

BEFORE THE ENVIRONMENT COURT

ENV-2016-_____

IN THE MATTER

of the Local Government (Auckland Transitional Provisions) Act (2010) ("**the Act**") and the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of an appeal under s156(1) of the Act

AND

IN THE MATTER

of Hearing Topics 11 (Rural Environment) and 64 (Subdivision – Rural)

BETWEEN

MAN O'WAR FARM LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

NOTICE OF APPEAL AGAINST DECISIONS ON PROPOSED PLAN

16 September 2016

TO: The Registrar
Environment Court
AUCKLAND

1. The Appellant appeals against decisions made by Auckland Council ("**the Respondent**") on the proposed Auckland Unitary Plan ("**Unitary Plan**") whereby provisions were both included and excluded regarding a matter addressed in Appellant's submissions, as a result of decisions by the Respondent to reject recommendations of the Independent Hearings Panel.

2. The Appellant is a submitter to the provisions of the Unitary Plan subject of this appeal.
3. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 ("**RMA**").
4. The Appellant received notice of the Decisions on 19 August 2016.
5. The Decisions appealed are those numbered 13 and 42 in the Respondent's Decisions of 19 August 2016 regarding provisions of the Unitary Plan relating to:
 - (a) Rural Environment – Part B9 of the Unitary Plan (Hearing Topic 11); and
 - (b) Subdivision – Rural – Part E39 of the Unitary Plan (Hearing Topic 064).

("the Decisions")

Reasons for Appeal

6. The Decisions reinstate or include objectives regarding Rural Subdivision that are not the most appropriate way to achieve the purpose of the Act, and in particular will:
 - (a) Prevent opportunities for significant biophysical enhancement achieved through rehabilitation of degraded land.
 - (b) Confine any incentive for revegetation of land through subdivision to areas contiguous with existing mapped Significant Ecological Areas (rather than ecological features that might become significant through protection and replanting upon subdivision).
 - (c) As such fail to promote the sustainable management of natural and physical resources including with reference to s5(2), s6(c) and s7(b) of RMA.

7. The Decisions reinstate or include policies and rules setting restrictions on rural subdivision that are not the most appropriate way to achieve the objectives of the Unitary Plan, and in particular those objectives as recommended by the Hearings Panel that would better promote the purpose of the Act, in the respects described in paragraph 6 above.
8. It is counterproductive in both landscape and biodiversity terms to confine incentives for rural lifestyle subdivision to the protection (including marginal replanting) of existing SEAs that are otherwise protected under Unitary Plan rules in any event, and to not enable subdivision incentivising the protection of areas as yet unmapped as significant (but which meet the threshold for significance in RPS Policy B7.2.2 of the Unitary Plan) or where revegetation planting is proposed on land not containing elite or prime soils (as under the Hearings Panel's recommended Rules E39.4.2(A17) to (A20) with reference to the standards in E39.6.4.4 and 39.6.4.5).
9. The changes made to the Unitary Plan in the Decisions undermine the extent to which the Appellant's submissions on Sections B.8, C.6, and H.5 of the Unitary Plan as notified were addressed in the Hearing Panel's recommendations on (now) Parts B9 and E39.

Relief sought

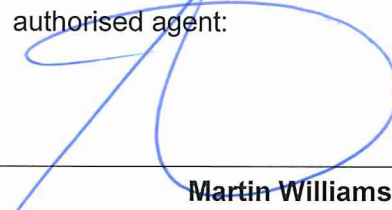
10. The appellant seeks that all changes made by Auckland Council to the provisions of Part B9 and E39 of the Unitary Plan be cancelled and that the provisions of Part B9 and E39 as recommended by the Hearings Panel be reinstated.

Service

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

Attachments

12. I attach the following documents to this notice:
- (a) A copy of the relevant Decisions.
 - (b) A list of names and addresses of persons served/ to be served with a copy of this notice
 - (c) The Appellant's submission on rural subdivision.

Signature:**MAN O'WAR FARM LIMITED** by their authorised agent:

Martin Williams

Date: 16 September 2016

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Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees and Procedure) Regulations 2003).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

ATTACHMENT A

Relevant Decisions

ATTACHMENT B

**List of persons to be served with a copy
of this notice of appeal**

Auckland Council

ATTACHMENT C

Appellant's submission on rural subdivision



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Decisions Report

19 August 2016

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1. Introduction

- 1.1 This “**Decisions Report**” sets out the decisions made by the Auckland Council (**Council**) on the recommendations for the Proposed Auckland Unitary Plan (**PAUP**) that were provided to the Council on 18 May 2016¹ and 22 July 2016² by the Auckland Unitary Plan Independent Hearings Panel (**Panel**).
- 1.2 This Decisions Report has been prepared in accordance with section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**). Section 148 sets out how the Council is to consider the “**Panel’s Recommendations**” and make and notify its decisions on them. In summary, the Council must decide whether to accept or reject each of the Panel’s Recommendations, and must publicly notify those decisions no later than 20 working days after it is provided with the reports containing the Panel’s Recommendations (or, if there is more than one report, the last of the reports). Where any of the Panel’s Recommendations are proposed for rejection, the Council must provide reasons supporting the rejection and an alternative solution to the Panel’s Recommendation that has been rejected.
- 1.3 The Council made its decisions on the Panel’s Recommendations during a series of Governing Body (**GB**) meetings held between 10 and 15 August 2016, at which the Panel’s Recommendations were considered alongside several reports which set out the proposed staff response to the Panel’s recommendations.
- 1.4 In accordance with section 148(4) of the LGATPA, the Council is required to:
- a) publicly notify its decisions no later than 20 working days after it is provided with the reports containing the Panel’s Recommendations (or, if there is more than one report, the last of the reports).
 - b) electronically notify its decisions on designations to requiring authorities.

2. Statutory Context

- 2.1 The statutory context within which the Panel was required to provide recommendations on the PAUP to the Council, and which then requires the Council to make its decisions on the Panel’s Recommendations, is found in Part 4 of the LGATPA.
- 2.2 As outlined in earlier reports to the Council³, Part 4 of the LGATPA was enacted by the Government to provide a streamlined, unique process for the preparation of the PAUP. It is the Part 4 process which requires the Council to make and publicly notify its decisions on the Panel’s Recommendations, and notify requiring authorities of decisions on their designations, by way of this Decisions Report.

¹ In relation to a majority of designations, except for Auckland International Airport, Kiwirail designations heard on 2 May 2016, and NZ Transport Agency designation 6727 (Newmarket Viaduct) heard on 2 May 2016.

² In relation to the remaining designations and the balance of the PAUP.

³ Reports 1, 2 and 3 dated 10 August 2016. Report 1 provided information about the process used to develop the PAUP and the statutory framework around the PAUP process and the decision-making requirements placed on the Council by the LGATPA.

- 2.3 The Panel was required to provide its recommendation report(s) to the Council by no later than 22 July 2016.
- 2.4 After receiving the Panel's Recommendations the LGATPA requires the Council to make decisions, specifically deciding whether to accept or reject each recommendation made by the Panel⁴. Where the Council decides to reject any recommendation, there are additional requirements for the Council, including preparing an "alternative solution" which, in accordance with section 148(1)(b):
- a) may or may not include elements of both the PAUP as notified and the Panel's Recommendation in respect of that part of the PAUP; but
 - b) must be within the scope of the submissions.
- 2.5 After making its decisions, the Council must, by no later than 19 August 2016, publicly notify its decisions in a way that sets out the following information⁵:
- a) each Panel recommendation that it accepts; and
 - b) each Panel recommendation that it rejects and the reasons for doing so; and
 - c) the alternative solution for each rejected recommendation.
- 2.6 In relation to designations (discussed further below), the Council must, again by no later than 19 August 2016, electronically notify each requiring authority affected by the decisions of the Council of the information referred to in paragraph (2.5) above that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation concerned⁶.

Decision-making by the Council

- 2.7 In making its decisions the Council must either accept or reject the Panel's Recommendations.
- 2.8 For the Panel's Recommendations that it decides to **accept**, the Council will be able to fulfil its decision-making obligations by considering the Panel's Recommendations and reasons only. This is because the Panel, in making its recommendations, was required to comply with all the requirements of section 145 of the LGATPA, including obligations on the Panel to:
- a) ensure that if the Council accepts each/any/all of the Panel's Recommendations, all relevant requirements (and legal tests) of the RMA,

⁴ See section 148, LGATPA.

⁵ See section 148(4), LGATPA.

⁶ See section 148(4b), LGATPA. While this requirement also applies to heritage orders, all heritage orders in the PAUP 'rolled over' without modification or submissions, meaning that section 144(6) of the LGATPA applies (pursuant to that provision, the Panel must not make a recommendation on any existing designation or heritage order that is included in the PAUP without modification and on which no submissions were received).

and other enactments which apply to the Council's preparation of the PAUP, are complied with⁷; and

- b) prepare, and include with its recommendations, a further evaluation in accordance with section 32AA of the RMA⁸.

2.9 Where however, the Council decides to **reject** any of the Panel's Recommendations, there are additional requirements that must be satisfied before that decision can be publicly notified. If the Council decides to **reject** a recommendation, it must provide reasons supporting that rejection and also prepare an **alternative solution** for that rejected Panel recommendation⁹ (which, given the way in which the Panel's Recommendations have been formulated, could be any matter or provision recommended by the Panel), together with a **section 32AA assessment** supporting the rejection, where necessary. No new section 32AA assessment has been undertaken by the Council, where section 32 / 32AA assessment relating to all alternative solution has already been prepared as part of development of the PAUP¹⁰ and / or the Council's case team evidence for the hearings before the Panel.

2.10 There are specific requirements relating to the preparation of alternative solutions, which are set out in subsections (1) and (2) of section 148 of the LGATPA. In short, the Council must decide an alternative solution which:

- a) **May or may not** include elements of both the PAUP as notified and the Panel's Recommendations in respect of that part of the PAUP (and which therefore may be a combination of the two); **but**
- b) **Must** be within the scope of the submissions.

3. The Panel's Recommendations

3.1 As outlined in the background information report prepared by staff for the GB decision-making meetings¹¹, the Panel's Recommendations were provided to the Council in three parts:

- a) **Part 1** - The Panel's Recommendation Reports: these comprise an overview report dated July 2016, which generally addresses all of the Panel's Recommendations, and 58 separate recommendation reports, relevant to the topics that were heard before the Panel (albeit with some of those hearing topics being combined together in one Panel recommendation report). In addition, the Panel provided a series of designation reports, including a similar introductory / overview report on designations;
- b) **Part 2** - The Recommended Plan: which comprises a "clean" version of the Panel's recommended text for the PAUP; and

⁷ See section 145(1)(f), LGATPA.

⁸ See section 145(1)(d) and (f)(i) and (ii), LGATPA.

⁹ See section 148(1)(b), LGATPA.

¹⁰ E.g. in the Auckland Unitary Plan Evaluation Report prepared by the Council under section 32.

¹¹ Report 1.

- c) **Part 3** - The Recommended Maps / GIS Viewer: which comprises the Panel's recommended version of the PAUP planning maps, created in the Panel's GIS viewer.

Collectively, the above reports have been referred to by the Council as the "**Panel's Recommendations**".

- 3.2 The Panel's Recommendations (including on designations), Recommended Plan, and Recommended Maps / GIS Viewer can all be viewed on the Council's website: www.aucklandcouncil.govt.nz/unitaryplan.
- 3.3 It is noted that the Panel's Recommendations contain a number of separate hearing topic reports, and that recommendations are often provided throughout the body of each report (including the overview reports referred to at paragraph 3.1(a) above). As a result, where the Council has made a decision which accepts all of the Panel's Recommendations in relation to a specific hearing topic / designation, this Decisions Report will need to be read in conjunction with the related hearing topic report provided to the Council as part of the Panel's Recommendations as well as the decisions (and recommended) version of the PAUP text and maps.

4. 'Out of scope' recommendations / decisions

- 4.1 The Part 4 process for the preparation of the PAUP allowed the Panel to make recommendations that are beyond the scope of submissions made on the PAUP¹² ("out of scope recommendations"). Where the Council accepts any out of scope recommendations made by the Panel in relation to provisions / matters in the PAUP, there is a specific right of appeal to the Environment Court for any person that "is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter"¹³.
- 4.2 The overview report dated July 2016 included with the Panel's Recommendations contained a detailed section that addressed "scope" and, as required by section 144(8) of the LGATPA, the Panel identified recommendations that the Panel considered to be beyond the scope of submissions on the PAUP.
- 4.3 The identification of the Panel's out of scope recommendations was set out in Appendix 3 to the overview report dated July 2016 – "*Summary of recommendations out of scope*" – which listed the hearing topics where the Panel had provided out of scope recommendations to the Council, and identified the out of scope recommendations in question. The Panel's Appendix 3 is reproduced as **Attachment C** to this Decisions Report.
- 4.4 While the Panel's Appendix 3, as reproduced at Attachment C, should be referred to, in summary, the Panel has identified out of scope recommendations in relation to the following topics: 006 – *Natural Resources*, 027 – *Artworks, signs and temporary activities*, 028 – *Future Urban*, 032 – *Historic heritage schedules*, 080 – *Rezoning and precincts (general)* and 081 – *Rezoning and precincts (geographical areas)*, with numerous individual precincts containing out of scope recommendations.

