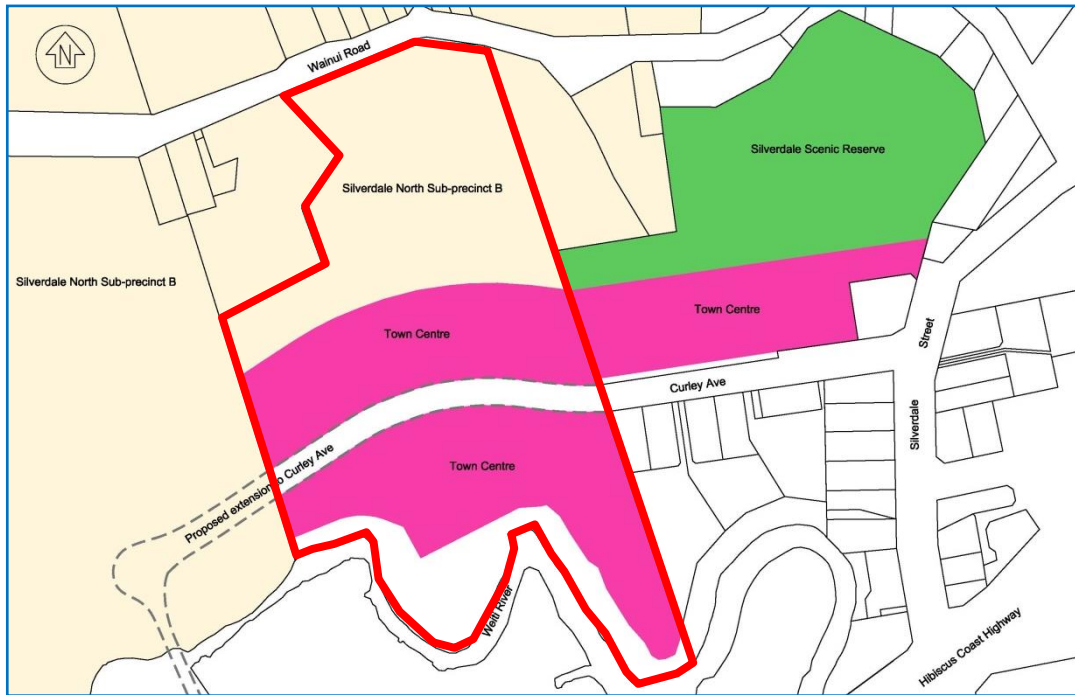


Figure 3: Proposed rezoning of 31 Curley Ave and Rodney Landscape Sub-precinct H

Section 32 Assessment of Costs and Benefits

A summary assessment of costs and benefits under S32 of the RMA has been prepared to demonstrate the robustness of the submission. This is included in **Appendix A**, and concludes that the amendments sought better provides for the well-being of future generations, and is the most sustainable use of this existing land resource.

SECTION 32 SUMMARY EVALUATION

1. SUMMARY

The PAUP proposes Rodney Landscape Sub-precinct H and Town Centre Zone over the submitter's land at 31 Curley Ave, Silverdale.

In summary the key points are:

- The Town Centre Zone is generally supported
- Replace the Public Open Space Conservation Zone over the southern part of the Silverdale Scenic Reserve with Town Centre Zone
- A minor change to the road alignment for Curley Ave and the northern boundary of the Town Centre Zone is sought;
- A change from Rodney Landscape Sub-precinct H to Single House Zone Silverdale North Sub-precinct B is sought.

2. ISSUES

The key issues are that the lower part of 31 Curley Ave, Silverdale has been zoned as Town Centre and the owner seeks Single House Zone over the remainder of the property. DOC has a draft agreement with East Coast Farms to exchange low value land in the Public Open Space Conservation Zone along Curley Ave with higher conservation land on 31 Curley Ave. This would require rezoning a strip along Curley Ave as Town Centre Zone.

The landscape values protected in the Operative Plan that may have been present 15 years ago have been degraded by on-going development around the Wainui Road ridge and the application of the Rodney Landscape Sub-precinct to this locality is no longer appropriate. Any remaining ecological and local landscape values can be protected through a framework plan and consent conditions.

