

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council

Hearing topic 11

Rural environment

July 2016

Report to Auckland Council - Hearing topic 011 Rural environment

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Hearing topic overview

1.1. Topic description

Topic 011 addresses the regional policy statement plan provisions of the proposed Auckland Unitary Plan relating to:

| Topic | Proposed Auckland Unitary Plan reference | Independent Hearings Panel reference |
|-----------------------------------|---|---|
| Regional policy statement - Rural | B.8 Sustainably Managing our Rural Environment | B9 Rural environment |

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

The Panel recommends the following provisions for the rural section (B9) of the regional policy statement;

- i. The contribution that the rural areas make to the wider economic productivity of, and food supply for, Auckland and New Zealand is more explicitly recognised in the objectives and policies.
- ii. In enabling rural production activities, landscape and biodiversity values, in addition to character and amenity values, are to be maintained.
- iii. Strengthening and making clearer the provisions relating to reverse sensitivity as part of better enabling rural production.
- iv. That while the protection of land containing elite soils from inappropriate subdivision, use and development is confirmed as notified, land containing prime soils are not treated the same as elite soil, but protected where it is practicable to do so.

- v. Subdivision in rural zones is provided for to a greater extent than in the proposed Auckland Unitary Plan as indicated in the Panel's Interim Guidance on topic 011 dated 10 June 2015.

1.3. Overview

There were a considerable number of submissions lodged and evidence presented on this topic. In broad terms there were two groups of submitters: those seeking greater flexibility in the range of activities and in particular subdivision that could occur in the rural areas; and those seeking to restrict these activities to protect rural character, amenity, landscape and biodiversity values.

This report acknowledges that many of the issues between the Council and submitters were resolved through mediation and through the hearing process. The Panel supports the agreements reached. This report focuses on those issues that were not agreed, and these are addressed in sections 2-4 of this report.

The Panel notes the key strategic direction for rural production in the Auckland Plan, which is to "Keep Rural Auckland Productive, Protected and Environmentally Sound". This strategic direction is supported by two key directives related to rural production:

DIRECTIVE 9.1 - Ensure that the resources and production systems that underpin working rural land are protected, maintained and improved, and

DIRECTIVE 9.2 - Develop a regulatory framework that accommodates and encourages productive rural uses, changing activities and associated enterprises.

The Panel has had regard to these strategic directions in making its recommendations and considers that its recommendations achieve an appropriate balance between enabling rural production and rural activities while at the same time protecting rural character, amenity, landscape and biodiversity values.

The Panel's findings are summarised below.

The Panel recommends that the regional policy statement provisions recognise that rural areas make a considerable contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand. This is a vital function and accordingly rural production activities need to be enabled. The regional policy statement provisions make this clear.

While rural productive activities are enabled, they should be undertaken in a way that maintains rural character and amenity values, as well as landscape, ecosystem services and biodiversity values. Landscape and biodiversity values were not explicitly addressed in the proposed Auckland Unitary Plan rural provisions, and the Panel agrees with those submitters, notably the Environmental Defence Society and the Royal Forest and Bird Protection Society, that they should be. The objectives and policies have been amended accordingly.

To enable rural production, while at the same time enabling a wider range of activities without unduly affecting those rural production activities, the issue of reverse sensitivity needs to be addressed. The Panel has addressed this in its recommended provisions.

A significant policy direction in the proposed Auckland Unitary Plan was the protection of elite and prime soils. The Panel heard a considerable amount of evidence on this matter, and it is addressed in more detail below. In summary the Panel recommends the protection of land containing elite soils from inappropriate subdivision, use and development, but that land containing prime soils not be treated in the same way. Due to the broad definition of prime soils in the proposed Auckland Unitary Plan and their wide geographic distribution across the region, the Panel does not find the level of protection as notified is justified or appropriate. The Panel, in accepting the versatility of this soil type, recommends that it be protected where it is practicable to do so.