¹² Section 144(5), LGATPA.

¹³ Section 156(3), LGATPA.

- 4.5 In order to identify out of scope recommendations as they relate to the GIS Viewer (the PAUP spatial component, e.g. zoning) the Panel outlined the properties associated with out of scope recommendations with a bold black line on the GIS Viewer. This outline can be seen on the Panel's recommended version of the GIS Viewer.
- 4.6 In order to identify the Panel's out of scope spatial (zoning) recommendations that have been accepted, the Council has retained the same bold black line on its decisions version of the GIS Viewer.
- 4.7 For ease of reference for users of this Decisions Report the Council has also printed and **attached** ten separate maps showing the accepted Panel out of scope recommendations as they relate to the GIS Viewer. These maps, which are included as **Attachment C**, show out of scope decisions made in the following areas: Albany; Glen Eden, Greenlane, Mangere Bridge, Milford, Newmarket, Otahuhu, Te Atatu South, Warkworth and Whangaparoa. The address details of the properties associated with those decisions have not been provided by the Council.

5. Designations

- 5.1 Under the RMA (and the special legislation applying to the PAUP), while designations included as part of a plan review are subject to submissions and a hearing, there is a different process for who makes the decisions on the recommendations from the Panel.
- 5.2 For the Council's own designations, the Council must make a decision on the recommendations provided by the Panel. For designations owned by other requiring authorities however, the Council's decisions are treated as recommendations to those requiring authorities on their designations¹⁴. The requiring authorities themselves will make the final decisions (subject to appeal) on whether they will accept or reject the Council's recommendations.
- 5.3 In relation to designations included in the PAUP, the Council's GB made decisions on the following aspects:
- a) decisions relating to Chapter G1.3 and Part 7 Designations of the PAUP;
 - b) decisions relating to the Council's own designations included in the PAUP; and
 - c) decisions relating to the recommendations it will make to other requiring authorities in respect of their designations included in the PAUP.
- 5.4 The Council did not oppose any designations included in the PAUP, and did not have an active role in the assessment of third party submissions on designations; other

¹⁴ See section 151(1), LGATPA. As noted at paragraph 2.3(i) above, the Council is required to electronically notify each requiring authority affected by the decisions of the Council of the information that specifically relates to the decision recommending that the authority confirm, modify, impose conditions on, or withdraw the designation.

than where the Council's own designations were involved, or where the Council was also a submitter. In addition, the LGATPA did not allow the Panel to make recommendations on designations (or heritage orders) that were 'rolled over' without modification that did not attract any submissions and the Council does not have a decision making role in relation to those 'rolled over' designations (and heritage orders¹⁵). These 'rolled over' designations will be included in the Council's decisions version of the PAUP and are deemed to have been approved by the Council¹⁶.

- 5.5 Council staff recommended that the GB, in making its decision on the Panel's Recommendations as they relate to designations, accept all the Panel's Recommendations on designations. Those designations were identified in an attachment to a report entitled "Proposed Auckland Unitary Plan Report 3 - Response to Recommendations from the Auckland Unitary Plan Independent Hearings Panel Relating to Designations" which was prepared for committee meetings on 10 August 2016. That same attachment has been included as Attachment E to this Decisions Report as it contains the Council's decisions in relation to designations.

¹⁵ As noted earlier, all heritage orders rolled over without modification / submissions.

¹⁶ Under clause 17(1) of Schedule 1 to the RMA. See s152(5) of the LGATPA.

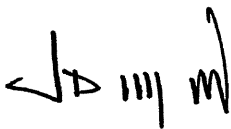
6. Attachments to Decisions Report

6.1 A number of attachments have been included as part of this Decisions Report, as follows:

- a) **Attachment A** - The alternative solutions prepared by the Council for any rejected recommendations (which includes: text, diagram and map alternative solutions).
- b) **Attachment B** – The section 32AA assessment reports prepared, where necessary, as part of any rejection.
- c) **Attachment C** – A list of the Panel's out of scope recommendations that have been accepted by the Council, including maps which show the out of scope recommendations within the GIS Viewer.
- d) **Attachment D** – A list of the Panel's Recommendations that have been rejected by the Council.
- e) **Attachment E** – Designations (Parts 1, 2 and 3).

Approved for release:

John Duguid - General Manager - Plans and Places



Penny Pirrit - Director Regulatory Services



7. Decisions of Auckland Council

- 7.1 The Council's decisions on the Panel's Recommendations are set out below, addressed in relation to each hearing topic report provided by the Panel in numerical order.
- 7.2 The Council's Decisions Report addresses those Panel Recommendations which have been accepted by the Council first, with the Panel Recommendations that have been rejected following.
- 7.3 A full list of the Panel's Recommendations that have been rejected by the Council is attached to this Decisions Report as **Attachment D**.

1. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 001 (Auckland-wide), July 2016"

Panel recommendations accepted:

- 1.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 001 (Auckland-wide), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

2. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 002 (ePlan and miscellaneous), July 2016"

Panel recommendations accepted:

- 2.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 002 (ePlan and miscellaneous), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

3. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 003 (Chapter A Introduction), July 2016"

Panel recommendations accepted:

- 3.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 003 (Chapter A Introduction), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

pre 1944), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 12.2.

Panel recommendations rejected:

12.2 The Council has rejected the Panel’s recommendations in relation to Hearing Topic 010/029/030/079 (Special character and pre 1944), as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The deletion of the objective that provides for management of heritage values in the Regional Policy Statement**

Reasons	
(i) The Special Character Areas overlay – Residential and Business District Plan provisions and character statements recommended by the Panel identify the amenity and heritage values of the areas that are to be addressed in the District Plan provisions. However the cascade down from the RPS to District Plan is not evident, with no corresponding RPS objective, resulting in a disconnect between the RPS and District Plan.	
Alternative solution	See Attachment A

13. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 011 (Rural environment), July 2016”

Panel recommendations accepted:

13.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topics 011 (Rural environment), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 13.2.

Panel recommendations rejected:

13.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 011 (Rural environment) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The deletion of objectives and policies for rural subdivision that:**

- (i) Prevent inappropriate subdivision
- (ii) Promote the significant enhancement of indigenous biodiversity

41. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 064 (Subdivision – urban), July 2016”

Panel recommendations accepted:

- 41.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 064 (Subdivision - urban), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps.

Panel recommendations rejected: none.

42. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 064 (Subdivision – rural), July 2016”

Panel recommendations accepted:

- 42.1 The Council has accepted all the recommendations of the Panel contained in the Panel report for Hearing Topic 064 (Subdivision - rural), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 42.2.

Panel recommendations rejected:

- 42.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 064 (Subdivision – rural) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) **The inclusion of objectives, policies and rules that enable sporadic and scattered rural subdivision**

Reasons	
(i)	The Panel's recommended provisions will enable inappropriate subdivision of the rural area through a proliferation of rural-residential lots across the production focussed rural zones (resulting in loss of rural production, reverse sensitivity, rural character and amenity and potential additional demands on infrastructure in remote locations).
(ii)	The provisions undermine the Auckland Plan's strategic direction for the rural areas.
(iii)	The provisions do not support the concept of the compact city that inherently has as a benefit the retention and protection of rural areas (rather than their subdivision for rural-residential uses).
(iv)	The provisions do not make it clear that the focus of rural lifestyle living is the Countryside Living zone.
Alternative solution	See Attachment A

(b) **The inclusion of provisions that allow for minimal environmental benefits to be accepted in exchange for rural-residential subdivision**

Reasons	
(i)	The provisions would enable potentially inappropriate subdivision of the rural area with the minimal environmental gains.
(ii)	<p>The provisions enable subdivision of sites with Significant Ecological Area (SEA) factors as opposed to identified SEAs. The SEA factors are not suitable to be used for rural subdivision assessment as they:</p> <ul style="list-style-type: none"> • Were made for a different purpose (assessing significance for vegetation protection – not for assessing whether the ecological value of an area would mitigate rural subdivision). • Were designed to be applied in a single, comprehensive manner across the region, not in isolation on a case by case basis. Site by site assessment in isolation will result in over-estimation of the significance of sites.

(iii) The provisions will enable a potentially significant increase in the number of rural-residential lots that can be generated (particularly in relation to wetland and revegetation planting subdivision).	
Alternative solution	See Attachment A

(c) **Absence in recommending specific site sizes for Countryside Living subdivision in the Caldwell's Road area in Whitford.**

Reasons	
(i) The minimum site size for the Caldwell's Road area was agreed with the submitter (Camperdown Holdings Limited) during the hearings process as an appropriate alternative mechanism to a Precinct.	
(ii) The Panel's report is silent on this matter and it may be an omission.	
Alternative solution	See Attachment A

Consequential Changes to other parts of the Plan:

B9. Toitū te tuawhenua- Rural environment

B9.1. Issues

The Auckland region is not just...

B9.4. Rural subdivision

B9.4.1. Objectives

(1) Further fragmentation of rural land by sporadic and scattered subdivision for urban and rural lifestyle living purposes is prevented.

~~(4)~~ (2) Subdivision does not undermine the productive potential of land containing elite soils.

~~(2)~~ (3) Subdivision of rural land avoids, remedies or mitigates adverse effects on the character, amenity, natural character, landscape and biodiversity values of rural areas (including within the coastal environment), and provides resilience to effects of natural hazards.

~~(3)~~ (4) Land subdivision protects and enhances significant indigenous biodiversity and degraded land.

B9.4.2. Policies

(1) Enable the permanent protection and enhancement of areas of significant indigenous biodiversity and rehabilitation of degraded land through subdivision.

(2) Enable subdivision for the following purposes:

(a) the creation of parks and reserves, including esplanade reserves;

(b) the establishment and operation of infrastructure;

(c) rural production purposes;

(d) marae, papakāinga, urupā and other activities that support Māori relationships with their land where this land is managed by the Te Ture Whenua Māori Land Act 1993; and

(e) special circumstances that provide for significant benefit to the local rural community, and that cannot be met through the use of existing titles.

(3) Provide for and encourage the transfer of the residential development potential of rural sites to Countryside Living zones to reduce the impact of fragmentation of rural land from in-situ subdivision from one place to another, as well as the rearrangement of site boundaries to:-

(a) promote the productivity of rural land;

(b) manage the adverse effects of population growth across all rural areas;

(c) improve environmental outcomes associated with the protection of identified areas of high natural values;

(d) improve the management of reverse sensitivity conflicts; and

(e) avoid unplanned demand for infrastructure in remote areas, or across areas of scattered development.

(4) Provide for....

(5) ~~Encourage~~ Provide the amalgamation and transfer of rural sites to Countryside Living zones to remedy the impact of past fragmentation of rural land from in-situ subdivision areas that can best support them.

B9.5. Principal reasons for adoption

The purpose of sustainable management includes safeguarding the life-supporting capacity of natural resources now and in the future. This includes protecting the productive potential of the land to provide for present and future generations as well as significant indigenous biodiversity. It is also to maintain or enhance the character of rural areas for their contribution to regional amenity values, particularly the landscape and natural character...

The subdivision policies also enable and encourage the transfer of the residential development potential of ~~new and existing from sites from in one place~~ productive rural zones to Countryside Living Zones another, and for title boundaries to be amalgamated and a residential development right adjusted or relocated to locations where they will more usefully enable the rural development potential to be realised in Countryside Living Zones.

E15. Vegetation management and biodiversity

E15.1. Background

Vegetation contributes to a range of ecosystem services ...

E15.3. Policies [rcp/rp/dp]

(1) Protect areas...

(4) Protect, restore, and enhance biodiversity when undertaking new use and development through any of the following:

(a) using transferable rural site subdivision to protect areas that meet the one or more of the factors referred to in B7.2.2(1) and in Schedule 3 Significant Ecological Areas -Terrestrial Schedule;

(b) requiring legal protection, ecological restoration and active management techniques in areas set aside for the purposes of mitigating or offsetting adverse effects on indigenous biodiversity; or

(c) linking biodiversity outcomes to other aspects of the development such as the provision of infrastructure and open space.

(5) Enable activities which...

Appendix 15 Subdivision information and process

15.1 Introduction

This appendix...

15.3. Transferable rural site subdivision

15.3.1. Process

(1) A Transferable Rural Site Subdivision (TRSS) is the transfer of the rural - residential development potential of rural sites from one location to the Countryside Living Zone another through a subdivision process. This process may be carried out in the following ways:

(a) through the protection of indigenous vegetation or wetland ~~either identified in the D9 Significant Ecological Areas Overlay or meeting Significant Ecological Areas factors as set out in the regional policy statement,~~ and established re-vegetated revegetation planting meeting relevant criteria; or

(b) through the amalgamation of donor sites: amalgamating two existing and abutting rural zoned sites (excluding a Rural - Countryside Living Zone site), and transferring the development potential of the 'amalgamated' site to the Countryside Living Zone ~~land in another location~~

(2).....

