

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

---

**Report to Auckland Council**  
**Hearing topic 064**  
**Subdivision - urban**  
**July 2016**

# Report to Auckland Council Hearing topic 064 Subdivision - urban

## Contents

1.	Hearing topic overview .....	3
1.1.	Topic description .....	3
1.2.	Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan.....	3
1.3.	Overview .....	4
1.4.	Scope.....	6
1.5.	Documents relied on .....	6
2.	Separation of rural and urban.....	7
2.1.	Statement of issue.....	7
2.2.	Panel recommendation and reasons .....	7
3.	Minor dwellings and conversion of existing dwellings .....	7
3.1.	Statement of issue.....	7
3.2.	Panel recommendation and reasons .....	7
4.	Section 106 - hazards and subdivision .....	7
4.1.	Statement of issue.....	7
4.2.	Panel recommendation and reasons .....	7
5.	Esplanade reserves and strips .....	8
5.1.	Statement of issue.....	8
5.2.	Panel recommendation and reasons .....	8
5.2.1.	Cross-lease issue (natural hazards) .....	8
5.2.2.	Activity status for subdivision involving the vesting of esplanade reserves .....	9
5.2.3.	Sites over four hectares.....	10
6.	Subdivision for a network utility .....	11
6.1.	Statement of issue.....	11
6.2.	Panel recommendation and reasons .....	11
7.	Urban-zoned sites which are a significant ecological area.....	12
7.1.	Statement of issue.....	12
7.2.	Panel recommendation and reasons .....	12
8.	Consequential changes .....	13

8.1.	Changes to other parts of the plan .....	13
8.2.	Changes to provisions in this topic .....	13
9.	Reference documents .....	13
9.1.	General topic documents.....	13
9.2.	Specific evidence .....	13

# 1. Hearing topic overview

## 1.1. Topic description

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

Topic	Proposed Auckland Unitary Plan reference	Independent hearings Panel reference
Subdivision General	Chapter C.6 Subdivision Chapter D.6 Zone Objectives and Policies - Rural Zones Chapter H.5 Auckland Wide Rules - Subdivision	Chapter E38 Subdivision-Urban

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

Changes have been made to the structure of the chapter, as set out below, as well as the changes agreed by the parties (through the mediation process and hearing process) as well as some clarification and streamlining of the provisions.

- i. The chapter has been split into two: subdivision - urban and subdivision – rural.
- ii. Some of the objectives and policies have been 'streamlined' to better relate to the objectives and policies of the zones that the subdivisions provisions relate to.
- iii. A prohibited subdivision rule has been inserted to prevent the subdivision of minor dwelling units from the principal dwelling and the subdivision of converted dwellings, where these do not otherwise meet the minimum subdivision site size.

- iv. Providing for section 106 of the Resource Management Act 1991 matters in the subdivision chapters and linking these to Section E26 Natural hazards and flooding.
- v. Subdivision for a network utility is recommended to be a permitted activity in all zones, subject to standards.
- vi. An urban subdivision option has been included where a site has a significant ecological area over it.

### 1.3. Overview

This report does not address rural subdivision as this is addressed in the Panel's Report to Auckland Council - Hearing topic 064 Subdivision - Rural July 2016.

The Panel notes that the notified provisions have undergone significant review, analysis and discussion between the Council and submitters, including key stakeholders, community representatives and members of the community. Many of the issues of concern to submitters have been addressed and agreed through the mediation process. However a number of issues were outstanding and addressed at the hearing. This report focuses on the more significant of these.

Council set out in legal submissions and evidence the proposed changes to the notified provisions. These are summarised below:

- i. minor amendments to the wording of various objectives and policies;
- ii. changes throughout the subdivision chapters in relation to natural hazards and flooding matters considered in Topic 022 (Natural hazards and flooding to provide more for and/or strengthen how those provisions relate to subdivision activity;
- iii. an amendment to the activity status of subdivision for a network utility within the rural zones;
- iv. restructuring, simplifying, deletion and addition of matters of discretion and control;
- v. restructuring the controlled and restricted discretionary assessment criteria to remove repetition, make those provisions easier to read, and to take into account matters raised at mediation;
- vi. providing a criterion for roads within a subdivision to provide adequate space for on-street car parking;
- vii. specific amendments to Policy 24 to align with what was agreed at the mediation, Policies 6 and 7 to update the terminology used and to reflect agreements made at mediation, and amendments to Policies 38 and 39 relating to esplanade reserves;
- viii. a new clause under Rule H5.2.1.6 relating to the provision of esplanade reserves to clarify situations involving Treaty Settlement Land;
- ix. an amendment to restricted discretionary assessment criterion 9j to provide clearer wording and alignment with the associated policies;

- x. minor changes to the introductory text to include a reference to the Residential - Mixed Housing Suburban Zone; and
- xi. an amendment to the references to Chapter J (Overlay rules) for subdivision within the National Grid Corridor.