Probably the most controversial aspect of the rural provisions was subdivision. In terms of the proposed Auckland Unitary Plan as notified subdivision was very restrictive, with many submitters saying it was tantamount to a prohibition. In response to hearing the rural subdivision provisions, the Panel issued interim guidance stating that subdivision needed to be provided for to a greater extent than in the proposed Auckland Unitary Plan. The Panel recommends that the regional policy statement set out the purposes for which subdivision is to be enabled. The Panel's recommended rural subdivision provisions (objectives, policies and rules) are set out in the Panel's Report to Auckland Council – Hearing topic 064 Rural subdivision July 2016.

In addition to rural productive purposes, the Panel notes that there is a clear interrelationship between the provisions in this chapter and the regional policy statement provisions relating to enabling quality urban growth (Chapter B2 in the Plan and Topic 13 –Urban Growth). In this regard the Panel has recommended strengthening the notified provisions to avoid urbanisation of the rural areas. In this respect the Rural Urban Boundary, together with the proposed Auckland Unitary Plan provisions to avoid urbanisation outside of the Rural Urban Boundary, will provide certainty for landowners both inside and outside of the Rural Urban Boundary as to which land can be urbanised in the future and which land will remain available for rural production activities.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed in full below. See section 6 Reference documents.

1. Contribution of rural areas to Auckland and New Zealand

1.1. Statement of issue

The contribution that the rural areas make to the wider economic productivity of, and food supply for, Auckland and New Zealand needs to be more explicitly recognised in the objectives and policies. However at the same time issues of rural character, amenity, landscape, ecosystem services and biodiversity need to be maintained and issues of reverse sensitivity addressed.

1.2. Panel recommendation and reasons

1.2.1. Contribution of rural areas

As set out above, the Panel, the Council and most submitters support the regional policy statement provisions recognising that rural areas make a considerable contribution to the wider economic productivity of, and food supply for, Auckland and New Zealand. These important functions need to be enabled. The recommended regional policy statement provisions do this.

Food supply and food security was a particular issue for a number of submitters including Horticulture New Zealand and the Pukekohe Growers Association, E and R Kovati and Beacon Pathways. In response the Council proposed the following amended wording in its closing statement:

Rural areas are a significant contributor to the wider economic productivity of, and security of food supply for, Auckland and New Zealand.

The Panel agrees that rural areas are a significant contributor to the food supply for Auckland and New Zealand. However, in the Auckland and New Zealand context the Panel considers that food supply was more of an issue than food security *per se*. This conclusion is reflected in the Panel's recommendations.

While rural productive activities are to be enabled, this is to be undertaken in a way that maintains rural character and amenity values, as well as landscape, ecosystem services and biodiversity values. Landscape and biodiversity values were not explicitly addressed in the proposed Auckland Unitary Plan rural provisions, and the Panel agrees with those submitters, notably the Environmental Defence Society and the Royal Forest and Bird Protection Society, that they should be.

The Panel has retained but substantially redrafted the policies to be more enabling of a wider range of activities in the rural areas provided any adverse effects are avoided, remedied or mitigated. This is in response to a number of submissions seeking a more enabling rural regime including Hugh Green Limited, Better Living, Terra Nova and a number of other submitters representing rural interests and communities. However the Panel does not consider it is the role of the Auckland Unitary Plan to “provide for the economic development potential of rural areas to be realised” (as stated in policy 1 in the Council's closing statement) but it is appropriate for the Plan to enable economic development while addressing any adverse effects.

As a result of this more enabling policy, the Panel saw no reasons or need to specify activities such as tourism and visitor activities that have a clear connection to rural resources. These, and other activities, would be enabled provided they did not constitute urbanisation and provided the adverse effects were avoided, remedied or mitigated. The policy would enable (for example) a range of work at home and entrepreneurial options not based on rural production but which have no impact on rural values.