3. SECTION 32 ANALYSIS

This analysis applies the statutory tests for assessing the appropriateness of the objectives / policies / rules and methods in regard to achieving the purpose of the Act. The relevant considerations are set out in **Appendix A**. A key aspect of the evaluation is that the available alternatives may be accepted (and limited to) as being those contained in the PAUP, and the relief sought by appellant (refer Section 32 (3)).

Does it assist the Council in performing its functions?

Yes. The extension of the Silverdale Town Centre can be best achieved with the minor changes to the Town Centre Zone on 31 Curley Ave and Silverdale Scenic Reserve. The change from Large Lot landscape precinct to Single House Zone (Silverdale North Sub-precinct B), will provide for an appropriate density of housing on the upper part of 31 Curley Ave, without compromising biodiversity and natural landscape at this locality.

Part 2 of the Act

The change in zoning sought over this land better meets the PAUP urban growth the environmental protection objectives and policies. This is entirely consistent with Part 2 of the Act in making the most efficient use of the land resource, while also providing for the protection of biodiversity and local landscape values.

Does it achieve and implement the objectives and policies

The land at 31 Curley Ave, Silverdale and the minor changes to the Town Centre Zone will achieve the Unitary Plan *objectives and policies*. Similarly the zoning change from Large Lot Zone Rodney Landscape Sub-precinct H to Single House Zone Silverdale North Sub-precinct B also will achieve the Unitary Plan *objectives and policies*. As the local landscape values at this locality have been degraded by the last decade of development and the landscape precinct is now inappropriate.

Efficiency and effectiveness of the provisions in achieving the objectives and policies

The minor changes to the Town Centre Zone will ensure the land is used more effectively. The change from Large Lot Zone - Rodney Landscape Sub-precinct H to Single House Zone Silverdale North Sub-precinct B will ensure more efficient use of land in the residential zoned area of Silverdale.

Benefits and costs

The benefits of the proposed changes sought will provide a well-planned urban development that is appropriate for the constraints of the site.

4. WHICH METHOD IS BETTER?

The changes proposed to the Silverdale Town Centre Zone and Single House Zone - Silverdale North Sub-precinct B better meets the UP urban growth objectives and policies in this location.

5. CONCLUSION

The above assessment of costs and benefits demonstrates that the submission seeking changes to

the Silverdale Town Centre Zone and Silverdale North Sub-precinct B at 37 Curley Ave, Silverdale, achieves the best environmental outcome (in an 'RMA' sense). These amendments will achieve the most efficient use of the existing land resource, and will also better provide for the future urban growth of Silverdale.

APPLICABLE LEGAL TESTS – SECTION 32 TESTS AND PART 2 OF THE ACT

1. Section 32(1) of the Act requires that before a council notifies a plan it must undertake an evaluation which must:

- (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *Identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
- (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

2. Section 32 (2) states:

An assessment under subsection (1)(b)(ii) must—

- (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
- (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
- (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

3. Section 32 (3) states

*If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—*

- (a) *the provisions and objectives of the amending proposal; and*
- (b) *the objectives of the existing proposal to the extent that those objectives—*
 - (i) *are relevant to the objectives of the amending proposal; and*

(ii) *would remain if the amending proposal were to take effect.*

4. Section 10 to the First Schedule to the RMA relates to decisions on provisions and matters raised in submissions and requires that:

(1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*

(2) *The decision—*

(a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—*

(i) *the provisions of the proposed statement or plan to which they relate; or*

(ii) *the matters to which they relate; and*

(ab) *must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and*

(b) *may include—*

(i) *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*

(ii) *any other matter relevant to the proposed statement or plan arising from the submissions.*

(3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*

(4) *The local authority must—*

(aaa) *have particular regard to the further evaluation undertaken in accordance with subclause (2)(ab) when making its decision; and*

(a) *give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and*

(b) *publicly notify the decision within the same time.*

5. The Eldamos¹ case established the parameters for the appropriateness test referred to in section 32. That case stated:

A. *An objective in a district plan is to be evaluated by the extent to which:*

1. *it is the most appropriate way to achieve the purpose of the Act;*
2. *it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72); and*
3. *it is in accordance with the provisions of Part 2 (s74(1)).*

