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

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision No. [2020] NZEnvC 153

IN THE MATTER	of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA)
AND	the Resource Management Act 1991
AND	the rural Subdivision provisions of the in part proposed and in part Operative Auckland Unitary Plan.
AND	an appeal pursuant to s156 of LGATPA
BETWEEN	CABRA RURAL DEVELOPMENTS LIMITED
	FOREST HABITATS LIMITED
	KAREPIRO INVESTMENTS LIMITED
	RAHOPARA FARMS LIMITED
	RAUHORI FORESTS LIMITED
	SH 16 LIMITED
	(ENV-2016-AKL-189)
AND	CATO BOLAM CONSULTANTS LIMITED
	(ENV-2016-AKL-206)
AND	OTHER APPELLANTS **(Attachment A)**
	Appellants
AND	AUCKLAND COUNCIL
	Respondent

Court: Judge J A Smith
Commissioner D Kernohan
Commissioner A C E Leijnen

Hearing: 10th – 11th June at Auckland together with maps supplied on 26th June 2020 and 24 July 2020

Appearances: M Savage for Cabra Rural Developments and Ors (**Cabra**)
A G W Webb for Radiata Properties Limited (**Radiata Properties**)

K J Littlejohn for Cato Bolam, Mason and others Terranova Planning Ltd (**Cato Bolam**)
D K Hartley and A F Buchanan for Auckland Council (**Auckland Council**)
R Gardner for Federated Farmers of NZ (**Federated Farmers**)
N De Wit for Zakara Investments Ltd (**Zaraka**)
J Young for Omaha Park Limited (abide decision – leave granted not to appear)

Date of Decision: 16 September 2020
Date of Issue: 16 September 2020

DECISION OF THE ENVIRONMENT COURT

A: The Court generally adopts the provisions of the Plan in relation to the appeals before it as summarised and **annexed hereto and marked C.** Other provisions are already agreed are to be incorporated in the Plan. The final wording is to be approved by the Court.

B: The Council is to provide the relevant parties with an integrated redraft of the revised provisions and circulate to parties within 20 working days. The parties are to consult with a view to finalising the wording and filing in the court within a further 20 days. If the parties are not agreed a memorandum is to be filed showing each parties' preferred wording in the alternative. The court will then approve the final wording or make further directions as appropriate.

C: The Reasons for generally adopting these provisions including under s32AA of the Act subject to final wording, is set out in this Decision.

D: Costs are generally not appropriate in respect of Plan Reviews and the Court is of the tentative view that costs are not appropriate in this case. If, notwithstanding any party seeks to make an application for costs they are to file and serve the same within 20 working days. Any reply is to be filed and served within 10 working days and a final reply (if any) within 5 working days thereafter.

REASONS

Introduction: Re-hearing

[1] By Decision[1] this Court issued a Decision in relation to appeals before it under the LGATPA Legislation. This included a reference to draft guide provisions annexed constituting proposed amendments to the Plan. The intent was that parties would comment on these and a further hearing would be held if necessary (see [349] on the original decision).

[2] The parties did not produce the intended set of documents, but an appeal was filed by Auckland Council in the High Court. Matters in this Court were then stayed until a resolution of the High Court appeal.

[3] By Decision issued on 6th August, Gordon J[2] issued a decision allowing the appeal in part on the first alleged error law (Issues 1 and 3) and the second and fifth alleged errors of law (paragraph 262 of the High Court Judgment sets these out in more detail).

They were (paraphrased):

i) The Environment Court failed to take into account and properly apply mandatory considerations under the RMA by:

(a) Failing to give effect to Policy 13 and Policy 15 of the New Zealand Coastal Policy Statement (**NZCPS**), as required by ss 62(3) and 75(3)(b) of the RMA.

(b) Failing to consider or sufficiently consider whether IHP provisions would give effect to relevant provisions of the Regional Policy Statement (**RPS**), as required by s75(3)(c) of the RMA.

ii) The Court mis-interpreted the RMA and the Auckland Unitary Plan (**AUP**), deciding that a similar test would apply for all subdivision whether a non-complying, discretionary or restricted discretionary activity. In particular, this

[1] *Cabra Rural Developments Limited v Auckland Council* [2018] NZEnvC 90.

[2] *Auckland Council v Cabra Rural Developments Ltd* [2019] NZHC 1892.

Court erred in:

(a) concluding that restricted discretionary status activity was no less onerous than discretionary activity status;

(b) That critical factors applying to a subdivision consent in relation to effects would be the same regardless of activity status;

(c) The assessment criteria on a case-by-case basis was to be preferred for addressing potential significant adverse effects using standards.

iii) The Court failed to give sufficient reasons, commensurate to the important decision for conclusions on RPS Objectives identified and Policies in Chapter E39.

[4] The matter was remitted back to the Court for consideration on the basis of the High Court Judgment.

[5] Although the High Court Judgment was released in August 2019, it was not until early 2020 that the parties approached the Court again, indicating a desire for a hearing. The Court set the matter down for a preliminary conference to address the issues for rehearing, the evidence and other procedural matters. The Preliminary Conference also addressed the issue of the status of Federated Farmers.

Prehearing Conference

[6] As a result of that preliminary conference, the Court issued a minute on the 19th February 2020. The Court noted at [5] of that Minute that the position adopted by all parties was that it is only necessary to revisit the original decision to the extent that it affected the wording of the relevant plan provisions.

[7] It was agreed that the High Court Judgment is relevant to that wording. Accordingly, the issues raised in the High Court Judgment could be addressed by legal submissions on the wording "as affected by" the decision of the High Court. All parties agreed this would be a far more focused approached to assist in achieving finality for the AUP which

is otherwise operative.[3]

[8] The Court then set an agreed timetable for the further hearing by way of submissions only. At the further hearing, the parties made submissions addressing the high-level issues arising from the High Court Judgment before moving to the specific provisions of the Plan that were of concern.

The issues at large

[9] By the time of the hearing, the position of the Council was to support provisions which met some of the concerns of the Appellants. These are **annexed hereto marked B**.

[10] The parties have spent some effort in trying to address differences since the High Court Judgement. The Council's position has remained to prefer transferrable rights to the Countryside Living Zone. To that extent, the parties are close to, if not fully agreed on most of the transferrable right provisions. The Council is also sympathetic to the concerns of the Appellants relating to having a staging process for transferrable rights. Their simple proposition supported in detail by Ms Buchanan in submissions, was that there was no scope in terms of the current process under LGATPA to address this. If there was, this could require consideration of s 193 of the RMA.

[11] We therefore, intend to proceed to address the legal issues remitted to us to the extent they are still in issue between the parties and then move to consider the provisions. That will also require, from time to time, reconsideration of the High Court Judgment and the relevant Law as appropriate.

Achieving and implementing superior documents

[12] As we understand the High Court Judgment, this Court erred in not considering achieving and implementing NZCPS 13 and 15 when considering the RPS Chapter B of the AUP and Chapter A, Introduction, Section A1.3 Structure of the AUP, and in failing to consider the RPS provisions when establishing the subdivision rules at E39. In particular, the inter-relationship of NZCPS Policy 11, 13 and 15 was not explicitly addressed.

---

[3] Cabra & Ors-v-Auckland Council (Minutes) LGAPTA PHC 19th February 2020 – para [4]-[6]

[13] As we understand it, this turns on a two-fold principle. Firstly, that a lower order document must achieve and implement the superior document. As we understand the hierarchy, it falls from Part 2 of the Act to the relevant NPSs, to RPSs, Regional Plans and then District Plans (for current purposes, at least).

[14] Secondly, once a document achieves and implements the superior document, it is not generally necessary to refer back to the superior document, unless there is some lack of certainty or clarity requiring re-consideration.

[15] Thus, it would be anticipated that a settled RPS achieves and implements the NZ Coastal Policy Statement, for example, unless there is a lack of clarity in some particular aspect. As we would understand it, this would mean that in understanding the relative weight of various policies within the NZ Coastal Policy Statement, reference might be had to Part 2 if that clarified meaning.

[16] Similarly, in settling the RPS, or making provisions in the RPS, reference might only be had beyond the NZCPS if it was unclear as to how the NZCPS achieves or implements the Act.

[17] Further, pursuant to s 75(3) of the RMA, the District Plan (part of the AUP) must give effect to the RPS (which is also part of the AUP) and any National Policy Statement or standard and the NZCPS.

[18] This appears to be the first error that is discussed by the High Court, namely, that the Environment Court failed to address the inter-relationship of Policies 11, 13 and 15 of the NZCPS when considering the appropriate RPS provisions. Furthermore, in deciding upon the provisions to be incorporated in E39, the High Court held that this Court had failed to give effect to the RPS and NZCPS provisions.

Problems with the AUP

[19] In its initial decision, this Court spent a considerable amount of time discussing issues with the AUP and in particular, the fact that the Court was never provided with a full copy or certified copy of the document. There are many hundreds of pages addressing the various aspects of the NZ Coastal Policy Statement, the RMA and various other policy statements that apply throughout the region. These were not discussed in detail, nor copies provided to the Court at the substantive proceedings.

[20] At the rehearing some provisions were supplied but again the wider context was

not apparent. For example, it was only through counsel for the appellant that the Court's attention was drawn to H19.5. dealing with The Rural Coastal Zones and the coastal environment under the NZCPS.

[21] Importantly, the RPS, Regional and District Plan provisions are integrated within the same document. Similarly, in this hearing there were a limited number of chapters made available to the Court, but these did include relevant RPS sections, B8 and B9 in Chapter B dealing with natural character and natural environments.

[22] Overall, we understood the parties to acknowledge that the RPS provisions with the exception of those in dispute, achieve and implement the Act and the NZCPS. We had also understood at the first hearing, that all the parties' sets of provisions achieved and implemented the NZCPS. We had understood the dispute to be which RPS provisions better achieved the act and NZCPS and which Plan provisions **better** achieved the RPS (when settled).

[23] To that extent, the issue is how the inter-relationship of the relevant plan provisions of the Act and the NZCPS apply within the rural area of Auckland. This inter-relationship is unclear given that the rural area of Auckland is not co-extensive with the area covered by the NZCPS. In areas not part of the coastal environment, Part 2 ss 6(1)(a) – 6(1)(c) would be relevant. Even the Rural Coastal Zones are not all within the coastal environment.

No defined coastal environment

[24] What was clear in our original decision and confirmed as we understand it in the High Court Judgment, is that the extent of the "coastal environment" is not set out in the AUP Policies or Provisions or maps. This is an essential element for the application of the NZ Coastal Policy Statement.

[25] Ms Hartley confirmed that the intention was that the coastal environment would be established on a case by case basis. At the re-hearing, we were shown provisions in the AUP which had not been addressed earlier. At H.19.5.1 the Rural Coastal Zones are identified in the AUP to be "more extensive than those constituting the coastal environment" for purposes of the NZCPS. Overall therefore, it appears that the rural provisions are intended to apply to areas that include some "coastal environment"

affected by the NZCPS.

[26] The introductory statement for the Rural Coastal Zone H19.5.1 includes:

> The zone is more extensive than the coastal environment line identified by using the [NZCPS] criteria. It recognizes the significance of the coast to the character and identity of Auckland and its role as a favoured place to live and work and for recreational and leisure activities. The coastal environment, and in particular, the coastal edge and margins of lakes and rivers, is important to Mana Whenua.
>
> Much, but not all of the zone and the adjacent coastal marine area is covered by Outstanding [sic] Natural Character, High Natural Character, Outstanding Natural Landscape and Significant Ecological Area overlays.

And later

> The objectives and policies set out in H19.5.2 and H19.5.3 apply to the entire Rural–Rural Coastal Zone. The objectives and policies set out in sections H19.5.4 – H19.5.10 apply to specific coastal areas:
>
> Rural Coastal Zone - Te Arai-Pākiri coastal area;
> Rural Coastal Zone - Whangateau-Waiwera coastal area;
> Rural Coastal Zone - Kaipara South Head and Harbour coastal area;
> Rural Coastal Zone - Muriwai-Te Henga coastal area;
> Rural Coastal Zone - Tasman coastal area;
> Rural Coastal Zone - Manukau Harbour coastal area; and
> Rural Coastal Zone - Tamaki-Firth coastal area.[4]

[27] It is surprising these provisions were not addressed in detail at the first hearing or even at this hearing. The end result is that the intent of the AUP is there would be provisions that will apply to subdivision within coastal areas for some of the "coastal environment" and also within the wider areas of general rural land through the Auckland Region. There are also objectives, policies and provisions including activity tables that apply in different specific coastal locations.

[28] We were unable to get further information as to what percentage of these coastal lands were affected by other overlays such as landscape, natural character or Significant Ecological overlays. To attempt to get some idea of this, we have asked for copies of

[4] AUP H19.5 Rural Coastal Zone. H19.5.1 zone description 4th paragraph.

the relevant maps relating to the identified Rural Coastal Zone areas to ascertain what portions of this may be covered by other overlays which would manage development and use and impact the subdivision rules in question. This information has now been provided and **annexed marked D** as an example. This assists in understanding the interrelation of the various parts of the AUP which affect subdivision and development in the rural area. The overlays cover many parts of this area especially near the coast. Nevertheless, there are extensive overlays (Significant Ecological Areas (**SEA)** in particular) in the Rural Hinterland.

