

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

Decision No. [2020] NZEnvC 013

IN THE MATTER

of the Resource Management Act 1991

AND

of eleven appeals under Clause 14 of
Schedule 1 to the Act

BETWEEN

SUE EDENS

(ENV-2016-AKL-118)

DEAN GLEN, CLAIRE ELLIOT, SOL
GLEN, ROY GLEN & BLACKJACK FARMS
LIMITED

(ENV-2016-AKL-080)

KEITH VERNON

(ENV-2016-AKL-084)

TASMAN BUILDINGS LIMITED

(ENV-2016-AKL-094)

HERITAGE NEW ZEALAND POUHERE
TAONGA

(ENV-2016-AKL-113)

NORTHERN LAND PROPERTY LIMITED

(ENV-2016-AKL-116)

FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED

(ENV-2016-AKL-119)

TAIRUA ENVIRONMENT SOCIETY
INCORPORATED

(ENV-2016-AKL-131)

PIETER DIRK SIELING & KJ SIELING

(ENV-2016-AKL-137)

ROYAL FOREST & BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED

(ENV-2016-AKL-143)

ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED

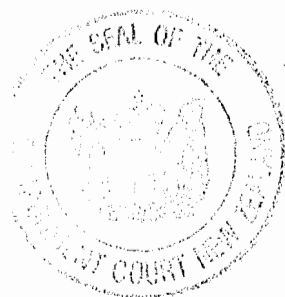
(ENV-2016-AKL-147)

Appellants

AND

THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent



Court: Environment Judge D A Kirkpatrick
Environment Commissioner D J Bunting
Environment Commissioner E H von Dadelszen

Hearing: at Thames on 4 - 6 July 2018

Appearances: S Edens for herself
D Glen for himself and Claire Elliott, Sol Glen, Roy Glen and Blackjack Farms Limited
K Vernon for himself
R Ashton for Northern Land Property Limited
R Gardner for Federated Farmers of New Zealand Inc
P D Sieling for himself and K J Sieling
P Senior for Environmental Defence Society Inc
A M B Green for respondent
J M Savage for Whangapoua Beach Ratepayers Association (s 274 party)
R Mear for himself (s 274 party)

Date of Decision: 20 February 2020

Date of Issue: **20 FEB 2020**

INTERIM DECISION OF THE ENVIRONMENT COURT

- A: Provisions of the proposed Thames-Coromandel District Plan relating to subdivision are **attached** to give effect to this decision according to its reasons.
- B: Leave is reserved for any party to apply for directions within 15 days of the date of receipt of this decision, on notice to all other parties, to address any apparent error in transcribing or otherwise giving effect to the reasons for this decision in the attached provisions.
- C: If no party gives such notice, then this decision will be final after that leave period expires. If notice is given, the Court will address that as may be required before making its final decision.
- D: The appeals are granted or dismissed to the extent stated in the reasons for this decision.
- E: There is no order as to costs.



REASONS

Introduction

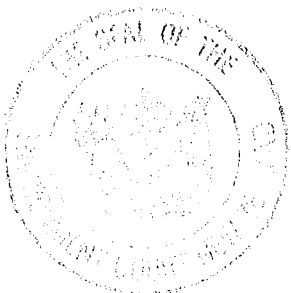
[1] These eleven appeals under the Resource Management Act 1991 (**RMA** or **the Act**) relate to various aspects of the rules relating to subdivision in Section 38 of Part VII (District Wide Rules) of the Thames-Coromandel District Council's proposed Plan (**the proposed Plan**).

[2] The range of issues raised by the appeals had been reduced prior to the hearing through direct negotiations and mediation. At the commencement of the hearing, Mr Green for the Thames-Coromandel District Council (**the Council**) advised that three main issues remained outstanding among the parties relating to the proposed subdivision rules:

- (a) **Cap on new conservation lots:** in relation to Rule 8 providing for conservation lot subdivision, disagreement remained as to the appropriate maximum cap for new lots that may be created;
- (b) **Activity status in the Rural zone:** in relation to Rule 9 and subdivision creating one or more additional lots in the Rural zone, there was no agreement on whether the appropriate activity status should be restricted discretionary or discretionary; and
- (c) **Definitions:** several definitions relating to subdivision remained in dispute.

[3] The Environmental Defence Society Inc. (**EDS**) sought a substantially lower cap on new conservation lots. It otherwise generally supported the Council's proposed wording of Rules 8 and 9, but subject to certain further amendments, including to the assessment criteria for restricted discretionary activities. These were the subject of discussions during the hearing, and EDS filed a further updated set of amendments with their closing submissions. We deal with these amendments as well. EDS was generally supported by the Whangapoua Beach Ratepayers Association Inc (**WBRA**), a party under s 274 RMA.

[4] A number of landowners, including Dean Glen of Blackjack Farms Ltd, Northern Land Property Ltd and the Sielings, as well as Federated Farmers of New Zealand Inc, contended for the activity status of subdivision creating new lots in the Rural zone to be



restricted discretionary.

[5] The positions of other parties who participated in the hearing will be identified as necessary in relation to each issue as it is addressed below.

[6] During the course of the hearing a number of other issues arose, mostly concerning the clarity and efficacy of the drafting of rules 8 and 9. We deal with these individually in the context of the relevant rule.

[7] We also address three matters that we raised with the parties during the course of the hearing concerning:

- a) The potential differences between a *minimum lot size* and a *minimum average lot size*;
- b) Whether a policy to support under-represented ecosystems should be included; and
- c) A new assessment criterion to address natural hazards.

Statutory Framework

[8] The proposed Plan was notified on 13 December 2013. These appeals and our consideration of what the most appropriate provisions are in relation to subdivision are accordingly to be determined in accordance with the RMA as it stood on that date.

[9] The relevant statutory considerations are mainly to be found in ss 31, 32 and 72 – 76 RMA. Section 31 RMA sets out the functions of the Council under the RMA. Section 32 sets out the requirements for preparing and publishing evaluation reports on a proposed plan. Sections 72 – 76 set out a number of requirements for the preparation and content of district plans, including to have particular regard to an evaluation report prepared under s 32.

[10] The inter-relationship of these provisions has been examined in a number of decisions of this Court as the relevant statutory provisions have been amended,¹

¹ *Nugent v Auckland City Council* [1996] NZRMA 481 at 484; *Eldamos Investments v Gisborne District Council* Decision W47/2005 at [128]; *Long Bay-Okura Great Park Society Inc v North Shore City Council* Decision A78/2008 at [34]; and *High Country Rosehip Orchards Ltd v Mackenzie District*



including most relevantly for the purposes of this appeal *Colonial Vineyard v Marlborough District Council*.²

[11] Acknowledging the comprehensiveness of the listing of matters for consideration in that decision, for relative ease of reference the particular issues that arise for consideration and determination in these appeals may efficiently be summarised in much the same way as they were in *Eldamos v Gisborne District Council*,³ but updated to account for subsequent amendments to s 32 and for the regular changes to statutory numbering:

- A. An objective in a district plan is to be evaluated by the extent to which:
 - 1 it is the most appropriate way to achieve the purpose of the Act (s32(1)(a)); and
 - 2 it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72); and
 - 3 it is in accordance with the Council's functions under s 31 and the provisions of Part 2 (s74(1)).
- B. A policy, rule, or other method in a district plan is to be evaluated by whether:
 - 1 it is the most appropriate way to achieve the objectives of the plan (s32(1)(b)) by
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives by identifying and assessing (quantitatively if practicable) the benefits and costs of the effects anticipated from its implementation together with the risk of acting or not acting if there is uncertain or insufficient information about the matter; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - 2 it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72);
 - 3 it is in accordance with the Council's functions under s 31 and the provisions of Part 2 (s74(1)); and
 - 4 (if a rule) it achieves the objectives and policies of the plan (s 76(1)(b)).

[12] The most relevant functions of the Council under s 31 RMA for the purposes of this decision are:

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - ...
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
 - (i) the avoidance or mitigation of natural hazards; and
 - ...
 - (iia) the prevention or mitigation of any adverse effects of the development,

Council [2011] NZEnvC 387 at [19].

² *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17].

³ *Eldamos Investments Ltd v Gisborne District Council Decision*, fn 1, at [128].



- subdivision, or use of contaminated land:
- (iii) the maintenance of indigenous biological diversity:

...
(f) any other functions specified in this Act.

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

National, Regional and District Planning Framework

[13] In this section we set out extensively the most relevant statements in the planning framework. There are numerous other provisions that could also be cited, but the following are sufficient to set out the higher policy approach.

[14] The New Zealand Coastal Policy Statement (NZCPS) must be given effect to by a district plan.⁴ The most relevant provisions of the NZCPS for present purposes include Objectives 2 and 6 and Policies 6, 13, 14, 15 and 25 which relevantly provide:

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;
- identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and
- encouraging restoration of the coastal environment.

Objective 6

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
- functionally some uses and developments can only be located on the coast or in the coastal marine area;
- the coastal environment contains renewable energy resources of significant value;
- the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;
- the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important



means by which the natural resources of the coastal marine area can be protected; and

- historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.

Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

- ...
- (c) encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;
- ...
- (f) consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;
- ...
- (j) where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value.
- ...

Policy 13 Preservation of natural character

(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:

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

Policy 14 Restoration of natural character

Promote restoration or rehabilitation of the natural character of the coastal environment, including by:

- (1) identifying areas and opportunities for restoration or rehabilitation;
- (2) providing policies, rules and other methods directed at restoration or rehabilitation in regional policy statements, and plans;
- ...

Policy 15 Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

- (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and
- (b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;
- ...

Policy 25 Subdivision, use, and development in areas of coastal hazard risk

In areas potentially affected by coastal hazards over at least the next 100 years:



- (a) avoid increasing the risk of social, environmental and economic harm from coastal hazards;
- (b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;
- (c) encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;
- (d) encourage the location of infrastructure away from areas of hazard risk where practicable;
- (e) discourage hard protection structures and promote the use of alternatives to them, including natural defences; and
- (f) consider the potential effects of tsunami and how to avoid or mitigate them.

[15] The district plan must also give effect to the Waikato Regional Policy Statement⁵ which relevantly provides:

i) In objective 3.12 for the built environment:

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

- a. promoting positive indigenous biodiversity outcomes;
- b. preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;
- c. integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;
- d. integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;
- e. recognising and protecting the value and long-term benefits of regionally significant infrastructure;
- f. protecting access to identified significant mineral resources;
- g. minimising land use conflicts, including minimising potential for reverse sensitivity;
- h. anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;
- i. providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;
- j. promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and
- k. providing for a range of commercial development to support the social and economic wellbeing of the region.

ii) In policy 4.1.7 for an integrated approach to managing the coastal environment:

Local authorities should:

⁵

Section 75(3)(c) RMA.



- a. recognise and manage the **coastal environment** as an integrated unit; and
- b. recognise the special context of the **coastal environment**, including the recognition that it has particular values and issues that are of regional and national significance and that impact on the wellbeing of the Waikato region, including:

...

- v. its amenity values, including its contribution to open space;

- iii) In policy 6.1 for planned and co-ordinated subdivision, use and development:

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a. has regard to the principles in section 6A;
- b. recognises and addresses potential cumulative effects of subdivision, use and development;
- c. is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
- d. has regard to the existing built environment.

- iv) In implementation method 6.1.5 relating to district plan provisions for rural-residential development:

Rural-residential development should be directed to areas identified in the district plan for rural-residential development. District plans shall ensure that rural-residential development is directed away from **natural hazard** areas, **regionally significant industry**, **high class soils**, **primary production** activities on those high class soils, electricity transmission, locations identified as likely renewable energy generation sites and from identified **significant mineral resources** (as identified through Method 6.8.1) and their identified access routes.

- v) In policy 6.2 relating to planning for development in the coastal environment:

Development of the built environment in the **coastal environment** occurs in a way that:

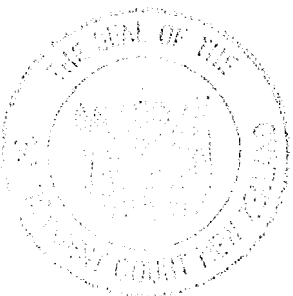
...

- g. protects the valued characteristics of remaining undeveloped, or largely undeveloped coastal environments;

[16] The RPS also contains a list of general development principles in section 6A which, given their centrality to the arguments before us, should be set out in full:

New development should:

- a. support existing urban areas in preference to creating new ones;
- b. occur in a manner that provides clear delineation between urban areas and rural areas;
- c. make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas;
- d. not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;



- e. connect well with existing and planned development and infrastructure;
- f. identify water requirements necessary to support development and ensure the availability of the volumes required;
- g. be planned and designed to achieve the efficient use of water;
- h. be directed away from identified significant mineral resources and their access routes, natural hazard areas, energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry, high class soils, and primary production activities on those high class soils;
- i. promote compact urban form, design and location to:
 - i. minimise energy and carbon use;
 - ii. minimise the need for private motor vehicle use;
 - iii. maximise opportunities to support and take advantage of public transport in particular by encouraging employment activities in locations that are or can in the future be served efficiently by public transport;
 - iv. encourage walking, cycling and multi-modal transport connections; and
 - v. maximise opportunities for people to live, work and play within their local area;
- j. maintain or enhance landscape values and provide for the protection of historic and cultural heritage;
- k. promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;
- l. maintain and enhance public access to and along the coastal marine area, lakes, and rivers;
- m. avoid as far as practicable adverse effects on natural hydrological characteristics and processes (including aquifer recharge and flooding patterns), soil stability, water quality and aquatic ecosystems including through methods such as low impact urban design and development (LIUDD);
- n. adopt sustainable design technologies, such as the incorporation of energy-efficient (including passive solar) design, low-energy street lighting, rain gardens, renewable energy technologies, rainwater harvesting and grey water recycling techniques where appropriate;
- o. not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;
- p. be appropriate with respect to projected effects of climate change and be designed to allow adaptation to these changes;
- q. consider effects on the unique tāngata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tāngata whenua connections within an area should be considered;
- r. support the Vision and Strategy for the Waikato River in the Waikato River catchment;
- s. encourage waste minimisation and efficient use of resources (such as through resource-efficient design and construction methods); and
- t. recognise and maintain or enhance ecosystem services.

Principles specific to rural-residential development

As well as being subject to the general development principles, new rural-residential development should:

- a. be more strongly controlled where demand is high;
- b. not conflict with foreseeable long-term needs for expansion of existing urban centres;
- c. avoid open landscapes largely free of urban and rural-residential development;



- d. avoid ribbon development and, where practicable, the need for additional access points and upgrades, along significant transport corridors and other arterial routes;
- e. recognise the advantages of reducing fuel consumption by locating near employment centres or near current or likely future public transport routes;
- f. minimise visual effects and effects on rural character such as through locating development within appropriate topography and through landscaping;
- g. be capable of being serviced by onsite water and wastewater services unless services are to be reticulated; and
- h. be recognised as a potential method for protecting sensitive areas such as small water bodies, gully-systems and areas of indigenous biodiversity.

[17] The explanation in the RPS for the provisions in Part 6 includes a statement that the principles in Section 6A:

are not absolutes and it is recognised that some developments will be able to support certain principles more than others. In some cases, certain principles may need to be traded off against others. It is important, however, that all principles are appropriately considered when councils are managing the built environment.

[18] To achieve the objectives of 3.1 - *Integrated management* and 3.19 - *Ecological integrity and indigenous biodiversity*, Policy 11.2 of the RPS provides:

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

[19] The associated Implementation Method 11.2.2 provides:

Regional and district plans shall (excluding activities pursuant to 11.1.4 (*being activities recognised as having minor adverse effects on indigenous biodiversity*)):

- a. protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b. require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;
- c. require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;
- d. where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (b) and (c), more than minor residual adverse effects shall be offset to achieve no net loss; and
- e. ensure that remediation, mitigation or offsetting as a first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods). Methods may include the following:
 - i. replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - ii. involve the re-creation of habitat;
 - iii. develop or enhance areas of alternative habitat supporting similar ecology/significance; or
 - iv. involve the legal and physical protection of existing habitat;
- f. recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable; and
- g. have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably practicable alternative location exists.



[20] The rules in the district plan must also be the most appropriate way to achieve the objectives of the plan. For the purposes of these appeals, the most relevant objectives for subdivision in Section 16 of the proposed Plan, together with their supporting policies, are not in issue in these appeals and, in the version used at the hearing, provide:

Objective 1

Subdivision is located, designed and implemented to provide for activities anticipated in the zone while maintaining the amenity values of the surrounding landscape, and protecting or enhancing biodiversity, natural character and historic heritage.