The Panel also notes that the Auckland Plan has a wide definition of “rural production” which is reflected in the “target” for Direction 9 as follows:

Increase the value added to the Auckland Economy by rural sectors (including rural production, complementary rural enterprises, tourism and visitor experiences in rural areas) by 50% by 2040.

The Panel considers that the policies as redrafted better address the objectives, being more open to a range of activities in the rural areas provided that any adverse effects on rural character and amenity, landscape, ecosystem services and biodiversity values are appropriately addressed.

1.2.2. Reverse sensitivity

Reverse sensitivity issues were raised by a number of submitters including Horticulture New Zealand, Pukekohe Vegetable Growers Association, Federated Farmers and all of the quarry extractors/operators, and by the Council. The Panel considers that as part of a more enabling planning framework, reverse sensitivity is a significant matter to be addressed.

The Panel has drafted policy B9.2.2(2) to make it clear how reverse sensitivity effects are to be minimised. This includes:

- i. preventing sensitive activities such as countryside living from establishing in areas where rural production activities could be adversely affected;
- ii. requiring sensitive activities (such as countryside living) to adopt onsite methods to avoid reverse sensitivity effects on rural production activities; and
- iii. avoiding subdivision and development that would result in incompatible uses or sensitive activities (again such as countryside living) in areas containing mineral resources identified in the plan for future extraction.

The Panel finds the provisions as recommended better reflect the Auckland Plan and in section 32 and section 32AA terms are the most appropriate to meet the purpose of the Resource Management Act 1991.

2. The protection of land containing elite and prime soils

2.1. Statement of issue

There was considerable debate (through submissions and evidence) about the extent to which land containing elite and prime soils should be protected from inappropriate subdivision, use and development.

2.2. Panel recommendation and reasons

A number of issues about the provisions relating to land containing elite and prime soils were raised during the hearing, both in the evidence of submitters and by the Panel in questions to submitters and their witnesses. These issues included the extent to which there was a need to protect land containing elite and prime soils and whether there should be a distinction between the degree of protection afforded to elite and prime soils - i.e. should they be treated the same, and whether the focus should be on versatility, reflected in the use of the term versatile soils.

2.2.1. Terminology

It was clear that the Council strongly supported the use of the terms elite land and prime land as defined in the proposed Auckland Unitary Plan and that elite and prime land be treated the same. Based on all of the submissions and evidence heard, and as part of the overall approach to a more enabling rural production/activity framework, the Panel supports the protection of elite soil, and where practicable prime soil, from inappropriate subdivision, use and development. That is the Panel does not recommend that elite and prime soils should be afforded the same level of protection.

The Panel sets out below the terms elite and prime land as defined in the Unitary Plan as recommended by the Panel. This is to demonstrate the difference between the two, and in particular the broad definition of prime land. The Panel also refers to the map of prime land provided by the Council and the extent of its spatial distribution.

Land containing elite soil

Land classified as Land Use Capability Class 1 (LUC1). This land is the most highly versatile and productive land in Auckland. It is:

- well-drained, friable, and has well-structured soils;
- flat or gently undulating; and
- capable of continuous cultivation.

Includes:

- LUC1 land as mapped by the New Zealand Land Resource Inventory (NZLRI);
- other lands identified as LUC1 by more detailed site mapping;
- land with other unique location or climatic features, such as the frost-free slopes of Bombay Hill;
- Bombay clay loam;
- Patumahoe clay loam;
- Patumahoe sandy clay loam; and
- Whatitiri soils.

Land containing prime soil

Land identified as land use capability classes two and three (LUC2, LUC3) with slight to moderate physical limitations for arable use.

Factors contributing to this classification are:

- readily available water;
- favourable climate;
- favourable topography;
- good drainage; and
- versatile soils easily adapted to a wide range of agricultural uses.