¹ *Eldamos Investments Limited and others v Gisborne District Council W047/2005*

- B. *A policy, rule, or other method in a district plan is to be evaluated by whether:*
1. *it is the most appropriate way to achieve the objectives of the plan; and*
 2. *it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72):*
 3. *it is in accordance with the provisions of Part 2 (s74(1)); and*
 4. *(if a rule) it achieves the objectives and policies of the plan (Section 76(l)(b)).*

6. The relief sought by a submitter is therefore to be evaluated having regard to the formulation in the Eldamos decision.
7. Section 32 requires consideration of whether the proposed provisions are appropriate to achieve their intended purpose by reference to alternatives available and that this calls for a consideration of all options, including the option of doing nothing.
8. In the context of the submission, the available alternatives may be accepted (and limited to) as being those contained in the PAUP, and the relief sought by appellant. This is confirmed by Section 32 (3)

Part 2 of the Act

9. The ultimate test that applies to all decisions under the RMA is provided by section 5 of the RMA which states:

5. Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

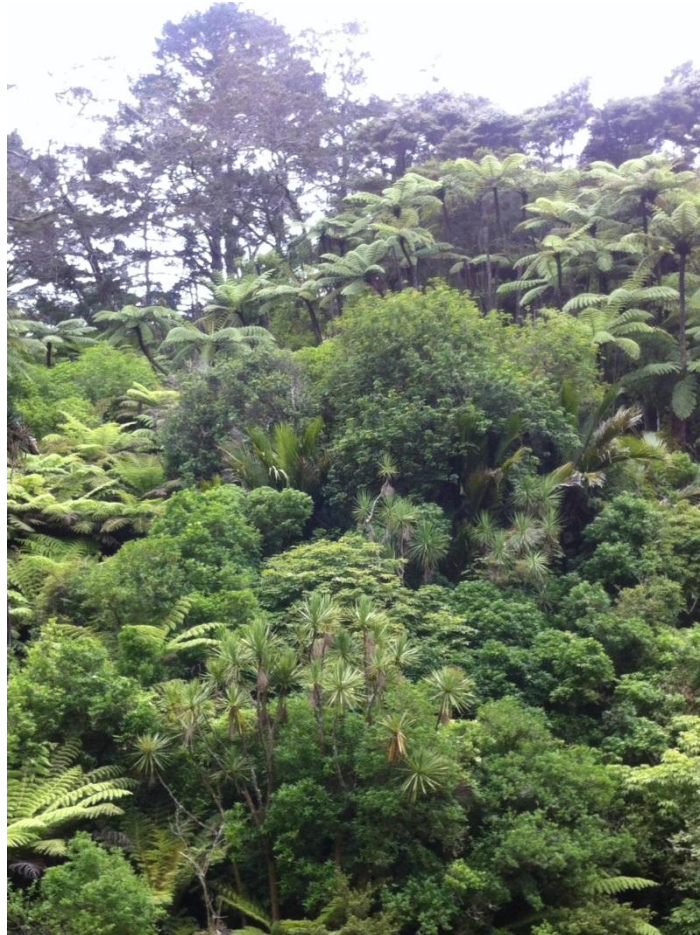
(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

10. The Courts have taken account of the “deliberate openness” of the language used in the Act and have said that Part 2 allows for an “overall broad judgement” to be made having regard to various competing considerations which might arise in any given set of circumstances.
11. Section 6 of the Act sets out matters of national importance which may or may not be relevant to a particular district plan issue but which, if relevant, decision makers under the

Act must “recognise and provide for” in making their decisions.

12. The specific matters which are relevant to the present issues in terms of section 6 include sections 6(a), (b) and (e).
13. Section 7 sets out other matters which, if relevant, decision makers need to “have particular regard to”. The specific matters of relevance to the present issue in terms of section 7 include sections 7(a), (aa), (b), (c), (d), (f), (g) and (h).
14. Section 8 requires consideration of the principles of the Treaty of Waitangi.
15. Under section 67(3)(c) of the Act the District Plan must give effect to the Regional Policy Statement (RPS).