Policy 1a

Subdivision design shall be consistent with the relevant principles in Appendix 4 Rural Subdivision Design Principles and Guidelines.

...

Policy 1c

Subdivision in the **Rural Zone** shall maintain the character of the **Rural Area**.

...

Policy 1e

Forms of subdivision that protect, restore or enhance indigenous biodiversity including under-represented ecosystems are incentivised.

...

Objective 6

Subdivision provides for the maintenance and enhancement of conservation values, recreational use of, and public access to or along, the District's water bodies.

...

Policy 6f

Subdivision in the **Coastal Environment** should consider development setbacks to protect natural character, open space, public access and amenity values of the coastal marine area and other water bodies.

[21] Also relevant is the following policy in Section 6 – Biodiversity:

Policy 1c

Subdivision resulting in restoration or enhancement of indigenous biodiversity shall be considered in the Rural Area where indigenous biodiversity is increased, and protected in legal perpetuity, by one or more of the following:

- a) Restoring or enhancing priority locations mapped in Section 38 Subdivision, identified for protection;
- b) Contributing to the establishment of mountain to sea corridors of terrestrial and aquatic ecosystems;
- c) Reconnecting fragmented ecosystems (on land and via waterways);
- d) Establishing buffers to an underrepresented or threatened indigenous ecosystem;
- e) Creating an ecological stepping stone or corridor to link indigenous vegetation;
- f) Maintaining or enhancing habitat of nationally Threatened or At Risk indigenous species;
- g) Restoring or enhancing indigenous habitats adjoining wetlands, rivers, springs, coastal cliffs, dunes, estuaries and fragmented forests;
- h) Establishing self-sustaining pest free areas;
- i) Restoring or enhancing rare ecosystems.

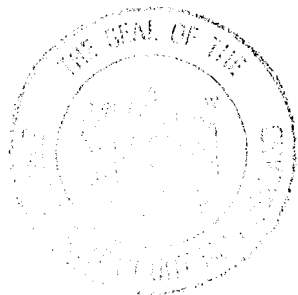
[22] We also refer to the following objective and policy in Section 24 – Rural Area:

Objective 1

A variety of land uses occur in the Rural Area without conflict, making efficient use of natural and physical resources.

...

Policy 1c



Subdivision in the **Rural Zone** shall be provided for, where appropriate, where priority areas of indigenous vegetation or other areas of significant indigenous vegetation are restored or enhanced and legally protected.

[23] There was some debate before us about whether these district policy provisions evince a stronger policy direction towards avoiding adverse effects on, as well as protecting, indigenous biodiversity or towards encouraging subdivision. In our view, these are general provisions which have been written to cover a wide range of circumstances and do not set a single or overall strategic direction of the kind contended for. While it is certainly desirable for plan provisions to be drafted succinctly, we would not expect the text of the proposed Plan in relation to a district-wide matter such as subdivision to be reducible to that rather blunt binary analysis. The more likely question is whether the Plan adequately identifies those resources, or areas of resources, where subdivision is regulated to a greater or lesser extent and where the several policy provisions can be considered in a particular context rather than a vacuum. That, indeed, is the question behind the main issues in relation to proposed Rules 8 and 9, as we discuss below.

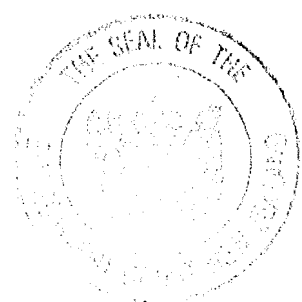
[24] Counsel for Federated Farmers advanced a submission that primary guidance should be taken from the RPS rather than the NZCPS. This submission proceeded on the basis of the reasoning in *Environmental Defence Society Inc v New Zealand King Salmon*⁶ where the Supreme Court held that the purpose of the NZCPS is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment.⁷ Just as a council in making a plan is directed by s 75(3)(b) RMA to give effect to the NZCPS, so too it must, in accordance with s 75(3)(c) RMA, give effect to the relevant RPS. If that is done, and if there is no issue with the RPS as to any invalidity, uncertainty or incompleteness,⁸ then there is no need to refer back to the NZCPS when making a plan or making decisions on submissions on it. The main point in pressing for consideration of the RPS as providing primary guidance, in counsel's submission, was that the general principles for new development in Section 6A of the WRPS, set out in full above, are expressed as what *should* occur rather than as absolutes and that specific evaluation or analysis may support an alternative approach that an absolutist position would not countenance.

[25] Counsel for Northern Land presented similar submissions.

⁶ *Environmental Defence Society Inc v New Zealand King Salmon* [2014] NZSC 38.

⁷ *Ibid.* at [85].

⁸ *Ibid.* at [88].



[26] While there is a hierarchy of planning documents under the RMA,⁹ we do not consider that the effect or regard required to be given to them in terms of the various requirements in Part 5 RMA means that plans are to be based only on the text of the lowest-ranking comprehensive document available. We respectfully think that the proposition presented by counsel is best answered by reference to the discussion in *Man o'War Station Ltd v Auckland Council*¹⁰ where the Court of Appeal addressed the issues that can arise if one attempts to adopt an overly strict approach to the interpretation and application of policy documents under the RMA.¹¹ It is important to keep in mind the centrality of identifying not only what is sought to be protected, but also what may be inappropriate subdivision, use and development in a sensitive environment.¹² With that guidance, we think that it is possible to read the relevant provisions of the NZCPS and the RPS together in a way that avoids artificial contradictions.

Cap on new conservation lots

[27] Rule 8 in Section 38.5 of the proposed Plan enables, as a restricted discretionary activity, additional subdivision opportunities in the Rural zone in return for protecting areas for conservation purposes and for restoring or enhancing priority areas of indigenous ecosystems. The issue is the extent to which such opportunities should go, taking into account the financial feasibility of any subdivision on the one hand while properly addressing the adverse effects of increased subdivision on the other.

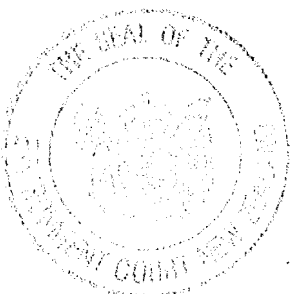
[28] In the proposed Plan as notified, Rule 8(1)(d) imposed a limit of no more than two conservation lots per parent lot. In the decisions version there was a limit of no more than 1 conservation lot per 4 ha of the parent lot. The expert witnesses on planning matters agreed that the latter would not be an appropriate cap as it would not be effective in all the priority areas. At the hearing, the Council and three of the expert planners said that the maximum should be 10 lots, while EDS and one of the expert planners said it should be 2 lots in the Coastal Environment and 4 lots outside it. The Council's position on this issue was supported by the appellants Blackjack Farms Ltd and its associated parties, Northern Land Property Ltd, Federated Farmers of NZ Inc, the Sielings, and by a s 274 party, Mr Ross Mear, while the position of EDS was supported by the Whangapoua Beach Ratepayers Association Inc (**WBRA**) and by Preserve New Chum for Everyone Inc (**PNC4E**) as s 274 parties.

⁹ Ibid. at [10] – [15].

¹⁰ *Man o'War Station Ltd v Auckland Council* [2017] NZCA 24

¹¹ Ibid. at [59] – [65].

¹² *Environmental Defence Society Inc v New Zealand King Salmon* fn 6 at [98] – [105].



[29] Exceeding the limit in Rule 8(1)(d) would now be a discretionary activity under Rule 8(1)(dd), rather than a non-complying one as provided for in the decisions version of the rule. This was supported by all parties. This is an important amendment, as we discuss below.

[30] As might be expected, the drafting of rule 8 went through numerous versions between the notification of the proposed Plan and the filing of closing submissions after the hearing before us. We see no need to rehearse that process and are concerned that to do so would be likely to create confusion in understanding our decision. It will, we think, be sufficient for us to use the version of Rule 8 that the Council presented in its reply submissions dated 30 July 2018. This version gathered together the amendments which had been agreed to that point. We will then address the remaining issues for decision, including any alternative wording where a party advanced that, in relation to this version.

[31] The full text of rule 8 as presented by the Council in reply is:

RULE 8 Conservation lot subdivision

1. Conservation lot subdivision in the Rural Zone is a **restricted discretionary activity** provided:
 - aa) The lot (parent lot) or landholding to be subdivided has not been the subject or result of a previous subdivision under this rule either through Table 1 or Table 2 in this District Plan; and
 - bb) The natural area/feature to be protected, restored or enhanced, and the conservation lot(s) to be created, are within the lot or the landholding; and
 - a) Either the land to be restored or enhanced and protected:
 - i) contains a priority area identified on Figure 1 A-D Priority Areas for Indigenous Ecosystem Restoration or Enhancements, and Protection by Conservation Lot and meets the standards in Table 1; or
 - ii) Meets the standards in Table 2; and
For the avoidance of doubt a subdivision application can be made using either Table 1 or Table 2 and not both.
 - b) The application is accompanied by a report prepared by a suitably qualified ecologist that:
 - x) Identifies any natural features including degraded under-represented ecosystems; and
 - i) Identifies the area/feature to be restored or enhanced and legally protected; and
 - ii) Confirms that the area/feature to be legally protected is ecologically significant in accordance with the assessment criteria of Section 11A of the Waikato Regional Policy Statement; and
 - iii) Identifies how the ecological values and benefits of the natural area/ feature are to be enhanced or restored and legally protected; and
 - iv) Identifies how adverse ecological effects associated with the subdivision are to be avoided, remedied or mitigated; and



- v) Where restoration has been undertaken or is proposed, confirms that the indigenous vegetation of the natural area/feature to be legally protected contains or will contain an array of indigenous plant species appropriate for the ecosystem type(s) represented; in proportions and cover expected for the ecosystem type, and comprising species found within the locality and within the Ecological District in which the area/feature is located; and where restoration has already been undertaken >95% indigenous cover has been achieved;
- vi) Confirms that the natural area/feature, or part of it, where it forms part of a larger continuous natural area/feature within a lot or the landholding, will not adversely affect the integrity of the larger natural area/feature and the part of it that has been identified for protection will protect the best biodiversity values of that area/feature within the Land Holding; and
- vii) Includes a management plan specifying:
- the key biodiversity and ecological enhancement objectives to be met, including successful ecological functioning of the natural area/feature and its ability to be self-sustaining;
 - the ongoing management measures required to achieve these objectives, including any ongoing plant/animal pest control and domestic animal restrictions;
 - the ongoing monitoring methods to measure the success or otherwise of implementation of the management methods; and
 - the measures to be taken should the objectives not be fulfilled; and
- viii) Identifies the location of building platforms and associated access outside of the area for restoration or enhancement, and protection and outside of the Outstanding Natural Features and Landscapes Overlay and the Outstanding Natural Character Overlay; and
- c) The application must specify how the area/feature will be legally protected in perpetuity; and
- d) The maximum number of conservation lots is:
- i) For subdivision using Table 1 Priority Areas, the maximum number of conservation lots per lot (parent lot) or landholding is 10; and
 - ii) For subdivision using Table 2, the minimum average lot size of all conservation lots is 2 ha.
- cc) The Council restricts its discretion to all the matters in Table 5 at the end of Section 38.
- dd) Subdivision creating one or more conservation lots in the Rural Zone that does not meet the standards in Rule 8.1 b), or d) is a **discretionary activity**.
4. Subdivision creating one or more conservation lots in the Rural Zone that does not meet the standards in Rule 8.1 aa), bb), a) or c), is a **non-complying activity**.

Table 1 - Identification of Priority Areas for Protection

Key from Figure 1 A-D	Minimum priority area to be restored or enhanced, and protected, for each additional conservation lot	Rationale for the area
	2 ha	Internationally to nationally significant of high or medium high priority



	4 ha	Internationally to regionally significant of high to medium priority
	10 ha	Nationally to locally significant of high to medium priority
	14 ha	Regionally to locally significant of medium high to medium priority
The priority areas mapped in Figure 1 A-D are indicative only. An ecological assessment will be required to determine the full extent of the area. At this time the priority area may be found to be smaller or larger than the mapping indicates or that the site contains other natural features as per Rule 8.1 b) x) that are contiguous with the priority area.		

[32] The reference in Rule 8(1)(a)(i) to Figure 1 is to the planning maps. Figure 1 (which is in four sheets labelled A – D) depicts the entire district mapped cadastrally in land parcels, with certain parcels coloured according to the extent of minimum priority areas as shown in the key in Table 1. To assist readers of this decision where it is not presented in colour those are, from top to bottom, red, orange, yellow and blue.

[33] We understand the references to *parent lot* to be used to avoid any confusion between a lot that exists prior to any application for consent and a lot created as a result of such application. *Lot* is defined as follows:

Lot means all adjoining allotment(s) (as defined in section 218 of the Resource Management Act - see below) held within one computer freehold register (also known as certificate of title). Where there is a registered cross lease flats plan, each exclusive use area identified on the flats plan constitutes a lot under this Plan. 'Site' has the same meaning.

[34] The term *landholding* has been included by agreement among the parties to enable adjoining landowners to combine their land resources to achieve conservation lot subdivision. Ms Williamson, the expert planning witness called by the Council, offered the following definition of landholding:

One or more parcels of land either contiguous or divided only by a road, railway, drain, water-race or stream.

We were told during the hearing that this definition had already been included in the subdivision rules, but we cannot see it in any of the copies available to us. We will include it in the provisions attached to this decision for the avoidance of doubt.

[35] The reference in Rule 8(1)(a)(ii) to Table 2 is to the general subdivision standards for one or more additional lots in Section 38.7 which sets out the assessment standards, matters and criteria for subdivision.

[36] Associated with the contested Rule 8(1)(d) is a new Table 2A. This is not in dispute but is important for a full understanding of how the contested rule is intended to operate. Table 2A would provide:



Table 2A – Protection, enhancement and restoration of other natural features outside of priority areas				
Natural feature	Rural Zone		Rural Zone outside the Coastal Environment only	
	Min. feature size for one additional lot	Min. feature size for two additional lots	Min. feature size for three additional lots	Min. feature size for four additional lots
Wetland	0.5ha + 10m indigenous buffer	2ha + 10m indigenous buffer	3ha + 10m indigenous buffer	4ha + 10m indigenous buffer
Duneland	0.5ha	2ha	N/A	N/A
Floodplain forest	1ha with minimum width 30m	2ha	3ha	4ha
Coastal forest	5ha	20ha	N/A	N/A
Coastal Edge Escarpment Forest	2ha	5ha	N/A	N/A
Lowland forest	10ha	30ha	45ha	60ha
The definitions for the purpose of this table, found in Section 3, intend to allow for the protection of existing mature indigenous ecosystems and the rehabilitation and/or restoration of under-represented ecosystem types including wetlands, dunelands and floodplain forest.				

NOTE: The Coastal Environment rules only apply to that part of a lot that is within the Coastal Environment

[37] The Council's case in support of its proposed rule included the evidence of its expert witnesses that, its counsel submitted, shows that subdivision is best managed through comprehensive, robust assessment criteria that enable a site-specific consideration of effects. It said that a cap of two lots is a blunt instrument when it comes to assessing potential effects and that such a low limit would be prohibitive to uptake of the opportunity under Rule 8. On that basis, counsel submitted, a cap of ten lots would result in greater ecological gains for the district.

[38] The Council's expert planning witness, Ms Williamson, with Mr Hall called by Northern Land and Mr Glen (a party but also a qualified planner) on his own behalf and for Mr Sieling and Ms Edens, supported the Council's position. They reviewed the likely yields for lots less than 100 ha and found that the averages for the priority areas in Figure 1 would be 2 ha – 10, 4 ha – 7, 10 ha – 4 and 14 ha – 4. On that basis they considered that a cap of 10 would be appropriate for the highest priority areas and that the other areas would be largely self-regulating within that cap.



[39] Counsel noted that, as a cap, the proposed rule should not be treated as a starting point but as a safety measure. Any subdivision proposal will need to be accompanied by a site-specific assessment of the constraints of the land itself and the application of the various standards, assessment criteria and design principles in the Plan. In particular, the priority areas identified on the Figure 1 A - D maps, to which Table 1 relates, provide strategic focus for the creation of conservation lots.

[40] Acknowledging that its expert witness on ecology, Mr Kessels, said that a lower cap would be preferred in theory in the coastal environment, counsel for the Council submitted that it would be very unlikely that as many as 10 lots could be created in the priority areas identified in the Coastal Environment. Counsel noted that that Mr Kessels also testified that overly onerous restrictions would result in such areas not being protected.

[41] Counsel for Northern Land submitted that there was a mathematical logic to the identification of a cap of 10 lots by the expert planning witnesses. He submitted that protecting the highest priority areas that had been identified would be achieved by higher potential yield, which would also incentivise subdivision and counter-balance the costs of subdivision. He noted that as a restricted discretionary activity, inappropriate subdivision could be declined resource consent.