Table 15.3.1.1 Transferable rural site subdivision process

Step	Transferable rural site subdivision process through the amalgamation of donor sites	Transferable rural site subdivision process through the protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Areas factors or established re-vegetated <u>revegetation planting meeting</u>

		relevant criteria
1	Identify the following: a. two donor sites abutting each other, one of which is vacant; b. a site zoned Rural - Countryside Living Zone identified as suitable as a receiver site for TRSS – see Table E39.6.5.2.1 Minimum and minimum average net site areas in E39 Subdivision - Rural	Identify the following: a. an area of indigenous vegetation or wetland (on the donor site) that: - is identified in the Significant Ecological Areas overlay; – meets the Significant Ecological Areas factors as set out in Policy B7.2.2(1); or - is established with re-vegetated <u>revegetation</u> planting meeting relevant criteria. b. a site zoned Rural - Countryside Living Zone identified as suitable as a receiver site for TRSS – see Table E39.6.5.2.1 Minimum and minimum average net site areas in E39 Subdivision - Rural.
2	Application made to Council: a. to amalgamate two donor sites into one new site; and b. to subdivide the receiver site.	Application made to Council: a. subdivide the property containing indigenous vegetation, <u>wetland or revegetation planting</u> to create the residential development opportunity; and b. transfer the residential development opportunity to the receiver site <u>in a Countryside Living Zone</u> .
3	Gain subdivision ...	
...5	Apply to Land Information New Zealand to: a. issue one new certificate of title in place of the original donor sites; and b. issue two new certificates of title for the new sites created from the receiver site after the title for the donor sites has been issued.	Apply to Land Information New Zealand to: a. attach an appropriate legal protection mechanism to the donor site for the protection of the indigenous vegetation, wetland or re-vegetated <u>revegetation</u> planting; and b. issue two new certificates of title for the new sites created from the receiver site.

15.3.2. Explanation of terms

(1) A donor site may be one of the following:

(a) two abutting rural sites being amalgamated;

(b) a rural site containing rural-residential development potential created from one of the following situations:

- (i) a site containing indigenous vegetation or wetland identified in the D9 Significant Ecological Areas Overlay;
- ~~(ii) a site containing an indigenous vegetation area or wetland meeting the Significant Ecological Areas factors as identified in Policy B7.2.2(1); or~~
- (ii) (iii) a site establishing re-vegetated revegetation planting.

(2) A receiver site is a Rural - Countryside Living zoned site identified on the planning maps by the Subdivision Variation Control.

15.4. Protection of existing indigenous vegetation

(1) All subdivision plans...

15.5. Legal protection mechanism to protect indigenous vegetation, wetland or re-vegetated revegetation planting:

(1) The legal...

(2) Where the Plan refers to indigenous vegetation or wetland to be subject to a legal protection mechanism, that mechanism must include the following:

(a) legal protection of the indigenous vegetation or wetland and any area of required ~~restoration~~ revegetation plantings in perpetuity. An agreement to the satisfaction of the council regarding an encumbrance, bond, consent notice, covenant or vesting as reserve must be entered into before the issue of the section 224(c) certificate under the Resource Management Act 1991;

(b) where applicable the legal protection mechanism must be in accordance with the relevant terms of the Reserves Act 1977 or the Queen Elizabeth II National Trust Act 1977. The legal instrument must provide protection in perpetuity, and must include enforcement and penalty provisions;

(c) where ~~re-vegetated~~ revegetation planting is required as a condition of the subdivision consent, the section 224(c) certificate will be issued only after the required works have been undertaken and the planting has satisfied the required

(d) The...

(3) The indigenous vegetation or wetland and any area of required ~~re-vegetated~~ revegetation plantings to be protected must be maintained free of livestock through appropriate stock proof fencing, or if livestock access to the vegetation is prevented by topographical or natural features then stock proof fencing may not be required.

15.6. Restorative Revegetation planting

(1) A planting plan for any ~~restorative~~ revegetation planting is required ~~prior to a section 224(c) certificate being issued~~ at the time of subdivision consent application and must identify the following:

- (a) the ecological district.....
- (l) how ~~restorative~~ revegetation planting will be ecologically linked to an area of contiguous Significant Ecological Areas (indigenous vegetation) and if possible any other additional existing ecological corridors or connections;
- (m) how ~~restorative~~ revegetation planting will provide robust and high value ecological connections without gaps to the Significant Ecological Areas;
- (n) how ~~restorative~~ revegetation planting will buffer the Significant Ecological Areas and ensure long term viability and resilience of the Significant Ecological Areas;
- (o) site planting, including species to be planted, size and spacing of plants and where they are to be planted, requirements for replacement of pest plants with appropriate native species and measures to minimise reinvasion of pest plants;
- (p) measures for the maintenance of planting, including releasing plants, fertiliser, plant and animal pest control and mulching and replacement of plants which do not survive, and measures for animal and plant pest control;
- (q) protective measures proposed to ensure the Significant Ecological Areas (indigenous vegetation) and any proposed ~~restorative~~ revegetation planting remain protected in perpetuity;
- (r) details confirming that ~~restorative~~ revegetation planting is only to be carried out contiguous to the Significant Ecological Areas (consisting of indigenous vegetation)
- (s) confirmation that the assessment of whether the maintenance of plantings has been achieved shall be undertaken by a suitably qualified independent ecologist according to a quantitative monitoring programme

(2) The location and species composition of the restoration planting is to achieve the following:

- (a) provide necessary.....
- (d) provide a sustainable, potentially significant forest, ~~wetland~~ or shrubland.

(3) The following matters...

H19. Rural zones

H19.1 Background

There are five rural zones: ...

H19.7 Rural – Countryside Living Zone

H19.7.1. Zone description

This zone provides for rural lifestyle living in identified areas of rural land which are generally closer to urban Auckland or rural and coastal towns. There is a diversity of topography, land quality and landscape character within the zone which results in a diversity of site sizes. The zone is the main-receiver area for transferable rural site subdivision from other zones.

This zone incorporates a range of...

E39. Subdivision – Rural

E39.1. Introduction

Subdivision is.....

E39.2. Objectives

(1) Land is....

(9) The productive potential of rural land is enhanced through the amalgamation of smaller existing land holdings sites, particularly for sites identified in Appendix 14 Land amalgamation incentivised area, and the transfer of titles to ~~areas of lower productive potential in certain Rural – Countryside Living Zone areas.~~

(10) Fragmentation of rural production land by:

(a) subdivision of land containing elite soil is avoided; and

(b) subdivision of land containing prime soil is avoided where practicable; and

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

(11) Subdivision avoids....

(12) Rural lifestyle subdivision is primarily limited to the Rural – Countryside Living Zone, and to sites created by protecting, ~~restoring~~ or creating significant areas of indigenous vegetation or wetlands.

(13) Subdivision of any...

(14) Subdivision is provided for by either:

a. Limited in-situ subdivision or by through the protection of significant indigenous vegetation and/or through indigenous revegetation planting; or

b. Transfer of titles, through the protection or enhancement of indigenous vegetation and wetlands and/or through restorative or indigenous revegetation planting to Countryside Living zones.

(15)

E39.3. Policies

(1) Provide....

(2) Require

(3) Manage rural subdivision and boundary adjustments to facilitate more efficient use of land for rural production activities by:

- (a) restricting further subdivision in the Rural – Rural Production Zone, Rural – Mixed Rural Zone and Rural – Rural Coastal Zone for a range of rural production activities; and
 - (b) providing for the transfer of titles to ~~areas of lower productive potential, in particular areas zoned~~ certain Rural – Countryside Living Zones.
- (4) Require subdivisions.....
- (11) Restrict in-situ subdivision for rural lifestyle living to where:
- (a) the site is located in the Rural – Countryside Living Zone;
 - (b) the site is created through the protection ~~or enhancement~~ of indigenous vegetation ~~and wetlands~~; or
 - (c) the site is created through ~~restorative~~ or indigenous revegetation planting.
- (12) Enable....

Protection of indigenous vegetation and wetland and revegetation planting

- (15) Enable limited in-situ subdivision ~~or the transfer of titles~~ through the protection of indigenous vegetation ~~or wetlands~~ identified in the Significant Ecological Areas Overlay and indigenous revegetation planting ~~or areas meeting the factors for Significant Ecological Areas in Policy B7.2.2(1) and in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule.~~
- (16) Encourage the transfer of titles through the protection of indigenous vegetation or wetlands identified in the Significant Ecological Areas Overlay and indigenous revegetation planting.
- ~~(16)~~ (17) Require indigenous vegetation or wetland within a site being subdivided to be legally protected in perpetuity.
- ~~(17)~~ (18) Provide limited opportunities for in-situ subdivision in rural areas while ensuring that:
- (a) there will be significant environmental protection ~~or restoration~~ of indigenous vegetation;
 - (b) subdivision

E39.4. Activity table

Tables E39.4.1 to E39.4.5 specify.....

Table E39.4.1 Subdivision for specified purposes

Activity		Activity status
(A1)...	Lease in excess of 35 years of a building or part of a building where a cross-lease, company lease, or unit title subdivision is not involved	P

Table E39.4.2 Subdivision in rural zones (excluding Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone)

Activity		Activity status
(A10)....	Subdivision for open spaces, reserves or road realignment	D
(A15)	In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay, and complying with Standard E39.6.4.4	RD
(A16)	In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.4	NC
(A17)	In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and complying with Standard E39.6.4.4	RD
(A18)	In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and not complying with Standard E39.6.4.4	NC
(A19)-(A17)	In-situ subdivision creating additional sites through establishing revegetation planting and complying with Standard E39.6.4.5	RD
(A20) (A18)	In-situ subdivision creating additional sites through establishing revegetation planting not complying with Standard E39.6.4.5	NC
(A21) (A19)	Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay complying with Standard E39.6.4.6	RD
(A22) (A20)	Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay not complying with Standard E39.6.4.6	NC
(A23)	Transferable rural sites subdivision through protection of	RD

	indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and complying with Standard E39.6.4.6	
(A24)	Transferable rural sites subdivision through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) and not complying with Standard E39.6.4.6	NC
(A25) (A21)...	Transferable rural sites subdivision through establishing revegetation planting complying with Standard E39.6.4.6	RD
(A30) (A26)	Any other subdivision not provided for in Tables E39.4.1 or E39.4.2	NC

Table E39.4.3 Subdivision in Future Urban Zone

Activity		Activity status
(A27)	Subdivision for open spaces, reserves or road realignment	D
(A31) (A28)	Any other subdivision not provided for in Table E39.4.1	D NC

Table E39.4.4 Subdivision in Special Purpose – Quarry Zone

Activity		Activity status
(A32) (A29)	Any other subdivision not provided for in Table E39.4.1	D

Table E39.4.5 Subdivision in Rural – Waitākere Foothills Zone and Rural – Waitākere Ranges Zone

Activity		Activity status
(A33).... (A30)....	Subdivision in the Rural – Waitākere Foothills Zone creating site size with a minimum site size of 4ha complying with Standard E39.6.3.2	C

E39.5. Notification

(1) An application.....

E39.6. Standards

Subdivision listed in Tables E39.4.1 to E39.4.5 must comply with the relevant standards in E39.6.1 General standards, and the relevant standards for permitted, controlled, restricted discretionary and discretionary activities in E39.6.2 to E39.6.5.

E39.6.1. General standards

E39.6.1.1. Specified building area

- (1) A specified building.....

E39.6.2. Standards – permitted activities

Subdivision listed....

E39.6.3. Standards - controlled activities

Subdivision listed....

E39.6.3.1. Amendments to...

E39.6.3.2. Boundary adjustments that do not exceed 10 per cent of the original site size

- (1) All sites...

(5) If any boundary adjustment under this control creates the potential for additional subdivision or dwellings over and above what was possible for each site prior to the boundary adjustment a legal covenant or consent notice under s. 221 of the RMA is to be registered on the titles prohibiting;

(a) any further subdivision; and/or

(a) new dwellings.

E39.6.4. Standards – restricted discretionary activities

E39.6.4.1. Subdivision establishing an esplanade reserve

- (1) Any subdivision.....

E39.6.4.2. Subdivision of a site within the two per cent annual exceedance probability floodplain

- (1) Each proposed site....

E39.6.4.3. Subdivision of land which may be subject to coastal hazards

- (1) Each proposed site.....

E39.6.4.4. In-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; and in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Refer to Appendix 15 Subdivision information and process for further information in relation to in-situ subdivisions.

- (1) The indigenous vegetation or wetland to be protected must either be:
(a) identified in the Significant Ecological Areas Overlay; or

(a)

(b) must be assessed by a suitably qualified and experienced person (e.g. for example, ecologist) who must determine that it meets one or more of the Significant Ecological Areas factors identified in Policy B7.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas – Terrestrial Schedule. A report by that person must be prepared and must be submitted to support the application.

- (2) The maximum number of sites created from the protection of an indigenous vegetation or wetland must comply with Table E39.6.4.4.1 and Table E39.6.4.4.2.