Other interrelationships of provisions on subdivision

[29] Section C1.8 *Assessment of restricted discretionary, discretionary and non-complying activities*, sets out how these overlays and the structure of the Plan applies in respect of applications for consent. We set this out in full below.

> C1.8. Assessment of restricted discretionary, discretionary and non-complying activities
>
> (1) When considering an application for resource consent for an activity that is classed as a restricted discretionary, discretionary or non-complying activity, the Council will consider all relevant overlay, zone, Auckland-wide and precinct objectives and policies that apply to the activity or to the site or sites where that activity will occur.
>
> (2) When considering an application for resource consent for an activity that is classed as a discretionary or non-complying activity, the Council will have regard to the standards for permitted activities on the same site as part of the context of the assessment of effects on the environment.
>
> (3) The absence of any specific reference to positive effects in the objectives, policies, matters of discretion or assessment criteria does not mean that any positive effects of allowing an activity are not relevant to the consideration of an application for resource consent for that activity.
>
> Emphasis added

[30] In circumstances where such overlays apply, there would be no conflict between the provisions in question in this case and those in the NZCPS. Section B8 of the RPS section of the AUP specifically sets out objectives and policies for Auckland's coastal environment. The objectives and policies which apply to all rural zones (H19.2) and then the specific Rural Zone objectives and policies also apply. Thus, there are multiple layers, and all are relevant to the consideration of a resource consent for subdivision.

[31] It is important to understand that the subdivision standards sit in a distinct part of the Plan in a separate chapter at E39 for Rural subdivision (E38 for Urban subdivision). Chapter E contains Auckland Wide provisions. In other words, it traverses all the zones. In this chapter we do not find subdivision rules specific to overlays. However, these provisions contain yet another layer of objectives and policies which include reference to overlays. All these layers are relevant to the consideration of a proposal for subdivision in a rural area. For instance, the following (unchallenged) objective applies:

> (16) Rural subdivision avoids or minimises adverse effects in areas identified in the Outstanding Natural Features Overlay, Outstanding Natural Character Overlay, High Natural Character Overlay, Outstanding Natural Landscape Overlay and Significant Ecological Areas Overlay.

[32] Further, the opportunities for subdivision we are considering, are only available where there are specific environmental benefits. The standard subdivision (i.e. not qualifying through environment benefit, see Table E39.4.2 (A12)) provides for subdivision as a Discretionary Activity provided Standard E39.6.5.1 is met. This standard sets size limits depending on the rural zone, with minimum and average size requirements per site. For example, in the Rural Production Zone, a minimum site of 80ha and a minimum average site of 100ha area is required. Where this standard is not met (unless it is relying on the environmental benefit pathway the subject of these appeals) the subdivision falls to be non-Complying.

[33] We note that as we follow the cascading of the policies through the Plan, under the general policies (unchallenged) the following applies to rural subdivision (at E39.3. (20)):

> Natural features and landscape
> (20) Require subdivision, including site boundaries and specified building areas and access, to:
>
> (a) recognise topography including steep slopes, natural features, ridgelines, aspect, water supplies, and existing vegetation;
>
> (b) avoid inappropriately located buildings and associated accessways including prominent locations as viewed from public places;
>
> (c) avoid adverse effects on riparian margins and protected natural features; and
>
> (d) avoid fragmentation of features and landscape in the Significant Ecological

> Areas Overlay, Outstanding Natural Character Overlay, High Natural Character Overlay, Outstanding Natural Landscapes Overlay, Outstanding Natural Features Overlay or Sites and Places of Significance to Mana Whenua Overlay, or areas between sites.

We conclude these directives to be clear.

[34] The Matters of Discretion pertaining to rural subdivision (E39.8.1), include effects on rural character, landscapes and amenity ((6)(a)). The related Assessment Criteria (E39.8.2) reference back to specific policies at E39.8.1. Relevantly they include (at E39.8.2(6) and (7)), cross reference to a selected list of policies which are specifically relevant. Of particular note to the Court, is the omission of a cross reference to E39.3.(20) which we have quoted above. Given the force of these policies we can only think this is an oversight. Unfortunately, given the process for the implementation of this AUP under the LGATPA, we are unable to correct this. In any event, we are content that if the Plan is appropriately applied, given these policies, any subdivision not meeting them should be declined consent.

Subdivision subject of these appeals

[35] It is subdivision that falls outside E39.3.(20) which we understand to be the subject of these appeals. The Council's concern is that there is a turning point at which subdivision proposals will most likely not align with certain objectives and policies, particularly related to amenity, landscape and character.

[36] Therefore, the Council says, to give effect to the relevant objectives and policies, that cut off point is required to be reflected in the rules. The Council is particularly concerned in respect of in-situ development opportunity enabled by subdivision, rather than transferable rights. However, there is some nuance around the provisions for wetlands used to facilitate subdivision as a transferable outcome. We will come to that issue later.

[37] More particularly, we also understand these concerns arise where development is next to identified overlay areas where the objectives and policies of the Plan are less explicit. In the case of subdivision generated from revegetation thus planting must not be located on land containing elite or prime soil and must not be located in any ONC, HNC or ONL overlay. These provisions do not appear to be challenged.

[38] However, there is an additional requirement for revegetation to be contiguous with an SEA. That requirement remains live in these appeals and we discuss that later.

[39] We also note that the Plan contains separate provisions for the development and use of areas captured by overlays. (rather than subdivision). These provisions manage what activities can take place within the various overlay areas. We are only concerned with the subdivision provisions of the Plan in these appeals.

[40] The question is, how the potential impact of subdivision outside identified overlays might impact on amenity of the significant areas of natural character, landscape or ecological value. We attach one map showing the area between Whangateau and Waiwera Rural Coastal Zones. From looking at all the maps showing overlays we conclude that most of the likely sub-dividable coastal land in the Rural Coastal Zone is covered by overlays or already developed.

The hierarchy within the NZCPS

[41] We conclude that Policy 11 is higher in the hierarchy of provisions within the NZCPS than Policies 13 and 15. Policy 11 is expressed in absolute terms:

> (a) Avoid adverse effects of activities on.....; and
>
> (b) Avoid significant adverse effects and avoid remedy or mitigate other adverse effects on.....

[42] Policy 13 and Policy 15 on the other hand are both qualified to preserve the natural character of the coastal environment and to protect it from "**inappropriate** subdivision, use and development".

[43] As the Environment Court discussed in far more detail in the *Motiti Rohe*[5] case areas of significant indigenous flora and fauna and areas of natural character and high landscape values often overlap. Where they do so under the AUP multiple overlays mean that development and use will be limited given the application of the various criteria of the AUP.

[44] Even for currently unidentified areas of SEA, if those occur within other overlays such as ONL or HNC, subdivision would be considered against the relevant objectives and policies and land use activities limited. Where new SEA are identified, particularly

[5] *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2018] NZEnvC 067 at [10] and at [82]-[86].

outside overlay areas, the potential exists for the relevant rural subdivision rules to provide for their protection. This may not otherwise occur if other activity status rules are relied upon.

Biodiversity in the Auckland Rural Areas

[45] Without repeating ourselves beyond the previous decision, we note that the loss of biodiversity in the Auckland region has been persistent for well over 150 years. Even since the RMA, the loss of significant indigenous vegetation has continued. In part, this turns upon clearance rules, which allow small portions of vegetation to be removed. In part, it was upon the lack of full recognition of areas that may constitute SEA. In respect of those areas that may be regenerating, or areas which may not yet meet the standards for ecological significance, the problem is more pronounced.

[46] The issue therefore, is how to protect areas of significant ecological value as required under Policy 11 (or s 6(c) of the Act outside the coastal environment), particularly where there is no formal protection in place currently. In the previous decision, we accepted there were unidentified SEA within the wider rural zone currently not protected with any relevant overlays. We concluded that not all of the areas of significance are within public domain within the rural zones. There are other areas which display the relevant ecological values but are not currently protected.

[47] The rural subdivision rules include a method of protection. We do not consider there is any doubt that these rules can provide protection for significant indigenous vegetation (including wetlands). It also allows some revegetation for areas where values may improve over years. The question then is the potential conflict between that objective and natural character and landscapes overlays in the Plan.

[48] While we see a clear justification for the protection of significant indigenous vegetation under the NZCPS Policy 11 (or s 6(c) outside the coastal environment), as being the primary provision in comparison with Policy 13 and Policy 15, we conclude that the Appellants position does not go this far. The Appellants seek to achieve protection of SEA while still providing for other RPS objectives and implementing Policy 13 and Policy 15 of the NZCPS. What is required is a consideration of whether a particular subdivision is inappropriate in terms of those Policies.

Activity status and effects

[49] We do not understand the High Court Judgment to go so far as to say that the question of inappropriate effects cannot be addressed on a case by case basis. This turns in our view on the question of whether it is likely that the adverse effects can be addressed through conditions of consent. If this is unlikely the proposal might fall to be non-complying or may need to be prohibited.

[50] As the risk of adverse effects changes, the status of the activity would reflect that prospect. We understand the activity status of activities in a Plan as set out in the RMA to follow this approach:

(a) Permitted activity – which does not require a consent, provided it meets standards set in the Plan;

(b) Controlled Activities (s104A) - where a consent is required but must be granted although conditions can be imposed on matters over which the AUP reserves control.

(c) Restricted Discretionary (s104C) – A consent is required but Council Is limited to considering matters reserved in NES or regulation or the AUP. It may grant or refuse consent and if granted may impose conditions on the matters of discretion.

(d) Discretionary (s104B) – consent required. May grant or refuse after considering s104(1). Can impose relevant conditions.

(e) Non-complying Consent required. May grant or refuse after considering s 104(1). Can impose conditions 104B. In addition, however, the authority must be satisfied (s 104D) the effects are minor **or** not contrary to the objectives and policies or relevant plan(s).

[51] The AUP (at A1.7) contains a statement about classes of activities which it refers to as "activity status". There is said to be a

> hierarchy of the classes in terms of both the basis for assessment and the nature of conditions that may be imposed on any grant of consent. The hierarchy runs from the

> most enabling permitted status to the most restrictive prohibited status. The Plan has been prepared on the basis of this classification and consenting hierarchy.

[52] Statements are then provided to assist users of the Plan to understand how this hierarchy has been applied. The restricted discretionary (**RDA**) and discretionary (**DA**) status includes a description which does not appear in the RMA (s87A Classes of Activities).

[53] Whereas the RMA sets the RDA and DA apart by reference to the scope for assessment of matters, the AUP provides a further "blush" to these activities. In the AUP, an RDA in addition to the requirement for reservation of matters which may be considered, activities are classed as restricted discretionary status:

> **where they are generally anticipated in the existing environment** and the range of potential adverse effects is able to be identified in the Plan.
>
> Emphasis added

[54] In contrast the DA statement of status of activities are classed as discretionary where:

> **they are not generally anticipated to occur in a particular environment, location or zone** or where the character, intensity and scale of their environmental effects are so variable that it is not possible to prescribe standards to control them in advance.
>
> Emphasis added

[55] These statements would appear to explain the concern this Court expressed at [270] of our earlier decision.

[56] We do not understand the High Court to be saying that the Environment Court must apply the AUP provisions in relation to activity status in preference to those within the Act. The status of the activities is set by the Act rather than the Plan and the AUP attempts to restate these provisions. We conclude that the general nature of the activity status are those derived from the Act, rather than the AUP statement of hierarchy.

[57] We conclude that an authority or the Court in considering a restricted discretionary activity should only grant consent if it is satisfied that the Plan matters reserved for consideration are adequately addressed. We conclude standards can be

used to qualify whether an activity is permitted or not permitted. To work properly, they need to clearly define the subject of consideration, i.e., XXm distance to a boundary, XXm metres height above a defined level. Assessment criteria require a more nuanced enquiry and evaluation.

[58] For instance, we cite "inappropriate development, subdivision and use" (emphasis added). This turns on subtleties to do with the impact upon landscape, amenity, natural character and the like. In particular, there can be effects, although not direct, that may have considerable adverse effect on flora or fauna, i.e., introduction of weed species around homes or cats on bird life. Some issues might be addressed by standards whereas issues around adequate landscaping, the type, method and maintenance of plants, roading to avoid deep cuts into the contour etc., are matters requiring a more subtle approach on a case by case basis.

[59] If these matters could be addressed by standards, we would expect the activity to be permitted. Where issues could require a condition to be imposed then controlled activities may be appropriate. It is only when there is a discretion to refuse a consent, that consideration of relevant plan provisions via restricted discretionary, discretionary and non-complying activity status apply.

The current position

[60] In the end, there appears to have been a recognition by all the parties that the AUP provisions should address this balance. In short, we do not understand the Council to have a problem with transferring subdivision rights to the countryside living area for the protection of SEAs including those not currently listed in the Plan. This achieves Objective 11 of the NZCPS and s 6(c) of the Act with no concomitant potential effect on the environment in the immediate rural area of the SEA (we include both identified and unidentified).

[61] In relation to in-situ development the concern is: what level of subdivision would mean that the activity could not be seen as generally appropriate subject to conditions or the right of refusal of consent if particular outcomes are not achieved?