2.2.2. Extent of elite and prime soil

The value of elite and prime soil (LUC classes 1 to 3) for rural production purposes was set out in the evidence from Dr Curran-Cournane, the Council's expert soil scientist. The Panel notes that Dr Curran-Cournane was the only soil scientist heard by the Panel on this issue. Her evidence was supported by the evidence on behalf of Horticulture New Zealand and the Pukekohe Vegetable Growers Association. However the Panel did hear evidence from other submitters including Better Living Landscapes, J and B Withers, B and J Phillips, Chin Hill Farms and others about the provisions relating to the production potential of land and subdivision (which is addressed in more detail in the next section). None sought to delete references to elite and prime land, but submitters did seek a distinction to be made between the provisions for elite and prime land/soil.

The Panel notes that Mr Littlejohn in his legal submissions on behalf of Better Living Landscapes Limited and others, who were the principal opponents to the use of the terms elite and prime land in the regional policy statement provisions, stated in paragraph 16 B, that

The Submitters no longer take issue with the use of the phrase "elite and prime land". Their concern here was that not all LUC 2 & 3 land is capable of productive use despite being mapped as such. Their proposed alternative phrase "land of high productive potential" was simply borrowed from the Explanation to the Part 8.2 provisions. Having reflected on the definitions of the terms "Elite land" and "Prime land" in Part 4 proposed Auckland Unitary Plan, and the way in which the policy is implemented (see Part 3.H5.2.3.3.4c) they are content that a qualitative analysis (in the form of a LUC soil assessment) will determine whether or not any particular parcel of land is able to be used for non-rural activities.

The Council's position was that there should be no distinction between the degree of protection afforded to elite and prime soil in the south and the north of the Auckland region. The Council considered that equal protection should be afforded to this resource across the region and that the provisions relating to land with high productive potential proposed by Mr Cross, the Council's expert planner, provided the most appropriate regional strategic policy approach to this issue.

As outlined above, the only expert scientific evidence before the Panel about the inherent qualities of elite and prime soil and its importance in the Auckland context was from Dr Curran-Cournane. Her evidence supported the protection of elite and prime soil from

inappropriate subdivision, use and development across the region. The Council in its legal submissions, and as was set out by Dr Curran-Cournanein her evidence, established that elite and prime soil is a finite, non-renewable resource and that it is the inherent qualities of this soil that are important and not the current use.

Dr Curran-Cournane's evidence also established that 28 per cent of Auckland's land contains prime soils and that 23 per cent of Auckland's land containing prime soil is located in the former Rodney District in the north of the region. She noted the presence of horticultural ventures on land containing prime soil in the former Rodney District, notably in Matakana, Ōmaha and Warkworth. While there is a particular emphasis on vegetable growing in the south of the region, in answer to questions from the Panel, Mr Keenan of Horticulture New Zealand confirmed that areas in the north are still very productive. In this respect Mr Keenan referred to a number of places including Ōmaha, Waimauku and areas around the top of the harbour where strawberries are grown.

It was the Council's view that answers to questions of the Horticulture New Zealand witnesses, including Mr Keenan, Mr Stuart Ford (economist) and Mr Bharat Jivan (grower), supported the proposition that Auckland's elite and prime soil resource is not readily substitutable and should be protected throughout the region. In light of this evidence, and against the background of increased population projections for Auckland over the next 30 years, the Council considered there could be no reason for promulgating different regional policy statement provisions for prime soil in the south and the north of the region.

Several submitters, including Ms Pegrume on behalf of Better Living and Mr David Mason, considered that the rural provisions placed too much emphasis on the importance of rural production activities and the protection of Auckland's elite and prime soils. They suggested that most of the elite and prime soil with high productive potential is located in South Auckland with some small clusters elsewhere and that all LUC Class 3 land should not be considered potentially highly productive.

Mr Jarvis, a planner with previous experience at the Auckland Regional Council, indicated in evidence for Topic 013 – Urban Growth (for Frank Reynolds) that prime soil was ubiquitous around the metropolitan boundary, particularly in the south, and avoiding urban development on prime soils to provide for growth was not possible (evidence in chief 30 November 2014).