Significant Ecological Area Assessment 31 Curley Avenue, Silverdale

For Silvertown Group Ltd

Executive Summary

The indigenous vegetation and fauna habitat at 31 Curley Avenue, Silverdale was surveyed, mapped and evaluated against the Significant Ecological Area (SEA) criteria in the Proposed Auckland Unitary Plan. Most of the indigenous and exotic vegetation on the site had been identified as SEA in the maps to the Proposed Auckland Unitary Plan.

A survey of the vegetation at 31 Curley Avenue revealed that most of the SEA mapped in the Unitary Plan is exotic shrubs and patches of grass. Indigenous forest of SEA quality covered 2.35ha meeting one of the representative sub-criteria for SEA. Most of the central part of the property mapped as SEA in the PAUP (Sept 2013), is exotic shrubland that does not meet any of the SEA criteria or sub-criteria. On the 31 Curley Avenue property (8.6697ha) 2.35ha meets the revised PAUP SEA criteria. On the 4.42ha northern part of the property that is subject to a SHA application, 1.76ha is SEA on the steeper parts of the property.

It appears that Council's SEA mapping did not include any ground-truthing, which would have revealed that much of the area is predominantly exotic vegetation that does not meet the SEA criteria in the PAUP. The vegetation map (Figure 2) in this report identifies vegetation that meets the Proposed Auckland Unitary Plan's SEA criteria.

Introduction

Auckland Council mapped most of 31 Curley Avenue, Silverdale as a Significant Ecological Area in the maps to the Proposed Auckland Unitary Plan (September 2013). The owners, East Coast Farms Ltd submitted that they did not agree with the SEA mapping and that the SEA boundaries on the property required re-evaluation. At the time Council were assessing disputed SEAs, 31 Curley Avenue was on the market, but Council's ecologists did not reassess the SEA on the site or contact the owners or agent.

In December 2015, the new owners Silvertown Group Ltd lodged a Special Housing Area application and commissioned an independent assessment of any areas of SEA value on the property. The survey was to assess the entire 8.67ha and in particular the 4.42ha that is subject of the SHA application. An ecological survey of the site was conducted in early January 2016.

Part of the Terrestrial SEA 2180 is on 31 Curley Avenue and it extends from upper reaches of Weiti River at State Highway 1 through a number of sites to Silverdale Scenic Reserve. The PAUP identifies the area as qualifying as a SEA due to it meeting the criteria¹ for:

1. Representative:
2. Threat status and rarity:

¹ 010 Heritage Hearing, 22 DECEMBER 2014 – CLOSING STATEMENT OF AUCKLAND COUNCIL, 4.3.4 BIODIVERSITY (Attachment 2)

- 3. Diversity:
- 5. Uniqueness or distinctiveness:

The sub-specific criteria are in Attachment 2. The indigenous vegetation or fauna habitat qualifies as a SEA if it meets any one of these criteria or sub-criteria.

Figure 1: Location of 31 Curley Avenue, Silverdale



Vegetation Communities

The site is in the south-east of the Rodney Ecological District and is characterised by undulating hill country underlain by Northland Allochthon siltstone, mudstone and limestone. This urban site has a mixture of exotic and indigenous vegetation types, but is predominantly low exotic vegetation, with indigenous forest vegetation across the northern and eastern boundaries, and some scattered indigenous trees and shrubs along the riparian edge of the Weiti River. The community composition is a product of species on the site at the cessation of grazing, that link small remnant indigenous forest and shrubland. The following four vegetation communities were identified on the site and the community types reflect the broad vegetation associations across this part of the district.

Type	Community	Key species	SEA Criteria
1	Exotic shrubland and grassland	English honeysuckle-gorse-Chinese privet-blackberry/ Yorkshire fog-buttercup-wild carrot-kikuyu	Does not meet any SEA criteria
2	Kanuka shrubland	Kanuka/ mapou-mahoe-silver fern-hangehange	Possibly representative (does not meet any other SEA criteria)
2a	Kanuka-totara forest	Totara/kanuka/ mapou-mahoe-silver fern-hangehange-totara	Representative (does not meet any other SEA criteria)
3	Totara-tanekaha forest	Totara-tanekaha/ mapou-mahoe-silver fern-hangehange-totara	Representative (does not meet any other SEA criteria)
4	Totara-tanekaha & mature broadleaf forest	Totara-tanekaha/ puriri-karaka-kohekohe-tarairi sub-canopy	Representative (does not meet any other SEA criteria)

The totara-tanekaha, totara-tanekaha & mature broadleaf forest and kanuka-totara-tanekaha forest communities are on the ridges, with a small area of tall kanuka shrubland in the north-eastern stream course.