[62] In the case of SEAs, the Council see that limit as being 3 new lots. This is based on a concern that the Council would not give extensive scrutiny to the AUP criteria in

exercising the consent discretion.

This appears to be the basis upon which the High Court's comments in the appealed decision about the "tests" being the same for discretionary or non-complying activities, arose.

[63] We acknowledge the infelicitous use of the word "test" by the Environment Court gave the impression that the factors to be considered are the same. What the Court was intending to express was that the relevant criteria in the AUP in relation to the protection of natural character, landscapes and indigenous vegetation were criteria which came from the RPS and the relevant policy statement and Act and did not change depending on the status of the activity.

[64] We acknowledge that in terms of a non-complying activity, the need to establish a true exception would normally have to be established. We also agree with the Council that there must be a trigger point at which applications for subdivision consent in-situ using the environmental protection/enhancement conduit, should become non-complying. So, did all the parties to this rehearing. The issue is what these trigger points should be.

Staging of Transferable Rural Site Subdivision (TRSS) Developments

[65] As we commented in the previous decision, there is merit to the TRSS approach and we consider that some form of subdivision staging would generally be appropriate. While there is a clear preference to encourage transferable rights of subdivision out of the rural area, the process to do this is somewhat fraught. The transferred lots must go to land zoned Countryside Living. While we were assured that there is capacity in that zone for that to occur, the process needs a willing seller and purchaser in order for it to work. In addition, the scope for transferring lots into that zone becomes more difficult as the number of lots which are to be transferred gets larger. Subdivisions are currently technically obtained at either end of the process and held until exchange can take place. The process is complex, costly and holds a good deal of uncertainty. We heard a significant amount of evidence on this point at the first instance hearing and cover it in our interim decision at [324]-[326].

[66] The Council is reluctant to bank such consents but acknowledges that transfer to Countryside Living is generally the preferred method of subdivision and wish to

encourage it. The practical problem for this hearing, is in relation to the LGATPA legislation. This is particularly constrained in its wording. The Environment Court has had no real dealings with the LGATPA given the limited range of matters that have come before it.

[67] The wording of s 156(2) of the LGATPA notes...

> If the Council's alternative solution included elements of the Hearing Panels "recommendation", **the right of appeal is limited to the effect of the differences between the alternative solution and the recommendation**.
>
> Emphasis added

[68] In short, the IHP did not adopt this solution even though submissions were made to them, nor did the Council adopt it. There is an almost irresistible force to Ms Buchanan's submission that it not being either in the IHP solution or the Council solution, it cannot be the subject of appeal.

[69] Mr Littlejohn notes that the paragraph goes on to say that:

> It would be decided in accordance with the sections of the Act relevant to Plan appeals.

[70] Nevertheless, we conclude that this limitation is contained before that reference and therefore, sub-paragraph 4 of s156 of the LGATPA reads:

> (4) The Environment Court must treat an appeal under this section as if it were a hearing under clause 15 of Schedule 1 of the RMA and, **except as otherwise provided in this section, clauses 14(5) and 15 of Schedule 1 of the RMA and parts 11 and 11A of the RMA apply to the appeal (including, to avoid doubt, sections 299 to 308).**
>
> Emphasis added

[71] In the Courts view, the words "**except as otherwise provided in this section**" are fatal to Mr Littlejohn's submission. Subsection (2) specifically limits the rights of appeal. We conclude the consequent effect is that it limits the range of solutions available to the parties or the Court. We cannot agree that this wording can only limit the right of appeal, but once the matter is on appeal, the Court has available to it any appropriate solution. The wording is not as clear as it should be, but nevertheless, we consider that this provision clearly fits with the intention of the LGATPA to provide a streamlined

process for the resolution of this Unitary Plan. Whether the LGATPA has met that intention is another matter.

Restricted Discretionary Activities – Transferrable Rights created

[72] As discussed by the Court (and accepted by all the parties) the Transferrable Rights created from subdivision in the rural area were to be exercised in the Countryside Living Zones. Any earlier appeals in relation to this aspect of the matter were not heard at the re-hearing.

[73] Accordingly, the issue is what level of subdivision is appropriate where the actual subdivision is transferred to the Countryside Living Zones. We put aside issues as to how the mechanisms for this work as these are not before this Court. as we discussed earlier.

[74] The concept is to protect SEA (and wetlands) without any correspondent adverse effect on the environment which may affect the values under s 6 or under Policies 13 and 15. It is clearly supportable in terms of not only the Act and the NZCPS but also the other Objectives and Policy provisions of the AUP.

Transferable rights from SEAs

[75] The Council position was that for sites meeting the ecological criteria (either identified already or meeting the various criteria now agreed) there should be the ability to create subdivision rights within the Countryside Living area by protecting:

(i) between 4ha and 9.999ha: 1 site
(ii) between 10ha and 14.999ha: 2 sites
(iii) between 15ha and 20ha: 3 sites; and
(iv) thereafter, 1 for every 10 ha increment: 1 additional site

[76] The Appellants did not dispute the 10ha per lot transferrable rights at the upper end but submitted that the first subdivision should be permitted from 2 ha. This would enable the protection of smaller SEA to be protected both in the coastal and other rural zones.

[77] We consider that the evidence to support this approach is compelling. We also

noted on our site visit and discussed this in our earlier decision. Many of the areas of ecological significance within the region have been severed over the years by intermediate development. There are often small areas of SEA (often gullies or areas around waterways), which as a consequence, have remained and provide stepping stones of importance for seed spread and other purposes such as habitat for birdlife, reptiles and aquatic fauna. We saw several examples where these had been used as key points to create connections between ecological areas, particularly in the former Rodney district.

[78] Thus, over time, riparian planting, revegetation and the inclusion of wetlands can provide increasing levels of indigenous species gradually approaching those of significance under the Act. Given the depauperate state of the region, we see this as the most realistic prospect of reversing the gradual decline of the SEA within the region. We keep in mind that to qualify as an area for protection, it would need to either be identified in the Unitary Plan or must meet the relevantly stringent criteria that are now to be set out in the relevant schedules. Whilst we recognise that there are arguments that such small areas are difficult to maintain at high levels of significance, we suggest that any area that still retains those features now having had 150 years of incursion, should be protected as soon as possible.

[79] Accordingly, we have concluded that the minimum size for lots meeting the SEA criteria at least for transferrable development should be set out 2ha. However, we agree with the Council that the right to the second lot should not arise until a minimum area of 10ha is being preserved – i.e., one lot would be obtained for areas between 2ha and 9.9999ha and thereafter 10ha to 14.999ha for the second lot and 15ha to 19.9999ha for the third lot and from 20ha every additional site for transferrable right would accrue on the basis of a further contribution of 10ha. We wish to be clear that we are not dealing with the issue of **in-situ** development which raises different issues which we discuss later in this decision.

Transferable rights from Wetlands

[80] When we move to the question of transferrable rights for wetlands, the Council's position is that these should be limited to 3:

(i) Areas 0.5ha and 0.9999ha: 1 site

(ii) Areas between 1.0ha and 1.9999ha: 2 sites

(iii) Areas for 2.0ha or greater: 3 sites maximum

[81] Based on the IHP provision the Court has accepted a qualifying feature of 0.5 ha. Accepting the Council's approach this would extend to a threshold of 0.9999ha for one site. Then, for between 1ha and 1.9999ha a further site. The Court then accepts (again consistent with the Council approach and based on our earlier conclusions), a qualifier for the third site of between 2ha and 3.9999 ha. At the threshold of 4ha, the Court concludes that for every additional 5ha of qualifying feature this accrues one further site with no maximum which thus steps up to the IHP approach.

[82] The Council's reasoning for limiting the number of sites accruing from the protection of wetlands, seems to favour protecting only small wetlands while ignoring the extremely important remaining wetlands that exist. Due to their rarity, wetlands are of significant importance in the indigenous sequences as they are often left in small residual areas in the midst of other ecological sequences or on the coastal margins. The concerns we heard from the Council, seem to be that there are sections of large areas, for example, marshlands by the sea, which could generate a significant number of sites which need to be accommodated in the Countryside Living Zone.

[83] For our part, based on the compelling evidence at the first hearing, we see a continuing transferable right as highly desirable given the urgent need to prevent the continual degradation of the remaining wetlands within the Auckland Region.

[84] There are important species which are now marginalised to such an extent they exist in an around these coastal zones. The potential for protection and fencing in these areas represents a significant gain. For our part, the provisions of NZCPS 11 and s 6(c) of the Act and the Objectives and Policies of the AUP, clearly militate towards maximising the preservation of wetlands already identified as SEA or meeting the various criteria.

[85] Given that there is no concomitant loss impact on features in the immediate area, the transfer of subdivision rights to the Countryside Living Zone, becomes desirable. Whilst we recognise the Countryside Living Zone itself may have values, the Council has identified this as an area of such subdivisions and furthermore has satisfied us that there are sufficient areas of land zoned in this way to enable subdivision within those areas.

[86] Accordingly, we conclude that the provisions adopted by the Court in respect of transferrable rights for wetlands should remain as they were in the Plan with no upper limit. For reasons we will discuss in due course, the situation is somewhat different for in-situ development.

Transferrable rights from Revegetation

[87] The creation of transferrable rights from revegetation is more problematic. The revegetation itself does not protect existing values recognised under either the NZCPS Policy 11 or under s 6 of the Act. Nevertheless, it may support such values, particularly if it is a buffer area around them and expands such areas in due course. It may even create new areas for example, along riparian waterways or expanding areas between two identified SEAs.

[88] We have concluded that for these reasons, the ability to generate additional sites as a transferrable right should be limited. To that extent, the position of the Council at the re-hearing was that there should be a maximum of six sites commencing with a minimum of 5ha as follows:

5ha to 9.9999ha: 1 Site
10ha to 14.9999ha: 2 sites
15ha to 19.9999ha: 3 sites
20ha to 24.9999ha: 4 sites
25ha to 29.9999ha: 5 sites
30ha to 34.9999ha or more: 6 sites maximum

[89] In the IHP provisions, the reward was 1 site for every 5ha of revegetation, with no maximum. Taking into account the balance that is anticipated between the NZCPS and relevantly under s6, we conclude that the Council's position is more appropriate. There are several reasons for this:

a) The significant cost involved in revegetation planting, monitoring, weeding and the like;
b) The significant cost to Council having its's Officers checking compliance with the conditions of consent.
c) No benefits arise immediately under Policy 11 or under s 6 of the Act, although they may do so in due course and they support existing development.

[90] In our view and in recalling the evidence[6] provided to the Court in the earlier hearing, the planting of at least 30 hectares to generate 6 lots is a significant commitment by the owner of the land from inception to management into the future.

[91] Overall, we consider that the Council's position in this regard represents a more balanced approach to revegetation bearing in mind this method can be coupled with the other SEA and Wetland methods. In our view, a balanced containment of the gain available from revegetation is likely to encourage people to protect those existing SEA and Wetland features in priority to revegetation. This is entirely appropriate in terms of the Act (where it applies to general land), the NZCPS, the RPS and also the Objectives and Policies of the Plan itself.

Conclusion on Transferrable Rights

[92] Overall, we consider that this balance provides a relatively rich source for further subdivision rights of the Countryside Living Zone where significant protection of wetlands and ecological features meeting the relevant criteria is gained. There is less extensive ability to subdivide based on revegetation which is likely to encourage people towards direct protection as envisaged in the relevant policy documents.

In-situ Development

[93] We have taken a very different view to the question of in-situ development given our conclusions as to the relationship between the relevant policies, NZCPS Policies 11,13 and 15, Part 2 of the Act, the RPS Policies (including those to be concluded) and the Plan.

[94] In our view we see in-situ subdivision (and consequential development), as being less desirable than the transfer of subdivision rights into the Countryside Living Zone. This is for several reasons:

a) Transferrable Rights maintain the openness and natural aspect of these areas without buildings, roads and other infrastructure and pressures that occur as a result of additional people in the rural area.

[6] Nicolas J Ranger, Regional Manager and Senior Restoration Ecologist at Wildland Consultants Ltd

b) There is a tension between the desire to protect the indigenous features and extend them, and retaining the existing amenities, particularly those relating to naturalness, character and landscapes which arise in certain parts of the rural area and particularly in many coastal locations.

c) The Policy support for in-situ subdivision in the rural area is less pronounced. In short, a subdivision should be for a purpose:

i) to enable proper management of rural activities; or

ii) to provide for protection in certain circumstances of indigenous ecological / biodiversity features and in more limited circumstances support for that through revegetation.

[95] There are of course a number of Objectives and Policies which underpin these provisions which are the subject of appeal. When we deal with each Policy, we will address our reasoning around them. Overall however, it is the Court's view that there should be a preference for transferrable rights to the Countryside Living Zone with no overall limits on wetlands or SEA where they have met the relevant criteria. There should be a limited right of revegetation for transferrable rights for practical reasons and because there is less Policy support for revegetation itself.

[96] In respect of in-situ developments, this should not be seen as the first preference but this method recognises that there are occasions when this is appropriate. To that end, we have concluded that there should be limits on the ability to subdivide in-situ for protection of SEA and wetlands, and for revegetation. The concept of in-situ subdivision brings with its development which is a in a sense, diametrically opposed to protection and this reinforces our conclusion providing a limited opportunity using this method.