Table E39.6.4.4.1 Maximum number of new rural residential sites to be created from the protection of indigenous vegetation either identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Areas of indigenous vegetation or wetland to be protected	Maximum number of rural residential sites that may be created
Minimum of 2.0ha	1
2.0001ha – 11.9999ha	2
12.0ha – 21.9999ha	3
22.0ha – 31.9999ha	4
32.0ha – 41.9999ha	5
42.0ha – 51.9999ha	6
52.0ha – 61.9999ha	7
62.0ha – 71.9999ha	8
72.0ha – 81.9999ha	9
82.0ha – 91.9999ha	10
92.0ha – 101.9999ha	11
102.0ha – 111.9999ha	12

<u>Areas of indigenous vegetation to be protected</u>	<u>Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision</u>	<u>Maximum number of rural residential sites that may be created for in-situ subdivision</u>
<u>5ha – 9.9999ha</u>	<u>1</u>	<u>1</u>
<u>10ha – 14.9999ha</u>	<u>2</u>	<u>2</u>
<u>15ha – 20ha</u>	<u>3</u>	<u>3 (maximum)</u>
<u>For every 10ha increment of SEA (indigenous vegetation) which is protected</u>	<u>No maximum</u>	

beyond the protection of 20ha		
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Table E39.6.4.4.2 Maximum number of new sites to be created from the protection of wetland either identified in the Significant Ecological Areas Overlay or meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

Area of wetland to be protected	Maximum number of rural residential sites that may be created
Minimum 5,000m ²	1
5,001m ² – 1.9999ha	2
2.001ha – 3.9999ha	3
4.001ha – 7.9999ha	4
8.0ha – 11.9999ha	5
12.0ha – 15.9999ha	6
16.0ha – 19.9999ha	7
20.0ha – 24.9999ha	8
25.0ha or more	9 plus one additional site for each 5ha of wetland above 30ha

- (3) A 20 metre buffer is to be applied to the perimeter of the indigenous vegetation or wetland and included as part of the protected area.
- (4) The additional sites must be created on the same site as the indigenous vegetation or wetland subject to protection.
- Note: Standard E39.6.4.6 provides a separate subdivision option to enable the transfer of additional lots created via Standard E39.6.4.4.
- (5) The additional sites must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.
- (6) Any indigenous vegetation or wetlands proposed to be legally protected in accordance with Appendix 15 Subdivision information and process must be identified on the subdivision scheme plan.
- (7) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection.
- (8) Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under this Plan or a previous district plan.
- (9) The subdivision resource consent must be made subject to a condition requiring the subdivision plan creating the sites to be deposited after, and

not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation or wetland.

(10) All applications must include all of the following:

(a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation or wetland and buffer area remain protected in perpetuity. Refer to legal protection mechanism to protect indigenous vegetation, wetland or ~~revegetated~~ revegetation planting as set out in Appendix 15 Subdivision information and process for further information;

~~(b) the planting plan for restorative planting must follow the specifications as set out in Appendix 15 Subdivision information and process that specifies any restoration measures proposed to be carried out within or adjacent to the indigenous vegetation or wetland proposed to be protected; and~~

~~(c)~~ (b) the plans required in E39.6.4.4(10)(a) and ~~(b)~~ must be prepared by a suitably qualified and experienced person.

(11) Indigenous vegetation or wetland to be protected must be made subject to a legal protection mechanism meeting all of the following:

(a) protection of all the indigenous vegetation or wetland and wetland buffer existing on the site at the time the application is made, even if this means protecting vegetation or a wetland larger than the minimum qualifying area; and

(b) consistent with the legal protection mechanism to protect indigenous vegetation, wetland or ~~revegetated~~ revegetation planting as set out in Appendix 15 Subdivision information and process.

(12) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:

(a) the establishment of secure stock exclusion;

~~(b) the maintenance of plantings, which must occur until the plantings have reached a sufficient maturity to be self-sustaining, and have been in the ground for at least three years for wetlands, or have reached 80 per cent canopy closure for other ecosystem types. The survival rate must ensure a minimum 90 per cent of the original density and species;~~

~~(c) the maintenance of plantings must include the ongoing replacement of plants that do not survive;~~

~~(b)~~ (d) the maintenance of the indigenous vegetation plantings must ensure that all invasive plant pests are eradicated ~~from the planting~~

site both at the time of planting and on an ongoing basis to ensure adequate growth; and

- (c) ~~(e)~~ the maintenance of the indigenous vegetation plantings must ensure animal and plant pest control occurs.

E39.6.4.5. In-situ subdivision creating additional sites through establishing native-indigenous revegetation planting

- (1) Any established revegetation planting must meet all of the following:
- (a) not be located on land containing elite soil or prime soil;
 - (b) be located outside any Outstanding Natural Character, High Natural Character or Outstanding Natural Landscape overlays; and
 - (c) be contiguous with existing indigenous vegetation identified in the Significant Ecological Area Overlay.
 - ~~(e)~~(d) the criteria as set out in Appendix 16 Guideline for native revegetation plantings.
- (2) The maximum number of new sites created through establishing revegetation planting must comply with Table E39.6.4.5.1.

Table E39.6.4.5.1 Maximum number of new sites from establishing native revegetation planting (to be added to existing indigenous vegetation identified in the Significant Ecological Area Overlay) subject to protection

Minimum area of established native revegetation planting <u>(to be added to an existing indigenous vegetation identified in the Significant Ecological Area Overlay)</u> subject to protection	Maximum number of new sites for <u>Transferable Rural Site Subdivision</u>	<u>Maximum number of new sites for in-situ subdivision</u>
5ha – 9.9999ha	1	<u>1</u>
10ha – 14.9999ha	<u>2</u>	<u>2</u>
15ha or more	<u>3 (maximum)</u>	<u>3 (maximum)</u>
Every additional 5ha	1	

- (3) Any new site must have a minimum site size of 1 hectare and a maximum site size of 2 hectares.
- (4) Any established revegetation planting proposed must be legally protected.
- (5) Areas subject to revegetation planting must be subject to a legal protection mechanism that:

- (a) protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any revegetation ~~restoration~~ planting; and
 - (b) meets the requirements as set out in Appendix 15 Subdivision information and process.
- (6) All applications must include all of the following:
- (a) a plan that specifies the protection measures proposed to ensure the indigenous vegetation ~~or wetland~~ and buffer area remain protected in perpetuity. Refer to the legal protection mechanism to protect indigenous vegetation, wetland or ~~revegetated~~ revegetation planting as set out in Appendix 15 Subdivision information and process for further information;
 - (b) a planting plan for ~~restorative~~ revegetation planting which outlines the restoration measures proposed to be carried out within or adjacent to the indigenous vegetation ~~or wetland~~ proposed to be protected in accordance with Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings ; and
 - (c) the plans required in E39.6.4.5(6)(a) and (b) must be prepared by a suitably qualified and experienced person.
- (7) All applications must include a management plan that includes all of the following matters, which must be implemented prior to the Council issuing a section 224(c) certificate:
- (a) the establishment of secure stock exclusion;
 - (b) the maintenance of plantings that must occur until the plantings have reached a sufficient maturity to be self-sustaining and ~~have been in the ground for at least three years for wetlands, or have reached 80 per cent canopy closure for other ecosystem types~~. The survival rate must ensure a minimum 90 per cent of the original density and species;
 - (c) the maintenance....
- (8) The subdivision resource consent must be made subject to a condition that requires the subdivision plan creating the sites to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation ~~or area of restoration planting~~ to be protected as applicable.

E39.6.4.6. Transferable rural sites subdivision through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; ~~or transferable rural sites subdivision~~

~~through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1); or transferable rural sites subdivision through establishing revegetation planting~~

Refer to Appendix 15 Subdivision information and process and Appendix 16 Guideline for native revegetation plantings for further information on transferable rural sites subdivisions and revegetation planting.

- (1) All transferable rural sites subdivisions applications involving protection of indigenous vegetation ~~or wetlands~~ must meet all of the standards that are (a) applicable for the protection of indigenous vegetation ~~or wetland~~ identified in the Significant Ecological Areas Overlay as set out in Standard E39.6.4.4.
- (b) ~~the protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1) as set out in Standard E39.6.4.4; or~~
- (a) ~~(e)~~ the creation of sites through establishing revegetation planting as set out in Standard E39.6.4.5.

- (2) All transferable rural sites subdivisions applications involving protection of wetlands must meet:
- (a) Clauses 1 and 3-12 in E39.6.4.4 as if references to indigenous vegetation are references to wetlands;
- (b) The maximum number of new sites created through the protection of wetlands must comply with Table E39.6.4.6.1.

Table E39.6.4.6.1 Maximum number of new sites to be created from the protection of wetland identified in the Significant Ecological Areas Overlay

<u>Area of wetland to be protected</u>	<u>Maximum number of rural residential sites that may be created for Transferable Rural Site Subdivision</u>	<u>Maximum number of rural residential sites that may be created for in-situ subdivision</u>
Minimum 5,000m ²	1	No in-situ subdivision
<u>1,000m² – 1.9999ha</u>	(2) (maximum)	

(3)(2)A donor site.....

E39.6.4.7. Transferable rural site subdivision through the amalgamation of donor sites, including sites identified in Appendix 14 Land amalgamation incentivised area

(1) Prior to amalgamation.....

E39.6.5. Standards – discretionary activities

E39.6.5.1. Subdivision in....

E39.6.5.2 Subdivision in the Rural – Countryside Living Zone

Table 39.6.5.2.1 Minimum and minimum average net site area

Location of Rural – Countryside Living Zone	Minimum net site area and average net site area without transferable rural site subdivision	Minimum net site area and average net site area with transferable rural site subdivision
Rural – Countryside Living Zone areas not identified below...	Minimum: 2ha	N/A
Whitford (excluding <u>Caldwells Road</u>) Precinct	Minimum: 2ha Minimum average: 4ha	N/A
<u>Whitford – Caldwells Road</u>	<u>Minimum: 1ha</u> <u>Minimum average: 2ha</u>	<u>N/A</u>
Papakura...	Minimum: 1ha	N/A

E39.7. Assessment – controlled activities

E39.7.1. Matters of control

The Council will...

E39.7.2. Assessment criteria

The Council will consider the relevant assessment criteria for controlled activities from the list below:

- (1) all controlled activities:
 - (a) compliance
 - (b) the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:
 - (i) the extent to...
 - (ii) whether...
 - (iii) refer to Policy E39.3(24)(25), (25)(26) and (26)(27);
 - (c) the effects of infrastructure provision:

(i) whether provision is made for infrastructure including creation of common areas over parts of the parent site that require access by more than one site within the subdivision; and

(ii) refer to Policy E39.3(27)(28) and (31)(32).

(d) the effects...

(2) Subdivision in the Rural – Waitākere Foothills Zone:

(a) Policies E39.3(1), (4), (6), (10), (11), (13), (16), (17), (19)(20), (24)(25) and (27)(28) - (32)(33).

E39.8. Assessment – restricted discretionary activities

E39.8.1. Matters of discretion

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application:

(1) subdivision of a site...

(6) in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; ~~in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay~~ areas but meeting the Significant Ecological Area factors in Policy B7.2.2(1); in-situ subdivision creating additional sites through establishing revegetation planting:

(a) effects associated with...

(i) the number of sites created, site size, building platforms locations, access;

(ii) the rural character, landscapes and amenity;

(iii) the location of the indigenous vegetation, ~~wetland~~ and/or revegetation planting relative to proposed new sites and to existing vegetation;

(iv) the quality of the indigenous vegetation, ~~wetland~~ and/or revegetation planting to be protected;

(v) the compliance with Auckland-wide rules;

(vi) any management plans for the ongoing protection and management of indigenous vegetation, ~~wetland~~ or ~~restorative~~ revegetation planting;

(vii) the provision of adequate access to existing and new infrastructure and provision of appropriate management of effects of stormwater;

(viii) the legal protection for indigenous vegetation, ~~wetland~~ or revegetation planting;

(ix) any reverse sensitivity effects; and

- (x) the location of identified building areas platforms relative to areas of significant mineral resources.
- (7) transferable rural sites subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; ~~transferable rural sites subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors in Policy B7.2.2(1); transferable rural sites subdivision through establishing revegetation planting:~~
 - (a) effects associated....

E39.8.2. Assessment criteria

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

- (1) subdivision of a site
- (5) subdivision establishing an esplanade reserve:
 - (a) the effect of the design, purpose and location of any esplanade reserve established by subdivision in terms of public access, and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features:
 - (i) the extent to which the design purpose and location of the esplanade reserve enables public access and the conservation of coastal and/or riverbank ecological values, natural values, geological features and landscape features; and
 - (ii) Policies E39.3(1), ~~(20)(21), (21)(22)~~ and ~~(22)(23)~~.
- (6) in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; ~~in-situ subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay areas but meeting the Significant Ecological Area factors in Policy B7.2.2(1); in-situ subdivision creating additional sites through establishing revegetation planting:~~
 - (a) Policies E39.3(1), (15), (16), ~~(17), (23) – (26)~~ and ~~(28) to (30)~~; (17), (18), (24) – (27) and (29) to (31).
- (7) transferable rural sites subdivision creating additional sites through protection of indigenous vegetation or wetland identified in the Significant Ecological Areas Overlay; ~~transferable rural sites subdivision creating additional sites through protection of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors in Policy B7.2.2(1); transferable rural sites subdivision through establishing revegetation planting:~~

(a) Policies E39.3(1), (11), (12), (13), (15), (16) and ~~(17), (23) – (26) and (28)~~
to ~~(30)~~. (17), (18), (24) – (27) and (29) to (31).