[42] In relation to whether how a cap should be approached, and whether it is better to work up from a low cap or start high and work down, counsel for Northern Land submitted that the policy framework clearly promotes positive biodiversity outcomes while protecting specified values and that this guidance favours a higher cap as a restricted discretionary activity. Counsel acknowledged a psychological perception of a restricted discretionary activity being less onerous to obtain based on specified assessment matters within a clear outcomes-based framework.

[43] Federated Farmers, Blackjack Farms and Mr Mear submitted that, to be appropriate, a provision enabling subdivision should make such subdivision worthwhile. Mr Mear submitted that the difference between the caps should be considered in terms of the potential environmental benefits that would be foregone if a lower cap were imposed.

[44] The case presented by EDS in support of lower caps emphasised the purpose of conservation lot subdivision being to protect and enhance biodiversity in the Rural zone.



Subdivision is a mechanism that can be used to achieve biodiversity objectives, including by offering increased opportunities, but such opportunities are not the purpose of Rule 8. The incentives need to be calibrated to ensure biodiversity gains are realised in a manner consistent with the values of the underlying area and wider strategic goals.

[45] Counsel for EDS submitted that the cap of 10 lots was simply an average yield set without any or sufficient regard for either considerations of amenity and character or the views of the expert witnesses on ecology. Assessment criteria, performance standards and management plans are not sufficient to address the pressures that additional dwellings and human activity generally may put on the environment. Realistically, while said not to be a target, the 10-lot cap will be seen by developers as goal where the objective is to maximise development yield and financial return, notwithstanding that such development may be inconsistent with the policy framework of the Plan and the higher-order planning documents.

[46] EDS expressed concern that not all adverse environmental effects can be captured through the assessment criteria and performance standards, particularly where such methods rely heavily on monitoring and enforcement by the Council. Counsel expressed doubt about the consistency of the stewardship ethic among relevant landowners. This means, counsel submitted, there is a risk of a poor ecological outcomes if the Council's proposed cap is adopted and that this risk should be minimised through a lower cap, consistent with a precautionary approach to environmental effects in the coastal environment, with reference to Policy 3 of the NZCPS.

[47] Mr Serjeant, the expert planning witness called by EDS, did not agree with his peers. He noted that the coincidence of the Priority Areas and the land covered by the ONFL overlay was very high and that there were very few instances where conservation lots could be generated because of that overlay. He also noted that the creation of an extra lot is a non-complying activity in an ONFL pursuant to Section 32, Rule 11 of the proposed Plan, which would provide some assurance that subdivision within the same lot would be low. However, he identified a risk arising from the provision for combined landholdings enabling the aggregation and relocation of lots outside the Priority Areas and the ONFL overlay, which could result in a large number of lots being created in the Coastal Environment. While acknowledging that the assessment of a subdivision application would include effects on landscape and natural character in the coastal environment, he was of the view



that a cap of 10 would be too high and said he would be more comfortable with 5 lots.

[48] In answer to questions from the Court, Mr Serjeant stated that in light of the relevant objectives and policies of the Plan and the RPS, the general thrust of the provisions was on protecting resources while enabling activities, rather than enabling activities subject to constraints. There is a particular focus in the policies on the protection of biodiversity and ecosystems and conservation lots are an incentive in the context of subdivision to achieve those aims rather than the goal of them. On that basis EDS submitted that the planning framework supports a lower starting point rather than a higher one.

[49] EDS also submitted that a 10-lot cap is not required to incentivise conservation lot subdivisions under Rule 8, noting that the package of rules now before the Court provides sufficient incentives which include:

- a) Further opportunities under Table 2A for restoration through subdivision, and those properties that contain underrepresented features can now use Rule 8.
- b) An activity status of restricted discretionary under Rule 8 compared with full discretionary under Rule 9 on the basis (which we address in relation to the second issue later in this decision) that there are fewer hurdles in obtaining resource consent as a restricted discretionary activity.
- c) The minimum average lot size favours use of Rule 8. If yield is the most important factor, then the minimum average lot size of 2 hectares under Rule 8 (as opposed to 20 hectares under Rule 9) allows for a greater yield to be achieved.

[50] The economic or financial aspects of the two options were not fully examined in evidence. While some evidence was presented regarding the cost of protection and restoration works, there was no evidence regarding the value that might be achieved through subdivision and sale of either 1 or 2 lots in the Coastal Environment or up to 4 lots outside the Coastal Environment. Counsel noted that on the other side of such a ledger the importance of indigenous biodiversity on the Coromandel peninsula was widely supported by the expert witnesses on ecology and not questioned by any party.



Evaluation of a cap on new conservation lots

[51] Conservation lot subdivision presents a classic dilemma of regulatory design between incentives and controls – whether to use the carrot or the stick. Particular complexity arises because the activity to be controlled (subdivision and associated development) is also being used as an incentive mechanism to obtain public benefits (conservation lots) that may offset the adverse effects of the activity that are sought to be controlled.¹³ The degree of complexity increases because the boundaries of the regulatory framework under the RMA are not rigid and there is substantial discretion in relation to the limits of control.

[52] Incentive-based regulatory systems may be self-policing, which is at least a fiscally desirable attribute. Such systems may however also be prone to failure. Minimum standards may not be observed or maintained, and the system may be abused by allowing people to take the incentive without any or sufficient steps to meet the standard. Control-based regulatory systems require monitoring and enforcement which can be costly, but if not done then non-observance of standards may become widespread.¹⁴ In practical terms, a complex regulatory system often requires both the carrot and the stick to function as intended. This is sometimes called *responsive regulation*.¹⁵

[53] Further, a complex regulatory system is not always best implemented simply by rules. While one may intuitively think that rules can be more precise than objectives, policies or other statements of principle, it is the conclusion of at least one expert in the theory of regulation that *the iterative pursuit of precision in single rules increases the imprecision of a complex system of rules*.¹⁶ In simple stable systems, rules can regulate with greater certainty, but in complex dynamic systems, principles may be more likely to enable certainty. This is generally because the interaction of multiple factors leads to less certain results, especially where the factors are themselves inherently complex. The activity classification framework of the RMA,¹⁷ as typically implemented in plans, reflects this by reliance on rules and standards for permitted and controlled activities and relatively greater reliance on objectives and policies in assessing applications for consent

¹³ *Pathways to Prosperity*, Marie Brown, Environmental Defence Society and the New Zealand Law Foundation, 2016.

¹⁴ *Last Line of Defence*, Marie Brown, Environmental Defence Society and the New Zealand Law Foundation, 2016.

¹⁵ *Responsive Regulation*, Ian Ayres and John Braithwaite, Oxford University Press, 1992.

¹⁶ *Rules and Principles: A Theory of Legal Certainty*, John Braithwaite, (2002) 27 Australian Journal of Legal Philosophy 47.

¹⁷ Section 87A Resource Management Act 1991.



for discretionary and non-complying activities.

[54] Notwithstanding the careful arguments of the Council and the parties supporting its position about starting points and safety measures, we consider that providing for a lower number of conservation lots in Rule 8(1)(d) is more appropriate in Thames Coromandel district. From the evidence before us and the wider experience of members of the Court, we conclude that subdivision by its nature presents risks to the natural environment because the essential purpose of subdivision is to enable more intensive use of land, which usually entails greater adverse effects on the environment. In saying that, we recognise that more intensive use of land is inextricably linked to population growth and economic development, and that a positive result of subdivision is to provide additional opportunities for people to live and work in an area. We also recognise that a greater public benefit may result from additional conservation lots being created. But if such opportunities are to be provided in locations where natural resources of the environment, or particular attributes and values of them, ought to be protected or otherwise recognised and provided for so that the quality of the environment can be maintained and enhanced, then we think that the plan, including any starting point or limit set by the rules, should reflect that context.

[55] The Court's experience is that landowners seeking the benefits of subdivision, including higher returns from their land, generally design their subdivisions to maximise those benefits or returns rather than to optimise them in a manner that balances the benefits to them with wider environmental benefits. As well as the cost of the land and the likely return on sale of the subdivided lots, the prudent owner will also take into account the costs of obtaining consent (including any risk factor) and of implementing such consent. A limit on lots in the plan will affect those calculations, but if the consenting costs are substantially less than the potential return, then a discretionary limit is more likely to be treated by applicants as a starting point than a cap. While the consent authority may intend through its objectives and policies not to take the same approach, the consenting process can be unpredictable and may not achieve that. This is especially so where the consent authority pays little or no regard to its stated objectives and policies when assessing or deciding on applications. We discuss this issue further below.

[56] Where there are particular natural resources to be protected, as is likely to be the situation where conservation lots are proposed, then in our judgment it is better to set a lower limit and address the effects of an application to go higher on a case by case basis by the application of appropriate principles, rather than set a high limit in the expectation



(or hope) that the proposals will keep within the limit.

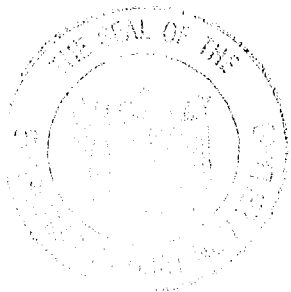
[57] We recognise the risk that setting too low a limit may deter conservation lot proposals and that this may be to the detriment of a strategy seeking to protect more land worthy of conservation. However, the ability to seek consent for a higher number of lots on a discretionary basis under Rule 8(1)(dd) leaves open the opportunity to present a proposal for additional subdivision. It is not clear to us, either on the evidence or in our experience, that making an application as a restricted discretionary activity would be greatly different than making an application as a discretionary activity in terms of either the cost of doing so or the likely result of a well-prepared application. If the circumstances of the parent lot or landholding are suitable for the creation of more lots, then we think that the provisions of the proposed Plan do not prevent that from being granted consent.

[58] It is for these reasons that we consider the agreed amendment of Rule 8 to classify subdivision above its limits as a discretionary activity rather than non-complying to be significant to our assessment. This assessment might be altered substantially if the default activity status for proposals above the limit were a non-complying activity and the objectives and policies were explicit about the purpose of the limit and directive about how it should be treated. We make a number of further comments about how activities should generally be classified, but in the context of Rule 9. For present purposes we observe that in order for the difference in activity status between discretionary and non-complying to have real effect under the RMA, the relevant objectives and policies must be explicit about what the adverse effects being controlled are and about what should not be granted consent beyond any discretionary limit. In the Court's experience, few plans contain sufficiently rigorous objectives and policies to make the threshold assessment under s 104D(1)(b) RMA a very high bar.

[59] We do not need to examine that issue further, given the parties' agreement on activity status. For present purposes, the main factor is that setting the lower limits sought by EDS does not foreclose on the opportunity to subdivide to a greater degree where that is appropriate in the circumstances of the case.

Other issues with Rule 8

[60] As well as the main issue concerning the maximum number of conservation lots under Rule 8, there were several other issues with particular aspects of the Rule that we now address.



Rule 8(1)(d)(i) – lots and landholdings

[61] In Rule 8(1)(d)(i), EDS proposed that the words *per lot (parent lot) or landholding* are inserted after the words *the maximum number of conservation lots*. The Council supports this.

[62] The definitions of *lot* and *landholding* are set out above. As already noted, the purpose of including this definition is to afford an ability to use Rule 8 to create conservation lots by combining separate owners' holdings. That is a generally desirable method to enhance the operation of the rule.

[63] Equally, it is important to ensure that this does not have unintended or even perverse consequences. Counsel for EDS submitted that without more, the wording would not make it clear that the number of conservation lots that can be created is to be counted per lot or per landholding basis (whichever is applicable). This may lead applicants to argue that they should be allowed to create the maximum number of additional lots for each lot within a landholding. The insertion of the words *per lot (parent lot) or landholding* should make it clear that the cap on the maximum number of lots applies per lot or per landholding, whichever is applicable.

[64] We agree.

Rule 8(1)(d) – Types of conservation lot subdivision

[65] The wording of Rule 8(1)(d) proposed by the Council would set a maximum of 10 conservation lots of any size created in the priority areas referred to in Table 1 and apply a 2-hectare minimum average lot size to all additional conservation lots created under Table 2.

[66] EDS argued that the same 2-hectare minimum average should apply to conservation lot subdivision under Tables 1 and 2 to ensure a consistent approach, and that no valid reason has been raised as to why this should not be the case. To achieve that, EDS sought that the words *for Table 1 and Table 2* be inserted in Rule 8(1)(d)(i) after the words *per lot (parent lot) or landholding* and that the words *For subdivision using Table 2* should be deleted from the beginning of Rule 8(1)(d)(ii). These amendments would result in the same limits for lot numbers and average lot size for all subdivisions under Rule 8, whether using Table 1 priority areas or Table 2 minimum



standards. Counsel submitted that the same cap should apply to Table 1 and Table 2, as both tables are seeking similar outcomes.

[67] The Council opposed these changes. Counsel pointed out the Table 1 methodology had been developed using existing data and therefore was quantified, with knowledge of the spatial range and extent of the priority areas. The Table 2 standards had been agreed through mediation and had not been quantified, so that no-one could say what the location and distribution of natural features was. To ensure flexibility in achieving the best ecological outcomes for each site, the two methods should not be treated as combined. These changes were also opposed by other parties for the same reasons.

[68] On those grounds the Council sought to retain the use of both Table 1 and Table 2 in Rule 8, with a precautionary approach justifying the difference between the limits of the tables given the extent to which Table 1 has been based on an assessment of priority areas while Table 2 is a general provision. We acknowledge the force in this submission.

[69] In light of our decision on the maximum number of lots provided for in the first part of this rule, the potential for disparate outcomes should be reduced. Ultimately, the design of any subdivision and the total number of lots are matters of discretion as listed in item 6 of Table 5. We therefore do not apply the 2 hectare minimum average lot size to Table 1.

Rule 8(1)(bb)

[70] A new Rule 8(1)(bb) is proposed:

bb) The natural area/feature to be protected, restored or enhanced, and the conservation lot(s) to be created, are within the lot or the landholding; and

[71] EDS suggest that the word "a" is changed to "the" before the term "Land Holding". The Council supports this change.

[72] The natural feature to be protected and the relevant conservation lot(s) could technically be located in any landholding (i.e. "a" landholding), not necessarily the same Land Holding or the landholding subject of the application for subdivision consent under Rule 8. This amendment would overcome any ambiguity about the scope of the rule to achieve that outcome.



[73] We agree.

Rule 8(1)(b)(x)

[74] Several changes to the list in Rule 8(1)(b) of items to be included in the report accompanying an application for subdivision consent are proposed.

[75] A new Rule 8(1)(b)(x) was proposed by the Council:

b) The application is accompanied by a report prepared by a suitably qualified ecologist that:

...
x) Identifies any natural features; and

[76] EDS submitted that two phrases, *including degraded under-represented ecosystems* and *and dunelands, floodplains*, should be inserted after *natural features*. Counsel submitted that there is a risk under the Council's version of the Rule that only those existing high priority natural features will be identified by ecologists, and that underrepresented degraded ecosystems will not be identified.

[77] All other parties supported the first change sought by EDS but the Council was concerned that the second, seeking a list of examples, may create uncertainty.

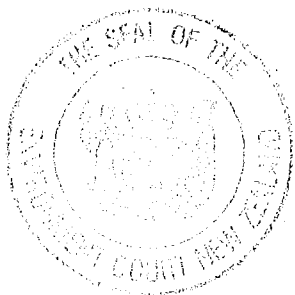
[78] We accept that the first amendment sought by EDS to this rule is appropriate to make it clear that all types of natural features and natural features of varying condition need to be identified by ecologists in compiling reports under Rule 8(1)(b). This is consistent with the objectives and policies of the proposed District Plan, which encourage both the protection of ecosystems in good condition and the restoration of degraded ecosystems.

[79] We accept the Council's submission that a list of examples should not be included. It is sufficient to refer to natural features and ecosystems. Where particular types of land or other natural resources contain natural features, then the rule will allow those to be assessed.

Rule 8(1)(b)(v)

[80] A new rule 8(1)(b)(v) was proposed:

Where restoration has been undertaken or is proposed, confirms that the indigenous vegetation of the natural area/feature to be legally protected contains or will contain an array of indigenous plant species appropriate for the ecosystem type(s) represented; in



proportions and cover expected for the ecosystem type, and comprising species found within the locality and within the Ecological District in which the area/feature is located; and where restoration has been undertaken >95% indigenous cover has been achieved;

[81] This wording would allow applicants under Rule 8 to obtain subdivision consent without already having undertaken the restoration of the natural feature.