[97] Overall, in-situ subdivision should be limited to situations where more considerable gains are achieved for the environment than those available from transferrable rights. We recognise that because of the difficulty in creating and banking transferrable rights, there may be a preference for in-situ subdivision by some owners. This should come at a price in terms of the amount of land to be protected.

[98] Accordingly, we have concluded that these issues should be addressed by:

(a) having high thresholds for subdivision rights for in-situ development and easier step gains for transferrable subdivision;

(b) recognising that the assessment criteria will be considered on every occasion, the issues relating to amenity, character, landscapes, methods for protection and other relevant matters to each application, i.e., a subdivision must support restricted discretionary criteria for any application to be consented.

[99] We have given considerable thought to the various positions of the parties in this matter. The Council position is that there should be a maximum for each category of protection as summarised in our table below:

Type of feature	Area required	In-situ allowance
SEA (and qualifying SEA)	4ha – 9.9999ha	1 site
	10ha -14.9999ha	2 sites
	15ha – 20ha	3 sites maximum
Wetland	0.5ha – 0.9999ha	1 site maximum
Revegetation (to be added to existing SEA (and qualifying SEA)	5ha – 9.9999ha	1 site
	10ha – 14.9999ha	2 sites
	15ha – 19.9999ha	3 sites maximum

[100] We compare that position to the relevant summary of the IHP decision version of the provisions which we set out in the following table:

Type of feature	Area required	Added area of feature	In-situ allowance
SEA (and qualifying SEA)	2ha	2ha	1 site
	2ha -11.9999ha	+9.9999	2 sites
	12ha – 21.9999ha		3 sites
	22ha – 31.9999ha		4 sites
	additions of 9.9999ha		plus 1 (in additions of 9.9999ha)
	102ha – 111.9999ha		**12 sites maximum**

Wetland	5000m^2	5000m^2	1 site
	5001m^2 – 1.9999ha	1.4998ha	2 sites
	2.001ha – 3.9999ha	1.9989ha	3 sites
	4.001ha – 7.9999ha		4 sites
	8ha – 11.9999ha	3.9999	5 sites
	12ha – 15.9999ha		6 sites
	16ha – 19.9999ha		7 sites
	20ha – 24.9999ha	4.9999ha	8 sites
	25ha or more	5ha	9 sites plus 1 additional site for each 5ha of wetland above 30ha **No maximum**
Revegetation	5ha	5ha	1 site
	Every additional 5 ha and locational restrictions for example: not located on Elite or Prime soil or in an ONL, HNC, or ONL overlay.	5ha	Plus 1 site for each additional 5ha **No maximum**

[101] As can be seen by comparing the tables the key issues are:

(a) The minimum size feature which generates the first site for SEAs;

(b) The maximum for in-situ sites generated from SEAs;

(c) The maximum for in-situ sites generated from wetlands and revegetation; and

(d) The requirement for revegetation to be an addition to and contiguous with an existing SEA. We will come to this point separately in the decision. Here we are simply dealing with the generated subdivision able to be locate in-situ.

[102] As we have noted earlier, in the revegetation method there is exclusion for sites in areas affected by certain overlays and prime and elite soil areas. Where these standards are not met we understand the subdivision would fall to be a non-complying

activity[7]. (We understand that status is accepted in the currently proposed provisions by all the parties). We also accept that these subdivisions would still require assessment against the criteria.

In-situ Subdivision for SEA

[103] Having heard again from the parties, we have concluded that:

(a) for in-situ sites generated from SEA protection, 2ha is too small an area of protection to justify a 1ha lot with a house curtilage access etc. We have concluded that the area required for the first site should be between 4ha and 9.9999ha and each additional 10ha thereafter should give the ability for a further one lot to a maximum of 12 sites. To achieve a 12-lot subdivision there would need to be around at least 114ha of SEA meeting the criteria.

(b) the assessment of the subdivision would also need to include consideration of potential impacts on the SEA from the introduction of dwellings, pest plants and pest animals and should seek, in the first instance, any development be separated from any such features, on the same property. This again will suggest to parties that transferrable rights may be preferable given the more favourable provisions.

In-situ Wetland Subdivision

[104] When we come to wetlands we similarly have concerns as to the minimum size for one lot. Nevertheless, we recognise that both the IHP and Council positions in relation to in-situ wetland subdivision started at 0.5ha and ended at 1.0ha for the provision of 1 site. We understand that to be related to the rarity of these features and the desire to capture what is left.

[105] For our part, we would not allow a second site until at least 2ha were protected and a third at 4ha of protected wetland. We consider that the maximum in-situ should be 3 sites. The reasoning for this, is that wetlands are an extremely important and scarce

[7] Table E39.4.2 (A19)

resource within the district. There should be a clear preference for transferrable rights into the Countryside Living Zone but there should be recognition that there may be occasions when such protection should allow subdivision in-situ.

[106] There should be clear control for separation and avoidance of adverse effects. We consider that wetland areas are particularly susceptible to rural subdivision, housing, curtilage with concomitant pest animals and pest plants. We would expect careful assessment of these matters, and if subdivision is appropriate, conditions to be applied to protect the wetlands.

[107] We consider this also recognises a balance between preference for the transfer provisions as well as providing a limited restricted discretionary basis for consideration of on-site development. We have limited the numbers significantly more than those for SEA because of our concern that development along the edges of large wetlands area could in itself have significant adverse effects. Such adverse effects could also extend to the wider amenity, landscape, and rural character of the district.

[108] Accordingly, we have set what we consider a reasonable, but cautious position in respect of such in-situ development. Again, this gives a strong preference towards transferrable rights.

In-situ Revegetation Subdivision

[109] The in-situ provision for revegetation sought by the Council is 5ha to 9.9999ha for one site and essentially 5ha for each additional site to a maximum of 3 sites. The IHP provision was one site for each 5ha without an overall maximum.

[110] For the reasons we have already discussed, we consider that the unlimited development of revegetation would be inappropriate in-situ subdivision. However, we consider that a limited number of sites up to three would provide a benefit of at least 15 hectares of new vegetation protected in perpetuity and maintained, for the addition of three sites.

[111] In our view, the long-term benefits of this justify the situation of the in-situ development. Given there is a limited right, we consider this appropriately balances our concerns as to the potential adverse effects of additional rural dwellings with the provision of substantial new areas of native revegetation.

[112] Again, by allowing only a maximum of 3 in-situ on a restricted discretionary basis, this shows a strong preference for transferrable sites and potentially allows some cumulative total using a combination of in-situ and transferable sites.

Cumulative in-situ allowances

[113] We are concerned that there is potential to allow cumulative subdivision rights generated through a combination of protection for SEAs, wetlands and revegetation. This would allow a theoretical possible total of 18 in-situ sites. We conclude that would be inappropriate.

[114] For the reasons that lead to the individual maxima, we consider and conclude, that the maximum generated sites available for all in-situ development by combining features under each of these rules should be 12 sites. Based on area of feature and rarity this would mean that the first and highest priority is biased towards the protection of wetlands then SEA and then remaining for revegetation.

[115] Moreover, it would mean that any potential combination development would at least have something in order of 60ha of protected SEA together with at least 15ha of revegetation and 4ha of wetlands. If the area was larger, additional protections would lead to transferrable rights which based on our discussion and interim decision, except for revegetation, are not limited by this cumulative total.

[116] In practical terms we see the cumulative total and the relationship between the transferrable method and in-situ method could provide a mechanism for an owner to pay the cost of the protection and development by selling a limited number of in-situ sites and thus secure funding for the costs for the TRSS creation subdivision rights, which would then only yield funds if and when they were sold to a third party (or the landowner) within the Countryside Living Zone.

Overall mechanisms

[117] Currently rural subdivision seems to largely be occurring on non-complying basis. At the time of our first hearing, several hundred non-complying applications had been processed by the Council. As we understand it, applications are still routinely sought and

granted from the Council with some of these coming on appeal to the Court. Most of which subsequently are settled between the parties. On several occasions, the Court has required further information before signing off any consent orders and occasionally held hearings. Nevertheless, use of the non-complying procedures to obtain a subdivision within the rural area not only undermines the purposes of the Plan, but leads to arguments, which we understand are now being made, that the grant of earlier non-complying applications justifies later ones.

[118] We consider that a workable plan for subdivision within the rural area with a strong preference for transferrable rights, should:

(a) reduce the numbers of non-compliance applications that have been granted by the Council; and

(b) provide a mechanism for parties to take reasonable steps to protect and create important future ecological features within the region.

[119] Overall we consider this meets an appropriate balance in terms of the District Plan Objectives and Policies, the over-arching Objectives and Policies of the RPS and will achieve the superior documents being the NZCPS (in respect of the coastal environment) and Part 2 of the Act in respect of landscapes, natural character, biodiversity and indigenous ecological features within the general rural area.

Section 32AA Evaluation Overall

[120] Under s32AA, we must consider what is most appropriate provisions before us. We are limited by the terms of the LGTPA to consider only provisions between those the subject of the IHP Decision or the subject of the Council decision raised in the appeals before us.

[121] Mr Littlejohn suggested an intermediate position which might allow 7 lots as a restricted discretionary and then another 5 as discretionary. For our part, we do not consider this addressed the evaluation required. The key evaluations (not the only but those to which this appeal is pointed), relate to the inter-relationship of indigenous vegetation, natural character and landscapes and its amenity impacts.

[122] Those matters were addressed in evidence at the earlier hearing and are able to be identified now and covered by the assessment criteria and thus we see little practical advantage to a change from restricted discretionary to full discretionary. More importantly, we see the identification of assessment criteria on a restricted discretionary basis (especially given the AUP comments on the use of their classifications) will encourage applicants to seek to protect indigenous vegetation to achieve subdivision, rather than seeing it as an impediment to such activities. In doing so, we are still minimising the potential impact upon the natural character and landscapes and amenity, by limiting the overall development, rather than just one criteria. To be clear, we note that such potential impact is a matter identified for assessment for an RDA and consent can be declined on this basis.

[123] Overall, we see the preference for unlimited TRSS both for wetlands and SEA as being a significant encouragement in the first instance to land owners to create transferrable rights. This provides a more appropriate balance to achieve the protection of the environment, while in the first instance, preferring transfer out of the area to the Countryside Living Zone which is supported by objectives and policies. In the second instance, by preferring the protection of wetlands, significant indigenous vegetation and then revegetation in value of benefit order of preference.

[124] The maxima in-situ ensures adequate consideration is given to potential for cumulative effects from different developments. For in-situ developments, we conclude an overall cumulative quantum of 12 lots constitutes a reasonable balance which can rely on an RDA assessment using the criteria in the Plan and the application of conditions of consent. We stress, this does not mean 12 lots will be constituted; the Council has significant scope to decline a consent under relevant criteria of the AUP.

[125] Where the Council concludes that the impacts on the landscape, natural character and amenity are not appropriate, this might be addressed by appropriate conditions or refusal of consent. We accept the arbitrary nature of the lot maximum. However, but the evidence provided to the Court at first hearing and the ability of the Council to manage potential adverse effects via conditions or decline is acceptable at this level.

[126] We are not saying that other criteria do not apply, or that issues of precedent affect or plan integrity are not matters that would be relevant in appropriate cases. Certainly, we would consider that the generality of cases for in-situ subdivision over 12

would need to give consideration to these matters in particular. Below that level, we consider that the impacts may be acceptable, if particular concerns set out in the assessment criteria can be addressed. We say this, because our factual conclusion, which was not overturned on appeal, that the level of development under either sets of provisions would be largely similar.

[127] We recognise that with a 4-hectare minimum for SEA and a 0.5ha minimum for wetlands, the amount of in-situ subdivision may be slightly quicker in the initial stage, particularly for those persons outside the Countryside Living Zone with sufficient land to sustain a further subdivision. However, experience would suggest that the amount of existing SEA meeting the required standard and the amount of existing wetlands meeting the required standard, is likely to be relatively minimal. Overall, we consider that protecting any SEAs may have the significant benefit of identifying those areas not yet mapped and protecting them in the first instance. This will encourage subdivision transfer into the Countryside Living Zone for smaller subdivisions.

[128] Accordingly, under s 32AA, we conclude the risks of adverse consequences of these provisions are low and that the benefits, particularly in terms of indigenous vegetation and biodiversity, could be very significant. We conclude the most significant benefit would be for TRSS giving an easy pathway to protection while providing more generous transferable rights to the Countryside Living Zone. We note that Ms Hartley stated, and we agree, that there is sufficient capacity in the Countryside Living Zone for such transfer to occur, at least in the medium term.

[129] Council will be able to consider appropriate development in every case due to the assessment criteria for restricted discretionary activities. We note that most new sites are likely to occur outside any areas of outstanding landscapes because of the protection afforded them in terms of the assessment criteria, objectives policies and provisions relating to activities in those overlays as well as the restrictions to modification in overlays using the revegetation method. We accept Ms Hartley's proposition that subdivisions for SEA, wetland and revegetation are more likely to occur in-situ within the coastal environment, and there are likely to be applications within the coastal environment. However, such applications are already subject to significant rules and controls, which in our view, would adequately protect the matters under the NZCPS without the need for reliance on precedent or integrity of the Plan.