(8) transferable rural sites subdivision through the amalgamation of donor sites including sites identified in Appendix 14 Land amalgamation incentivised area:

(a) Policies E39.3(1), (3), (9), (11), (12), (13), (15), (16), (17), ~~(17) (18)~~
and ~~(28) to (30)~~. (29) to (31).

E39.9. Special information requirements

There are no special information requirements in this section.

SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN

TO: Auckland Council

Name of submitters: Man O War Farm Limited and Clime Asset Management Limited

This is a submission on the proposed Auckland Unitary Plan notified on 30 September 2013 ("Unitary Plan").

The submitters could not gain an advantage in trade competition through this submission.

The submission relates to the entire contents of the proposed Auckland Unitary Plan (including appendices and maps) but in particular (and without limitation) those provisions referred to below.

Man O War Farm Limited and Clime Asset Management Limited submit as follows:

INTRODUCTION AND BACKGROUND

1. These submissions are made on behalf of Man O' War Farm Limited ("**MOWF**") and Clime Asset Management Limited.
2. MOWF and its associated companies own Man O' War Farm located on Waiheke and Ponui Islands. Clime Asset Management Limited represents the owners of residentially zoned land located at Stanley Point which is subject of the Special Character Residential North Shore overlay addressed in J.3.4 of the Unitary Plan.
3. Man O' War Farm was acquired over 30 years ago. There is a significant pastoral usage but also an increasingly diversified horticultural element on the 1785 hectare Waiheke block, with 68.5 hectares in grapes, and a smaller area of land in olives, developed over the past 20 years.
4. The ongoing viability of Man O' War Farm is dependent on the viticulture component. The substantial investment in that element of the overall operation will be continued into the future, with a new winery building (tasting room) recently established, and wine related tourism activities to be enhanced over time.
5. MOWF's activities during its ownership of Man O' War Farm exemplify the ethic of stewardship encoded within Section 7(aa) of RMA.

6. MOWF has been responsible for the positive transformation of Man O' War Farm through a range of voluntary initiatives including (for example) the planting of over 90,000 native trees and shrubs on the Waiheke Island property, as well as the establishment of the horticulture and viticulture activities. In the 12 years to 2010, in excess of \$2 million had been spent on amenity planting alone, with five permanent staff employed in carrying out that activity.
7. These activities have been neither driven nor compelled by RMA regulation.
8. The transformation achieved through the overall investments made has yielded a number of positive consequences that are considered to be directly relevant within the Unitary Plan context.
9. Environmentally, both ecological and landscape benefits have been realised in enhancing the range of significant ecological resources and landscapes falling within Man O' War Farm, including as identified on the 'legacy' District and Regional Plan and Policy Statement maps.
10. There is then the economic dimension, in securing a more diverse and productive use of the land resources than could be achieved through pastoral farming on its own. The end result of these initiatives not only sustains the stewardship approach, but there are now 20 permanent staff employed on Man O' War Farm with an annual salary contribution of over \$1.5 million made to the local economy.
11. An independent assessment by Dr Warren Hughes (economist) in 2008 estimated that farming operations on Man O' War Farm contribute to 139 jobs within the Auckland economy, and to 0.05% of Auckland's total economic output, which is extremely high for a single agricultural business unit. This assumes that there would be no (including planning) impediments upon the full capacity of the farming operations being achieved.
12. Dr Hughes' evaluation provides a concrete example as to application of B.8.1 Rural activities Objective 1 which is supported by MOWF, namely that:

Rural areas are a significant contributor to the wider economic productivity of Auckland.
13. MOWF also supports B.8.1 Rural activities Policy 1; namely to "*Encourage the economic development potential of rural areas by supporting a diversity of rural activities....*" Without the substantial investment in diversification of productive uses on Man O' War Farm, it would not have remained viable. Unless the ability to realise a return on that investment is sustained, the owners will be compelled to progress alternative land uses (including through subdivision, and residential development), as may not give effect to B.8.3 Rural subdivision.

14. MOWF's fundamental concern behind these submissions is to ensure that the proposed policy and regulatory framework adopted through the Unitary Plan is both reasonable and appropriate including for the particular nature of its properties, and does encourage and support a diversity of rural activity. B.8.1 Rural activities Objective 1 would be undermined through inappropriate, excessive or inefficient regulatory intervention against rural activity, creating conflict or tension within the Unitary Plan, including at Regional Policy Statement ("RPS") level.

HAURAKI GULF ISLANDS PROVISIONS

15. MOWF understands that the Auckland Unitary Plan will not, at least in the interim, replace the Auckland Council District Plan (Hauraki Gulf Islands Section) ("**HGI Plan**"), nor the regional planning instruments relative to the Hauraki Gulf Islands (A:1.1).
16. Further, MOWF understands that the 'district level' overlay rules (in Chapter J of the Unitary Plan) will not apply to the Hauraki Gulf Islands during the interim period.
17. By contrast, RPS provisions (Part 1, Chapter B) will apply from the outset, along with the regional plan provisions in Parts 2 and 3.
18. These submissions nevertheless address all provisions and overlays considered to be of current or potential future relevance.
19. This is because MOWF is concerned that any future plan change (to bring the HGI Plan within the ambit of the Unitary Plan) will not provide an opportunity to 'engage' with those provisions of the Unitary Plan that do not currently apply to the Islands. They would by then be effectively 'settled' as between the Council and other submitters, and determined by the Hearings Panel.

SUMMARY OF SUBMISSIONS

20. By way of summary, MOWF submits that:
- (a) The Outstanding Natural Landscape overlay (Landscapes 78 and 85) applied to its MOWF (Waiheke and Ponui Islands) property must be either deleted or substantially amended in line with the Environment Court decision¹ on the equivalent overlay applied under Change 8 to the operative Auckland Regional Policy Statement, and the relevant RPS objectives and policies must be amended to be (at least) consistent with those ultimately determined under Change 8 (including by agreement between the Council and all relevant stakeholders).

¹ Pending at time of preparation of this submission.

- (b) A number of amendments need to be made to the specific provisions (objectives, policies and rules) of the Unitary Plan to ensure that they give effect to the proposed Chapter B RPS objectives regarding the economic significance of rural activities, which encourage and seek to support a diverse range of activities in rural zones.
- (c) As they stand, various provisions of the Unitary Plan particularly regarding natural character, landscape, biodiversity, water quality management, natural hazards, and rural (including earthworks) activities, would not give effect to or achieve the RPS objectives in relation to the rural environment, along with the general objectives and policies set for the rural economy in D.6.1.1 Rural economy objectives and policies.
- (d) Proposed regulation regarding stock access to water bodies would preclude continued viable operation of MOWF's island farming operation, given the unique nature of the property and that activity (in an island context) as explained in these submissions.
- (e) The proposed regulatory framework for subdivision within rural coastal zones (as would likely apply to MOWF's property in the future) is strongly opposed; there being no basis on any "urban" containment" or landscape pretext to prohibit subdivision within all coastal and rural areas of the Hauraki Gulf Islands. MOWF seeks incorporation of at least the extent of provision for subdivision applied under the HGI Plan, including as to be determined by the Environment Court at the time this submission was prepared.
- (f) Before the Hauraki Gulf Islands are brought within the Unitary Plan through any future plan change, MOWF requests an opportunity to develop, on a collaborative basis with Council, a tailored planning framework for its Waiheke and Ponui Island properties, given the diverse range, extent and value of the natural and physical resources on the property, such that a specific rural precinct would better promote their sustainable management.
- (g) The zoning and overlay provisions applying to the Stanley Point land identified at J.3.4 (Special Character Residential North Shore) of the Unitary Plan are supported, as consistent with the equivalent provisions of the operative North Shore City District Plan, as determined by the Environment Court in the context of Plan Change 21.
- (h) MOWF submits that in promoting the Unitary Plan in its current form, and having regard to the issues raised in these submissions, the Council has failed to discharge its obligations under s32 of the RMA, including

as revised by the Resource Management Amendment Act 2013 (as applies to the Auckland Unitary Plan process).

HISTORY OF INVOLVEMENT IN RESOURCE MANAGEMENT PLANNING AND PROCESSES

21. Since 2006, MOWF has been involved in plan preparation processes at every level of the resource management hierarchy including:
 - New Zealand Coastal Policy Statement 2010 (“**NZCPS**”)
 - The proposed National Policy Statement on Biodiversity
 - Change 8 to the operative Auckland Regional Policy Statement (“**ARPS**”) (outstanding natural landscapes) (“**Change 8**”)
 - The Auckland Plan
 - The HGI Plan
 - Now and most recently, the Unitary Plan
22. At the same time MOWF has been progressing two resource consent applications for dwellings in discrete bays located within its 1750 hectare Waiheke Island property; with the relevant applications first lodged in November 2007 (neither application is yet concluded).
23. MOWF has incurred substantial costs in these processes. This includes legal costs, expert planning advice, and retaining specialist archaeological, ecological, landscape and resource mapping expertise. MOWF is reluctant to divulge the figures, but they are in the order of many hundreds of thousands of dollars.
24. MOWF’s involvement with the HGI Plan and Change 8 has comprised the dominant component of the overall costs of its participation in RMA processes to date.
25. To fully set the scene for MOWF’s submissions on the Unitary Plan, these processes and the issues MOWF has had to address in each case are now explained in more detail. This is not simply to ‘rake over old ground’, but to demonstrate MOWF’s significant concern at needing to “re-litigate” issues that have been successfully resolved, including to Council’s satisfaction, and that of all other parties and stakeholders through the preceding processes.

Plan processes

26. Change 8 and the HGI Plan have nothing short of profound implications for MOWF, in terms of sustaining (or curtailing) the capacity of its property holdings to yield a return on the substantial investments made, as outlined in the Introduction. So will the Unitary Plan, and increasingly so over time.
27. Change 8 was notified in 2005. It maps virtually the entire Waiheke Island farm property as an outstanding natural landscape (ONL), along with a significant component of the Ponui Island holding also comprising part of Man O War Farm.
28. From the outset, MOWF raised a substantial challenge to both that mapping and the policy prescription for outstanding natural landscapes proposed to be included within the ARPS through Change 8. Evidence in support of MOWF's submission was presented to the Council Hearings Committee in May 2007.
29. In 2008 the Auckland Regional Council put Change 8 "on hold" and conducted a "second round" evaluation of all of the landscapes identified within the change as notified, this time applying the Environment Court established *Pigeon Bay* or *WESI* criteria (derived from the Environment Court's decision in *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* (2000) NZRMA 59). The mapping nevertheless remained unchanged upon release of decisions in October 2010.
30. Following an appeal lodged by MOWF, it participated in a series of informal discussions and mediations which led to substantial changes to the policy prescription, but not to the mapping of the ONL over virtually its entire property.
31. The mapping issue was considered by the Environment Court in a hearing in May 2013, and a decision is currently pending.
32. The Unitary Plan mapping applies an Outstanding Natural Landscape Overlay over Man O' War Farm to the same extent as the Change 8 ONL.
33. While potentially beyond the scope of the Unitary Plan, MOWF wishes nevertheless to express its considerable frustration that it is required to pay rates based on a valuation assessment that seems essentially disconnected with the real implications of scheduling of the property as an ONL, and the regulatory impact of planning provisions that flow from that.
34. As discussed further below, MOWF considers that the Council has 'taken the benefit' of its many investments and voluntary initiatives (as a steward of the land) that have resulted in landscape or ecological enhancements, to the point of mapping those features, and then regulating against further reasonable use

of the resources involved. Yet there is no corresponding 'benefit' to the landowner, through rates relief or otherwise, and the consequences of regulation are essentially an adverse 'one way street' from the landowner perspective.

35. Concurrently with the Change 8 process, MOWF has been fully engaged in the proposed HGI Plan review as notified in October 2006.
36. MOWF had specifically requested an opportunity to consult directly (or indeed in modern terms 'collaborate') with the Council prior to notification of the HGI Plan. No such opportunity arose or was afforded.
37. Within the HGI Plan as notified, substantial areas of MOWF's Waiheke Island property were scheduled as ecologically significant, with landforms (zonings) and rules applied that rendered pastoral farming activities over several hundred hectares of land, a non-complying activity.
38. Mapping of some of the significant ecological features was grossly inaccurate, including mapping wetland areas over the top of steep escarpments or even cliffs, and areas of significant vegetation over what were in fact well established vineyard plantings, and/ or areas of pasture that had no formed canopy.
39. MOWF has invested in an accurate three dimensional computer model of its property. This was used as a tool by expert landscape, ecology and planning advisers retained by both Auckland Council and MOWF to "ground truth" the HGI Plan mapping of landforms and ecological features. The final and agreed result (with Council) was a significantly more robust and accurate set of District Plan maps for application to the property holding.
40. This was all achieved through the appeal phase of the process.
41. MOWF's property is quite probably unique (for a working farm) in having some six landforms (or zones) applied to it under the HGI Plan.
42. The rules set within the HGI Plan for some of those landforms are very restrictive, including going so far as to provide (only) for eco-sourced planting as a permitted activity. It was therefore very important to get the landform (zone) mapping right, so that more reasonable landform provisions enabling rural activity to continue then applied to areas that were not significant in ecological or landscape terms.
43. Again, and at the appeal phase (following in essence, rejection of all of MOWF's submissions to the HGI Plan), MOWF was able to achieve a reasonable degree of modification to the HGI Plan provisions of most concern. A rule framework it is more comfortable with has been realised which will be

applied within the now more accurately identified landform zonings (and mapped significant ecological sites).