As set out in section 1.2 above, as a result of the hearing of evidence few additional substantive changes have been made to the provisions themselves, but changes have been made to the structure of the chapter as well as to clarify and streamline the provisions.

The chapter has been split into two, separately addressing urban and rural subdivision (containing the relevant objectives, policies and rules for urban and rural subdivision in separate chapters). The single chapter in the notified plan addressing both urban and rural subdivision was long and complex (11 objectives and 41 policies). Dividing them by urban and rural makes the Plan easier to use.

Subdivision can be an important method for giving effect to the objectives and policies of the relevant zones. Accordingly the Panel has amended and added objectives and policies to ensure that subdivision is undertaken in a way that achieves the objectives and policies of the relevant zone. This change has also enabled a number of the proposed objectives and policies to be deleted as they are encapsulated in the provisions linking back to the zone provisions.

The Panel has recommended more enabling provisions for minor dwellings in the rural and residential zones. However the Panel is clear that the presence of a minor dwelling should not be used as a justification to subdivide a site based on the presence of that minor dwelling. Accordingly the subdivision of the minor dwelling from the principal dwelling unit, where it does not otherwise meet the minimum subdivision site size, is recommended to be a prohibited activity. The subdivision of an existing dwelling converted into two dwellings, where it does not otherwise meet the minimum subdivision site size, is also a prohibited activity.

The Panel has provided for section 106 matters in the subdivision chapters and linked these to Chapter E36 Natural hazards and flooding. This is addressed in more detail later in this report.

The Panel has also addressed various issues relating to the provision of esplanade reserves and strips. These include:

- i. cross-lease issue (natural hazards);
- ii. the activity status for subdivision involving the vesting of a complying esplanade reserve; and
- iii. sites over four hectares.

Based on the evidence of the network utility operators, subdivision for network utility is recommended to be a permitted activity in the Rural, Waitākere and Future Urban zones. Subdivision for a network utility in the urban zones (residential, business etc.) was a permitted activity in the notified Unitary Plan.

The Panel has recommended the inclusion of a subdivision rule to enable urban sites that are partially or substantially affected by a significant ecological area to provide for the

anticipated number of dwellings that could be established on a site if the significant ecological area was not present.

Apart from the matters addressed above, this topic dealt with the 'mechanical and technical' matters relating to subdivision, rather than any major policy directions or outcomes, which are more appropriately addressed in the zoning chapters.

#### **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, or are consequential changes due to other recommendations made.

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 below in section 9 Reference documents.

## **2. Separation of rural and urban**

### **2.1. Statement of issue**

The chapter dealing with subdivision has been split into two, separately addressing urban and rural subdivision.

### **2.2. Panel recommendation and reasons**

The Panel's reasons for recommending this are set out above in section 1.3 above, and are not repeated here.

## **3. Minor dwellings and conversion of existing dwellings**

### **3.1. Statement of issue**

Prohibited activity status to subdivide minor dwellings from the principal dwelling and the conversion of existing dwellings.

### **3.2. Panel recommendation and reasons**

The Panel's reasons for recommending this are set out in section 1.3 above, and are not repeated here.

The provisions for and the reasons for providing for these activities are set out in the plan provisions and the Panel's Report to Auckland Council – Hearing topics 059, 060, 062, 063 Residential zones July 2016, and Report to Auckland Council – Hearing topics 056 and 057 Rural zones July 2016

## **4. Section 106 - hazards and subdivision**

### **4.1. Statement of issue**

The Panel was concerned during the hearing on Topic 022 Natural hazards and flooding to ensure that section 106 matters were appropriately addressed in the subsequent hearing on subdivision.