If there is a proposal within existing overlays (which are extensive) the activity controls are restrictive. In fact, the Plan identifies **much** of this area as being covered by overlays.

Other Provisions

[130] Having dealt with the issues at a general level and specifically yield, we now turn to the particular wording changes to the provisions sought have not been resolved. For convenience we have summarised these in our attachment marked **C**.

RPS B9.4 Rural Subdivision

[131] We turn now to the RPS B9.4 Rural Subdivision and in particular Objective B9.4.1(1). This turns on the need for the Objective relating to "fragmentation". The Appellants argue for its deletion and the Court in its primary decision indicated that it felt that the IHP were correct in that view.

[132] Again, we have had to consider whether or not this Objective adds anything to the provisions already within the objectives listed at B9.4.1. We note in particular, that the requirement under B9.4.1(3) relate to subdivision of land. Fundamentally, the problem for the Court is the difference between "fragmentation" and "subdivision" and why "fragmentation" is used. Also, the word "subdivision" is qualified by the words "sporadic" and "scattered". This would suggest that there are subdivisions which are not fragmentation. Our overall conclusion is that Objective 1 adds little but confusion to the overall objectives. There was also an issue in relation to the clarity around reverse sensitivity. We conclude that there is an argument for improving the wording of (3) slightly, particularly to include "reverse sensitivity effects". We think in particular (4) identifies the protection and enhancement features and we wonder whether the words "and degraded land" add anything. We did include these in the original IHP provisions but on reflection, the question then turns to what is "degraded land" and thus these words should be removed.

[133] In summary, we consider the deletion of (1) is appropriate but that the balance of the Objectives should remain the same. We do not include "reverse sensitivity effects" and although we acknowledge Mr Gardner's point on this, we do not consider it is open because it was not the subject of either a IHP decision or a decision of the Council (the same as the issue about Transferable Rights Staging). However, we note that B9.4.1

does not sit alone and reverse sensitivity is addressed in the section addressing Rural Activities (B9.2), at Policy B9.2.2(2) and in relation to Rural Subdivision, Policy B9.4.2(3).

Policies

B9.4.2 (1)

[134] We originally included the word "degraded" in our decisions guide. We are however concerned about the word "degraded" and wonder whether insertion of the words "and rehabilitation of land through subdivision" is sufficiently clear to allow for enhancement planting that is envisaged. We wonder whether "degraded" is an unnecessary qualification given its lack of clarity. We have concluded that it should be removed.

B9.4.2(3)

[135] The Council are adamant that they wish to retain the reference to Countryside Living Zones. We were concerned that the reference to only one zone, seemed unnecessary at RPS level, given the lack of flexibility this would create for future changes. The Council acknowledge that they would have to undertake a vertical plan change from the RPS level through to the District Plan level if they wish to change this provision. Ms Hartley states that the Council are confident they have sufficient land to allow for transferable rights, at least into the medium term.

[136] Given their position, we have concluded that the retention of the words "to Countryside Living zones to reduce the impact from in-situ subdivision on rural land" is an appropriate wording. We again have removed the word "fragmentation" because we consider it to be confusing when compared to subdivision. Clearly, the concern is the creation of "in-situ subdivision" and we conclude that the clear Policy Statement to that effect gives better affect to the Plan. Under s 32AA we conclude this wording is more appropriate than the alternative wording given. Although it provides a single zone, that is the wish of the Council and the Policy is clear in its intent.

[137] The parties are not in dispute about:

(a) Paragraph 9.4.2 (3)(a);

(b) The parties agreed with the removal of the word "the" from paragraph (b) "manage the adverse effects of population of growth across all rural areas";

(c) Paragraphs (c) and (d) are agreed; and

(d) The only issue in respect of paragraph (e) is whether the word "unplanned" should be included.

[138] The Appellants suggested the wording "avoid significant adverse effects for infrastructure". However, quite clearly, the concern of the Council in this regard is to avoid demands for new infrastructure to be put in place after a subdivision occurs. We agree that the Council has a clear resource management reason for this approach and that the words themselves are clear. Accordingly, we conclude that the proper wording for this Clause should be "avoid unplanned demand for infrastructure in remote areas or across areas of scattered development".

B9.4.2(5)

[139] The Council again seeks the reference directly to Countryside Living Zones rather than allowing for the prospect of other zones. We do not consider a specific reference to a zone is required at a RPS level. However, the Council is adamant that this is what they wish to do and appreciate the consequences if there is a Policy change by council. That being the case, we confirm that the Countryside Living Zone has been identified as appropriate and that we understand the transferable rights will occur to that zone. Accordingly, (5) is to be retained as suggested by the Council.

B9.5 Principal reasons for adoption

[140] The first change is to the opening paragraph, Council seeking to insert the word "significant". Given the wording of s 6(c) and NZCPS Policy 11, we would have considered that the current reference to indigenous biodiversity as a whole would remain appropriate. The RPS does not suggest immediately, the methodology for achieving such protection, but clearly must include the terms of both the Act and the NZCPS:

> avoiding adverse effects on significant indigenous vegetation and avoiding significant effects on indigenous vegetation.

[141] It is the second aspect of this that the Council wording would not achieve. We have concluded that the word "significant" should be deleted as per the original Decision of the Environment Court.

[142] The next change relates to the paragraph relating to Subdivision Policies. The Council wording and that of the IHP shown as alternatives. Given our conclusion on the movement from one place to another under B9.4.2(3), we agree in principle with the Council's wording:

> of the transfer of residential development in productive rural zones to Countryside Living Zones".

We consider that the following words:

> and for title boundaries to be amalgamated

to be a correct annunciation of the current position given the alternative wording of:

> adjusted or relocated

which do not appear in the AUP.

[143] Finally, the most substantial difference from the IHP version is the words "and a residential development right to be realised in Countryside Living Zone". This means that this paragraph is focused on the Countryside Living Zones transferable rights with limited reference to amalgamation of title boundaries.

[144] We conclude that the more general wording sought by the Appellants is unnecessary for current purposes. We agree with the Council overall, that a (mutual) right to develop in-situ correctly states the position given it would always remain a restricted discretionary activity. We consider that the balance of the reasons for adoption do recognise the potential and demand for general rural development and seeks to focus that on the Countryside Living Zones. It does not in itself prevent limited rights of development beyond those, but encourages the amalgamation and transfer of rural sites to areas that can best support them, see 9.4.2(5).

[145] We accordingly confirm the Council's wording of this provision and conclude it

better meets the overall intent of the AUP and the balancing provisions. To this extent we do not consider that Policies 11, 13 and 15 or ss 6 (1)(a) to (c), particularly bear upon the wording of this provision which is addressing the preference for development within existing Countryside Living Zones and including where there is an amalgamation of titles.

The overall evaluation of the RPS

[146] Clearly the RPS is intended to achieve and implement the relevant superior documents including s 6 and the relevant National Policy Statements. At least part of the rural land is within the coastal area and the NZCPS would also need to be achieved and implemented. The particular wording in question in this case does not particularly bear upon these issues and is rather an issue about subdivision mechanisms in the AUP.

[147] The RPS clearly prefers the amalgamation of titles and other methodologies to create transferrable rights to Countryside Living Zones. This is entirely consistent with our earlier decision and in our view, achieves the purposes of the RMA and the NZCPS and other Policy documents to the extent they are relevant.

[148] Overall we have concluded that the most appropriate wording for the RPS is the IHP provisions with the amendments we have made to these. As a whole this makes the subdivision policies focused upon transfer of any new lots to the Countryside Living Zone. It also focuses on amalgamation of titles. Both of these objectives are appropriate and entirely consistent with the superior documents on which they rely. There are of course a significant number of other policies that deal more directly with issues such as indigenous vegetation, natural character, landscapes, amenity values, economic and other factors. Those are not the subject of any appeal before this Court, nor is it appropriate for this Court, in terms of the limited appeal to amend these.

[149] To the extent the matters are before us on appeal, we conclude that the provisions we have adopted most properly achieve the purposes of s 32AA and s 32(3) and that they:

(a) Maximise the potential benefits available within the terms of the appeal; and
(b) Minimise relevant costs.

[150] We accept that they incentivise the transferable rights into the Countryside Living

Zone, but this is to achieve purposes in respect of productive land, protection of indigenous vegetation (especially significant indigenous vegetation) and avoid potential impacts upon land, natural character and landscapes that might occur in the broader rural areas.

[151] Overall we are satisfied that these provisions meet the appropriate balance in terms of the RPS as a whole. Although we are concerned that the specificity of the provisions identified in the Countryside Living Zone, the Council has been very clear that they consider this as appropriate and we do not see any practical basis on which we should resist that Policy decision by the Council. If it is necessary for them to undertake extensive changes to the Policy Statement as a result, that is a cost they are clearly prepared to meet to change their Policy.

Relevant District Plan provisions

[152] The (District Plan) Rural Subdivision Provisions are contained within Chapter E.39 of the AUP. Again, the changes requested are hard to connect directly to the RPS and other Rural Provisions which reflects the same sort of issues that we have already discussed. However, the substantive difference between the parties comes with the application of the Restricted Discretionary Subdivision rules for in-situ development in particular.

Objective E39.2(10)

[153] The AUP currently contains provisions relating to fragmentation as follows:

> (10) Fragmentation of rural production land by:
>
> (a) subdivision of land containing elite soil is avoided; and
>
> (b) subdivision of land containing prime soil is avoided where practicable;

[154] The Council seek to delete the first connector "and" between (a) and (b) and add one at the end of (b) and a following:

> (c) subdivision of land avoids contributing to the inappropriate, random and wide dispersal of rural lifestyle lots throughout rural and coastal areas.

[155] The concept of "Fragmentation of rural production land" at the beginning of (10) is a clearer concept than "fragmentation" as a whole. It is clear that these provisions

address the ability of productive land to produce primary products suitable for consumption. It acknowledges many of these activities rely on relatively large land holdings where issues such as "reverse sensitivity" and "economies of scale" can be addressed.

[156] The concept in (a) and (b) is focused firstly on elite soil and secondly on prime soil. The move in (c) to "inappropriate random and wide dispersal of rural lifestyle lots" seems to introduce another concept.

[157] We conclude, that the real concern here is the potential for rural lifestyle lots to prevent the operation of this rural production land as envisaged. We are concerned at the use of words such as "random and wide dispersal" given the lack of clarity of their precise meaning.

[158] Overall, we have concluded that a simpler provision should be provided which would read:

> (c) Subdivision of land avoids inappropriate rural lifestyle lots dispersed throughout the rural and coastal areas.

[159] The use of the word "inappropriate" follows on from the use within both ss 6(1) (a) and (b) and also from NZCPS 13 and 15. The word "dispersed" simply identifies a distribution and may include random and wide distribution. Nevertheless, this seems in our view sufficiently concise that it could be given a meaning if necessary in an appropriate case.

[160] We conclude that such wording has the added benefit that it provides clarity as to the concern of the Council. We have considered whether we should go on to mention potential adverse effects such as reverse sensitivity but do not consider this is specifically necessary as they are addressed in other relevant objectives and policies (e.g., Objective E39.2 (11) and Policy E39.3 (10) & (13). In our view these concepts are contained within the word "inappropriate" and "dispersed" identifies the potential for individual lots to create such difficulties.

E39.2 (14)

[161] Council has this contained in two sub-categories (a) and (b). Although the

Appellants sought that this be contained in a single clause, they accepted at the hearing that neither format had a preference. The IHP adopted a single clause, whereas the Council original notified a double. We concur with the parties that nothing turns upon the format. The issue relates to the substance. Given the Council decision to adopt (a) and (b), we have concluded that this provides greater clarity by identifying the two-separate bases for subdivision.

[162] Given the importance of Significant Indigenous Vegetation (the absolute requirement to protect), we consider that overall the two alternatives provide a way to deal with them separately. To this extent, we conclude that the major concern of the Appellants is the use of the words "Limited in-situ subdivision". We have concluded that in considering the various matters in terms of s 6(1)(a) to (c) and Policies 11, 13 and 15 that:

(a) The protection of Significant Indigenous Vegetation is a high point in the hierarchy, but nevertheless, still must be undertaken in consideration of the other aspects including of course, natural character, landscape and amenity.

(b) We have considered whether there is a better word than "Limited in-situ" and in the end have concluded that the intent of this is clear, namely, that subdivision is provided for in circumstances where appropriate benefits are derived.

[163] We conclude that the Council wording is consistent with, not only the RPS, but also with the Council's intent in respect of subdivision. Neither party suggests that subdivision in-situ should be unlimited, and the question then is, what is the appropriate limit on subdivision for protection or enhancement of significant vegetational wetlands and/or indigenous vegetation planting. We therefore confirm the Council's wording both of (a) and (b).

E.39.3 Policy 11

[164] Policy 11 reads:

Restrict "in-situ" subdivision for rural lifestyle living to where

[165] Parties now agree with the removal of the word "in-situ" and the provision would now read"

> Restrict subdivision for rural lifestyle living to where:
>
> a. ...
> b. the site is created through the protection **and/or** enhancement of significant indigenous vegetation and wetlands;
> c. the site is created through restorative or indigenous revegetation planting.