[82] EDS submitted that the words *or is proposed* in the first line and *or will contain* in the second line be deleted so that all restoration is undertaken before subdivision consent is granted under Rule 8. Counsel submitted that there is a greater risk of poor subdivision outcomes if restoration is not secured before subdivision can occur as the incentive to undertake restoration has been lost once subdivision has already occurred.

[83] While acknowledging the importance of encouraging the use of Rule 8 to obtain conservation lots and the risk that uncertainty in obtaining consents until after restoration work has been done might inhibit that, counsel for EDS submitted that other methods might be used to secure adequate restoration and that it is important to ensure that promised restoration is in fact carried out in well set up management frameworks.

[84] The Council did not support this proposed amendment. Instead it proposed to add specific references to the use of bonds, as provided for in ss 108(2)(b), 108A and 109 RMA, as a new item 11(e) in Table 5.

[85] We agree with the Council's revised approach. We can see significant potential difficulties in requiring restoration always to be in advance of subdivision. In some cases, restoration work may involve long-term management which might effectively preclude subdivision if required to be completed before subdivision could occur. That outcome would be contrary to the purpose of the rule. It may also result in adverse effects on the natural area or feature by not providing for its protection on a timely basis.

[86] On a more minor drafting point, while the Court generally admires concise drafting, we think it goes slightly too far to use mathematical symbols among the words. The symbol > should be removed and replaced by *greater than*.



Rule 8(1)(b)(vii) - bullet point 3

[87] The third new bullet point in Rule 8(1)(b)(vii) reads:

- the ongoing monitoring methods to measure the success or otherwise of implementation of the management methods; and

[88] EDS proposed that the words *implementation of* be deleted as being redundant and the word *methods* is replaced by *measures* for consistency with the rest of Rule 8(1)(b)(vii). The Council supported these amendments.

[89] We agree.

Rule 8(1)(b)(vii) - new bullet point 5

[90] EDS proposed an additional (fifth) bullet point in Rule 8(1)(b)(vii), to read:

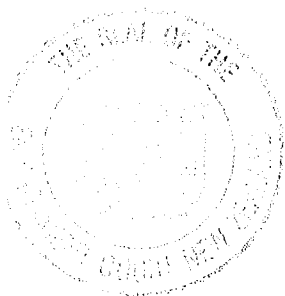
- how the management measures are to be coordinated over the protected natural feature; and

[91] EDS submitted that poor outcomes may arise from multiple landowners taking disparate approaches to ecological protection or restoration, with negative ecological outcomes. Seeking that an integrated approach being taken by different owners, EDS submitted that it is essential that Rule 8 gives the consent authority a discretion to consider the extent to which an integrated management approach has been proposed.

[92] This proposal received support from a number of other parties but not from the Council.

[93] It is not clear to us how such a provision as sought by EDS could be given regulatory effect on a case by case basis. We are concerned that the provision might be read as suggesting that the management measures taken by one landowner could govern those to be taken by their neighbours. We therefore do not consider this proposed addition to be appropriate.

[94] It may be more feasible to advance the objective behind this suggestion where the Council has included in its plan provisions which would guide the types of management measures which are to be applied, whether generally or in relation to any particular feature or type of feature. Then each application could be assessed against



such plan provisions rather than attempting to assess them against the terms of consents on neighbouring land.

Rule 8(1)(b)(viii)

[95] Rule 8(1)(b)(viii) is now proposed by the Council to read:

- viii) Identifies the location of building platforms and associated access outside of the area for restoration or enhancement, and protection and outside of the Outstanding Natural Features and Landscapes Overlay and the Outstanding Natural Character Overlay; and

[96] EDS considered that the words *identified natural features in Rule 8.1(b)(x)* should be inserted in place of the words *the area for restoration or enhancement, and protection*. This amendment would require identification of the location of building platforms or accessways outside all natural features in their entirety. Counsel for EDS submitted that to do otherwise would create a higher risk of negative ecological outcomes as it would necessitate destruction of some of the identified natural feature. Addressing the concern that this may preclude opportunities where a property is completely covered by a natural feature, counsel for EDS submitted that there would be options to utilise the definition of *landholding* or to apply for consent as a discretionary activity.

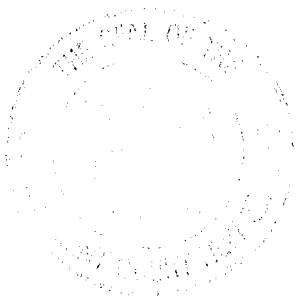
[97] A similar issue arises in relation to the wording of item 11(f) in Table 5.

[98] The Council did not support this amendment. Counsel submitted that the rules enabled appropriate assessment of an application in the particular context of each natural feature in terms of items 6 and 11 in Table 5.

[99] We agree with the Council. The potential for arbitrary cadastral boundaries to conflict with the identification of the boundaries of a natural feature (which may be disputed) make this another example of how a general rule may apply false precision and lead to greater dispute rather than better environmental outcomes.

Activity status of subdivision in the Rural zone

[100] The second principal issue for decision concerns Rule 9 in Section 38.6 of the Appeals version of the proposed Plan. Rule 9 lists subdivision in the Rural zone as a discretionary activity, provided that it meets the standards in Tables 2 and 3 in Section 38.7 of that Plan. The Council says that this activity status remains appropriate.



[101] EDS maintain that Rule 9 should remain a discretionary activity and agrees with the reasoning of the Council on this point, in summary that:

- a) a discretionary activity status under Rule 9 is one of the factors to incentivise the use of Rule 8 over Rule 9; and
- b) subdivision in the Rural Zone should be assessed against the full suite of objectives and policies of the proposed District Plan, given the important resource management issues (for example, land fragmentation) together with the fact that much of the Rural Zone also falls within the Coastal Environment.

[102] Several appellants, being Blackjack Farms Ltd and its associated parties, the Sielings, Federated Farmers and Northern Land Property Ltd, say that the activity status should be as a restricted discretionary activity. We note again the question whether a restricted discretionary activity is a less onerous status than full discretionary, either in terms of what the RMA and the proposed Plan provide or in terms of a psychological perception.

[103] The version of Rule 9 considered at the hearing provides:

RULE 9 Subdivision creating one or more additional lots

1. Subdivision creating one or more additional lots in the Rural Zone is a discretionary activity provided:
 - a) It meets the standards in Tables 2 and 3 at the end of Section 38; and
 - b) The land has not been the subject of previous subdivision under this Rule or Rule 751 of the previous Thames-Coromandel District Plan, except as provided for in Rule 9.1 c); and
 - c) A lot greater than 60 ha may be subdivided in two or more stages provided that the application for the first stage shows the full extent of the staged subdivision and specifies how the total subdivision complies with Tables 2 and 3 at the end of Section 38; and
 - d) Lots created within the National Grid Subdivision Corridor can identify a building platform outside of the National Grid Yard; and
 - e) It is not within Section 2 Block VI Harataunga Survey District.
2. Subdivision creating one or more additional lots that is not a discretionary activity under Rule 9.1 a), b) or c) is a non-complying activity.
3. A resource consent application for subdivision within the National Grid Subdivision Corridor shall be assessed without public or limited notification under Sections 95, 95A, and 95B of the RMA where written approval is obtained from the owner and operator of the National Grid.
4. Subdivision creating one or more additional lots within Section 2 Block VI Harataunga Survey District is a prohibited activity.



NOTE

1. *A resource consent application for subdivision within the National Grid Subdivision Corridor under Rule 9.1 will consider Table 5 Matter 13 "Restricted Discretionary Assessment Matters": "Subdivision in the National Grid Subdivision Corridor".*

[104] Table 2 sets out subdivision standards for one or more additional lots, being spatial minimums for lot area or net lot area, average lot density, shape and road frontage. Table 3 sets out other standards for subdivision, relating to services, access and street lighting.

[105] The appellants who seek that subdivision under Rule 9 be a restricted discretionary activity are content that the restriction be in respect of the matters and assessment criteria set out in Table 5 in Section 38.7.

[106] Table 5 lists 14 matters. Twelve of those are of general application, relating to stability, suitability for on-site effluent disposal, servicing, stormwater, access, location and design, protection of existing quarries, staging, cumulative effects on urban density and stormwater runoff, accordance with the Council's code of practice for subdivision and development, ecosystem restoration and enhancement and reverse sensitivity effects. There are also matters relating to the National Grid subdivision corridor and flood hazard risk on a specific lot at Whangapoua. The twelve general matters spawn some 42 assessment criteria, and several of those are further subdivided. The code of practice for subdivision and development is listed as a single matter and criterion, but that reference is the tip of an iceberg: the code of practice is a lengthy document in eight sections with nine appendices.

Evaluation of activity status of subdivision in the Rural zone

[107] This issue raises the question of the appropriate extent of assessment of a restricted discretionary activity. While generally the use of the restricted discretionary activity class has been confined to relatively minor matters, with the intention of reducing the cost and time involved in processing applications and often being dealt with on a non-notified basis,¹⁸ the power to refuse consent remains available where the proposal has inappropriate adverse effects or is inconsistent with relevant objectives and policies.

[108] The Court's experience with other plans is that the original impetus for the application of restricted discretionary status was that when it was introduced by the

¹⁸ *Auckland Council v John Woolley Trust* (2007) 14 ELRNZ 106 (HC) at [49].



Resource Management Amendment Act 2003,¹⁹ this status was accompanied by a provision that enabled a rule in the plan to provide that an application for such an activity did not need to be notified.²⁰ That appeared to lead to many activities being classed as restricted discretionary principally to preclude notification of applications for them.

[109] That notification provision was replaced in 2009 by s 77D RMA which now generally enables a rule in a plan to specify activities for which the consent authority must give or is precluded from giving notification. The current position, therefore, is that in making a plan a council can address the activity status of an activity separately from whether applications for that activity need to be notified.

[110] As matters of general principle for making plans under the RMA, notification of applications for resource consent should not be dependant simply on activity status, and nor should activity status be set as a general method to require or preclude notification. The Court is aware that some district plans provide that all restricted discretionary activities are to be processed on a non-notified basis. This appears to be done without regard for the nature of the effects the activity might have, which is not consistent with an effects-based approach to informing affected persons of a proposal and may result in persons having no ability to make submissions on matters that directly affect them.

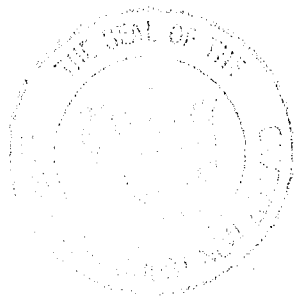
[111] The notification provisions in the RMA provide a clear basis on which such outcomes can be avoided. Notoriously, notification processes can be the most contentious matters affecting applicants and their neighbours, but the policy of the RMA is that decisions about resources are best made by allowing public participation in a process in which applications are publicly contested.²¹ This imports an implicit acknowledgement that seeking to avoid such issues may not be the most appropriate method of pursuing robustly sustainable outcomes for resource consents. To reduce the adverse consequences of potential contention including delay and cost, plan-makers should seek to provide greater focus in their plans on the nature of the effects of proposed activities that are relevant to consenting and to the identification of who may be directly affected.

[112] We note that the rules relating to subdivision in the proposed Plan do not contain

¹⁹ Section 77B(3) RMA, inserted by s 34 Resource Management Amendment Act 2003.

²⁰ Section 94D RMA, inserted by s 41 Resource Management Amendment Act 2003 and repealed by s 76 Resource Management (Simplifying and Streamlining) Amendment Act 2009.

²¹ *Murray v Whakatane District Council* [1999] 3 NZLR 276, [1997] NZRMA 433, (1997) 3 ELRNZ 308.



any general rule relating to notification, except for the specific case of subdivision within the National Grid Subdivision Corridor where Transpower agrees. That limited exception appears to us to be an appropriate approach to balancing the constraint on and cost to an applicant with the protection of national infrastructure. We also consider that it is appropriate that the Plan allow for consideration of whether an application for subdivision should be notified or not to be determined according to the provisions in ss 95 – 95G RMA.

[113] The classification of activities as restricted discretionary should be carefully considered. Diligent attempts should be made to try and focus the range of resource management issues that ought to be addressed when considering an application for resource consent for such an activity. The basis for assessment of restricted discretionary activities should be clear from the relevant objectives and policies. This should assist in limiting the extent to which submissions create unnecessary complexity or delay for applicants. The status of activities should be changed to discretionary where the extent of the matters for discretion is in fact unrestricted.

[114] Where the extent of the effects of activities (including subdivision) that would be likely to result from the grant of consent would not be known prior to an application being made, then that lack of knowledge raises a question as to how the restriction on matters of discretion could be understood and fixed, as required by sections 87A(3) and 104C of the Resource Management Act 1991.

[115] An activity status should not necessarily be linked to the likelihood of consent being granted, except of course for controlled activities. The discretion, whether restricted or full, to grant consent in ss 104B and 104C and the thresholds in s 104D should be considered in relation to the effects of the proposal and its relationship with the relevant objectives and policies of the statutory planning documents. We discuss this in greater detail below.

[116] If the Council really considers that consent would always be granted for a particular activity subject only to the terms and conditions that may be imposed, then the appropriate class for that activity would be controlled. That is not in issue in this case.

[117] In the course of the hearing counsel for WBRA said that the Council's planning officers, and possibly planners generally, did not assess applications for restricted discretionary activities against the objectives and policies of the Plan. If that is true, then



it is a matter of considerable concern to the Court which warrants particular comment.

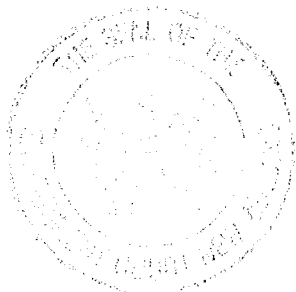
[118] The assessment of any application for resource consent must be done in accordance with s 104 RMA which requires the consent authority to have regard to, among other things, any relevant provisions of a proposed plan. *Provisions* is not defined for the purposes of s 104, but we can think of no reason why it would not include objectives and policies. When first enacted, s 104(4)(a) and (b) referred separately to the requirement to have regard to any relevant rules and any relevant objectives and policies. Section 104 was replaced by s 44 Resource Management Amendment Act 2003, where those provisions were replaced by the current wording. There is nothing to indicate that this amendment was anything more than editing to make the references more succinct.

[119] Section 104C RMA requires a consent authority, when considering an application for consent for a restricted discretionary activity, to consider only those matters over which its discretion is restricted. That restriction certainly limits the extent of the consent authority's consideration of matters and may accordingly limit the extent of the provisions, including the objectives and policies, that are relevant to such consideration. Equally clearly, that restriction is not framed in a manner that could be interpreted to mean that it would prevent consideration of all objectives and policies.

[120] It might be argued that the listing of matters to which discretion has been restricted and the assessment criteria applicable to such matters provides all the guidance needed to make an assessment of an application for a restricted discretionary activity. Even if those provisions were drafted sufficiently well to achieve that standard, that cannot remove the requirement for proper consideration of relevant objectives and policies: the objectives are part of the plan as the most appropriate way to achieve the purpose of the RMA and the policies are the most appropriate way to achieve the objectives. There can be no proper understanding of the matters of discretion and associated assessment criteria in a plan unless there is an understanding of the plan's objectives and policies in relation to those matters.

[121] The need to have regard to relevant objectives and policies when interpreting or applying the rules in a plan has been repeatedly confirmed over very many years. In *J Rattray & Sons Ltd v Christchurch City Council*²² the Court of Appeal noted that the rules applicable to a particular zone *are simply one segment of what must be regarded as a*

²² *J Rattray & Sons Ltd v Christchurch City Council* (1984) 10 NZTPA 59 (CA) at 61.



living and coherent social document. In *Batchelor v Tauranga District Council*²³ the Planning Tribunal held that among the matters to which a consent authority must have regard are:

any effects which allowing the activity might have on public confidence in the consistent administration of the district Plan and on the coherence of the interrelated objectives, policies and rules which make up a district Plan.

[122] This was upheld by a full Court of the High Court,²⁴ noting that having regard to the rules and the relevant policies and objectives envisaged consideration of the integrity of the Plan. Successive amendments to the RMA have not altered that approach and it remains the law: see *Rodney District Council v Gould*²⁵ and *R J Davidson Family Trust v Marlborough District Council*.²⁶

[123] The position is no different in relation to a restricted discretionary activity, notwithstanding the restrictions under ss 77B(3) and (4), 87A(3) and 104C. The reasoning of the High Court in *Auckland City Council v John Woolley Trust*²⁷ in relation to the nature of restricted discretionary activities under the RMA remains instructive even though principal element of the decision was overturned by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.²⁸ At [40] - [42] the High Court considered the extent to which the matters in s 104(1) RMA apply to applications for consent to restricted discretionary activities and how those were to be reconciled with the restriction in s 104C. Relevantly for present purposes, the High Court considered that the matters in s 104(1)(a), (b) and (c) must be read down so they are relevant only in relation to those matters over which the consent authority has restricted the exercise of its discretion. The High Court noted that this was the express position under s 105(3A) prior to its repeal in 2003 and that the repeal did not appear to be intended to change the position as that provision was one for the avoidance of doubt.