The Council noted in its opening legal submissions that references to section 106 of the Resource Management Act 1991 had been included in certain Auckland-wide subdivision provisions with the aim of assisting Plan users. The Council had opted for this approach noting the Panel's concern with the inconsistent reference to natural hazards (including all types listed in section 106) in the subdivision provisions, and the apparent lack of regulatory control.

### **4.2. Panel recommendation and reasons**

The Panel records that at the hearing there were diverging views on the Council's proposed approach. The evidence and presentations made on behalf of various submitters in Topic 064, for example, Ms Linzey and Mr Lindenberg for the Housing New Zealand Corporation,



requested that references to section 106 be deleted. These witnesses considered that the references to section 106 unnecessarily duplicated, and potentially confused, the provisions under section 106 of the Resource Management Act 1991. However the evidence of Ms Russ for Tonkin and Taylor Limited was that the Council has not gone far enough.

The Panel, having considered the legal submissions and the evidence, recommends retaining the section 106 references in the subdivision chapter, but with the policies requiring the management of risk of adverse effects resulting from natural hazards to be in accordance with the objectives and policies in E36 Natural hazards and flooding.

## **5. Esplanade reserves and strips**

### **5.1. Statement of issue**

A number of issues were raised by various submitters about the provisions relating to esplanade reserves and strips. These are:

- i. the cross-lease issue raised by Ports of Auckland Limited;
- ii. the activity status for subdivision involving the vesting of a complying esplanade reserve; and
- iii. the issues raised by Federated Farmers concerning the taking and vesting of esplanade reserves for sites over four hectares.

### **5.2. Panel recommendation and reasons**

#### **5.2.1. Cross-lease issue (natural hazards)**

Mr Arbuthnot, expert planner for the Ports of Auckland Limited requested in his evidence that cross-leases be exempt from the Auckland-wide subdivision provisions on natural hazards.

The Panel understands Mr Arbuthnot's request, and as set out in the Council's closing statement notes that historically cross-leases did not require resource consents from the Council. Prior to the introduction of the Resource Management Act 1991, cross-leases were not considered as a type of subdivision and therefore did not require a subdivision consent or approval. The Council only certified such plans to note that the buildings forming the subject of a cross-lease complied with fire rating requirements under the Building Act 2004.

Historically matters such as esplanade reserves, or the areas of a site affected by natural hazards, would not have been considered in the issuing of older cross-lease titles (pre-1991). The Council's planning witnesses noted that, with regard to the use of precincts, if any exclusions are made for cross-leases in Ports of Auckland Limited's precinct provisions, then the precinct provisions would override the applicable Auckland-wide subdivision provisions. In this respect the Panel agrees with the Council that any exclusions from the Auckland-wide subdivision provisions on natural hazards should be made within the relevant precinct provisions rather than the Auckland-wide rule framework.

Precincts have been designed so that certain areas have specific rules which override particular Auckland-wide provisions.

### 5.2.2. Activity status for subdivision involving the vesting of esplanade reserves

Ms Kurzeja, expert planner for The University of Auckland, the Gibbs Foundation and MGM Limited questioned the need for an activity status for subdivision involving the vesting of a complying esplanade reserve. Her concern was the extra consenting requirement and that this matter could be dealt with as a development control.

Ms Kurzeja also proposed an amended activity status where a reduction or waiver of the esplanade reserves or strip was sought. The proposed Auckland Unitary Plan required a discretionary consent and Ms Kurzeja sought that it be a restricted discretionary activity as all of the relevant matters for consideration were known.

It was the view of Ms Stewart, the Council's expert planner, that:

- i. it was appropriate to retain the restricted discretionary activity status for subdivision involving the vesting of a complying esplanade reserve; and
- ii. it was appropriate to retain the discretionary activity status for any reductions or waivers of the width requirements for esplanade reserves.

The reasons for Ms Stewart's views are set out in her evidence in rebuttal (paragraph 6.11). For subdivision involving the vesting of a complying esplanade reserve she considered that restricted discretionary activity status would allow the Council to assess whether the reserve is acceptable to be vested as public land and whether it wishes to take a reserve. The removal of any assessment for the creation of esplanade reserve would prevent the Council from ensuring that the land was suitable for vesting. Ms Stewart also considered there may be times when the Council did not want an esplanade reserve but would be forced to accept it if it could not be appropriately assessed. The Panel agrees with Ms Stewart. Moreover, while a separate activity status for this activity has been listed, most subdivisions require a resource consent and therefore all relevant aspects of the subdivision proposal should be assessed together.