[166] The disagreement between the parties in respect of the connector word protection **and/or** enhancement relates to whether enhancement must always occur. We have concluded that this argument is a technical one and that a clearer intention of the provision would be simply to have a "/"; protection/enhancement of significant indigenous vegetation/wetlands. This avoids the use of connectors and relies instead upon the actual provisions of the Rules, without creating a further gloss.

[167] In relation to (c), we agree with the Council that the word "restorative" is not consistent with the wording of the rest of the Plan and that this word should be removed.

[168] Our reasoning for these changes is simply to provide clarity and certainty for the parties. When read in this way, it can be seen that the relevant Policy acknowledges the alternatives without placing any further limitation or potential gloss upon them. We understand the concern of the Appellants was that this wording could create further interpretation arguments. We agree that the Plan could be interpreted in that way. Accordingly, we conclude our modified wording avoids such potential confusion.

E39.3(15) & (16)

[169] Policies 15 and 16, essentially have the same provisions but apply in different circumstances. Policy 15 applies to "limited in-situ subdivision" whereas Policy 16 applies to "transfer".

[170] We conclude that the following is a simpler way of stating this position:

> Transfer of titles;
>
> Limited in-situ subdivision; and
>
> ... through the protection of indigenous vegetation or wetlands identified in the

> Significant Ecological Areas Overlay or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – terrestrial Schedule and indigenous revegetation planting.

[171] We agree that the heading should be changed to add "and revegetation planting" and that the words "and indigenous revegetation planting" should be added at the bottom of the Provisions. We do not understand there to be a significant concern about this.

[172] We have listed:

(a) Transfer of Titles; and

(b) Limited in-situ subdivision

To show the clear preference of the Council to the creation of transfer of titles, however the issue that it is addressing is the same in both cases.

Policy E.39.3 (17)

[173] Federated Farmers a suggested change to this Policy, but, as we have already explained, we conclude that this is not within scope or appropriate within the circumstances.

Policy E.39.3 (18)

[174] We have already concluded that "limited opportunities" is a correct identification of in-situ potential and we have reworded the sub-clause (a) slightly as the Council suggests to read:

> there will be significant environmental protection of indigenous vegetation or wetlands.

[175] At first sight, this does not seem to include "restoration". We conclude the addition of "including restoration" after "indigenous vegetation", and with the addition of the words "or wetlands" adequately address the concern in this case.

Activity Table

[176] From this point on, there are a number of changes made to the Activity Table E39.4.2 with the agreement of Zakara including:

(a) A17A;
(b) A17B;
(c) A21A;
(d) A21B.

[177] These are all agreed between the parties and we consider them appropriate and specific to those sites.

[178] In relation to Standards, we note that there is also an exception at E39.6 with the addition of further words (with agreement of Zakara). This again, seems to be an exception that all parties are content with and we see no further reason to comment on these.

except as otherwise provided in Standard 39.6.5.1(2)

E39.6.3.2

[179] We move now to the question of boundary adjustments at E39.6.3.2. There did not appear to be any dispute about the change sought by the Council which is to delete (a) and (b) and add "creating additional sites" or "additional dwellings". This seems to simply be a clarification provision.

E39.6.4.4.1, E39.6.4.4.2 and E39.6.4.5.1 - the Tables

[180] It is at these Tables where the intent of the Plan begins to become clear. As we have already set out, the Council has now agreed that there should be a restricted discretionary activity in relation to the subdivision opportunity obtained through indigenous biodiversity environmental protection methods (SEA, Wetlands and Revegetation). We have set out earlier our conclusions regarding the deliverables required in these tables.

Contiguous in relation to revegetation

[181] The parties continue to debate the degree of contiguity required for revegetation to an existing SEA. We understand the Council now accept the areas must touch (i.e., along a stream, for example) but the revegetation does not necessarily have to surround

most or all of the SEA (Buffer Zone).

[182] The Appellants seek that the revegetation subdivision provision might apply to sites which are disconnected from but between areas of SEA (stepping stones or an ecological corridor). The concept is that these areas provide refuge for fauna travelling from one SEA to another and can eventually link up to protect and connect to SEA into broader Ecozones.

[183] The Court has concluded that areas containing the attributes qualifying as an SEA are available for the leverage of subdivision as are those identified (mapped) as SEA in the Plan. This will require an assessment and the Plan sets out how the process should occur. We note that the Council position now aligns with the Courts interim decision regarding B7.2.2(1).

[184] We conclude that areas for revegetation should connect to an area meeting the relevant criteria for wetland or SEA. Ecological corridors are well understood but the assessment of a particular proposal which might promote one as a support for subdivision, will require case by case assessment for which no specific criteria as such, are set out in the Plan. For instance, while there is a mechanism for determining a feature meets the SEA criteria just what a stepping stone / ecological corridor might entail is not clear. The Court is not prepared to provide for this as an RDA. The matter was left rather open ended and, on that basis, we conclude that the contiguous requirement should extend to existing indigenous vegetation and wetlands meeting policy B7.2.2(1) as well as identified SEA.

E39.6.4.6

[185] As we have already noted, we consider that the appeal here related to staging is limited. Although we see the merit of such provisions, we do not consider that this is a matter that is properly between the decisions of the IHP (which did not address this issue) or the decision of the Council (which again, did not address this issue).

[186] We consider that it is therefore limited in terms of application of s 156 as we discussed earlier in the decision. Even if we had concluded we had jurisdiction, we would be reluctant to impose a transferrable staging system without wider consultation. We are particularly concerned to achieve a mechanism which creates a fair and reasonable system for encouraging the use of the transferable rights and the utilisation within the

Countryside Living Zone.

[187] In our view, this is best undertaken by the Council. We strongly recommend to the Council that it consider this issue for the purpose of a Plan change as soon as possible. At this stage however we do not consider that there is scope of make such amendments, nor that they should properly be made in this decision.

Overall assessment of wording

[188] Our wording follows clearly on our earlier reasoning and s 32AA evaluation earlier. The most appropriate wording is that which achieves and implements the objectives and policies while being effective. We conclude these provisions encourage the potential and enhancement of indigenous vegetation and wetlands and encourage the costs (in terms of subdivision potential) to be moved to Country Living Zones. Where development occurs in-situ significant gains for SEA are achieved at modest levels of development.

[189] Concerns as to impacts on the broader Policy and Objectives of the RPS and Plan can be considered under the Restricted Discretionary activities at the development / subdivision level adopted.

Outcome

[190] The Court generally adopts the provisions of the Plan in relation to the appeals before it as summarised and annexed hereto and marked **C**. Other provisions are already agreed are to be incorporated in the Plan. The final wording is to be approved by the Court.

[191] Furthermore, in respect of the RPS provisions, we have concluded that the wording now adopted is most appropriate to achieve and implement Policies, 11, 13 and 15 of the NZCPS and also Part 2 of the Act to the extent it applies to other non-coastal areas of land. We therefore direct the Council to incorporate the changes into its Plan.

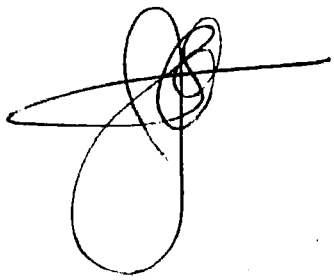
[192] The Council is to provide the relevant parties with an integrated redraft of the revised provisions and circulate to parties within 20 working days. The parties are to consult with a view to finalising the wording and filing in the Court within a further 20 days.

If the parties are not agreed a memorandum is to be filed showing each parties' preferred wording in the alternative. The Court will then approve the final wording or make further directions as appropriate.

[193] The reasons for generally adopting these provisions including under s 32AA of the Act subject to final wording, is set out in this decision.

[194] Costs are generally not appropriate in respect of plan reviews and the Court is of the tentative view that costs are not appropriate in this case. If, notwithstanding any party seeks to make an application for costs they are to file and serve the same within 20 working days. Any reply is to be filed and served within 10 working days and a final reply (if any) within 5 working days thereafter.

For the Court:



J A Smith
Environment Judge

ATTACHMENT A

(Other Appellants)

MASON AND OTHERS

(ENV-2016-AKL-207)

SMITHIES FAMILY TRUST

(ENV-2016-AKL-212)

ZAKARA INVESTMENTS LIMITED

(ENV-2016-AKL-216)

RADIATA PROPERTIES LIMITED

(ENV-2016-AKL-234)

TERRA NOVA PLANNING LIMITED

(ENV-2016-AKL-248)

ATTACHMENT B

PAUP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HC Decision
E39.6.4.4	E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map g} ; **and in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay or shown on meeting the Significant Ecological Area factors identified in Policy 87.2.2(1)** Refer to Appendix 15 Subdivision information and process for further information in relation to in-situ subdivisions (1) The indigenous vegetation or wetland to be protected must either be: (a) identified in the Significant Ecological Areas Overlay; or (b) must be assessed by a suitably qualified and experienced person (e.g. for example, ecologist) who must determine that it meets one or more of the Significant Ecological Areas factors identified in Policy 87.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas - Terrestrial Schedule. A report by that person must be prepared and must be submitted to support the application. (2) The maximum number of sites created from the protection of aR indigenous vegetation or wetland must comply with Table E39.6.4.4.1 and Table E39.6.4.4.2. **Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation either identified in the Significant Ecological Areas Overlay or shown on Map IXi or meeting the Significant Ecological Area factors identified in Policy 87.2.2(1)** Areas of indigenous vegetation or wetlana to be protected / Maximum number of in situ rural residential sites that may be created / Number of TRSS sites that may be created Minimum of 2.0ha / 1 / 1 2.0001ha - 11.9999ha / 2 / 2 12.0ha - 21.9999ha / 3 / 3 22.0ha - 31.9999ha / 4 / 4 32.0ha - 41.9999ha / 5 / 5 42.0ha - 51.9999ha / 6 / 6 52.0ha - 61.9999ha / 7 / 7 62.0ha - 71.9999ha / 8 / 8 72.0ha - 81.9999ha / 9 / 9 82.0ha - 91.9999ha / 10 / 10 92.0ha - 101.9999ha / 11 / 11 102.0ha 111.9999ha / 12 (maximum) / 12 For eve0110ha increment of indigenous vegetation protected beyond 112ha / / 1 additional site	E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or **wetland identified in the Significant Ecological Areas Overlay or shown on Map IXi: and in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but rneeting the Significant Ecological Area factors identified in Policy 87.2.2(1)** Refer to Appendix 15 Subdivision information and process for further information in relation to in-situ subdivisions. (1) The indigenous vegetation or wetland to be protected must either be: (a) identified in the Significant Ecological Areas Overlay or shown on Map (XI: or (b) must be assessed by a suitably qualified and experienced person (e.g. for example, ecologist) who must determine that it meets one or more of the Significant Ecological Areas factors identified in Policy 87.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas - Terrestrial Schedule. A report by that person must be prepared and must be submitted to support the application. (2) The maximum number of sites created from the protection of indigenous vegetation or wetland must comply with Table E39.6.4.4.1 and Table E39.6.4.4.2. Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from protection of indigenous vegetation either identified in Significant Ecological Areas Overlay or shown on Map IXi or meeting the Significant Ecological Area factors identified in Policy 87.2.2(1) Area of indigenous vegetation identified in the Significant Ecological Areas Overlay or wetlana or shown on Map IXi to be protected / Area of indigenous vegetation meeting the Significant Ecological Area factors identified in Policy 87.2.2{1} to be protected / Maximum number of in-situ rural residential sites that may be created / Maximum number of rural residential TRSS sites that may be created 4ha - 9.9999ha / 4ha - 9.9999ha / 1 / 1 10ha 14.9999ha / 10ha - 14.9999ha / .f. / .f. 15ha 20ha / 15ha - 20ha / 3 {maximum) / 1 For eve01 10ha increment of SEA indigenous vegetation which is protected beyond the protection of 2ona. / For eve01 10ha increment of SEA indigenous vegetation which is protected beyond the protection of 2ona. / No additional in-situ subdivision / 1 additional site.

PA UP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HCDecision

Table E39.6.4.4.2 Maxi mum number of new sites to be created fro m the protecti on of wetland either identified in the Significant Ecological Areas Overlay or shown on Map (Xi or meeting the **Significant Ecological Area factors identified in Policy B7.2.2(1)**

Area of wetland to be protected	Maximum number of rural residential sites that may be created
0.5ha - 0.9999ha	1
MiAiF!HIFR a,GGGFR	
1ha .9999ha	2
2.oo.tha 3.9999ha	3
7.9999ha	4
8M=la 11.9999ha	5
12.0ha 15.9999ha	6
16.0ha 19.9999ha	7
20.0ha 24.9999ha	8
25.0ha or more	9 plus one additional site for each Sha of wetland above 30ha

If Rules (Ax2l or (Ax3l are used to create in-situ sites through grotection of indigenous vegetation or freshwater wetland the number of in-situ sites created must be subtracted from the maximum number of sites that may be created for Transferable Rural Site Subdivision under Rules (Ax4l or /Ax5).

If Rules (Ax4l or (Ax5l are used to create Transferable Rural Site Subdivision through grotection of . indigenous vegetation or freshwater wetland, any number of sites created over 70 through the 12rotectlon of indigenous vegetation or any number of sites created over 4 through the 12rotect1on of freshwater wetland must be subtracted from the maximum number of in-situ sites that may be created under Rules (Ax2l or (Ax3).