[124] As submitted by counsel for Northern Land, the practice of not having regard to objectives and policies of a Plan when considering an application for a restricted discretionary activity was specifically considered by the Environment Court in *Wellington Fish and Game v Manawatu-Wanganui Regional Council*.²⁹ The Court had been

²³ *Batchelor v Tauranga District Council* (1992) 1 NZRMA 266 (PT) at 270.

²⁴ in *Batchelor v Tauranga District Council* (1992) 2 NZRMA 137 (HC) at 141.

²⁵ *Rodney District Council v Gould* [2006] NZRMA 217 (HC) at [99] - [102].

²⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73] - [74].

²⁷ *Auckland City Council v John Woolley Trust* [2008] NZRMA 260 (HC).

²⁸ *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZHC 878 at [100].

²⁹ *Wellington Fish and Game v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [91] - [94].



presented with evidence that the consent authority had been granting applications for restricted discretionary activities without real consideration of the discretion to refuse consent. The Court said:

[91] In closing, the applicants submitted that the statement in Mr Willis's evidence that for restricted discretionary activities, objectives and policies must be directly relevant to the matter of discretion and ... *not open up ... a fundamental assessment of whether the activity can be considered appropriate in a zone or catchment* ... is not supported by the Act. We concur. Nor is it supported by the One Plan. The statement by Mr Willis reflects the controlled activity (which must be approved but can be subject to conditions) and not the restricted discretionary activity status, where a proposed activity may be declined consent.

[92] The Council agreed that it is appropriate for it to consider relevant objectives and policies to inform its understanding of the matters over which discretion is restricted. The applicants have not asked for specific objectives and policies to be included in the declaration, and the declaration recognises that these must relate to matters over which discretion is restricted. While the Council is critical of seeking (and making) a declaration that states no more than what the RMA requires, we accept the desirability (and even necessity) of making such a declaration in the light of the compelling evidence of the shortcomings of applications (perhaps partly a consequence of the material on the Council's website and its forms including the co-produced Guide), compounded by the Council's practice in processing existing farming consents - as evidenced by the analysis of the examples provided to us.

[125] The Court accordingly made the following declaration:

2. That in considering applications for resource consents for restricted discretionary activities under Rules 14.2 and 14.4 of the One Plan (existing and future intensive land use activities), pursuant to sections 104 and 104C of the Act, the Council has a duty to have regard to each of the following matters:
 - (a) all the matters over which discretion is reserved under Rules 14.2 and 14.4 respectively, including:
 - iii. the extent of non-compliance with the cumulative nitrogen leaching maximum values set out in Table 14.2; and
 - iv. the environmental effects of that non-compliance including cumulative effects and a consideration of the required reductions of nitrogen in the relevant water management zone or subzone in order to provide for the Schedule B values (for zones or subzones that are over-allocated).
 - (b) the objectives and policies of the One Plan in so far as they relate to matters over which discretion is reserved under Rules 14.2 and 14.4;
 - (c) the objectives and policies of the National Policy Statement for Freshwater Management 2014 (NPSFM) in so far as they relate to matters over which discretion is reserved under Rules 14.2 and 14.4;
 - (d) in relation to the discharge consent required under section 15 of the Act and under Rules 14.2 and 14.4:
 - (i) the nature of the discharge and the sensitivity of the receiving environment under section 105 of the Act; and
 - (ii) the requirements of section 107 of the Act.

[126] We respectfully agree and consider that the declaration made in that case in relation to the consideration of objectives and policies in a plan or a National Policy Statement is a statement that applies generally to the consideration of applications for resource consent for restricted discretionary activities under the RMA.



[127] We conclude that subdivision under Rule 9 should remain discretionary. The matters identified as relevant to the assessment of such applications are too extensive and the range of possible circumstances are too broad to ensure discretion can be restricted on a principled basis, as required by ss 87A(3) and 104C. The consequences of classifying the activity as discretionary rather than restricted discretionary, whether for notification purposes or consenting purposes, are not nearly so great as to outweigh those factors.

Repetitive subdivision

[128] There was general support for further amendment to Rule 9 to ensure that repetitive subdivision of lots cannot occur. Without such an amendment, it would be at least mathematically possible for owner of a very large rural property to subdivide it into a number of very small allotments with a large balance lot in a way that resulted in an overall average lot size of 20 ha. The process might then be repeated with the balance lot, leading to a greater number of small lots than would otherwise be anticipated with consequential adverse effects from intensive development and loss of natural character. Perverse outcomes could arise from such use of the minimum average lot size to pursue intensive subdivision in the Rural zone.

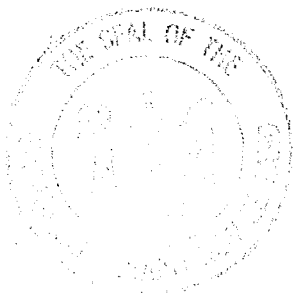
[129] The operative Plan contains Rule 751.2 for subdivision of rural lots, which provides the following limitation:

This rule shall not apply to land which has been the subject of previous subdivision under this rule, except as provided for in clause 751.4 hereunder.

Clause 751.4 allows for the staging of subdivisions in certain circumstances.

[130] A similar control has been added to Rule 8, by agreement, as Rule 8(1)(aa). A proposal which does not comply with this standard is a non-complying activity under Rule 8(4).

[131] At the hearing, there was general agreement that a subdivision proposal should fully address the subdivision opportunity available under the Plan, rather than be done piecemeal. An exception could be made where the plan of subdivision expressly identified future opportunities, such as by staging. While a minimum lot size could restrict the creation of small lots, there was also a general preference to retain the flexibility of a control based on a minimum average lot size, as discussed below.



[132] On that basis, there was general support for the inclusion of the following wording as Rule 9(1)(b):

The land has not been the subject of previous subdivision under this Rule or Rule 751 of the previous Thames Coromandel District Plan, except as provided for in Rule 9.1(a)(i) above.

A proposal which does not meet this standard is a non-complying activity under Rule 9(2).

[133] We agree that the inclusion of such a rule is appropriate to address the potential adverse effects of repetitive subdivision.

Table 5, Assessment Criterion 6 – numbers of lots

[134] EDS sought the inclusion of the words *and number of lots* throughout Assessment Criterion 6 in Table 5 of Section 38.7. This would enable the consent authority to consider the number of lots as part of the location and design of a subdivision. The Council supported this amendment. There was no opposition to it.

[135] We agree that this is an appropriate amendment. The number of lots may be affected by particular constraints or opportunities on the land, and it would potentially complicate the assessment of location and design in a manner that is responsive to the environment not to be able to adjust the number of lots where necessary. Although the consideration of number might be considered implicit in the overall assessment of a subdivision, it is generally preferable (and necessary for a restricted discretionary activity) for an assessment criterion or factor to be explicit for the benefit of all users of the Plan.

Table 5, Assessment Criterion 11(b) – ecosystem enhancement

[136] In Table 5, assessment criterion 11 requires the consent authority to consider a number of matters relating to ecosystem restoration, enhancement and protection. In particular, criterion 11(b)(i), in the appeals version of the proposed Plan, required consideration of:

Whether the area/feature is part of a larger natural area that is not protected and whether the area to be protected is able to be successfully managed to ensure its ability to be ecologically functional and self sustaining.

[137] EDS proposed amendments to this criterion to require consideration of whether the unprotected part of the area or natural feature would be able to retain its integrity or would be affected by the management or protection works specified for



the protected area. Counsel submitted that it is important that as pockets of larger natural features are selectively protected, the integrity and functionality of the wider natural feature is retained, or else there is a risk of doing more harm than good.

[138] The Council supported these amendments.

[139] We agree. The Council's function of preparing and administering its Plan to achieve integrated management of the effects of the use, development or protection of land, including by the control of subdivision, as provided by s 31 RMA, requires a broader view to be taken and for resources, especially resources to be protected, to be considered in their context.

Table 5, Assessment Criterion 11(c)(iii) – management co-ordination

[140] EDS proposed adding to assessment criterion 11(c) in Table 5 the words: *and iii) ensure effective management coordination over the protected natural feature.*

[141] The Rules do not otherwise specifically provide for the consent authority to consider this matter. Counsel for EDS submitted that it is important to include such wording. The Council supported this amendment.

[142] We agree for the reasons already given in relation to the importance of establishing and implementing subdivision methods to achieve integrated management of the effects of use and development of resources caused by or associated with subdivision.

Definitions

[143] The definitions in the proposed plan are in Part 1, Section 3. New definitions are proposed to clarify particular types of natural environments which are suitable candidates for rehabilitation or restoration, particularly where they may be under-represented types of ecosystem, as follows:

Coastal Edge Escarpment Forest - Coastal forest and treeland which is dominated by mature indigenous coastal tree species, such as pohutukawa and can include flaxland and shrubland where these form an indigenous vegetation mosaic with treeland, and which is no further than 150m inland from MHWS.

Duneland - areas composed of sand built by wind or the flow of water and that have a vegetation cover dominated by indigenous duneland species which are naturally occurring



within the Coromandel Ecological Region. Duneland can be located by identifying suitable underlying soil types (e.g. as shown on geological maps).

Floodplain forest – Forest or shrubland that is found, or would have been found, on low-lying alluvial substrates subject to flooding and that has vegetation dominated by at least 80% of indigenous floodplain forest/shrubland species, which are naturally occurring within the Coromandel Ecological Region. These areas are located by identifying suitable underlying flood levels using the TCDC Flood Hazard/Regional Scale Flood Hazard Maps.

Forest - Indigenous woody vegetation in which the cover of trees and shrubs in the canopy is > 80% and in which tree cover exceeds that of shrubs. Trees are woody plants > 10 cm dbh. Tree ferns 3-10 cm dbh are treated as trees.

Scrub – Indigenous woody vegetation in which the cover of shrubs and trees in the canopy is > 80% and in which shrub cover exceeds that of trees. Shrubs are woody plants < 10 cm dbh

Shrubland – Vegetation in which the cover of indigenous shrubs in the canopy is 20-80% and in which the shrub cover exceeds that of any other growth form or bare ground.

Treeland - Indigenous Vegetation in which the cover of trees in the canopy is 20-80%, with tree cover exceeding that of any other growth form, and in which the trees form a discontinuous upper canopy above either a lower canopy of non-woody vegetation or bare ground.

NOTE The definitions for the purposes of Section 38 Rule 8 Conservation Lots intend to allow for the rehabilitation and/or restoration of all of these particularly under-represented ecosystem types.

[144] Most of these definitions, and some others which have not been advanced for inclusion in the proposed Plan, were considered and agreed on by the three expert witnesses who gave evidence before us on ecological matters, together with a specialist officer of the Department of Conservation who did not give evidence. This drafting allows for the protection of all mature ecosystems, and the restoration or rehabilitation of wetlands, dunelands and floodplain forests, which are severely underrepresented.

[145] During the hearing Mr Vernon raised further issues in his submissions and in question of witnesses. As a result, the new definition of *treeland* was added and the word *indigenous* was inserted during the hearing at the beginning of the definitions of *forest*, *scrub* and *treeland*.

[146] Mr Vernon raised other issues concerning these definitions, including as to the scope of inserting them. He submitted that there was no specific relief in any appeal seeking to introduce these specific ecological areas or these definitions. He noted that there are no such mapped areas in the proposed Plan. He also noted that as these definitions would be located in Section 3 with other definitions, they would affect the rest



of the proposed Plan, including Section 29 on Biodiversity. These issues were not addressed by any other party.

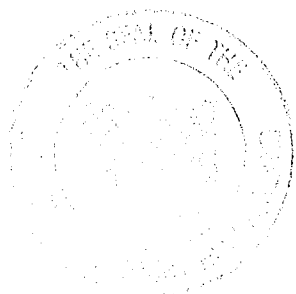
[147] We do not think these amendments are beyond the scope of the appeals. We note that the appeal by EDS sought substantial amendments to Rule 8 for subdivision to include more detailed and specific ecological standards to be met in respect of the features to be protected and the actions taken to manage protected areas, including as to ecological quality and value to qualify for an environmental lot. In our judgment, rule 8 as re-written during the course of the mediation, conferencing and hearing processes, responds to the substance of that part of the appeal by EDS. These amendments to the definitions arise directly from that part of the appeal by EDS and the substantive amendments to Rule 8. We do not consider that any person who is not a party to these appeals could be said to be prejudiced by these amendments. We therefore conclude that the inclusion of these definitions is within the scope of the appeal by EDS and is appropriate to improve the operation of Rule 8.

[148] Mr Vernon also sought further amendments to the definitions, as follows:

- a) That the definitions of types of forest should include that they be a *contiguous area*;
- b) That the definitions of types of forest should include minimum areas of either 0.25 or 0.5 ha; and
- c) That the definition of *coastal edge escarpment forest* should include the words *on steep coastal slopes* to reflect the nature of an escarpment.

[149] We consider that the first two suggestions, while offering apparent precision, may in fact make the operation of the rules less effective by setting boundaries that would hamper their use. The application of Rule 8 will always require an assessment of the particular environment where subdivision is proposed by a person or persons with expertise in ecology. That assessment will always be subject to a discretionary decision. Matters such as the contiguity or size of an area to be protected are certainly appropriate for consideration, but we think the adequacy of an area should be determined in its context, rather than by limits which are inherently arbitrary and may be inappropriate.

[150] We do not see a need to add to the definition of *coastal edge escarpment forest*



as suggested. The attribute *coastal* is already present in the term and need not be repeated. The term *steep slopes* begs further definition. From our observations, much of the coastal land on the peninsula is sloping and could be regarded as generally steep. That character is already conveyed by *escarpment* so that no further elaboration of that is necessary.

[151] We agree that the proposed new definitions should assist users of the Plan in identifying particular ecosystems that may be identified for conservation lot purposes and are therefore appropriate.

[152] In the submissions of its counsel in reply, the Council proposed deleting the note following these definitions. It also proposed the corresponding insertion of the words *including under-represented ecosystems* in Policy 1(c) under Objective 1 in Section 6 – Biodiversity.

[153] The first amendment appears to follow comments from the Court during the hearing about the inclusion of notes in planning documents. To be clear, we consider that if the makers of a plan regard a matter of intention to be sufficiently important to be included in the text of the plan, then in almost all circumstances such text should be clearly stated as an issue, objective, policy, rule, method or expected result, being the types of provision anticipated under ss 67 and 75 RMA as the contents of a plan. Such clear identification will assist readers of the plan, including the Court, to understand what the function of such text is and thus to understand what legal effect it may have. The second amendment does this by transferring the note to a policy.

Further Amendments

[154] During the hearing, the Court raised three additional matters for the parties to consider and address.

Section 38.7, Table 2, criterion 12(a) – minimum or average lot size

[155] During the hearing, in the context of subdivision creating additional rural lots under Rule 9, the Court asked whether a 20-hectare minimum lot size or a 20-hectare minimum *average* lot size would more appropriate. The Court highlighted the risk of perverse outcomes that could arise from the use of a minimum average lot size. This is related to the issue of repetitive subdivision, as discussed above.



[156] EDS submitted that perverse outcomes could arise from the use of a minimum average, as opposed to a minimum, lot size. Its expert witness on planning matters, Mr Serjeant, said in evidence that for larger properties, the use of the minimum average introduces the potential for a congregation of small lots, which is inconsistent with the objectives and policies of the Rural Zone and could undermine the character of the Coastal Environment.

[157] Other parties, including the Council, Blackjack Farms, Federated Farmers, Ms Edens and the Sielings, submitted that the minimum should remain an average. Their principal ground for this was that there would be circumstances where it would be appropriate to allow the creation of lots smaller than 20 ha, whether to meet the particular needs of the owner or to design the subdivision in a way that responded to environmental factors.

[158] Having considered the competing arguments, we conclude that in a discretionary context a minimum average size would be more appropriate than a minimum size. The ability to average the sizes of the lots reduces the risk of arbitrary lot design, enabling the landowner to design a subdivision in a manner that takes the characteristics of the land and its resources into account. It would be possible to create small lots but, as a discretionary activity, the consent authority would retain control over how the averaging provision may be used and could refuse consent where the subdivision proposal would have extreme or perverse results.