The Panel notes that in answer to a question about the value of LUC class 3 land, Mr Keenan (Horticulture New Zealand's Manager Natural Resources and Environment), noted that in his seven years' working with 10 growers in Auckland his experience is that they use all three classes of land (LUC classes 1 to 3).

The Panel accepts the evidence that the elite soil, in Pukekohe at least, is non-substitutable is limited in its spatial extent and should be protected for primary production purposes. In this respect the Panel has recommended an objective that elite soil is *protected* through management practices to maintain its capability, flexibility and accessibility for primary production

2.2.3. Protection of and differentiation between elite and prime soil

The Panel is less convinced on the evidence about the need to protect prime soil to the same extent as elite. The Plan definition of "land containing prime soil" is broad, its spatial extent is reasonably widespread across the region and, while clearly 'good' land, it is not

non-substitutable to the same extent as elite soil. It is the Panel's view that if prime soils are protected in the same way as elite soil this has the potential to undermine the broader enabling rural production framework by restricting or limiting a range of related or complementary activities on prime soils.

The Environment Court has traversed the issue of the extent that soils should be protected from urban uses for rural production under the Resource Management Act 1991 in a number of cases.¹ The principles that the Panel has applied, consistent with these decisions and the provisions in the Resource Management Act 1991, are that soil is a resource that must be considered under both sections 5 and 7 and in relation to the needs of both present and future generations. The protection of high-quality soils as a finite resource is an important consideration, but the protection of productive land from urban uses is not a matter of national importance. Section 5(2)(b) of the Resource Management Act 1991 is not to be taken as meaning that land containing soil of good quality is effectively unavailable for any use other than primary production in any circumstances, irrespective of its location, size and features.

The Panel is aware that following the decision in *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd*², the use of the word “avoid” has to be carefully considered. Policies in the regional policy statement on urban growth, including policy B2.2.2(2)(g), are meant to provide a high bar for the use of elite soil for urban uses, but not to avoid its use in all circumstances. An example of the application of this policy is the Panel's recommendation to include the area of land on the Pukaki Peninsula at Puhinui inside the rural urban boundary and zone it Future Urban despite the loss of 27ha of elite soils and a further 25ha of prime soils. This is based on the significance of the area adjacent to the Airport and Wiri for Business uses being greater than its significance for the ability to sustain food production.

For the reasons set out above the Panel does not consider prime soil requires the same level of protection as elite soil. Nonetheless prime soils should be managed to enable them to be used for productive purposes where this is practicable. In this respect the objective for prime soil has been drafted to require the *management* (but not protection) of its capability, flexibility and accessibility for primary production.

Overall, in section 32 and 32AA terms the Panel is satisfied that elite soil needs to be protected as set out above. It is the Panel's view that prime soil does not need to be protected to the same extent as elite soil. This is due to:

- i. The broad definition of “land containing prime soil” in the Plan which includes LUC 2 and 3 land which is not always highly productive;
- ii. that prime soils are reasonably extensive in the region; and
- iii. prime soil has a wide spatial distribution (see Council's supplementary Evidence - Attachment 2 - Soil Maps).

¹ See for example: *Becmead Investments Limited v Christchurch City Council* A088/96 2 ELRNZ 368; *Canterbury Regional Council v Selwyn District Council & Tucker* W142/96 2 ELRNZ 395; and *Gargiulo v Christchurch City Council* C137/2000.

² [2014] NZSC 38; [2014] 1 NZLR 593 at paragraphs [88]–[91] of the decision.

The Panel is also of the view that to protect prime and elite soils in the same way would likely undermine the policy intent of enabling rural activities, particularly those activities supporting primary rural production. Protecting prime soils where this is practicable is the appropriate resource management outcome given the factors set out above.

Again in section 32 and section 32AA terms an objective of managing this soil resource is appropriate to achieve the resource management issue of enabling primary production, enabling a range of rural activities while maintaining other rural values.