With respect to the activity status where a reduction or waiver of an esplanade reserve or strip is sought, the Panel recommends the retention of the discretionary activity status. Section 229 of the Resource Management Act 1991 set out the purpose of esplanade reserves and esplanade strips, stating

An esplanade reserve or an esplanade strip has 1 or more of the following purposes:

- (a) to contribute to the protection of conservation values by, in particular,—
  - (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
  - (ii) maintaining or enhancing water quality; or
  - (iii) maintaining or enhancing aquatic habitats; or
  - (iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or

- (v) mitigating natural hazards; or
- (b) to enable public access to or along any sea, river, or lake; or
- (c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

Some of these are matters of national importance (section 6 of the Resource Management Act 1991) and discretionary activity status is appropriate as it provides for a wider assessment than is possible against a more limited set of criteria. In this regard the Panel agrees with the Council's closing statement:

We understand that all the Council's legacy plans have this as a Discretionary activity matter, and note from the relevant case law set out in our legal submissions for the Council that the default esplanade reserve width of 20m is important to maintain where possible given that subdivision is the only opportunity to secure public access to the coastal marine area (paragraph 8.7).

### 5.2.3. Sites over four hectares

On behalf of Federated Farmers, Mr Gardner requested that the requirement to vest an esplanade reserve on the subdivision of properties over four hectares be removed. He submitted that esplanade reserves should be required only in cases where there is a demonstrable demand for access to the coast.

In response to Federated Farmers' concerns, Ms Stewart suggested amendments to the general development controls. In essence the proposed amendments clarified that a reserve must be taken for subdivisions of less than four hectares, and may be taken for subdivisions greater than four hectares. It was Ms Stewart's opinion that the proposed amendments better aligned with the provisions with the operative Auckland Council District but was also appropriate having regard to the purpose of esplanade reserves outlined in section 229 of the Resource Management Act 1991.

Ms Stewart proposed the following as a standard:

Where a site of 4ha or more is to be created through subdivision, an esplanade reserve or strip **may** be required where the land concerned is demonstrably significant for the protection of conservation values, recreational use, public access, or for the mitigation of natural hazards. Where any esplanade reserve or strip of any width is required to be set aside or created on an allotment of 4ha or more created when land is subdivided, the Council shall compensate for the land in accordance with the requirements of the RMA. (Emphasis added)

While the Panel understands the Council's position, the above wording is not appropriate as a standard, as there is clearly discretion as to whether an esplanade resource would be required. This wording would be more appropriate as a policy. However the Panel is satisfied that the policies in the plan already adequately address this issue.

Accordingly the Panel agrees with Mr Gardner for the reasons he set out in his evidence and legal submissions (paragraph 9 of his evidence and legal submissions).

## 6. Subdivision for a network utility

### 6.1. Statement of issue

Mr Hay, expert planner for the Auckland Utility Operators Group and other network utilities sought that the Plan provide for subdivision for network utilities in the rural zones and the Future Urban Zone as a permitted activity. Mr Hay considered that a number of standards for such permitted activities could be implemented, including that a consent notice or covenant be placed on the title limiting the development of a site to network utility purposes only.

The Council's position was that subdivision for network utilities in the rural zones and Future Urban Zone should not be a permitted activity, but they could be restricted discretionary activities, with a limited number of matters for consideration (which have been proposed through the limited assessment criteria). It is Ms Stewart's view that the proposed assessment criteria are not overly onerous.

### 6.2. Panel recommendation and reasons

The Panel notes that this form of subdivision is a permitted activity in the urban zones, subject to standards. The Panel was persuaded by Mr Hay's argument that:

- i. this form of subdivision was permitted in the urban zones;
- ii. that standards could be imposed and one of these could be a consent notice or covenant to limit the use of the site (note - the Panel has recommended a requirement the re-amalgamation of the site as opposed to limiting its use; and
- iii. that as far as Mr Hay was aware very few sites had been created for this activity over the past 20 years.