44. One outstanding issue; the minimum lot size framework for subdivision within the predominant landform applied to the property (Landform 5), was heard alongside the Change 8 ONL mapping issue in May 2013, and the Court's decision on that issue is also currently pending.
45. Having now reached somewhere close to the 'end point' of these various procedures; MOWF must now engage with the Unitary Plan that is 're-writing the script' at least at RPS level, while essentially adopting the HGI Plan for the Hauraki Gulf Islands in the interim.

Resource consent processes

46. The highly dynamic planning context within which MOWF has been forced to operate over the past eight years has not made its two principal resource consent applications any easier to progress.
47. The applications are for dwellings; one at Owhiti Bay and one at Cactus Bay within the property. MOWF appreciates these are sensitive and valued landscapes, and areas of the coastal environment with high natural character. Both applications were publicly notified, and the first instance decisions were both appealed to the Environment Court (one by MOWF itself).
48. As the two applications have tracked through the various stages of the relevant processes, the planning landscape has changed considerably through the introduction of new statutory tests, planning instruments, and amendments to the same over the period.
49. The Owhiti Bay consent application was granted consent by independent commissioners. This decision was overturned on appeal by the Environment Court. The Environment Court decision was set aside by the High Court. MOWF is progressing a revised (reduced) proposal in the context of the Environment Court rehearing directed by the High Court, and an interim decision indicating consent would be forthcoming (subject to addressing minor issues of conditions raised by the Court) was issued by the Court in October 2013. The Court's final decision is awaited, with MOWF having responded to the issues of conditions raised by the Court.
50. The Cactus Bay dwelling was refused consent at first instance by an independent commissioner, and the appeal of that decision has very recently been resolved by agreement through a revised proposal being put to the Court for approval on an uncontested basis.

51. Of all of the issues causing the most uncertainty and cost for MOWF throughout these two consent processes, those associated with existing s 6 requirements relative to:
- The natural character of the coastal environment
 - outstanding natural landscapes
 - what comprises “appropriate” development within those contexts,
- have been the most complex or indeed fraught.
52. Of all of the costs it has incurred, MOWF seriously considers it would be fair to suggest that some 70 to 80% of them have resulted directly and solely from these two words (“outstanding” and “inappropriate”).
53. MOWF has attempted to achieve greater certainty within the policy framework of Change 8 to the ARPS in this respect, whereby the specific *features, patterns processes and qualities* that make a landscape outstanding are expressly recorded in the document, so that the impact of any given development on those resource attributes must expressly be examined, in deciding whether a particular proposal is “appropriate”.
54. The Change 8 policies have been substantially amended, by agreement of all parties to that process, to provide much greater certainty in this respect.
55. Against that background, MOWF is concerned to achieve consistency between the Unitary Plan provisions addressing issues of landscape quality and the agreed Change 8 outcomes, as reached to the satisfaction of Council and all stakeholders, and as otherwise determined by the Environment Court under Change 8.
56. As to the overlay mapping, MOWF submitted to the Environment Court that the Council applied the wrong threshold in mapping Man O’ War Farm (Waiheke and Ponui) as an ONL (to the same extent now proposed under the Unitary Plan). With reference to case law, and to qualify a landscape as outstanding it must be:
- Conspicuous
 - Eminent
 - Special by excellence
 - [Stands] out from the rest.

57. Both under Change 8 and now the Unitary Plan, ONL mapping has been applied to very significant areas of the property that would more properly qualify as a visual amenity landscape, than one that is truly outstanding either regionally or nationally.
58. The Court is yet to rule on this issue; but if successful and the Change 8 ONL mapping is amended, the landscape overlay applied to Man O' War Farm under the Unitary Plan must also be amended, as the Court's decision will be binding on the Council. This is addressed further later in these submissions.

UNITARY PLAN RPS- PART 1, CHAPTER B PROVISIONS

B.4.3.1 – NATURAL CHARACTER OF THE COASTAL ENVIRONMENT

Reasons for submissions

59. Significant areas of the coastline of MOWF's Waiheke property are scheduled on the overlay maps as having high natural character (HNC). MOWF requests access to the assessment by which those high natural character areas were identified by the Council (or through its experts), pursuant to s 10 of the Local Government Official Information and Meetings Act 1987. MOWF opposes that scheduling and seeks that it be deleted in its entirety, pending review of that assessment.
60. B.4.3.1 Natural character Objective 2 is opposed in that the natural character of areas with high (as well as outstanding) natural character is sought to be preserved, with subdivision use and development to be managed to maintain "their high levels of naturalness".
61. This objective, in setting a preservation imperative for areas of high natural character in addition to areas of outstanding natural character, does not give effect to Policy 13(1) of NZCPS, which requires this only for areas with outstanding natural character.
62. Furthermore, the objective ignores the second limb of s 6(a) of RMA, which provides for the protection of the natural character of the coastal environment from inappropriate development, rather than setting (within s6(a)) a mandate for preservation 'at all costs'.
63. The objective should be deleted, or at least confined to areas identified to have outstanding natural character within the coastal environment.
64. B.4.3.1 Natural character Policy 1 is opposed as to:
- (a) The reference to "experiential values" within item (c) of the policy, which should be replaced with the word "processes" and/ or the words

“experiential attributes” as applied under Policy 13(2) of NZCPS, in the interests of greater certainty as to the scope and intent of the policy.

- (b) Item (d), as any particular subdivision use or development proposal should be assessed on its merits, not with reference to whether an alternative location or form should be promoted. This item should be deleted.
65. MOWF opposes those aspects of B.4.3.1 Natural character Policy 4 that would seek to protect the physical and visual integrity of HNC areas by:
- (a) Requiring subdivision use and development to *maintain* natural character values of the area;
 - (b) Maintaining high levels of naturalness of these areas;
 - (c) Avoiding activities that individually or cumulatively detract physically or visually from the natural character values of the area;
 - (d) Maintaining, and where practicable, enhancing Mana Whenua values.
66. These policies would establish an effective “veto” or “prohibition” on any development within HNC areas and which could not entirely *maintain* natural character values.
67. The Policy should be reframed to apply the distinction between outstanding natural character (ONC) and HNC areas of the coastal environment. Policy 13 (1) of NZCPS only requires avoidance of effects in ONCs, not HNCs. This Policy fails to make that distinction and as such does not give effect to the NZCPS.
68. For HNC areas, the policy should be amended to be consistent with a requirement to avoid *significant* rather than *any* adverse effects. Failing that, the Policy should be deleted or at least those elements of it set out at paragraph 65.
69. B.4.3.1 Natural character Policy 5 is opposed for the following reasons:
- (a) As to the first item (a), there is no requirement under RMA to “minimise” visual effects on HNC areas (instead the policy item should require such effects to be avoided, remedied or mitigated);
 - (b) As to item (d), for adopting a complete avoidance approach to cumulative effects, and otherwise the reasons set out at paragraphs 89 below. This item should be deleted.

- (c) As to item (e), for the reasons set out at paragraph 90 below, such that this item should be deleted.
70. B 4.3.1 Natural Character Policy 10 is opposed through its reference to requiring subdivision outside of an HNC area, where there is an alternative.
71. There is limited scope under RMA for legitimate consideration of alternatives, both in a planning and resource consent context (*Meridian v Central Otago District Council* [2011] 1 NZLR 482, *Brown v Dunedin City Council* [2003] NZRMA 420 (HC)).
72. The correct legal approach is for any specific subdivision, use or development proposal to be assessed on its merits, and within the context defined by the application (*Man O' War Station Ltd v Auckland Regional Council* (CIV -2010-404-005288)). It is unclear how a policy seeking to "require" development to be undertaken outside of an HNC area would be implemented in practice. The policy should be deleted.
73. B.4.3.1 Natural character Policy 11 is generally supported to the extent the focus is on avoiding "significant" adverse effects, consistent with Policy 13(1) of NZCPS 2010 for HNC's.
74. The reference to maintaining "experiential values" in Policy 11(d) is opposed; it would be more consistent with established case law regarding landscape evaluation and assessment practice to refer to 'associative' or 'perceptual' values.

Decisions Sought

75. MOWF seeks the following decisions in relation to B.4.3.1:
- (a) Delete Objective 2 or confine it to application in areas of outstanding natural character.
 - (b) Delete reference to experiential values in Policy 1(c) (replacing it with "processes" or "experiential attributes") and delete item (d).
 - (c) Delete Policy 4 or at least those elements of it summarised at paragraph 65, alternatively confine application of the policy so as to avoid significant rather than any adverse effects.
 - (d) Replace the word "minimise" in Policy 5(a) with "remedy or mitigate", and delete items (d) and (e).
 - (e) Delete Policy 10.

- (f) Delete words “experiential values” from Policy 11(d) and replace them as suggested at paragraph 74.

B.4.3.2 – LANDSCAPE AND NATURAL FEATURES

Reasons for Submissions

76. As RPS B.1.3 (natural heritage) statement acknowledges, many outstanding natural landscapes and features are working rural areas or used for private commercial purposes, and land owners want to continue using their land for these purposes.
77. The fact that outstanding natural landscapes may also be working rural landscapes is expressly acknowledged in the Change 8 objectives (6. 3.6).
78. The provisions of the Unitary Plan must enable rural production activities to continue within outstanding natural landscapes to be consistent with RPS B.8.1 Rural activities Objective 1 (as supported by MOWF, refer paragraph 12 above). MOWF therefore supports B.4.3.2 Landscape and natural feature Objective 7.
79. MOWF also partly supports identification of ONLs in the manner prescribed by B.4.3.2 Landscape and natural feature Policy 2, ie through application of the *Pigeon Bay* or *WESI* factors stated in the policy.
80. However, those factors are only sufficient to inform the evaluation. They do not set the threshold through which an ONL can be classified after application of those factors. Consistent with relevant case law, the policy should also prescribe that threshold in the manner also set by the Courts (and as set out above at paragraph 56). Applying the criteria, the landscape must amount to something exceptional to qualify.
81. Furthermore, B.4.3.2 Landscape and natural feature Policy 2 includes an effective “mix and match” of criteria; some reflect those adopted and applied by the Environment Court, but others do not. These additional factors are opposed as being inconsistent with both the correct legal approach set by the Court, and the factors that informed Change 8. Specifically, MOWF opposes:
- Reference to the visual coherence, unity or integrity of the site or landform (criterion (a))
 - The extent to which the site can be perceived of as natural, such as low intrusion of human influence, presence of buildings and structures, or landform modification (criterion (c))
 - The “public profile of the site or landform” (first part of criterion (d))

- The presence of water including seas, lakes, rivers and streams (criterion (h))
- Wild or scenic values (criterion (j)).

Those aspects of this Policy should be deleted.

82. B.4.3.2 Landscape and natural feature Policy 4 is supported, in providing for appropriate rural production activities as part of the working rural and coastal landscape. The Policy however begs the very question that has dogged MOWF's experience under RMA as outlined above, as to what is meant by 'appropriate'. This needs to be better defined in the Chapter B, in the manner now achieved under Change 8 to the ARPS.
83. The only enabling Policy within B.4.3.2 (Landscape and natural feature Policy 6) is confined in its application to development that would "maintain or enhance the values or appreciation" of ONLs (and ONFs). This policy is vague and uncertain. It is unclear how it would work or be applied in practice. MOWF's stewardship initiatives have achieved the apparent intent of the Policy without impetus from any RMA planning instrument nor, it has to be said, any "credit" for such initiatives, throughout its involvement in RMA processes affecting its land.
84. The Policy should be amended (in line with Change 8 Policy 6.4.22.1) to enable works and development that maintain the *features, patterns, processes and qualities* that make a landscape outstanding (rather than maintain or enhance vague and subjective terms such as "values" or appreciation").
85. B.4.3.2 Landscape and natural feature Policy 8 directs the management of subdivision, use and development on sites immediately adjacent to ONLs towards various outcomes or results.
86. The first (item (a) is to "consider" adverse physical and visual effects on ONLs. Consideration of such effects might be a relevant factor, but would not be the result of managing subdivision use and development. This clause adds no value and should be deleted.
87. Similarly, item (b) (protecting the physical and biophysical linkages 'between the two areas') has little relevance in a policy seeking to manage subdivision, use and development on sites adjacent to ONLs, and should be deleted.
88. Item (c) is supported as being consistent with the equivalent policy in Change 8 (Policy 6.4.22.3 (ii)), but should be directed to the circumstances set in the Change 8 Policy (ONLs within regional parks, reserves and the like).