Section 38.7, Table 5, Criterion 13 – Natural Hazards

[159] During the hearing the Court asked several counsel and witnesses about the adequacy of the provisions in ensuring that applicants and the consent authority addressed any relevant issues relating to natural hazards. Notwithstanding its function under s 31(1)(b)(i) RMA and the requirements to give effect to Policy 25 NZCPS and to Policy 6.1 WRPS, including implementation method 6.1.5 and the associated development principles, the appeals version of the proposed Plan did not include any specific provisions addressing how to deal with natural hazards in relation to an application for subdivision consent.

[160] Section 106 RMA confers on a consent authority a broad discretion to refuse to grant a subdivision consent or to grant a consent subject to conditions if it considers that there is a significant risk from natural hazards as those are broadly defined in s 2 RMA.



Given the breadth of the power, we think that it is desirable, when preparing a plan and identifying potential hazards, for a council to state how this discretion will be exercised. As appears to have been the case with this proposed Plan, this matter is often overlooked.

[161] The Council now proposes to include a further assessment criterion in Table 5 for natural hazard risk, requiring it to consider whether there is a significant risk from natural hazards. This would be the bare minimum provision to offer some assurance that such risk is addressed by applicants and by the staff of the Council when assessing applications.

Policy to support underrepresented ecosystems

[162] The Court also raised a question whether there was any express provision in the policies of the proposed Plan for the restoration and rehabilitation of *underrepresented* ecosystems, which is now a central element of Rule 8 and the provision for conservation lots.

[163] Counsel for EDS submitted that there is some support in Policy 1c of Section 6 - Biodiversity of the proposed Plan, which relates specifically to using subdivision and development as a means to incentivise biodiversity gains. In particular:

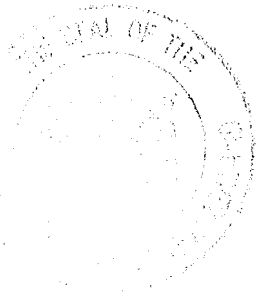
- a) Policy 1c(d) provides for *establishing buffers to an underrepresented or threatened indigenous ecosystems*;
- b) Policy 1c(i) provides for *restoring or enhancing rare ecosystems*.

Counsel suggested inserting the following wording after Policy 1c(a):

Restoring or enhancing indigenous under-represented ecosystems identified in Section 38, Rule 8, Table 2".

[164] In response, counsel for the Council submitted that a better result could be achieved by adding the words *including under-represented ecosystems* after the first reference to indigenous biodiversity in the opening words of Policy 1c of Section 6 and also in Policy 1e in Section 16 – Subdivision.

[165] We consider that the Council's suggested amendments would be more appropriate as inserting the words in those locations results in consideration of under-represented ecosystems as part of the whole of both policies, rather than being limited



to elements of sub-policies.

Conclusion

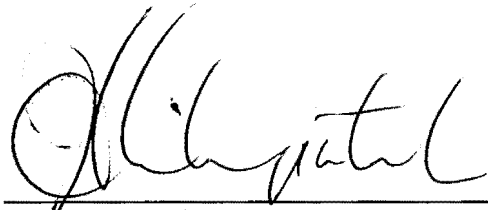
[166] We attached revised provisions for the proposed Plan, based in the version submitted by the Council in reply and amended according to this decision.

[167] This decision is an interim one to the extent that leave is reserved for any party to apply for directions within 15 days of the date of receipt of this decision, on notice to all other parties, to address any apparent error in transcribing or otherwise giving effect to this decision in the attached provisions.

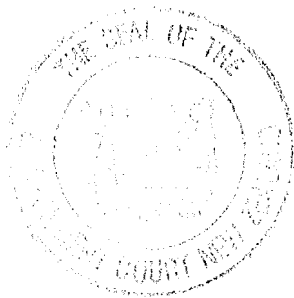
[168] If no party gives such notice, then this decision will be final after that leave period expires. If notice is given, we will address that as may be required.

[169] In accordance with the Court's general practice in relation to appeals from decisions on submissions on proposed plans, there is no order as to costs.

For the Court:

A handwritten signature in black ink, appearing to read 'D A Kirkpatrick', written over a horizontal line.

D A Kirkpatrick
Environment Judge



SECTION 3 - DEFINITIONS

Coastal Edge Escarpment Forest – Coastal forest and treeland which is dominated by mature indigenous coastal tree species, such as pohutukawa and can include flaxland and shrubland where these form an indigenous vegetation mosaic with treeland and which is no further than 150m inland from MHWS.

Duneland – areas composed of sand built by wind or the flow of water and that have a vegetation cover dominated by indigenous duneland species which are naturally occurring within the Coromandel Ecological Region. Duneland can be located by identifying suitable underlying soil types (e.g. as shown on geological maps).

Floodplain forest – Forest or shrubland that is found, or would have been found, on low-lying alluvial substrates subject to flooding and that has vegetation dominated by at least 80% of indigenous floodplain forest/shrubland species, which are naturally occurring within the Coromandel Ecological Region. These areas are located by identifying suitable underlying flood levels using the TCDC Flood Hazard/Regional Scale Flood Hazard Maps.

Forest – Indigenous woody vegetation in which the cover of trees and shrubs in the canopy is greater than 80% and in which tree cover exceeds that of shrubs. Trees are woody plants greater than 10 cm dbh. Tree ferns 3-10 cm dbh are treated as trees.

Landholding – One or more parcels of land either contiguous or divided only by a road, railway, drain, water-race or stream.

Scrub – Indigenous woody vegetation in which the cover of shrubs and trees in the canopy is greater than 80% and in which shrub cover exceeds that of trees. Shrubs are woody plants less than 10 cm dbh

Shrubland – Vegetation in which the cover of indigenous shrubs in the canopy is 20-80% and in which the shrub cover exceeds that of any other growth form or bare ground.

Treeland – Indigenous Vegetation in which the cover of trees in the canopy is 20-80%, with tree cover exceeding that of any other growth form, and in which the trees form a discontinuous upper canopy above either a lower canopy of non-woody vegetation or bare ground.

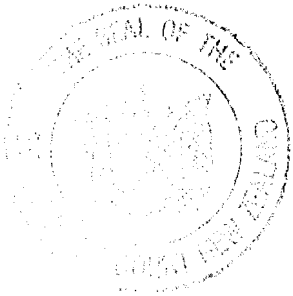


SECTION 6 - BIODIVERSITY

Policy 1c

Subdivision resulting in restoration or enhancement of indigenous biodiversity including under-represented ecosystems shall be considered in the **Rural Area** where indigenous biodiversity is increased, and legally protected in perpetuity, by one or more of the following:

- a) Restoring or enhancing priority locations mapped in Section 38 Subdivision, identified for protection;
- b) Contributing to the establishment of mountain to sea corridors of terrestrial and aquatic ecosystems;
- c) Reconnecting fragmented ecosystems (on land and via waterways);
- d) Establishing buffers to an underrepresented or threatened indigenous ecosystem;
- e) Creating an ecological stepping stone or corridor to link indigenous vegetation;
- f) Maintaining or enhancing habitat of nationally Threatened or At Risk indigenous species;
- g) Restoring or enhancing indigenous habitats adjoining wetlands, rivers, springs, coastal cliffs, dunes, estuaries and fragmented forests;
- h) Establishing self-sustaining pest free areas;
- i) Restoring or enhancing rare ecosystems.



SECTION 16 - SUBDIVISION OBJECTIVES AND POLICIES

Section 16 - Subdivision

16.1 BACKGROUND

Due to its topography, natural values and natural processes the District has a limited area of land available for subdivision and development. Historically, subdivision and development has been largely contained within the main serviced settlements of Thames, Whitianga, Whangamata, Pauanui, Tairua, Matarangi and Coromandel Town.

Intensification within these settlements has led to changes in the character and amenity of some settlements. This has particularly occurred where subdivision design and layout has not taken into account the character of the neighbourhood or wider settlement to which they relate. In these cases intensification has led to poor design outcomes in terms of how the subdivision and development is expressed on the ground. Intensification which has been carefully planned and managed offers many benefits including efficient use of infrastructure, protection of rural and coastal values and a variety of housing opportunities.

Since notification of the previous District Plan (1997) development in the District has led to increased demand on existing and new utilities. As a result the Council has invested significant resources into new infrastructure to accommodate this growth.

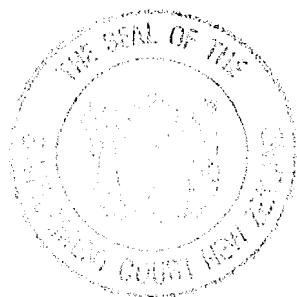
The District has also experienced development in its small coastal settlements, which are generally within the Coastal Environment (refer to Section 7 Coastal Environment and Section 15 Settlement Development and Growth). The New Zealand Coastal Policy Statement 2010 (NZCPS) seeks to encourage the consolidation of coastal settlements where this will assist with the avoidance or mitigation of sprawling or sporadic patterns of settlement or urban growth. Subdivision in undeveloped areas of the Coastal Environment must be carefully managed to protect its special character and values.

This Plan seeks to provide for development and growth where it uses capacity in existing or planned, water, wastewater and stormwater infrastructure. Outside of these areas subdivision is enabled where it is self-sufficient and is prioritised where it offers environmental benefits for the District (refer to Section 6 Biodiversity, and the Conservation and Environmental Benefit rules in Section 38).

Matters of national importance (Section 6 of the RMA) are provided for in this Plan through the use of overlays and district-wide rules that afford targeted protection for areas with high landscape, natural character, biodiversity and historic heritage and cultural values. Specific objectives and policies relating to subdivision are located in the Plan section for each overlay.

Rural Subdivision Design Principles and Guidelines in Appendix 4 have also been developed to ensure that development outside of settlements happens in a manner that enhances the environment, rather than detracting from it.

Many of the District's settlements are located on or near to high class soils (LUC Class II, and Class IIIe1 and IIIe5 soils). Settlement expansion and unmanaged subdivision in the Rural Area can result in a loss of opportunity to use these soils for productive purposes. Subdivision in the Rural Area needs to balance the protection and enhancement of special values, including biodiversity, the productive capacity of soils, maintenance of rural character and amenity and opportunities for economic growth.



16.2 ISSUES

1. Subdivision of land in the Rural Area can result in fragmentation, the loss of high class soils available for primary production and adverse effects on rural character and amenity.
2. Opportunities for public access to and along the coast and other water bodies, and protection of conservation values can be lost if esplanade reserves, strips or development setbacks are not provided for at the time of subdivision.
3. Poorly planned subdivision can compromise local amenity values and lose opportunities for the provision of public recreation space.
4. Ad-hoc subdivision that does not make use of and connect with existing and planned infrastructure can:
 - a) Reduce pedestrian safety;
 - b) Create barriers to convenient vehicle and pedestrian travel;
 - c) Impose greater infrastructure costs;
 - d) Offer fewer land choices;
 - e) Reduce or remove walking or cycling as viable transport options;
 - f) Provide low levels of on-site privacy and amenity.
5. Access to known mineral resources can be compromised by subdivision and subsequent land use opportunities.

16.3 OBJECTIVES AND POLICIES

Objective 1

Subdivision is located, designed and implemented to provide for activities anticipated in the zone while maintaining the amenity values of the surrounding landscape, and protecting or enhancing biodiversity, natural character and historic heritage.

Policy 1a

Subdivision design shall be consistent with the relevant principles in Appendix 4 Rural Subdivision Design Principles and Guidelines.

Policy 1b

Subdivision in the **Rural Lifestyle Zone** shall maintain the low density character and amenity of the locality in which it is located.

Policy 1c

Subdivision in the **Rural Zone** shall maintain the character of the **Rural Area**.

Policy 1d

Subdivision within the **Residential Area** shall maintain the existing character, style and amenity of the locality in which it is located.

Policy 1e

Forms of subdivision that protect, restore or enhance indigenous biodiversity including under-represented ecosystems are incentivised.



Objective-2

Subdivision recognises the location of existing activities and does not result in reverse sensitivity effects.

Policy 2a

Subdivision shall be designed to take into account the location of existing quarries, regionally significant infrastructure and other lawfully established activities and ensure that future land use activities will not result in reverse sensitivity effects.

Policy 2b

Subdivision shall be designed to ensure that resulting land use activities (including building platforms) will not affect the operation, maintenance and upgrading of regionally significant infrastructure.

Policy 2c

Subdivision should consider the location of significant mineral resources identified on a publicly available map held by the Council and not restrict access to them.

Objective 3

Subdivision provides convenient, safe routes and connections for vehicles, cyclists and pedestrians within the subdivision and to surrounding transport networks.

Policy 3a

Subdivision shall provide transport infrastructure that connects to existing and planned networks/nodes, areas of public space and community focal points while maintaining the safety and efficiency of the network.

Policy 3b

New road networks shall be consistent with any applicable structure or concept plan and have multiple connections to adjacent road networks.

Objective 4

Subdivision does not unnecessarily or inappropriately alter the contours of the existing landform.

Policy 4a

Subdivision design shall respond to the natural landform by ensuring building platforms and road configuration nestle into the site's topography without breaking the natural skyline, and in the **Coastal Environment**, are located away from headlands and ridgelines that are visually prominent from public places. Where it is not practicable to locate building platforms and road configurations away from headlands and ridgelines subdivision design shall as far as practicable and reasonable apply controls or conditions to avoid adverse visual effects.

Policy 4b

Where appropriate, physical and legal access to new lots should follow the natural contour of the land.

Objective 5

Subdivision design maintains water quality in wetlands, waterways and groundwater.

Policy 5a

Planting and enhancement of wetlands and the margins of water bodies shall be encouraged through subdivision.

Policy 5b

Subdivision located within a community water supply catchment shall protect water quality and the availability of an existing water take.

Policy 5c

Subdivision design shall ensure that stormwater does not adversely affect water quality or the capacity of existing natural systems.

Objective 6

Subdivision provides for the maintenance and enhancement of conservation values, recreational use of, and public access to or along, the District's water bodies.

Policy 6a

An esplanade reserve/strip shall be established at the time of subdivision where it will:

- a) Enhance linkages and connectivity to or along the existing esplanade areas; or
- b) Provide public access to or along the District's water bodies; or
- c) Enable recreational use of the esplanade reserve or strip and the adjacent District's water bodies where the use is compatible with conservation values; or
- d) Maintain or enhance aquatic habitats and ecosystems; or
- e) Mitigate natural hazards; or
- f) Maintain or enhance water quality; or
- g) Protect the natural character and/or amenity values associated with a riparian area.

Policy 6b

An esplanade reserve/strip may be reduced below 20 m when:

- a) There is a lawfully established structure located within the reserve/strip; and
- b) The reduction will not limit the opportunity to provide public access, and recreation opportunities where this is compatible with the conservation values; or
- c) The reduction will not limit the opportunity to maintain or enhance the natural functioning of the water body; water quality or aquatic habitats; or
- d) The reduction will not limit the opportunity to protect the natural values of the water body and surrounding area or mitigate natural hazards.

Policy 6c

An esplanade reserve/strip may be greater than 20 m when:

- a) The area has special values that require protection greater than a 20 m reserve/strip can provide; or
- b) The topography requires a larger area for it to be effective to enable public access, recreational opportunities and protection of conservation values; or

- c) It will assist with the management of natural hazards; and
- d) Compensation will be payable for the area over 20 m.

Policy 6d

An esplanade reserve may only be waived when:

- a) The land is already protected in perpetuity by a Queen Elizabeth II National Trust Covenant, consent notice, memorandum of encumbrance with the Council or another covenant, and alternate provision is already or will be made for public access to the water body concerned; or
- b) Vesting an esplanade reserve has no environmental or public benefit; or
- c) Special values exist that would be compromised by public access; or
- d) The area is remote, public access is not desirable and the conservation values can still be maintained without a reserve.

Policy 6e

An esplanade strip may be established instead of an esplanade reserve when:

- a) Significant erosion or accretion is known to occur; or
- b) The area is remote and inaccessible; or
- c) Public access needs to be managed.

Policy 6f

Subdivision in the **Coastal Environment** should consider development setbacks to protect natural character, open space, public access and amenity values of the coastal marine area and other water bodies.

Objective 7

Utility and infrastructure services are provided to meet current and future subdivision demand.

Policy 7a

Provision shall be made through the subdivision process for existing and proposed lots to be connected to reticulated wastewater, water and stormwater services, where these services are available and the lots are outside of the **Rural Area**.

Policy 7b

Where a reticulated wastewater system is not available for proposed lots to connect to, it shall be demonstrated that each lot can be serviced with a wastewater treatment and disposal system that meets the requirements of the Waikato Regional Council.

Policy 7c

Subdivision should demonstrate that it can be serviced by electricity and telecommunications suppliers. Where one or more of these services are not available or feasible, information shall be provided to demonstrate what alternative means of sustainable supply will be available to the lots.