The Panel has recommended permitted activity status for this subdivision in the rural zones and Future Urban Zone and, as a consequential change, it is also permitted in the Waitākere Ranges Zones. The standards that apply have been modified (and apply to any subdivision for a network utility irrespective of the zone) and include, among other things, that the network utility activity must:

- i. either be a permitted activity or have all the necessary resource consents or notices of requirements approved;
- ii. have a covenant or consent notice requiring that if and when that land is no longer required for the network utility it must be amalgamated with adjoining land; and
- iii. that the balance of the site complies with the relevant plan provisions other than site size.

The Panel finds that making the subdivision a permitted activity is the most appropriate plan method given the need for network utilities and their activities. Any effects will be minor and the standards ensure that once the network utility is no longer required the site will cease to exist.

## **7. Urban-zoned sites which are a significant ecological area**

### **7.1. Statement of issue**

The need to be more enabling of development on sites partially or substantially covered by a significant ecological area.

### **7.2. Panel recommendation and reasons**

The Panel has recommended a subdivision rule to enable urban sites that are partially or fully covered by a significant ecological area to subdivide to the anticipated number of dwellings that could be established on a site if the significant ecological area was not present. This would most likely require a different site configuration than if the significant ecological area was not present.

Ms Nairn, expert planner for R and D J Duthie, proposed a new subdivision rule which would apply to urban sites that are partially or substantially covered by a significant ecological area. She proposed a restricted discretionary activity rule providing for the anticipated number of dwellings that could be established on a site if the significant ecological area was not present. The dwellings would be established in the part of the site not subject to the significant ecological area, as long as the significant ecological area itself was protected and covenanted.

The Panel supports this approach, and considers that this help balance the costs and regulatory burden imposed by the significant ecological area. Moreover the Panel does not consider this subdivision option will generate many applications or lots. As the Council set out in its closing remarks for Topic 023 Significant ecological areas and vegetation management (paragraph 2.12) only around four per cent of residentially zoned land is classified as significant ecological area.

At the hearing on Topic 023 Significant ecological areas and vegetation management the Council, in principle at least, supported the proposed rule from a biodiversity perspective. This was because such a rule could help maintain significant indigenous biodiversity and achieve ecological improvement through covenanting, while having no adverse ecological effects. However the Council was concerned that the rule could result in development with a different built form and character to that provided for within the relevant zone, particularly in the Residential - Single House Zone which is often applied in such locations.

The Panel acknowledges the Council's concern. However the Panel considers that it has addressed these concerns through imposing standards on the subdivision, combined with the controls retained in the Plan and the assessment criteria. These include, amongst other things, the size and shape of the lots and the effects on the amenity of adjoining sites and neighbourhood from the lots created and the development that would be enabled. Moreover the Panel notes the limited extent of land to which this rule would apply as only four per cent of residentially zoned land is classified as significant ecological area

## 8. Consequential changes

### 8.1. Changes to other parts of the plan

There are no consequential changes to other parts of the Plan as a result of the Panel's recommendations on this topic.

### 8.2. Changes to provisions in this topic

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

## 9. 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](http://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 loaded.

(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.)

### 9.1. General topic documents

#### Panel documents

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

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

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

#### Auckland Council closing statement

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

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

[023 Hrg - Auckland Council - Closing Remarks](#) (2 September 2015)

### 9.2. Specific evidence

#### Auckland Council

[064 Hrg - Auckland Council - Legal submissions](#) (2 November 2015)

[064 Hrg - Auckland Council \(Elizabeth Stewart\) - Planning](#) (25 September 2015)

[064 Hrg - Auckland Council \(Elizabeth Stewart\) - Planning - REBUTTAL](#) (23 October 2015)

**Auckland Utility Operators Group Incorporated**

[064 Hrg - AUOG et al \(David Hay\) - Planning](#) (9 October 2015)

**Federated Farmers of New Zealand**

[064 Hrg - Fed Farmers \(Richard Gardner\) - Evidence and Legal Submissions](#) (9 October 2015)

**Housing New Zealand Corporation**

[064 Hrg - Housing New Zealand \(Amelia Linzey and Matt Lindenberg\) - Planning](#) (13 October 2015)

**Ports of Auckland Limited**

[064 Hrg - POAL \(Mark Arbuthnot\) - Planning](#) (9 October 2015)

**Tonkin and Taylor Limited**

[064 Hrg - Tonkin & Taylor \(Marje Russ\) - Planning](#)

**The University of Auckland**

[064 Hrg - University of Auckland \(Karyn Kurzeja\) - Planning](#)