(3) A 20 metre buffer is to be applied to the perimeter of the iAEligeAaus••egelatiaA er wetland and included as part of the protected area.

(4) The additional in-situ sites must be created on the same site as the indigenous vegetation or wetland subject to protection.

Note: Standard E39.6.4.6 provides a separate subdivision option to enable the transfer of additional lots created via Standard E39.6.4.4.

(5) The additional in-situ sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.

(6) Any indigenous vegetation or wetlands proposed to be legally protected in accordance with Appendix 15 Subdivision information and process must be identified on the subdivision scheme plan.

(7) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection.

(8) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under this Plan or a previous district plan.

(9) The subdivision resource consent must be made subject to a condition requiring the subdivision

Table E39.6.4.4.2 Maximum number of new sites to be created from the protection of wetland either identified in the Significant Ecological Areas Overlay or shown on Map (XJ or meeting the Significant **Ecological Area factors identified in Policy B7.2.2(1)**

Area of wetland to be protected	Maximum number of in-situ rural residential sites that mal£ be created	Maximum number of rural residentiá TRSS sites that mal£ be created
a.Sha - 0.9999ha	1 /maximum)	/
1ha - 1.9999ha	No additional in-situ subdivision	.f.
2ha or greater	No additional in-situ subdivision	3 (maximum)

Each increment of indigenous vegetation or wetland to be grotected may onll£ be used for either in-situ or Transferable Rural Site Subdivision, not both. Where the area of indigenous vegetation or wetland to be grotected enables more than one site to be created then a combination of in-situ and Transferable Rural Site Subdivision can be used.

For examgle:

• Protection of 40ha of indigenous vegetation could allow the creation of 3 in-situ sites and 2 transferable rural sites.

• Protection of 1.5ha of wetlands could allow the creation of 1 in-situ site and 1 transferable rural site.

If Rules (A17Al or (A17Bl are used to create in-situ sites through grotection of indigenous vegetation or freshwater wetland, the number of in-situ sites created must be subtracted from the maximum number of sites that may be created for Transferable Rural Site Subdivision under Rules /A21Al or /A21Bl.

If Rules (A21Al or (A21Bl are used to create Transferable Rural Site Subdivision through grotection of indigenous vegetation or freshwater wetland, any number of sites created over 70 through the protection of indigenous vegetation or any number of sites created over 4 through the grotection of freshwater wetland must be subtracted from the maximum number of in-situ sites that may be created under Rules /A17Al or /A17Bl.

(3) A 20 metre buffer is to be applied to the perimeter of the iAEligeAaus vegetatiaA wetland and included as part of the protected area.

(4) The additional in-situ sites must be created on the same site as the indigenous vegetation subject to protection.

Note: Standard E39.6.4.6 provides a separate subdivision option to enable the transfer of additional lots created via Standard E39.6.4.4.

(5) The additional in-situ sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.

(6) Any indigenous vegetation or wetland proposed to be legally protected in accordance with Appendix 15 Subdivision information and process must be identified on the subdivision scheme plan.

PAUP Provision	Interim Decision Post Hearing Provisions	AC F'roposed Amendments post HC Decision
	plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or wetland.	(7) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection.
	(10) All applications must include all of the following:	(8) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under this Plan or a previous district plan.
	(a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation or wetland and buffer area remain protected in perpetuity. Refer to legal protection mechanism to protect indigenous vegetation, wetland or revegetation re·•es1etated planting as set out in Appendix 15 Subdivision information and process for further information;	(9) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or wetland.
	(b) the planting plan for restorative planting must follow the specifications as set out in Appendix 15 Subdivision information and process that specifies any restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wetland proposed to be protected; and	(10) All applications must include all of the following: .
	(c) the plans required in E39.6.4.4(10)(a) and (b) must be prepared by a suitably qualified and experienced person.	(a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation or wetland and buffer area remain protected in perpetuity. Refer to legal protection mechanism to protect indigenous vegetation, wetland or revegetation planting as set out in Appendix 15 Subdivision information and process for further information;
	(11) Indigenous vegetation or wetland to be protected must be made subject to a legal protection mechanism meeting all of the following:	(b) the planting plan for restorative planting must follow the specifications as set out in Appendix 15 Subdivision information and process that specifies any restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wetland proposed to be protected;
	(a) protection of all the indigenous vegetation or wetland and wetland buffer existing on the site at the time the application is made, even if this means protecting vegetation or a wetland larger than the minimum qualifying area; and	(c) the plan required in E39.6.4.4(1O)(a) and (b) must be prepared by a suitably qualified and experienced person.
	(b) consistent with the legal protection mechanism to protect indigenous vegetation, wetland or revegetated planting as set out in Appendi x 15 Subdivision information and process.	(11) Indigenous vegetation or wetland to be protected must be made subject to a legal protection mechanism meeting all of the following:
	(12) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:	(a) protection of all the indigenous vegetation or wetland and wetland buffer existing on the site at the time the application is made, even if this means protecting vegetation or a wetland larger than the minimum qualifying area; and
	(a) the establishment of secure stock exclusion;	(b) consistent with the legal protection mechanism to protect indigenous vegetation, wetland or revegetation planting as set out in Appendix 15 Subdivision information and process.
	(s) !Re FRaiAleAaAce of plaAiiA§S, 'NRiCR FRIJSi OCCIJr UAtil !Re plaAiiA§S Ra\<e reacRed a sufficient maturity to se self sustainin§, aAd Ra>,<e seen in !Re §rounEl f0r at least iRree years for wetlanEls, or Ra'e reacRed 8Q per ceAt canopy closure f0r otRer ecosystem types. TRe survi• •al rate must ensure a minimum QQ per cent of !Re oriS!iAal density and species;	(12) **All** applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:
	(s) !Re maintenance of planIiA§IS mus! include !Re OAS!OinS! replasemeAI of plants !Rat do nol sur.ive;	(a) the establishment of secure stock exclusion ;
	(d) the maintenance of the indigenous vegetation or wetland must ensure that all invasive e1lant e1ests are eradicated.	(s) !Re FRaiAleAaAce of plaAii A§S, WR!CR FRUS! Ocsur UA! il ! Re pla Al iA§! S Ra \ <e r eaERed a sufficient naturit) / lo se self suslainin§!, an El Ra\•e seen in !Re s1round for al least 1Rree years f0r wetlands, or Ra> <e reasRed 8Q per sent saAopy closure fer otRer ecosystem types i TRe suE Yi· al rate mus! ensur e a FRi AiFRu FR QQ per cent of !Re ori§!iAal density and species:
	(e) plaAiiA§IS must eAsure !Rat all iA><asi•,•e plaAt pests are eradisaleEl from !Re planIiA!I site SOIR al tRe lime of plantin i aAd OR aA OA JOiA J sasis to eAsure adeeiuate JEO'I h: aAd	(s) !Re maintenance of planlin§!s must include !Re ons1oins1 r eplasemenl of plants !ha do r ot sur: i...e:
	(I) !Re FRaiA!eAaAGe of plaAliA§IS must eAsure aAimal and plaAlpest COA!rol eE6tIF&.	(b) the maintenance of the indigenous vegetation or wetland must ensure that all invasive plant pests are eradicated from !Re 13lantins1 site sotR al tRe lime of plaAtin§I and on an ons1oin s1. sasis lo ensure ade(1uale .irowth: and
		(c) the maintenance of the indigenous vegetation or wetland must ensure animal and plant pest control occurs.

PAUP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HC Decision
E39.6.4.5	**E39.6.4.5. In-situ subdivision creating additional sites through establishing native revegetation planting** (1l Any established revegetation planting must meet all of the following: (al not be located on land containing elite soil or prime soil; (bl be located outside any Outstanding Natural Character, High Natural Character or Outstanding Natural Landscape overlays; and (cl the criteria as set out in AQQendix 15 Subdivision informationand Qrocess and Appendix 16 Guideline for native revegetation plantings. (2l The maximum number of new sites created through establishing revegetation planting must comply with Table E39.6.4.5.1. **Table E39.6.4.5.1 Maximum number of new sites from establishing native revegetation planting subject to protection** (3) Any new in situ site must have a minimum site size of 1 hectare and a maximum site size of 2 hectares. (4l Any eslaslisheEl rcvegetation planting proposed must be legally protected. (5) Areas subject to revegetation planting must be subject to a legal protection mechanism that: (al protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any restoration planting; and (bl meets the requirements as set out in Appendix 15 Subdivision information and process. (6l All applications must include all of the following: (al a plan that specifies the protection measures proposed to ensure the revegetation Qlanting and other areas of indigenous vegetation or wellaREl aREl suffer area remain protected in perpetuity. Refer to the legal protection mechanism to protect indigenous vegetation, wetland or revegetation revelJelaleEl planting as set out in Appendix 15 Subdivision information and process for further information; (b) a planting plan for restorative planting which outlines the restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wellam:l proposed to be protected in accordance with Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings; and (c) the plans required in E39.6.4.5(6)(al and (b) must be prepared by a suitably	**E39.6.4.5. In-situ subdivision creating additional sites through establishing native revegetation planting** (13l Any established revegetation planting must meet all of the following: (al not be located on land containing elite soil or prime soil; (bl be located outside any Outstanding Natural Character, High Natural Character or Outstanding Natural Landscape overlays; and (cl be contiguous with existing indigenous vegetation identified in the Sianificant Ecological Area Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1). (dl the criteria as set out in Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings. (14l The maximum number of new sites created through establishing revegetation planting must comply with Table E39.6.4.5.1. **Table E39.6.4.5.1 Maximum number of new sites from establishing native revegetation planting (to be added to existing indigenous vegetation identified in the Significant Ecological Area Overlay or meeting the SignificantEcological Areas factors identified in Policy B7.2.2.{1)l subject to protection**

Minimum area of established native revegetation planting subject to protection	Maximum number of new sites
Sha	1
Every additional Sha	1

Minimum area of established native revegetation Qlanting {to be added to existing indigenous vegetation identified in the Significant Ecological Area Overlay or meeting the Significant Ecological Areas factors identified in Policy B7.2.2{1ll subject to Qrotection	Maximum number of new sites for in-situ subdivision	Maximum number of new sites for Transferable Rural Site Subdivision
Sha - 9.9999ha	*1*	*1*
10ha - 14.9999ha	.£	.£
15ha - 19.9999ha	3 (maximum)	
20ha - 24.9999ha	No additional in situ subdivision	1
25 - 29.9999ha	No additional in situ subdivision	*9.*
30ha - 34.9999ha or more	No additional in situ subdivision	6 (maximum)

For each increment of revegetation Qlanting subject to Qrotection either in-situ or Transferable Rural Site Subdivision may be used, but not both. Where the area of revegetation Qlanting subject to Qrotection

PAUP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HC Decision
	qualified and experienced person. (7) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate: (a) the establishment of secure stock exclusion; (b) the maintenance of plantings that must occur until the plantings havereached a sufficient maturity to be self-sustaining, and ha><e been in the grsunEl fer at least three years fer wetlanEls , er have reached 80 per cent canopy closure for other ecosystem types. The survival rate must ensure a minimum 90 per cent of the original density and species; (c) the maintenance of plantings must include the ongoing replacement of plants that do not survive; (d} the maintenance of plantings must ensure that all invasive plant pests are eradicated from the planting site both at the time of planting and on an on-going basis to ensure adequate growth; and (e) the maintenance of plantings must ensure animal and plant pest control occurs. The subdivision resource consent must be made subject to a condition that requires the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or area of restoration planting to be protected as applicable.	enables more than one site to be created then a combination of in-situ and Transferable Rural Site Subdivision can be used. For examl2le, revegetat ion 12lanting of 30 ha could allow the creation of 3 in-situ sites and 3 transferable rural sites. (4) Any new in-situ site must have a minimum site size of 1 hectare and a maximum site size of 2 hectares. (5) Any established revegetation planting proposed must be legally protected. (6) Areas subject to revegetation planting must be subject to a legal protection mechanism that: (a) protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any restoration revegetation planting; and (b) meets the requirements as set out in Appendix 15 Subdivision information and process. (7) All applications must include all of the following: (a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation sf walaRd anElbuffer area remain protected in perpetuity. Refer to the legal protection mechanism to protect indigenous vegetation, wetland or re•:e9etateEl revegetation planting as set out in Appendix 15 Subdivision information and process for further information; (b} a planting plan for resterati> •e re vegetation planting which outlines the revegetation 12l anting restoration measures proposed to be carried out within or adjacent to the indigenous vegetation proposed to be protected in accordance with Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings; and (c) the plans required in E39.6.4.5(6)(a) and (b) must be prepared by a suitably qualified and experienced person. (8) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate: (a) the establishment of secure stock exclusion; (b) the maintenance of plantings that must occur until the plantings have reached a sufficient Maturity to be self-sustaining, and ha..ce been in the greunEl fer at least three years fer wetlanEls er have reached 80 per cent canopy closure fer ether ecosystem types. The survival rate must ensure a minimum 90 per cent of the original density and species; (a) the maintenance of plantings must include the ongoing replacement of plants that do not survive; (b) the maintenance of plantings must ensure that all invasive plant pests are eradicated from the planting site both at the time of planting and on an on-going basis to ensure adequate growth; and (c) the maintenance of plantings must ensure animal and plant pest control occurs. (9) The subdivision resource consent must be made subject to a condition that requires the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation GF-afea-ef restoration planting to be protected as ap!3i oable.