89. Item (d) is unnecessary and inappropriate through adopting a complete "avoidance" approach as to cumulative effects. Change 8 contains an appropriate policy prescription relative to the issue of adverse cumulative effects that should be applied under the Unitary Plan instead (Policy 6.4.22.4), if this issue (cumulative effects) is of concern to Council. The item should be deleted.
90. It is unclear in relation to item (e) how adverse effects on Mana Whenua *values* could be avoided. The RMA does not require that effects on perceptions or values (as opposed to natural and physical resources) be avoided, (or even remedied or mitigated). This dimension of the policy should be deleted with the issue better framed as one directed at recognising and providing for Mana Whenua values (in the context of B.4.3.2 Landscape and natural feature Objective 2).
91. The provision is also out of place in the context of a policy aimed at managing development of sites immediately adjacent to ONLs, and should be deleted.
92. B.4.3.2 Landscape and Natural Feature Policy 9 is opposed to the extent it sets out to avoid activities that *individually or cumulatively* result in significant modification or destruction of ONLs including volcanic features.
93. It is noted that the first limb of the policy refers to both ONLs and volcanic features, while the avoidance imperative (in item (a)) concludes with the words "the feature"; raising uncertainty as to the scope of clause (a) of the policy.
94. To the extent it is intended to embrace ONLs beyond volcanic features the Policy is opposed. Any activity might *individually* (or cumulatively) result in significant modification of an ONL, but it is unclear how a consent applicant would demonstrate whether or not this was the case, in the context of any particular application.
95. For example does the policy require assessment relative to future applications that might be made (requiring speculation) or against the environment as modified through permitted entitlements? Overall the policy is too problematic, unable to be effectively administered, and should be deleted (at least item (a)).
96. Item (c) of Policy 9 is opposed for the reasons addressed above at paragraph 90.
97. B.4.3.2 Landscape and natural feature Policy 16 is generally supported but should be reframed to more closely reflect policy 6.4.22.1 of Change 8, and in particular:

- (a) Delete item (a), as requiring that the type, scale, intensity and location of development be "appropriate" provides no certainty or assistance to resource users or plan administrators.
- (b) Retain item (b) but replace the words "making built elements" with "ensuring that built elements are".
- (c) Delete, for the reasons stated in paragraph 89 and 94 above, item (c) (making provision for assessment of cumulative impacts in the manner outlined above).
- (d) Delete item (f), at least in the absence of a specific Appendix within the Unitary Plan that identifies visual or physical qualities making a given ONL iconic or rare.
- (e) Delete item (g); naturalness being a necessary but not sufficient condition for an ONL and the issue of "naturalness" being better addressed in the context of B.4.3.1 (natural character of the coastal environment).

Decisions Sought

98. MOWF seeks the following decisions in relation to B.4.3.2:
- (a) Retain Objective 7.
 - (b) Amend Policy 2 to require an overall evaluation with reference to the criteria in the policy such that the landscape must amount to something exceptional in a national or regional context (conspicuous, eminent, special by excellence etc) to qualify as an outstanding natural landscape.
 - (c) Delete Policy 2 items (a), (c), the words "public profile of the site or landform" from item (d), item (h), and item (j) of the policy.
 - (d) Clarify what is meant by the word "appropriate" within Policy 4 (in the manner now achieved under Change 8 to the ARPS).
 - (e) Delete the words "values or appreciation" from Policy 6 and replace them with "features, patterns, processes and qualities".
 - (f) Amend Policy 8 by deleting items (a), (b), (d) and (e) and amend item (c) to refer to ONLs that are adjacent to or within regional parks, public reserves and the like.
 - (g) Delete Policy 9(a) and (c).

- (h) Delete Policy 16(a), (c), (f) and (g) and amend item (b) by replacing the words “making built elements” with “ensuring that built elements are”.

B.4.3.4 – BIODIVERSITY

Reasons for Submissions

99. B.4.3.4 Biodiversity Objective 1 sets out to protect (in absolute terms) significant indigenous biodiversity from adverse effects. The High Court has confirmed that s6(c) of RMA does not require absolute protection, or support any “zero effect” requirement (*Rational Transport Society Inc v New Zealand Transport Agency*², *Royal Forest & Bird Protection Society v Buller District Council and West Coast Regional Council*).³
100. The objective would be better framed so as to place (if this is sought by Council and supported by submitters) an emphasis or priority on avoidance, but allowing for remediation and/ or mitigation (along with offsetting) as envisaged by B.4.3.4 Biodiversity Policy 6.
101. B.4.3.4 Biodiversity Objective 2 is opposed in seeking to maintain “indigenous biodiversity” through protection and restoration, including in areas where ecological values are degraded or development is occurring.
102. An objective of maintaining indigenous biodiversity (itself an extremely broad concept) in degraded areas is at best problematic. The Objective would be better focused at *encouraging* enhancement of indigenous biodiversity in areas where ecological values are degraded (for example in the manner envisaged by B.4.3.4 Biodiversity Policies 12 and 13).
103. The objective of protecting the life supporting capacity of “coastal ecosystems” (B.4.3.4 Biodiversity Objective 4) is unrealistic. Coastal ecosystems would be too many and diverse to be practically identified, let alone protected and enhanced in such blanket terms. Further, no absolute protection or enhancement imperative should be set through the objective. The objective should be deleted or replaced with one that is directed to coastal systems that are identified and known to be significant.
104. B.4.3.4 Biodiversity Policy 1 is opposed as to the criteria through which significant indigenous vegetation and habitats would be identified and protected, including in the following respects:
- (a) Criterion (a) needs some reference to a baseline date (eg pre 1840) and as to type and composition of species from which to determine whether

² Unreported. High Court. Wellington CIV-2011-485-002259 at [54].

³ Unreported. High Court. [2013] NZHC 1346 at [52].

an area is ecologically representative of the mature and successional stages within the district.

- (b) Criterion (b) (stepping stones, buffers and migration pathways) is inappropriately subjective and would lead to areas of habitat and vegetation that have little or no significance being included in identification and protection requirements, with the concept of what comprises a “buffer” not being defined in terms of what the area in question might be buffering against.
 - (c) As to threat status and rarity (criterion (c)) for referencing an area that supports “genes”. This aspect of the criterion should be deleted given a lack of understanding or knowledge about genetic diversity and endemism that could be drawn upon in applying it. The “naturally rare” component of the criterion needs qualification as to the quality of the area in question (it might be of a naturally rare species, but have no existing self-sustainability).
 - (d) Criterion (d) should be amended by deleting the word “genes” (as with criterion (c)) and by deleting the words “or near endemic”, as there is no ecologically accepted meaning of any such term or concept.
 - (e) The diversity component can be deleted as subsumed within criterion (a) (representativeness).
105. B.4.3.4 Biodiversity Policy 2 is opposed to the extent that it suggests that the Council would “identify” other areas that “do or can” enhance biodiversity values, or make a significant contribution to providing “ecosystem services”, but does not go on to explain exactly how such areas would be identified; e.g. through scheduling on private land or otherwise.
106. No demonstrable resource management purpose would be served by setting out to “identify” so called “other areas” (and bearing in mind the preceding Policy whereby all significant areas would be identified and protected). The Policy should be deleted.
107. B.4.3.4 Biodiversity Policy 6 is opposed in the following respects:
- (a) By seeking to avoid and minimise effects on the specified resources (item (a) should commence “avoid or mitigate”);
 - (b) Through importing other legislation as would trigger application of item (a)(ii), and as such effectively amend the scope and application of the Unitary Plan RPS provisions without following the First Schedule

procedure. Further, as such areas would have the protection of the other legislation at issue in any event;

- (c) As to item (a)(iii), for presuming that any estuaries, lagoons, coastal wetlands etc would be in a state warranting the avoidance or [minimisation] of effects. At least some qualification within that Policy should be applied, eg by adding the words “where such resources are not degraded by existing development” at the end of the provision;
 - (d) For referencing the no net loss (and preference for net gain) aspiration in item (d).
108. As to item (d), “no net loss” is not a requirement of the RMA, and no workable, established or practical methodology has been set through which any “no net loss” outcome could be determined (refer observations of the Environment Court in *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC047, at paragraph 219, along with the High Court decision in *Royal Forest & Bird Protection Society v Buller District Council* to the effect that the RMA is not a “zero sum game” in relation to indigenous vegetation and habitats). This aspect of this policy item should be deleted.
 109. B.4.3.4 Biodiversity Policy 7 is opposed to the extent that it seeks to avoid, remedy, or mitigate (offset) adverse effects on indigenous species and *ecosystem* [sic].
 110. In the absence of a clear definition of what comprises an ecosystem, application of the policy should be refined by deleting that word (as it appears at the end of the policy), and changing reference to “indigenous species” to indigenous biodiversity, for consistency with the other policies in B.4.3.4.
 111. B.4.3.4 Biodiversity Policy 8 is opposed for the same reason (absent a sensible definition of ecosystems, in referencing that term throughout).
 112. Similarly for reference to nebulous concepts such as “ecological mosaics”, sequences, processes or integrity as under item (k).
 113. Item (o) of Policy 8 references a reduction in the value of various associations with indigenous biodiversity as “held by the wider community”.
 114. Such aspects of this policy (along with reference to effects which “contribute to a cumulative loss” as in item (i)) are inappropriately broad and unhelpful. They should be deleted to ensure the scope of what is considered a relevant adverse effect on indigenous biodiversity is appropriate to the context, and a potential consent applicant does not need to in effect “survey” as to what comprises the values held by the “wider community” in preparing an AEE.

115. B.4.3.4 Biodiversity Policy 9 is opposed as to item (e) (provision of one dwelling per site). A regional policy statement provision should not set such a generic requirement in any context; issues of building density being better addressed at District Plan level, and tailored to the circumstances of a given zone or environment. This item should be deleted.
116. B.4.3.4 Biodiversity Policy 11(b) is opposed for that reason as well (reference to a single building platform per site for a dwelling and associated services). That aside, the provision should be reframed to refer to minimising the loss of native vegetation within SEAs through selection of building platforms, and the location of associated services, access and carparking. A threshold of what is 'unavoidable' is inappropriate under RMA.
117. Item (d) of the Policy is opposed for setting a requirement to avoid any changes in hydrology that could adversely affect indigenous biodiversity values. Any development would necessarily have some impact on hydrology, but such impact would ordinarily be able to be appropriately managed to avoid a material effect on indigenous biodiversity values. That should be the requirement of this aspect of the Policy, if it is to be retained.
118. Item (e) is opposed to the extent that it requires that there be "no increase" in the amount of sediment entering natural waterways. This is an impossible aspiration and it should instead be framed towards managing the amount of sediment entering natural waterways, as typically occurs through the setting of well-established conditions as consent requirements for any development (or Regional/ District Plan earthworks controls, including of the kind found in Part 3 of the Unitary Plan).
119. B.4.3.4 Biodiversity Policy 13 should be amended to clarify the circumstances in which it is triggered (for example as with Policy 12, when undertaking new use and development) as otherwise there would be no realistic 'vehicle' through which the Policy could be implemented.
120. Further, item (a) needs clarification to identify what "further opportunities" for threatened ecosystems are sought to be promoted, e.g. establishment or expansion?
121. B.4.3.4 Biodiversity Policy 15 is opposed for requiring complete avoidance of cumulative effects on SEAs. The provision should incorporate opportunities for remediation, mitigation or offsetting in line with the structure of provisions elsewhere in this part of the Unitary Plan.
122. B.4.3.4 Biodiversity Policy 18 (item (a)) is opposed by MOWF on the basis that it is not physically possible or reasonable to fence the entire coastline of the property in a manner that would avoid *any* disturbance of the foreshore and

seabed by grazing from livestock, including for reasons addressed later in these submissions (in the context of C.5.14 and H.4.13).

Decisions Sought

123. MOWF seeks the following decisions in relation to B.4.3.4:
- (a) Amend Objective 1 to remove the absolute protection requirement (and provide for remediation and/ or mitigation of effects).
 - (b) Amend Objective 2 to encourage enhancement of degraded areas, rather than maintenance through protection of indigenous biodiversity in such areas.
 - (c) Delete Objective 4, or confine it to application to coastal systems that are identified and known to be significant.
 - (d) Amend Policy 1 in the manner outlined at paragraph 104 above.
 - (e) Delete Policy 2.
 - (f) Amend Policy 6(a) to refer to avoiding *or* minimising [alternatively mitigating] adverse effects on the relevant areas, and by deleting items (a)(ii) and adding the words "where such resources are not degraded by existing development" at the end of (iii)".
 - (g) Delete Policy 6(d) from after words "enhancement actions".
 - (h) Delete the word "ecosystem" in Policy 7 and change the reference to "indigenous species" to "indigenous biodiversity".
 - (i) Amend Policy 8 as outlined at paragraphs 111 to 114 above including deletion of items (i), (k) and (o).
 - (j) Delete Policy 9(e) and amend Policy 11(b) to refer to minimising loss of native vegetation within SEAs through selection of building platforms and location of associated services (and deleting reference to what is "unavoidable to create a single building platform per site").
 - (k) Delete Policy 11(d).
 - (l) Amend Policy 11(e) to refer to managing the amount of sediment entering natural waterways (rather than requiring no increase in the amount of sediment entering them).
 - (m) Amend Policy 13 by adding the words "when undertaking new use and development" at the commencement of the policy.