The Panel also considers that the approach taken by the Panel satisfies the submissions raised by a number of parties, including Chin Hill Farms, Terra Nova Limited, Better Living Landscapes, who have sought a more enabling and appropriate set of objectives and policies for the rural areas. The Resource Management Act 1991 was amended in 2013 to require the consideration of how policies may affect the provision or reduction, of economic growth and employment by the identification and assessment of the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of any planning provisions (section 32(2)(a)). The Panel referred the Council to a report from Market Economics undertaken for Manukau City Council in June 2005 entitled “Mangere-Puhinui Rural Zone Review – Horticultural Land Use Viability” that concluded that the 15 ha of Class 1 land did not have to be urbanised. However the “cost” of not allowing it to be urbanised would have been very high in terms of:

- An urban business use being estimated to provide 230 x more jobs than intensive horticulture
- An urban business use being estimated to provide 613 x the economic output of intensive horticulture.

2.2.4. Versatility

Based on the evidence of Council, it is clear that elite and prime soil (LUC Classes 1-3) is versatile land. See the definitions above from the proposed Auckland Unitary Plan), and Table 1 of Dr Curran-Cournane's evidence in chief entitled *Increasing limitations to use and decreasing versatility of use from LUC Classes 1-8*. The Council therefore considered that a change in terminology would serve no purpose and the Panel agrees.

3. Rural subdivision

3.1. Statement of issue

The proposed Auckland Unitary Plan as notified provided very limited opportunity for rural subdivision. This was supported by a number of submitters who sought to limit further fragmentation of rural land to protect or avoid the further degradation of values such as landscapes, natural character and biodiversity. However many submitters sought greater subdivision opportunities ranging from very flexible countryside living-style subdivisions to an ability to create or restore natural environments in exchange for a subdivision right.

3.2. Panel recommendation and reasons

The Panel's recommendation is that subdivision in rural zones needs to be provided for to a greater extent than in the notified proposed Auckland Unitary Plan as indicated in the

Panel's Interim Guidance dated 10 June 2015. The details of the rural subdivision rules are contained in the Panel's Report to Auckland Council – Hearing topic 064 Subdivision - rural July 2016.

A number of submitters in their submissions to the Panel suggested that the Council's strategic policy approach to subdivision in the rural areas was tantamount to a prohibition on subdivision. This issue was raised in the outline of submissions on behalf of Man O War Farms Limited and by the legal submissions of counsel on behalf for J and B Withers and B and J Phillips, Omaha Park Limited, Chin Hill Farms Limited Better Living Landscapes and many others.

The Council disagreed that the provisions effectively prohibit rural subdivision. It was the Council position that the provisions provided targeted opportunities for rural subdivision. The Council submitted that the provisions set out a range of situations where new subdivision for purposes other than countryside living would be enabled. With regard to countryside living, while the policy intention was that this should be avoided on elite and prime soils, Mr Cross's evidence in rebuttal and the Council's legal submissions claimed there were more countryside subdivision opportunities available to rural land owners on land that did not contain elite or prime soil than submitters suggested.

In-situ resource consent countryside living subdivision opportunities were enabled through transferable site subdivision. The Panel addresses the transfer of titles in greater detail in the Panel's Report to Auckland Council – Hearing topic 064 Rural subdivision July 2016. Landowners have the option of purchasing a title from a land owner in another location (depending on the final form of the district plan rules that will give effect to these regional policy statement provisions). Subdivision opportunities involving the rearrangement of site boundaries are also provided for.

The Panel, after hearing the rural regional policy statement submissions and evidence from the Council and other submitters, issued interim guidance on rural subdivisions. The essence of that guidance is summarised below.