PAUP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HC Decision
E39.6.4.6	E39.6.4.6. Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map [X.J; or transferable rural sites subdivision through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay or shown on Map [X] but meeting the Significant Ecological Area factors identified in Policy 87.2.2(1); or transferable rural sites subdivision through establishing revegetation planting Refer to Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings for further information on transferable rural sites subdivisions and revegetation planting. (1) All donor sites to be used for transferable rural sites subdivisions applications, protection of inail1ienoi:s ve!1Jelalion or \trellanas must meet all-el the following standards !Rat, are applicaele for: (a) for the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or shown on Map (XI • Standards E39.6.4.4(1l (2) and (3) *(except that E39.6.4.4(1) does not apply to the areas shown on Map* fX/J: (b) for the protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay or shown on Map [X] but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) - Standards E39.6.4.4(1l (2) and (3) *(except that E39.6.4.4(1) does not apply to the areas shown on Map [X])* or (c) for tl=ie creation of $ites to be created through establishing revegetation planting - a& set-GtlHfl Standards E39.6.4.5(1l and (2). (2) A donor site (being the site with the indigenous vegetation, wetland or the revegetation planting to be protected) must not be the same site as a receiver site. The application may ~~provide for the staging of transfers of donor sites to receiver sites.~~[1] (3) The receiver site must be located within a Rural - Countryside Living Zone and be identified as an eligible receiver site by the subdivision variation control on the planning maps. (4) The receiver sites being subdivided must have a minimum net site area and average net site area that complies with the transferable rural sites subdivision in the Rural - Countryside Living Zone as set out in Table E39.6.5.2.1 Minimum and average net site areas. (5) The subdivision resource consent for the receiver site must be made subject to a condition requiring the subdivision plan creating the receiver site or sites to be deposited after. and not before, !fie 2 protective covenant has been legally registered against the title of the donor site containing the covenanted indigenous vegetation, revegetation planting or wetland as applicable to be protected in perpetuity (6) Areas of indigenous vegetation or wetland and buffer at the donor site must: (a) not already be sublect to legal protection or have been previously used to support another transferable rural site subdivision or in situ subdivision under this plan or a previous district plan: (b) be identified on a suitable land transfer plan capable of registration with Land	E39.6.4.6. Transferable rural site subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or shown on Map [X): or transferable rural sites subdivision through protection of indigenous vegetation or wetland not identifi ed in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy 87.2.2(1); or transferable rural sites subdivision through establishing revegetation planting Refer to Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings for further information on transferable rural sites subdivisions and revegetation planting. (1) All transferable rural sites subdivisions applications involving protection of indigenous vegetation or wetlands must meet all of the standards that are applicable for: (a) the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay or shown on Map (X.J as set out in Standard E39.6.4.4; or (b) the protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) as set out in Standard E39.6.4.4: or (c) the creation of sites through establishing revegetation planting as set out in Standard E39.6.4.5. (2) A donor site (being the site with the indigenous vegetation, wetland or the revegetation planting to be protected) must not be the same site as a receiver site. (3) The receiver site must be located within a Rural - Countryside Living Zone and be identified as an eligible receiver site by the subdivision variation control on the planning maps. (4) Sites being subdivided must have a minimum net site area and average net site area that complies with the transferable rural sites subdivision in the Rural - Countryside Living Zone as set out in Table E39.6.5.2.1 Minimum and average net site areas. (5) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the receiver site or sites to be deposited after, and not before, the protective covenant has been legally registered against the title containing the covenanted indigenous vegetation or wetland as applicable.

[1] Note EC comment atfn40 of App J. Also see discussion in Appendix 15 provisions. This may not be necessary.

PAUP Provision	Interim Decision Post Hearing Provisions	AC Proposed Amendments post HC Decision
	Information New Zealand; and (c) be maintained free of stock and be subject to animal and 12lant 12e s t control. (7) Areas of revegetation 12lanting to be establ ished and 12rotect e d a t the donor site must: (a) not alread be subject to legal 12rotection or have been 12reviou s l used to su1212ort another transferable rural site subdivision or in situ subdivision under this 12lan or a Qre vi ous district Qian; (b) be identified on a suitable land transfer Qian caQable of registration with Land Information New Zealand; (c) be subject to a management Qian that 12ro vi de sfor: i. the establishment of secure stock exclusion· ii. the maintenance of Qlantings that must occur (including reQlacement of Qlants that do not survive) until the Qlantings have reached a sufficient maturit to be self-sustaining and have reached 80 12er cent cano12 closure for other ecos stem t 12es . The survival rate must ensure a minimum 90 Qer cent of the original densit and SQecies ; iii. th e maintenance of Qlantings to ensure that all invasive Qlant 12ests are erad icated from the Qlanting site at the time of Qlanting to ensure adeQuate growth; and iv. the ongoing control of animal and Qian! Qests .	

ATTACHMENT C

COURTS CONCLUSIONS SUMMARY:

Yield tables:

FEATURE PROTECTED	TRANSFERABLE SUBDIVISION YEILD		IN-SITU SUBDIVISION YIELD	
	AREA OF FEATURE	TRANSFERABLE SITE ENTITLEMENT	AREA OF FEATURE	IN-SITU SITE ENTITLEMENT
SEA	2ha – 9.9999ha	1	4ha – 9.9999ha	1
	10ha – 14.9999ha	2	10ha – 20ha	2
	15ha – 19.9999ha	3	Thereafter for every additional 10ha	+1 To a total of 12 maximum
	20ha – 30ha	4		
	Thereafter for every additional 10ha	+1 No maximum		
WETLANDS	0.5ha – 0.9999ha	1	0.5ha – 1.9999ha	1
	1ha – 1.9999ha	2	2ha – 3.9999ha	2
	2ha – 2.9999ha	3	4ha and over	3 maximum
	4ha – 9ha	4		
	Thereafter for every additional 5ha	+1 No maximum		
REVEGETATION	5ha – 9.9999ha	1	5ha – 9.9999ha	1
	10ha – 14.9999ha	2	10ha – 14.9999ha	2
	15ha – 19.9999ha	3	15ha and over	3 maximum
	20ha – 30ha	4		
	Thereafter for every additional 10ha	+1 to maximum of 6		
Combination SEA, Wetland, revegetation	As set out for features above	No maximum	As set out for features above	12 maximum

Other Provisions:

Regional Policy Statement B9.4 Rural Subdivision

- Objective B9.4.1(1): delete
- Objective B9.4.1(4): delete reference to "degraded land".
- Policy B9.4.2(1): should not include the reference to "degraded land"
- Policy B9.4.2(3): should read "Provide for and encourage the transfer of the residential development potential of rural sites to Countryside Living zones and for title boundaries to be amalgamated."

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

- Policy B9.4.2(3) subparagraphs: otherwise agreed by parties at hearing eg removal of "the" para (b), and (c) and (d) agreed. The Court confirms that sub-para (e) should read "avoid unplanned demand for infrastructure in remote areas or across areas of scattered development"
- Policy B9.4.2(5): retain reference to "Countryside Living Zone".

AUP District Plan provisions E39 Subdivision- Rural

- Objective E39.2(10): subclause (c) should read "Subdivision of land avoids inappropriate rural lifestyle lots dispersed throughout the rural and coastal areas."
- Objective E39.2(14): Leave as Council version (ie two separate sub-categories (a)and (b)
- Policy E39.3(11): policy to read:

  "Restrict subdivision for rural lifestyle living to where:

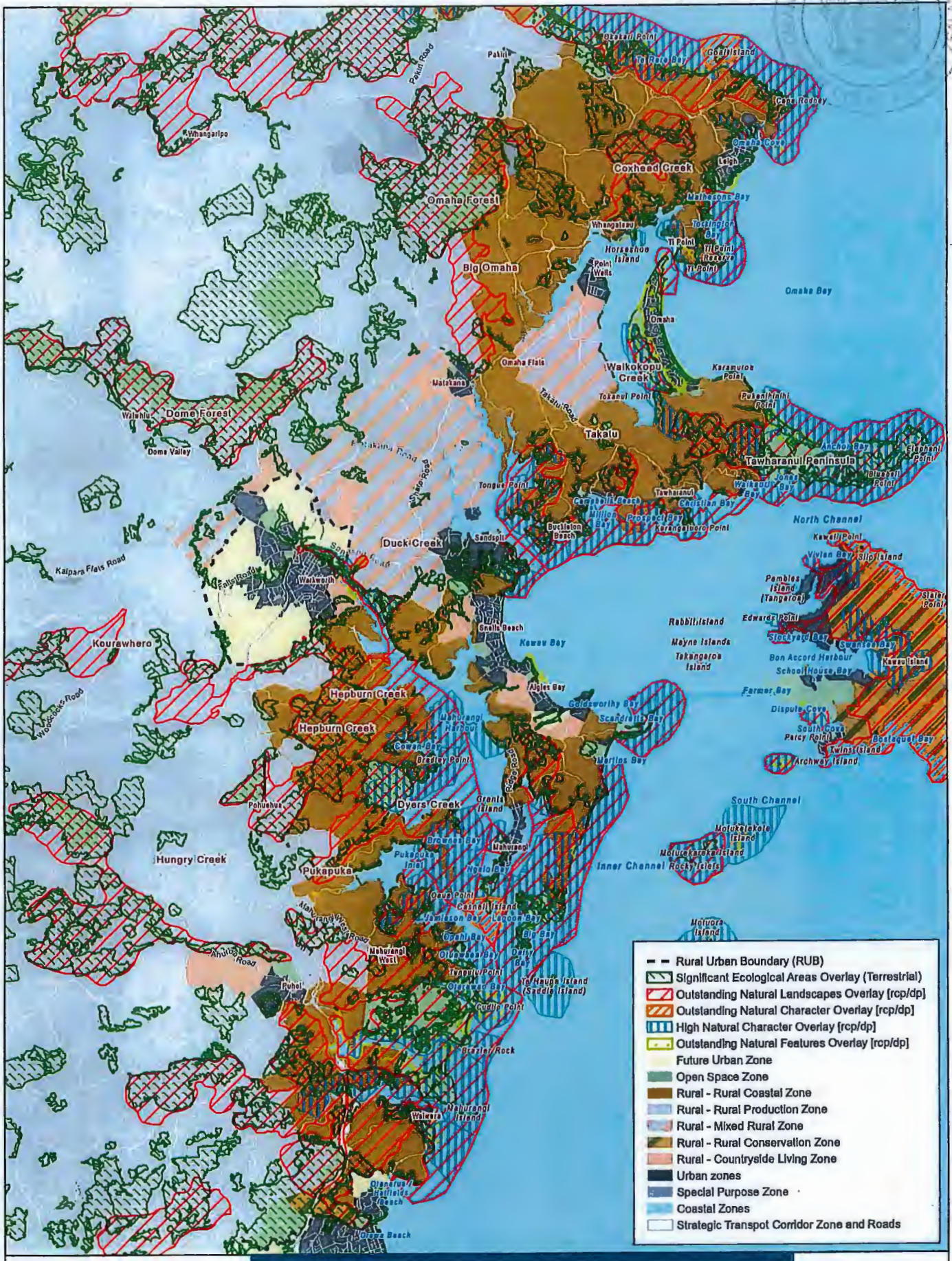
  a) the site is located in the Rural – Countryside Living Zone;
  b) the site is created through the protection / enhancement of significant indigenous vegetation and wetlands;
  c) the site is created through indigenous revegetation planting."
- Policies E39.3(15) & (16): Combine as one policy as follows:

  "Protection of indigenous vegetation and wetland and indigenous revegetation planting

  a) Transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay and indigenous revegetation planting.
  b) Limited in-situ subdivision through the protection of indigenous vegetation identified in the Significant Ecological Areas Overlay or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – terrestrial Schedule and indigenous revegetation planting."
- Policy E39.3(18)(a): the policy should read: "there will be significant environmental protection of indigenous vegetation including restoration, or wetlands."
- Activity Table: A17A, A17B, A21A, A21B Changes as agreed between the parties relating to the Zakara appeal. (ie: except as otherwise provided in Standard 39.6.5.1(2))
- E39.6.3.2 clarification as agreed between the parties
- E39.6.4.4.1, E39.6.4.4.2,E39.6.4.5.1 being the various yield tables. Bearing in mind conclusions in the Court first interim decision as to qualifying SEAs and Wetlands, the suggestion is to simplify layout; content should be in accordance with the requirements and yields set out in table above.
- Contiguity: the contiguous requirement should extend to existing indigenous vegetation and wetlands meeting policy B7.2.2(1) as well as identified SEA

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Attachment D



Whangateau to Waiwera Coastal Area

Auckland Council
Te Kaunihera o Tamaki Makaurau
Plans and Places

Document Path: U:\CPO\RLP\COLUP\GIS 0072\Miscellaneous\Rural Coastal Policy Area\3. Workspace\Awhitu Peninsula.mxd