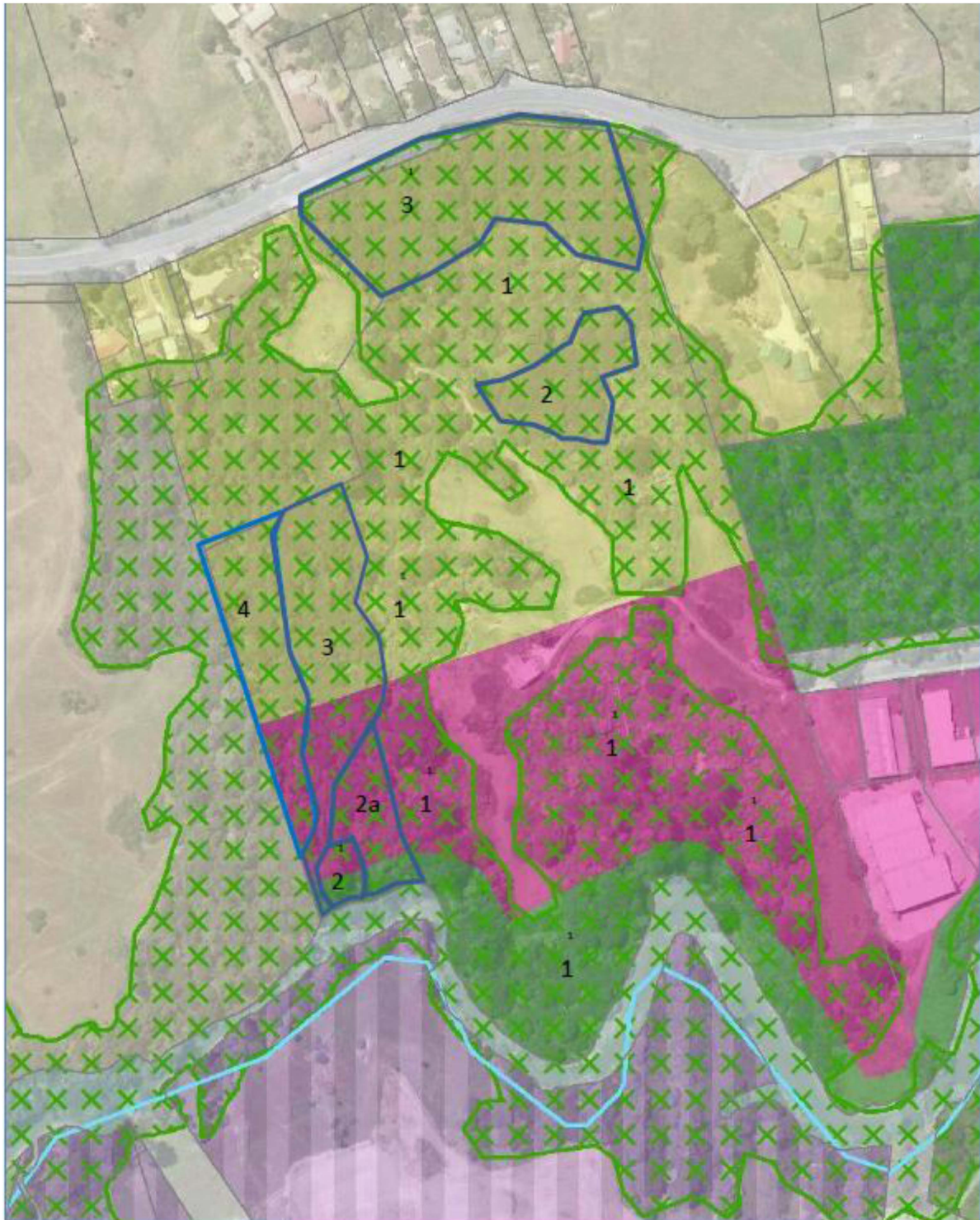
The remainder of the property is covered in exotic shrubland and grassland (vegetation type 1), with scattered kanuka and pines trees. This exotic vegetation covers most of the central portion of the property, the southern area and riparian area adjacent to the Weiti River and the eastern ridge. None of this area meets any of the SEA criteria.