Policy 7d

Staged subdivision shall specify on the survey plan the extent of all the stages proposed and the

order of those stages.

Policy 7e

Subdivision should demonstrate that principles of Low Impact Urban Design and Development have been considered and incorporated where appropriate.

Policy 7f

Subdivision may use staging as a means to overcome lack of existing infrastructure.

Objective 8

Subdivision of land does not result in additional infrastructure costs to the community.

Policy 8a

Subdivision creating lots outside of the **Rural Area** shall be required to pay for infrastructure upgrades where there is not sufficient capacity or infrastructure available to service it.

Objective 9

High class soils are available for primary production activities.

Policy 9a

Subdivision in the **Rural Area** shall not reduce the availability of high class soils to be used for primary productive purposes except where land is retired for the restoration or enhancement, and protection of indigenous biodiversity.



SECTION 38 - SUBDIVISION RULES

Section 38 - Subdivision

38.1 CODE OF PRACTICE FOR SUBDIVISION AND DEVELOPMENT

The Council's Code of Practice for Subdivision and Development (October 2013) has been reviewed to incorporate the new NZS 4404:2010 Land Development and Subdivision Engineering, which encompasses issues such as sustainable development and urban design that emphasizes livability and environmental quality. The Council's Code of Practice for Subdivision and Development contains two parts:

- Code of Practice for Subdivision and Development Parts 1-8
- Code of Practice for Subdivision and Development Appendices A - K

38.2 ACTIVITY TABLE AND USER INFORMATION

The district-wide rules are part of a hierarchy of rules. There may be zone rules, other district-wide rules, overlay rules or special purpose provisions that also apply to the activity and site. Where there is conflict between rules the rule hierarchy applies to the extent of the conflict (see Section 1 Background and How to Use the Plan for more information).

There are other sections in the Plan that may also need to be considered. These include but are not limited to overlays, Section 15 Settlement Development and Growth, Section 18 Transport, and the underlying zone provisions.

38.2.1 Formation of roads

The formation of a new road created as part of a subdivision will need to be designed and constructed in accordance with the Council's Code of Practice for Subdivision and Development.

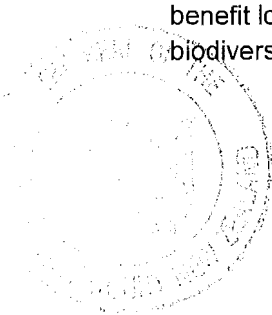
38.2.2 Earthworks

Earthworks for the construction of the subdivision will be assessed as part of the subdivision application and will assume the same activity status.

38.2.3 Conservation lots and environmental benefit lots

A conservation lot is an additional lot created in the Rural Zone in exchange for restoring or enhancing, and protecting identified Priority Areas (in accordance with Table 1) or other natural features outside identified Priority Areas (in accordance with Table 2). These areas are based on an assessment of indigenous biodiversity significance, their importance for restoration and their vulnerability and threats. The conservation lot rule is targeted to areas that give the greatest benefit to indigenous biodiversity in the District.

An environmental benefit lot is similar to a conservation lot, except that it is in the Rural Lifestyle Zone. It is created in exchange for restoration or enhancement, and protection of either underrepresented indigenous ecosystems or areas of natural character. The aim of the environmental benefit lot rule is to recreate and restore or enhance areas of natural character or indigenous biodiversity that can provide linkage and stepping stones to large ecological areas.



ACTIVITY TABLE									
ZONE	Amend an existing cross lease plan, unit title plan or company lease plan	Boundary adjustment	Conversion of cross lease title into fee simple titles	Subdivision to accommodate a network utility	Subdivision around two or more dwellings	Subdivision creating one or more additional lots	Subdivision creating one or more conservation lots	Subdivision creating environmental benefit lots	Waiver, reduction or alteration of esplanade reserve or strip
Airfield	R 1	R 2	R 3	R 4	R 5	R 7	N/A	N/A	R 12
Coastal Living						R 7			
Commercial						R 7			
Conservation						R 6			
Extra Density Residential						R 7			
Gateway						R 7			
Industrial						R 7			
Light Industrial						R 7			
Low Density Residential						R 7			
Marine Service						R 7			
Open Space						R 10			
Pedestrian Core						R 7			
Recreation Active						R 6			
Recreation Passive						R 6			
Residential						R 7			
Road						R 6			
Rural Lifestyle						R 7		R 11	
Rural						R 9	R 8		
Village						R 7	N/A	N/A	
Waterfront						R 7			

38.3 PERMITTED ACTIVITIES

RULE 1 Amend an existing cross lease plan, unit title plan or company lease plan

1. Amending an existing cross lease plan, unit title plan or company lease plan is a **permitted activity** provided the plan is solely amended to show additions and alterations to buildings, new buildings and accessory buildings, for which building work has been carried out, or exclusive use areas.
2. Amending an existing cross lease plan, unit title plan or company lease plan that is not permitted under Rule 1.1 is a **discretionary activity**.

38.4 CONTROLLED ACTIVITIES

RULE 2 Boundary adjustment

1. A boundary adjustment is a **controlled activity** provided:
 - a) The boundary adjustment does not cause or increase non-compliance with standards in the Plan or resource consent conditions; and
 - b) The subject titles prior to the boundary adjustment are contained within the same zone; and
 - c) The adjustment involves a common boundary between two or more contiguous lots; and
 - d) The boundary adjustment does not:
 - i) Increase the number of lots fronting a state highway unless access is gained via a local road; or



- ii) Where there is no local road access, access to the state highway is shared and the number of state highway vehicle crossings does not exceed the number of frontages existing prior to the boundary adjustment.
- 2. The Council reserves its control over matters 1-7 in Table 4 at the end of Section 38.
- 3. A boundary adjustment that is not a controlled activity under 2.1(a), (b) and (c) is a discretionary activity.
- 4. A boundary adjustment that is not a controlled activity under Rule 2.1(d) is a restricted discretionary activity and the Council restricts its discretionary to the matters in Table 5(h).

RULE 3 Conversion of cross lease titles into fee simple titles

- 1. The conversion of any cross lease title into a fee simple title is a **controlled activity**.
- 2. The Council reserves its control over matters 1-7 in Table 4 at the end of Section 38.

RULE 4 Subdivision to accommodate a network utility

- 1. Subdivision to create a lot around a network utility is a **controlled activity** provided:
 - a) The applicant is the requiring authority for the network utility or the network utility operator; and
 - b) The network utility is a permitted activity in the underlying zone or continues to comply with the conditions of resource consent.
- 2. The Council reserves its control over matters 2, 3 and 7-13 in Table 4 at the end of Section 38.
- 3. Subdivision to create a lot around a network utility that is not a controlled activity under Rule 4.1 is a **discretionary activity**.

RULE 5 Subdivision around two or more dwellings

- 1. Subdivision around two or more dwellings that have been granted land use consent under this Plan is a **controlled activity** provided:
 - a) Each lot or unit title has at least one existing or consented dwelling; and
 - b) The subdivision is consistent with the land use consent.
- 2. The Council reserves its control over matters 1-8 in Table 4 at the end of Section 38.
- 3. Subdivision around two or more dwellings that is not a controlled activity under Rule 5.1 is a **discretionary activity**.

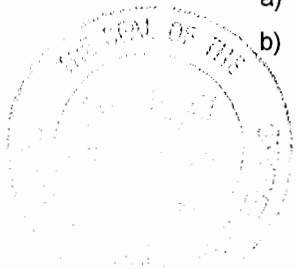
RULE 6 Subdivision creating one or more additional lots

- 1. Subdivision creating one or more additional lots in the Recreation Area or Road Zone is a **controlled activity**.
- 2. The Council reserves its control over matters 1-8 in Table 4 at the end of Section 38.

38.5 RESTRICTED DISCRETIONARY ACTIVITIES

RULE 7 Subdivision creating one or more additional lots

- 1. Subdivision creating one or more additional lots in the Commercial Area, Industrial Area, Residential Area, Rural Lifestyle Zone or Airfield Zone is a **restricted discretionary activity** provided:
 - a) It meets the standards in Tables 2 and 3 at the end of Section 38; and
 - b) Other than Pt Sec 6 Blk VIII Tairua SD (18 Kapakapa Road) and Sec 15B3 Blk VIII Tairua SD (409 Opoutere Road) it is not in the Opoutere Coastal Living Zone; and

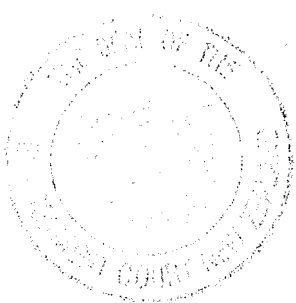


- c) It is not Lot 2 DPS 26491, Pt Weiti 1 DP 3656, Pt Weiti DP 3657, Lot 2 DPS 4046 and part of Lot 2 DP 382594 to the north of the designation for proposed road extending Racecourse Road to Moewai Road;
- 2. The Council restricts its discretion to matters 1-10 and 12 in Table 5 at the end of Section 38.
- 3. Subdivision creating one or more additional lots in the Commercial Area, Industrial Area, Residential Area, Rural Lifestyle Zone or Airfield Zone that is not a restricted discretionary activity under Rule 7.1 a) is a **discretionary activity**.
- 4. Subdivision creating one or more additional lots in the Commercial Area, Industrial Area, Residential Area, Rural Lifestyle Zone or Airfield Zone that is not a restricted discretionary activity under Rule 7.1 b) is a **non-complying activity**.
- 5. Subdivision creating one or more additional lots in the Commercial Area, Industrial Area, Residential Area, Rural Lifestyle Zone or Airfield Zone that is not a restricted discretionary activity under Rule 7.1 c) is a **non-complying activity** until a structure plan for this area (shown as 'Future Structure Plan Area' on Planning Map 17A) is incorporated into the Plan.

RULE 8 Conservation lot subdivision

- 2. Conservation lot subdivision in the Rural Zone is a **restricted discretionary activity** provided:
 - aa) The lot (parent lot) or landholding to be subdivided has not been the subject or result of a previous subdivision under this rule either through Table 1 or Table 2 in this District Plan; and
 - bb) The natural area/feature to be protected, restored or enhanced, and the conservation lot(s) to be created, are within the lot or the landholding; and
 - a) Either the land to be restored or enhanced and protected:
 - i) contains a priority area identified on Figure 1 A-D Priority Areas for Indigenous Ecosystem Restoration or Enhancements, and Protection by Conservation Lot and meets the standards in Table 1; or
 - ii) Meets the standards in Table 2; and

For the avoidance of doubt a subdivision application can be made using either Table 1 or Table 2 and not both.
 - b) The application is accompanied by a report prepared by a suitably qualified ecologist that:
 - x) Identifies any natural features including degraded under-represented ecosystems; and
 - i) Identifies the area/feature to be restored or enhanced and legally protected; and
 - ii) Confirms that the area/feature to be legally protected is ecologically significant in accordance with the assessment criteria of Section 11A of the Waikato Regional Policy Statement; and
 - iii) Identifies how the ecological values and benefits of the natural area/feature are to be enhanced or restored and legally protected; and
 - iv) Identifies how adverse ecological effects associated with the subdivision are to be avoided, remedied or mitigated; and
 - v) Where restoration has been undertaken or is proposed, confirms that the indigenous vegetation of the natural area/feature to be legally protected contains or will contain an array of indigenous plant species appropriate for the ecosystem type(s) represented; in proportions and cover expected for the ecosystem type, and comprising species found within the locality and within the



- Ecological District in which the area/feature is located; and where restoration has already been undertaken greater than 95% indigenous cover has been achieved;
- vi) Confirms that the natural area/feature, or part of it, where it forms part of a larger continuous natural area/feature within a lot or the landholding, will not adversely affect the integrity of the larger natural area/feature and the part of it that has been identified for protection will protect the best biodiversity values of that area/feature within the Land Holding; and
 - vii) Includes a management plan specifying:
 - the key biodiversity and ecological enhancement objectives to be met, including successful ecological functioning of the natural area/feature and its ability to be self-sustaining;
 - the ongoing management measures required to achieve these objectives, including any ongoing plant/animal pest control and domestic animal restrictions;
 - the ongoing monitoring methods to measure the success or otherwise of implementation of the management methods; and
 - the measures to be taken should the objectives not be fulfilled; and
 - viii) Identifies the location of building platforms and associated access outside of the area for restoration or enhancement, and protection and outside of the Outstanding Natural Features and Landscapes Overlay and the Outstanding Natural Character Overlay; and
- c) The application must specify how the area/feature will be legally protected in perpetuity; and
- e) The maximum number of conservation lots is:
- i) For subdivision using Table 1 Priority Areas, the maximum number of conservation lots per lot (parent lot) or landholding is 2 additional lots in the Coastal Environment or 4 additional lots outside of the Coastal Environment; and
 - ii) For subdivision using Table 2, the minimum average lot size of all conservation lots is 2 ha.
- cc) The Council restricts its discretion to all the matters in Table 5 at the end of Section 38.
- dd) Subdivision creating one or more conservation lots in the Rural Zone that does not meet the standards in Rule 8.1 b), or d) is a **discretionary activity**.
4. Subdivision creating one or more conservation lots in the Rural Zone that does not meet the standards in Rule 8.1 aa), bb), a) or c), is a **non-complying activity**.

Table 1 - Identification of Priority Areas for Protection

Key from Figure 1 A-D	Minimum priority area to be restored or enhanced, and protected, for each additional conservation lot	Rationale for the area
	2 ha	Internationally to nationally significant of high or medium high priority
	4 ha	Internationally to regionally significant of high to medium priority
	10 ha	Nationally to locally significant of high to medium priority



	14 ha	Regionally to locally significant of medium high to medium priority
The priority areas mapped in Figure 1 A-D are indicative only. An ecological assessment will be required to determine the full extent of the area. At this time the priority area may be found to be smaller or larger than the mapping indicates or that the site contains other natural features as per Rule 8.1 b) x) that are contiguous with the priority area.		

Table 2A – Protection, enhancement and restoration of other natural features outside of priority areas				
Natural feature	Rural Zone		Rural Zone outside the Coastal Environment only	
	Min. feature size for one additional lot	Min. feature size for two additional lots	Min. feature size for three additional lots	Min. feature size for four additional lots
Wetland	0.5ha + 10m indigenous buffer	2ha + 10m indigenous buffer	3ha + 10m indigenous buffer	4ha + 10m indigenous buffer
Duneland	0.5ha	2ha	N/A	N/A
Floodplain forest	1ha with minimum width 30m	2ha	3ha	4ha
Coastal forest	5ha	20ha	N/A	N/A
Coastal Edge Escarpment Forest	2ha	5ha	N/A	N/A
Lowland forest	10ha	30ha	45ha	60ha
The definitions for the purpose of this table, found in Section 3, intend to allow for the protection of existing mature indigenous ecosystems and the rehabilitation and/or restoration of under-represented ecosystem types including wetlands, dunelands and floodplain forest.				

NOTE: The Coastal Environment rules only apply to that part of a lot that is within the Coastal Environment

38.6 DISCRETIONARY ACTIVITIES

RULE 9 Subdivision creating one or more additional lots

1. Subdivision creating one or more additional lots in the Rural Zone is a **discretionary activity** provided:

- a) It meets the standards in Tables 2 and 3 at the end of Section 38 except:
 - i) Table 2 shall not apply where a consent notice is registered on the certificate of title identifying lots which qualify for further subdivision.
- b) The land has not been the subject of previous subdivision under this Rule or Rule 751 of the previous Thames-Coromandel District Plan, except as provided for in Rule 9.1 a) i) above.

Subdivision creating one or more additional lots that is not a discretionary activity under Rule 9.1 is a **non-complying activity**.



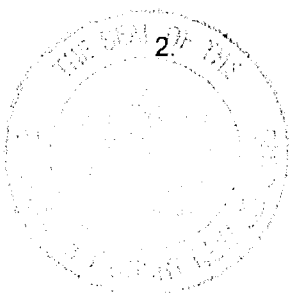
RULE 10 Subdivision creating one or more additional lots

1. Subdivision creating one or more additional lots within the Open Space Zone is a **discretionary activity** provided it meets the standards in Table 3 at the end of Section 38.
2. Subdivision creating one or more additional lots that is not a discretionary activity under Rule 10.1 is a **non-complying activity**.