- i. Subdivision in rural zones should be provided for to a greater extent. It may be discouraged or constrained but should not be effectively prevented. There should be no requirement to use existing rural sites rather than create new ones.
- ii. The productive potential of elite land [soil] should not be undermined.
- iii. Subdivision should provide resilience to effects of natural hazards.
- iv. Provision for rural subdivision should enable protection, rehabilitation or enhancement of significant indigenous biodiversity through subdivision in appropriate locations, subject to evidence that it will produce significant environmental benefits, and with cost-effective monitoring.
- v. Provision for subdivision for rural lifestyle purposes should be enabled subject to constraints on location, scale and density which:
 - a. avoid areas that would undermine the integrity of the Rural Urban Boundary or compromise the expansion of identified towns and villages;

- b. protect areas of identified significant ecological, landscape and natural character values;
- c. avoid elite land [soil];
- d. avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;
- e. maintain or enhance landscape, rural character and amenity values;
- f. avoid the potential for reverse sensitivity effects that could hinder the continued operation or growth of existing rural activities, or the establishment of new rural activities; and
- g. safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.

This guidance was used by the Council to present amended subdivision provisions at hearing topic 064 Rural subdivision. Submitters also suggested amended subdivision provisions as well as providing comments on the Council provisions. These are set out in the Panel's Report to Auckland Council – Hearing topic 064 Subdivision - rural July 2016

The Panel recommends amended objectives and policies in the regional policy statement that reflect the guidance summarised above. The amended provisions seek to enable subdivision of rural land to:

- i. create parks and reserves, including esplanade reserves;
- ii. establish and operate infrastructure,
- iii. enable rural production,
- iv. protect and enhance indigenous biodiversity and degraded rural land,
- v. provide for marae, papakāinga, urupā and other activities that support Māori relationships with their land where this land is managed by the TeTure Whenua Māori Land Act 1993; and to provide for significant benefit to the local rural community and that cannot be met through the use of existing titles.

The provisions also provide for:

- i. the transfer of the residential development potential of rural sites from one place to another, as well as the rearrangement of site boundaries; and
- ii. countryside living in locations and at scales and densities as set out in the interim guidance summarised in v, a-g above.

Objective B9.4.1(3) and Policy B9.4.2(1) provide for the protection and enhancement of indigenous biodiversity and degraded rural land by creating a regional policy framework for the district plan rural subdivision rules for in situ subdivision (E39.6.4.5). The productivity of rural areas relies on the eco-system services that natural systems provide, including forming soil and assimilating contaminants. Leveraging off subdivision opportunities provides the opportunity to restore degraded rural ecosystems.

In terms of the minimum 5 ha area of replanting per additional title (Table E39.6.4.5.1), this area was incorporated from the operative Auckland Council District Plan – Rodney Section. The Panel did not receive specific expert evidence on the appropriateness of 5 ha as a

minimum and it may be that this needs to be revised in the future to ensure that the objectives, policies and rules are achieving the intended environmental benefits of enhancement subdivision, that have been endorsed the courts as discussed below.

In *Di Andre Estates Limited v Rodney District Council*³ the Environment Court found in favour of subdivision involving land restoration after also considering the amenity effects of additional houses in the coastal environment. The Court indicated that if the district plan did not provide for in situ enhancement rural residential subdivision it should be amended to do so because this method clearly promoted the purpose of Part 2 of the Act. In *Omaha Park v Rodney District Council*⁴ a different division of the Environment Court observed that the Di Andre planting was progressing well.

When questioned by the Panel, Council witnesses Mr Brown and Dr Seabrook-Davidson agreed that the restoration activities taking place at Church Bay on Waiheke Island promoted the sustainable management of degraded rural land resources. Mr Myles Goodwin gave evidence to the same effect in relation to restoration activities in Rodney.

The Panel considers that the providing for this type of in situ enhancement subdivision opportunity, promotes the purpose of Part 2 of the Resource Management Act 1991.

4. Consequential changes

4.1. Changes to other parts of the plan

The changes that have been made to the regional policy statement result in changes to the relevant Plan provisions, as those provisions must give effect to the regional policy statement.

4.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of recommendations on other hearing topics.

5. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

³ [1996] No W187/96 – see pages 32-33.

⁴ [2010] NZEnvC 265

5.1. General topic documents

Panel documents

[011-Submission Point Pathway Report - 17 Oct 2014](#) (20 Oct 2014)

[011-Parties and Issues Report -12 Dec 2014](#) (12 Dec 2014)

[Mediation Joint Statement](#) (14 Nov 2014)

[081f Ak Cncl - South - Precincts \(Puhinui\) - \(N Lau and D Wong\) - Planning](#) (28 Jan 2015)

[Hearing Evidence – Closing Statement](#) (29 Jan 2015)

Interim guidance

[011 Rural - PAUP Section B8.3 - Rural Subdivision \(PDF 34KB\)](#) (10 June 2015)

Auckland Council marked up versions:

[Hearing Evidence - proposed track change Rural](#) (6 Nov 2014)

5.2. Specific evidence

Auckland Council

[Hearing Evidence - Fiona Curran-Cournane \(Land and Soil Scientist\) \(Topic 011 RPS B8\)](#) (1 Dec 2014)

[Hearing Evidence - Bain Cross \(Topic 011 RPS Rural B8\)](#) (2 Dec 2014)

[Hearing Evidence - Stephen Brown \(Topic 011 RPS Rural B8\)](#) (2 Dec 2014)

[Hearing Evidence - Mark Seabrook-Davison \(Topic 011 RPS B8\)](#) (1 Jan 2015)

[Hearing Evidence - Legal Submissions](#) (18 Jan 2015)

[Rebuttal Evidence - Bain Cross \(Topic 011 RPS Rural B8\)](#) (12 Jan 2015)

[Hearing Evidence - Supplementary Evidence - Attachment 2 Soils Map](#) (21 January 2015)

[Hearing Evidence – Closing Statement](#) (29 January 2015)

Better Living Landscapes Limited

[Hearing Evidence](#) (9 Dec 2014) – and appendices

[Legal submissions](#) (19 Jan 2015)

Cato Bolam Consultants Limited

[Rebuttal Evidence - Myles Goodwin](#) (14 Jan 2015)

Chin Hill farm Limited

[Hearing Evidence - Legal Submissions](#) (19 Jan 2015)

[Hearing Evidence - Jeffrey Brown \(LATE\)](#) (10 Dec 2014)

[Hearing Evidence - Jeffrey Brown - Supplementary Evidence - Proposed Mark Up Version](#) (19 Jan 2015)

David B Mason

[Evidence - David B Mason](#) (9 Dec 2014)

[Hearing Evidence – David B Mason - Summary Evidence](#) (19 Jan 2015)

[Hearing Evidence - Legal Submissions](#) (19 Jan 2015)

Environmental Defence Society Incorporated and Royal Forest and Bird Protection Society of New Zealand Incorporated

[Hearing Evidence – Legal Submissions](#) (20 Jan 2015)

Federated Farmers of New Zealand

[Hearing Evidence and Legal Submissions](#) (10 Dec 2014)

Horticulture New Zealand and the Pukekohe Vegetable Growers Association

[Hearing Evidence - Bharat Jivan - Grower](#) (9 Dec 2014)

[Hearing Evidence - Chris Keenan - Management](#) (9 Dec 2014)

[Hearing Evidence - Legal Submissions](#) (20 Jan 2015)

[Hearing Evidence - Stuart Ford - Economics](#) (9 Dec 2014)

Joan and Brian Withers

Barry and Jeanette Phillips

[Hearing Evidence -Owen Burn](#) (10 Dec 2014) – and appendices

[Hearing Evidence - Legal Submissions](#) (20 Jan 2015)

Man O War Farm Limited and Clime Asset Management Limited

[Hearing Evidence - Legal Submissions](#) (20 Jan 2015)

Terra Nova Planning Limited

[011 evidence Mark Bellingham](#) (10 Dec 2014)