A number of indigenous bird species were recorded (tui, grey warbler, fantail and silvereye). And they occurred in forest types 2 – 4 at low densities. None of these species are ‘at risk or threatened’².

The field survey revealed that Council’s mapping pre-2013 did not appear to have included any ground-truthing of this SEA, and much of the SEA area on 31 Curley Avenue was exotic shrub and grassland vegetation.

² Holdaway, R.J.; Wisser, S.K.; Williams, P.A. 2012. Status assessment of New Zealand’s naturally uncommon ecosystems. Conservation Biology 26: 619–629. Attachment 2

Fig 2: Vegetation Types on 31 Curley Avenue, Silverdale (Note type 1 is not SEA)



Key

	Significant Ecological Area (PAUP 2013)
	Reassessed SEA areas (this report)
	Large lot zone
	Town centre zone
	Public Open space zone

The reassessment of SEA shows that the 31 Curley Avenue property is 8.6697ha and 2.35ha meets the revised PAUP SEA criteria.

The 4.42ha northern part of the property that is subject to a SHA application has 1.76ha of SEA.

The SEA vegetation is confined to steep ridges on the northern and eastern slopes and a gully in the north-east of the property. The SEA areas appear to be on areas that were too steep to be grazed in the past and where indigenous vegetation has revegetated these steeper areas. Only the Totara-tanekaha & mature broadleaf forest (Type 4) on the eastern boundary appears to be original forest cover.

Summary

1. The indigenous vegetation on the northern and eastern ridges of 31 Curley Avenue, Silverdale has been assessed as meeting the Unitary Plan SEA criteria.
2. Most of the central part of the property mapped as SEA in the PAUP (Sept 2013), is exotic shrubland that does not meet any of the SEA criteria or sub-criteria.
3. On the 31 Curley Avenue property is 8.6697ha and 2.35ha meets the revised PAUP SEA criteria.
4. The 4.42ha northern part of the property that is subject to a SHA application has 1.76ha of SEA on steeper parts of the property.

A handwritten signature in blue ink, appearing to read "Mark Bellingham".

Dr Mark Bellingham
Senior Planner & Ecologist
21st January 2016

Attachment 1

- **Representative:**

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 extent¹ of each of Auckland’s original ecosystem types² 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
- **Threat status and rarity:**
 - i. 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 ecosystems³)
 - ii. 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 assessed as having a regional threatened conservation status including Regionally Critical, Endangered and Vulnerable and Serious and Gradual Decline
 - iii. Is indigenous vegetation that occurs in Land Environments New Zealand Category IV where less than 20% remains
 - iv. Is any indigenous vegetation or habitat of indigenous fauna that occurs within an indigenous wetland or dune ecosystem v. Is a habitat that supports an occurrence of a plant, animal or fungi that is locally rare
OR has been assessed by the Department of Conservation and determined to have a national conservation status of Naturally Uncommon, Range Restricted or Relict
- **Diversity:**
 - i. Is habitat for a plant, animal or fungi that is endemic to the Auckland region (i.e., not found anywhere else)
 - ii. 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
 - iii. 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)
 - iv. Is a habitat that supports occurrences of a plant, animal or fungi that is the type locality for that taxon
 - v. Is important as an intact sequence or outstanding condition in the region
 - vi. 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
 - vii. Is a habitat that supports occurrences of a plant, animal or fungi that are at (or near) their national distributional limit
- **Uniqueness or distinctiveness:**
 - i. 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

- ii. 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 an area identified as significant under the 'threat status and rarity' or 'uniqueness' criteria. 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
- iii. 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
- iv. Is a site which makes an important contribution to the resilience and ecological integrity of surrounding areas