RULE 11 Subdivision creating environmental benefit lots

1. Subdivision creating environmental benefit lots in the Rural Lifestyle Zone is a **discretionary activity** provided:
 - a) The application is accompanied by a report prepared by a suitably qualified professional that:
 - i) Identifies the area/feature to be created, restored or enhanced and protected; and
 - ii) Confirms that at least one of the following can be achieved:
 - Restoration or enhancement of an identified under-represented ecosystem (refer Figure 2 A-G); or
 - Restoration of indigenous biodiversity; or
 - Enhancement of indigenous biodiversity; or
 - Creation of a buffer to a under-represented or threatened indigenous ecosystem/s; or
 - Creation of an ecological stepping stone or corridor to link indigenous ecosystem/s; or
 - Restoration or enhancement of a wetland or dune habitat; or
 - Legal protection and restoration or enhancement of a modified or degraded area of natural character or an area of High Natural Character or Outstanding Natural Character identified on the Overlay Maps; and.
 - iii) Confirms that the area/feature, or part of it, (where it forms part of a larger natural area) that has been identified for protection and restoration or enhancement will be:
 - self sustaining; and
 - provide the greatest biodiversity gains or outcomes for protection of natural character for the site; and
 - iv) Includes a management plan specifying the steps to be taken to create, restore or enhance the area/feature and its ongoing management and monitoring requirements to ensure that the biodiversity gains are maintained; and
 - b) The area to be set aside for restoration or enhancement and protection is at least equivalent to the total area of new lots created; and
 - c) The minimum area of each new lot created is 5,000 m²; and
 - d) The new lots created are not dependent upon public water and wastewater infrastructure.
 - e) No more than four environmental benefit lots are created per lot.

Subdivision creating environmental benefit lots in the Rural Lifestyle Zone that is not a discretionary activity under Rule 11.1 is a **non-complying activity**.



RULE 12 Waiver, reduction or alteration of esplanade reserve or strip

1. The requirements to provide an esplanade reserve or strip may be waived, reduced or altered as a **discretionary activity**.

38.7 ASSESSMENT STANDARDS, MATTERS AND CRITERIA

Table 2 - Subdivision standards for one or more additional lots			
1.	Airfield Zone		
a)	Minimum net lot area	700 m ²	
2.	Coastal Living Zone		
a)	Minimum net lot area when lot is able to connect to wastewater reticulation	800 m ²	
b)	Minimum net lot area when lot is unable to connect to wastewater reticulation	1,200 m ²	
c)	Minimum shape circle diameter	20 m	
3.	Commercial Zone		
a)	Minimum lot area	200 m ²	
b)	Minimum shape circle diameter	7.5 m	
c)	Minimum road frontage	6 m	
4.	Extra Density Residential Zone		
a)	Minimum net lot area	Front lot 250 m ²	Rear lot 350 m ²
b)	Minimum shape circle diameter	10 m	
5.	Gateway Zone		
a)	Minimum lot area	2,000 m ²	
b)	Minimum road frontage	20 m	
6.	Industrial Zone		
a)	Minimum net lot area	1,000 m ²	
b)	Minimum shape circle diameter	20 m	
7.	Light Industrial Zone		
a)	Minimum net lot area	700 m ²	
b)	Minimum shape circle diameter	15 m	
8.	Low Density Residential Zone		
a)	Minimum net lot area, except on the western side of Koromiko Drive	2,500 m ²	
b)	Minimum average lot density, except on the western	1 per 3,000 m ²	

	side of Koromiko Drive		
c)	Minimum shape circle diameter		25 m
d)	Western side of Koromiko Drive minimum net lot area		1,800 m ²
9.	Marine Service Zone		
a)	Minimum net lot area		700 m ²
b)	Minimum shape circle diameter		15 m
10.	Pedestrian Core Zone		
a)	Minimum lot area		200 m ²
11.	Residential Zone		
a)	Minimum net lot area, unless b) or c) applies	Front lot 400 m ²	Rear lot 500 m ²
b)	Minimum net lot area for lots in Tairua, Matarangi and Coromandel Town		500 m ²
c)	Minimum net lot area for lots not adjacent to a canal in Pauanui		600 m ²
d)	Minimum shape circle diameter		15 m
12.	Rural Zone		
a)	Minimum average lot area for all lots		20 ha
13.	Rural Lifestyle Zone		
a)	Minimum net lot area		2 ha
14.	Village Zone		
a)	Minimum net lot area		800 m ²
b)	Minimum shape circle diameter		20 m
15.	Waterfront Zone		
a)	Minimum net lot area		200 m ²
b)	Minimum shape circle diameter		6 m
c)	Minimum road frontage		6 m

Table 3 - Standards for subdivision	
1.	Stormwater, Wastewater and Water Services
a)	Every lot, excluding those in the Rural Area and Low Density Residential Zone must be connected to a public stormwater, water and wastewater reticulation network if the subdivision is within 100 m of the respective reticulation network. If the public reticulation network is underground, the connection or extension to each lot must also be underground.
b)	Adequate water supply (suitable for domestic, commercial or industrial consumption based on zoning) must be provided for each lot and/or building.
c)	Where connection to a reticulated stormwater or wastewater treatment and disposal system is not available, or there is not sufficient capacity, every lot and/or building must provide self-contained wastewater treatment and disposal and stormwater disposal on-site.
2.	Electricity and Telecommunications
a)	Every lot within a Commercial, Industrial or Residential Area must be connected to an underground electricity network, unless the lot can connect to existing overhead infrastructure.
b)	All additional lots created by a subdivision of ten or more lots within a Commercial, Industrial or Residential Area in Thames (Tararu to Kopu), Whitianga (including Wharekaho) or Whangamata (south of Whitiwharua Road/SH 25 intersection (road to Onemana)), must be connected to a telecommunication line.
3.	Access, road and street lighting
a)	Every lot must have legal and physical vehicle access to a point on a formed public road which is suitable for the construction of a vehicle crossing.
b)	If a public road is created as part of the subdivision within the Commercial Area, Industrial Area or Residential Area, street lighting must be provided.
c)	Excluding State Highways, where land at an intersection is subject to subdivision, or where a new subdivision involves creating an intersection, corner splays of not less than 6 metres along each street/road frontage must be provided for and shown as 'road to vest in the Council' on the survey plan.

NOTE

1. For vehicle access standards please refer to Section 39 Transport.
2. Should access be required from a State Highway which is a Limited Access Road, a notice pursuant to Section 93 of the Government Roadings Powers Act 1989 is required from the NZ Transport Agency in order to provide legal and physical access from the State Highway. The provision of legal and physical access to all allotments created by subdivision is a requirement under section 106 (1)(c) of the RMA.



Table 4 - Controlled Activity Matters

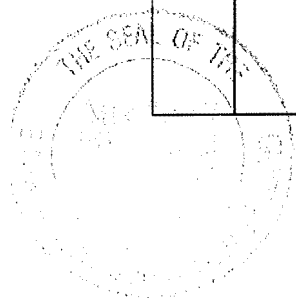
1.	A building platform for each lot free from inundation (including sea level rise), erosion, subsidence and slippage. The Council may require a report on the geotechnical suitability of each lot (including any restrictions on development) from a chartered professional engineer.
2.	Provision of suitable safe access (including number, location and design) and the provision of power, sewage, and stormwater to each lot. The Council may require a report on these matters (including any restrictions on development) from a chartered professional engineer.
3.	If applicable, the consistency and compliance with the original land use consent.
4.	Consistency with the relevant Rural Subdivision Design Principles and Guidelines for the zone (refer to Appendix 4 (if relevant)).
5.	For the conversion of cross lease sites to freehold sites, the apportionment of land area to each respective lot (taking into account exclusive use areas).
6.	Compliance with the Code of Practice for Subdivision and Development (October 2013).
7.	The necessity or requirement for any easements and the suitability of their location.
8.	Any landscaping required to mitigate the effects of the creation of the new lot.
9.	Compliance of the balance lot with the relevant zone standards and ability for it to be used in accordance with the purpose of the underlying zone.
10.	The suitability of the lot size to accommodate the network utility while allowing access for maintenance and repair.
11.	Compliance with NZS 2772.1:1999 Radiofrequency fields.
12.	The necessity for a consent notice to be added to a subdivision for a network utility provider which states that the site is not suitable for residential activity.
13.	Reverse sensitivity effects.

Table 5 - Restricted Discretionary Activity Matters			
Matter		Assessment Criteria	
1.	Site stability for a building platform	a)	Whether lots will have a building platform free from inundation (including sea level rise), erosion, subsidence and slippage. The Council may require a report on the suitability of the lot (including any restrictions on development) from a Chartered Professional Engineer.
2.	Site and soil suitability for an on-site effluent treatment system (if wastewater reticulation is unavailable or not provided)	a)	Whether a site and soil evaluation assessment has been carried out in accordance with NZS 1547:2012 On-site Domestic Wastewater Management, and the results indicate that the site and soil can adequately cope with anticipated wastewater loads without leaching or ponding during wet seasons.
3.	Servicing of water, wastewater, electricity, telecommunications	a)	Whether all lots can be adequately serviced.
		b)	Whether adequate provision for a firefighting water supply can be made in accordance with the SNZ PAS 4509:2008 New Zealand Fire Service firefighting water supplies code of practice, particularly in non- reticulated areas. If this is not available or is impractical, whether consent notice requires all buildings used for residential purposes to have sprinkler systems installed.
		c)	Whether all lots can be serviced by electricity and a telecommunications service (reticulated or provided remotely).
		d)	The extent to which broadband internet capability should be provided to all lots, particularly in Residential, Commercial and Industrial Areas, taking into account the affordability per lot connection.
		e)	Whether any network utility required as part of the subdivision proposal (e.g. transformer, pump station) can be contained within the subdivision and their location is appropriate.
		f)	Whether improvements to existing infrastructure, including extensions and upgrades, are required to service the subdivision and how the cost of these works will be met.
		g)	Whether easements are required.
		h)	Whether a consent notice on the title is needed to make future property buyers aware of any limitations of telecommunication availability (e.g. no fibre-optic cable) to the lot.
4.	Stormwater	a)	Whether stormwater is managed and appropriate stormwater management systems are established to ensure stormwater runoff from the subdivided area does not have any off-site

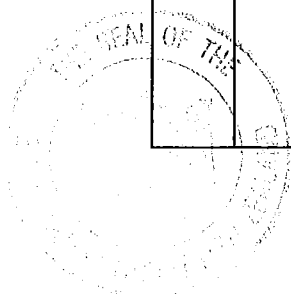
			adverse effects.
5.	Roads and access	a)	The extent to which any new roads being proposed provide the desired level of service based on road formation, convenience, traffic volumes, vehicle speed, public safety and amenity.
		b)	Whether utility services are able to be located within the road reserve, including water and wastewater reticulation, stormwater and land drainage, electricity and street lighting, telecommunications and landscaping.
		c)	The extent to which suitable physical and legal access is provided to each lot, and where appropriate, whether that access meets New Zealand Transport Agency and SNZ PAS 4509:2008 New Zealand Fire Service firefighting water supplies code of practice requirements.
		d)	Whether access requirement for the subdivision has the potential to undermine the safe and efficient operation of the transport network.
		e)	Whether access to the coast is maintained or enhanced.
		f)	Whether improvements to existing roads, including extensions and upgrades, are required to provide access and ensure connectivity and how the cost of these works will be met.
		g)	The extent to which effects from additional traffic movements and any related nuisance factors affected shared users of an existing internal access or private way.
		h)	Whether there is sufficient legal and physical access to each new lot.
			[NEW MATTER ASSOCIATED WITH RULE 2.4 SUBJECT TO SEPARATE SETTLEMENT]
		aa)	Whether rural amenity values and character are maintained or able to be enhanced.
		bb)	Whether the subdivision design responds to the natural landform and nestles building platforms and road configurations into the site's topography without breaking the natural skyline; and in the Coastal Environment whether buildings platforms and road configurations are located away from headlands and ridgelines that are visually prominent from public places. Where this is not practical or reasonable the extent to which measures have been or will be taken to avoid adverse visual effects.
		cc)	The extent to which the layout of the subdivision protects the natural characteristics of undeveloped areas of the Coastal Environment; avoids ribbon development along the coast; and



			provides for inland migration of coastal ecosystems.
6.	Subdivision location, design, and number of lots including Rural Subdivision Design Principles and Guidelines in Appendix 4	a)	The extent to which the proposal has considered the Rural Subdivision Design Principles and Guidelines in Appendix 4.
		b)	The extent to which the subdivision has been designed to: facilitate transport networks (e.g. arterial roads, local roads, and cycle and pedestrian routes), provide opportunities for connections within the subdivision and to adjacent transport networks, and facilitates easy vehicle and pedestrian access to higher ground in case of tsunami.
		c)	Whether the subdivision design and number of lots has taken into account topography, vegetation and waterways.
		d)	The extent to which the activity avoids adversely affecting a community water supply.
		e)	Whether there are sufficient setbacks from waterways, wetlands, forestry, and significant indigenous vegetation.
		f)	<p>The extent to which the area and volume of earthworks have been minimised.</p> <p>i) The design and layout of roads and lots should be in a manner that follows the natural contours and characteristics of the site.</p> <p>ii) The subdivision should retain the site's topsoil and avoid the need to dispose of large volumes of spoil to clean fill sites.</p> <p>iii) The design of the subdivision should be such that it avoids the need for significant post-development earthworks on each lot to construct buildings and access.</p>
		g)	<p>The extent to which subdivision has been designed to ensure the following:</p> <p>i) High levels of accessibility for residents.</p> <p>ii) Safe, efficient movement of vehicle and pedestrian traffic.</p> <p>iii) More efficient infrastructure provision.</p> <p>iv) A transport network layout (including cycleways and walkways) with multiple links to adjacent sites and surrounding roads.</p> <p>v) Spatial layout of roads, cycleways and walkways that allows for easy integration and direct access to and from bus stops, shops, schools, employment areas and other amenities based on how people logically seek to move through an area.</p> <p>vi) Integration with the existing settlement.</p> <p>vii) The long-term maintenance burden of all infrastructure in the subdivision is equitable to the existing community.</p>



			<p>viii) The subdivision reflects natural character and historic heritage values, landscape views and encourages energy efficiency.</p> <p>ix) Reserves and other amenities are located at prominent, highly visible locations which are well fronted by other activities.</p> <p>x) Lot numbers, sizes and densities have been based around the landform and urban amenities rather than a generic size indiscriminately laid over the land; and the configuration of lots, blocks, and activities have been designed to mitigate nuisances between users and activities.</p> <p>Lots are of a practical, useable dimension and take into account co-location of compatible activities on adjoining sites.</p>
7.	Efficient use of mineral resources	a)	Whether the subdivision design takes into account the effects of existing lawfully established quarries and ensures that future activities do not result in reverse sensitivity effects.
8.	Staging of subdivision	a)	Whether applications for staging sufficiently demonstrate the anticipated extent and order of the proposed stages.
		b)	Whether staging is the most appropriate method to address provisional lack of infrastructure.
9.	Cumulative effects on urban density and stormwater runoff	a)	The extent to which the subdivision adds to the cumulative effects of urban intensification that is beyond that anticipated by the Plan.
		b)	Whether the subdivision does not add to a cumulative effect of stormwater runoff beyond the capability of stormwater infrastructure.
10.	Code of Practice for Subdivision and Development (October 2013)	a)	The extent to which the works are designed and constructed in accordance with the Code of Practice for Subdivision and Development (October 2013).
11.	Ecosystem restoration, enhancement and protection	a)	Whether the part of the area/feature that has been identified for protection on a site will provide the greatest biodiversity gains for the site.
		b)	<p>Where the area/natural feature identified for protection is part of a larger area/natural feature that is not protected:</p> <p>i) Whether the area/feature is part of a larger natural area that is not protected and whether the area to be protected is able to be successfully managed to ensure it is able to be ecologically functional and self sustaining; and</p> <p>ii) Whether the unprotected part of the area/natural feature is able to retain its integrity; and</p> <p>iii) Whether the unprotected part of the</p>



			area/natural feature is affected by the management/protection works specified for the protected area.
		c)	Whether the management plan is adequate to: i) ensure the restoration or enhancement of the area/feature; and ii) ensure ongoing management requirements are identified and able to be achieved; and iii) ensure effective management coordination over the protected natural feature.
		d)	Whether the protected area/feature can be successfully monitored to ensure that the management requirements are being met.
		e)	Whether a bond is necessary to ensure that: i) the management plan is being effectively implemented; or ii) the restoration and/or enhancement work is being achieved to an acceptable level within the specified timeframes; or iii) the maintenance work is being carried out to an acceptable level.
		f)	Whether the dwelling platforms and vehicle access are located outside of the area to be protected.
		g)	Whether the method of legal protection is appropriate.
12.	Reverse sensitivity effects	a)	The extent to which reverse sensitivity effects are avoided or mitigated.
		b)	Whether the subdivision will result in new sites where noise sensitive activities could be established within 80 m of a state highway.
13.	Natural hazard risk	a)	Whether there is a significant risk from natural hazards.