- (n) Clarify within Policy 13(a) what further opportunities are sought to be promoted.
- (o) Delete or amend Policy 15 as to its requirement to avoid cumulative effects.
- (p) Delete Policy 18(a).

B.5 MANA WHENUA

Reasons for Submissions

124. While generally supporting the provisions of B.5 Mana Whanua, MOWF submits that greater recognition and provision should be made for Memoranda of Understanding (for example, as entered into between MOWF and Ngati Paoa in relation to the Waiheke Island property) throughout appropriate sections of this part of the Unitary Plan including:
- (a) 5.1, Policy 3.
 - (b) As an additional non-regulatory method to 5.1.
 - (c) As an additional item (e) to 5.2 Policy 2.
 - (d) Within 5.2 Policy 3.
 - (e) Under non-regulatory methods for 5.2.
 - (f) As an additional item (d) to 5.4 Policy 5.
 - (g) As an additional item (d) to 5.4 Policy 7.

with each reference being as to Memoranda of Understanding between Mana Whenua and land owners and/ or recognition and provision for such memoranda and their implementation as appropriate.

Decisions Sought

125. MOWF seeks reference to recognition and provision for Memoranda of Understanding between Mana Whenua and land owners and their implementation within the provisions of B.5 as outlined in the preceding paragraph.

B.6.3 – FRESH WATER AND GEOTHERMAL WATER

Reasons for Submissions

126. B.6.3 Fresh water and geothermal water Objective 1 refers to “safeguarding” natural, social, economic and cultural values of fresh water. The objective should refer to providing for those values; the imperative of safeguarding being better directed at life supporting capacity than social and economic considerations (in line with objective A1 of the National Policy Statement – Freshwater Management (“**NPSFM**”)).
127. B.6.3 Fresh water Objective 2 is opposed for referring to “community values” as an imperative towards which maintenance and enhancement of fresh water quality and values would be directed.
128. The relevant values for fresh water should be determined by the community through the National Objectives Framework being promulgated under proposed amendments to the NPSFM. The objective should also be reframed to refer to the “overall quality” of fresh water rather than maintaining, restoring and enhancing fresh water quality on an absolute basis (refer Objective A2 of NPSFM). Further, the objective should be to maintain or enhance (not both, ie alternatives, rather than additive requirements).
129. B.6.3 Fresh water Objective 4 is opposed in referring to progressive reduction of water use on a “per head basis”. The objective should be reframed towards water use efficiency rather than any per capita requirement that could not realistically be assessed over time.
130. B.6.3 Fresh water Policy 2 item (c) is opposed in referring to protection and enhancement of *the supporting elements and natural, social and cultural values of remaining rivers and streams*. It is left entirely unclear within the Policy as to what the “supporting elements” of rivers and streams are, and there is no imperative to protect and enhance all or any elements of rivers and streams on an absolute basis, regardless. The policy item should be deleted.
131. The reference to “natural, social and cultural values” in this item and item (f) of the Policy (or elsewhere in this part of the Unitary Plan) is opposed on the basis that these values are unknown at this point. The policies would again be better framed with reference to the forthcoming National Objectives Framework whereby attributes, attributes states and objectives for such values can be set so as to give effect to the NPSFM, rather than importing such nebulous concepts into the provisions of the RPS at this time.

132. B.6.3 Fresh water Policy 3 item (e) should be amended given the difficulty in reducing the potential for contaminants discharged from non-point surfaces to enter surface and ground water.
133. It is not physically possible to reduce the potential for contaminants to enter ground water within the paddocks of any farm (leaching will occur regardless, particularly for nitrogen), and issues of practicability arise in the context of the rules likely intended to give effect to this Policy, including in H.4.13 as addressed later in these submissions.

Decisions Sought

134. MOWF seeks the following decisions in relation to B.6.3:
- (a) Amend Objective 1 to refer to providing for the various values (rather than safeguarding them).
 - (b) Delete reference to meeting community values in Objective 2, add the word "overall" before the word "quality" at the commencement of the objective, and such that the values of freshwater systems are maintained or enhanced (not maintained and restored and enhanced).
 - (c) Amend Objective 4 to refer to progressive increase in water use efficiency (rather than reduction in water use on a per head basis).
 - (d) Delete Policy 2(c) and delete the words "natural, social and cultural values of freshwater systems" from Policy 2(f).
 - (e) Amend Policy 3(e) to acknowledge the difficulty in reducing potential for contaminants from non-point sources.

B.6.7 – NATURAL HAZARDS

Reasons for Submissions

135. B.6.7 Natural hazards Objective 1 aims to "reduce" risk to people from natural hazards. The objective should instead be to avoid increasing risk (rather than reducing it), being the approach adopted by NZCPS Policy 25 in relation to coastal hazard risks.
136. The only way risks as currently faced can be reduced is to effectively depopulate (and remove property and infrastructure from) areas that may be subject to natural hazards. Given the broad range of natural hazards potentially faced within the Region, such an objective is unachievable.

137. While B.6.7 Natural hazards Policy 7 refers to encouraging activities that reduce (or do not increase) the risk posed by natural hazards, specific measures are outlined in that Policy including managed retreat and designing for relocatable or recoverable structures.
138. Realistically, the Council can do no more than “encourage” reduction in that regard, particularly in the case of existing development, albeit design for relocation and recoverability is an option for new development.
139. B.6.7 Natural hazards Objective 1 should therefore at least be amended to commence:

“Not increase and where practicable reduce risk to people ...”

140. B.6.7 Natural hazards Objective 2 is opposed on the basis that a number of “Flood Plain” areas are shown on the Unitary Plan maps as applying to the submitters Waiheke property, and the Objective seeks to protect the natural functions of flood plains from *any* adverse effects of development and infrastructure. The Objective should be reframed so as to require the management of adverse effects of development and infrastructure on the natural functions of flood plains (rather than their absolute protection).
141. It is also noted that the Flood Plain overlay is represented as “non-statutory information” on the Council website, and yet there is clearly a regulatory effect under the Unitary Plan from identification on the planning maps of flood hazards (Flood Sensitive areas, Flood Prone areas and Flood Plains), as this objective demonstrates.
142. B.6.7 Natural hazards Policy 4 is opposed for adopting a “precautionary approach” including in circumstances where the effects of natural hazards are unknown. That is unworkable. The Policy should be reframed to be directed at the effects of natural hazards that are known, but cannot be fully quantified, and may be significant (rather than unknown hazards).
143. For the reasons identified in the paragraph 140, B.6.7 Natural hazards Policy 5 is opposed to the extent it involves absolute protection and maintenance (through retention) of flood plains, sand dunes, vegetation and riparian margins in their natural state. If the intent of the policy is to discourage the use of hard engineering methods, it can simply be reframed to express a preference for promotion of natural defences to hazards over hard engineering methods (as under NZCPS Policies 25 and 26) rather than requiring absolute protection, maintenance or retention of natural defence systems (refer C.5.12 Natural Hazards Objective 2 in that regard).

144. B.6.7 Natural hazards Policy 7(b) is opposed in the absence of clarification as to the means by which managed retreat would be effected, and at whose cost.
145. If subsequent Unitary Plan sections are to give effect to this policy, some signal within B.6.7 should be provided as to the appropriate methods through which it would be achieved, perhaps within the non-regulatory section of B.6.7.
146. In a similar vein, B.6.7 Natural hazards Policy 8 is opposed in its current form, and in particular item (a), which appears to be both incomplete (as worded) and inappropriate in the context of existing development (to which the Policy relates), through referring to a range of measures such as the "placement of buildings and structure [sic]".
147. Existing development would already have been established in a given location and measures involving placement of buildings and structures in relation to existing development appear non-sensical. A similar comment could be made relative to item (b) (design). These items should be deleted.

Decisions Sought

148. MOWF seeks the following decisions in relation to B.6.7:
 - (a) Amend Objective 1 by deleting referencing to reducing risk or in the manner outlined at paragraph 139 above.
 - (b) Amend Objective 2 so as to require management of the effects of development and infrastructure on the natural functions of flood plains and overland flood paths (rather than their absolute protection).
 - (c) Amend Policy 4 so as to apply a precautionary approach when effects are known, but cannot be fully quantified, and may be significant rather than where they are unknown or may be significant.
 - (d) Amend Policy 5 so as to discourage hard engineering methods in preference for reliance on natural defence systems, rather than requiring absolute protection of all such systems.
 - (e) Delete Policy 7(b) or clarify within B.6.7 how that policy would be effected and at whose cost.
 - (f) Delete Policy 8(a) and (b).

B.7 SUSTAINABLY MANAGING OUR COASTAL ENVIRONMENT

Reasons for Submissions

149. The introduction to this section of the Unitary Plan refers to a “public expectation” of *free* rights of use and access to the coast.
150. As the owners of an island property with some 25 kilometres of riparian frontage to the coastal marine area, MOWF is concerned that recording any such public expectation overlooks the significant implications for the land owner of ensuring “free rights of use and access to the coast”.
151. The Walking Access Act 2008 provides a means whereby the Walking Access Commission may negotiate opportunities for public access to and along the coastline. Unless and until such rights are secured by way of negotiation, and issues of fair compensation to the land owner are addressed, the expectation recorded in B.7 is unreasonable.
152. Certainly such provision of access does not come “free” from the land owners’ perspective, but should be secured by negotiation, and generally in exchange for fair compensation. Alternatively, through provision of an esplanade reserve or strip in the event that the land owner elects to subdivide.
153. MOWF requests that this aspect of the introduction be amended to provide a more balanced discussion of the issues surrounding opportunities for use and access to the coast within the region.
154. The introduction should also record (along with the relevant provisions addressed below) that there may be a need to restrict public access in certain circumstances relative to rural properties in the coastal environment, to ensure there is no unreasonable interference with established farming activities including as may lead to severance of stock at times of calving and lambing.
155. B.7.1 Subdivision, use and development Policy 2(a) refers to concentrating subdivision in areas where natural character values are already compromised. Given uncertainty in case law as to the meaning of the word “compromised”, the policy would usefully be supplemented with the words “or reduced”.
156. B.7.1 Subdivision, use and development Policy 3 is confined to providing for subdivision use and development that has a “functional need” to use resources within the coastal environment. The RMA does not set such any test under s6(a), and nor does the NZCPS as to provision for activities, except within the CMA (rather than coastal environment) – refer Policy 6(2)(c) of NZCPS.
157. This aspect of the policy should be amended so that it provides for subdivision use and development in appropriate areas of the coastal environment having

regard to the matters in Policies 1 and 2 (deleting the functional need requirement).

158. B.7.2 Public Access and Open Space in the Coastal Environment Policy 5 should be amended through adding reference to a further basis upon which walking access may be restricted, namely where this is necessary to protect livestock farming on occasions when public access to the CMA might cause a danger to or from livestock.
159. An additional regulatory method to B.7.2 to refer to "Walkways" should be added below the item "reserve management plans".
160. The word "farming" should be added to the final bullet point under 7.2 Public Access and Open Space in the Coastal Environment (explanation and reasons) after the word "airport".
161. B.7.4 Managing the Hauraki Gulf Objective 7 is opposed on the basis that it is unrealistic to aspire to generating economic wellbeing from the use of the Gulf's natural and physical resources without resulting in any further degradation of environmental quality, or adversely affecting marine ecosystems.
162. The objective should be reframed in less absolute terms, for example by referring to any further *significant* degradation or *significantly* adversely affecting life supporting capacity of marine ecosystems.
163. The same point is made regarding B.7.4 Managing the Hauraki Gulf Policy 2; setting a policy aspiration of complete protection of ecological values and the life supporting capacity of the Gulf. The policy aspiration of integrated management is understandable, but it cannot realistically be achieved so as to ensure complete protection of the resources in question, and the policy should be reframed accordingly.
164. B.7.4 Managing the Hauraki Gulf Policy 3 is opposed. It would impose an unreasonable burden on consent applicants to assess the effects of their activities in terms of the cumulative effect on the values of the entire Gulf in any given case, and this Policy should be deleted.
165. B.7.4 Managing the Hauraki Gulf Policy 4 is opposed through employing the term "compromise" (given the uncertainty as to the meaning of that term as noted earlier in these submissions), and for reference to "areas identified as having significant values".
166. The latter aspect of the Policy should be restated with reference to areas that are scheduled within the Unitary Plan, for example under the Natural resource or Natural heritage overlays; the Policy otherwise begging the question as to

identified “by whom and where”, and as to what is meant by “significant values”. The word “compromise” should be replaced with “significantly affect”.

167. B.7.4 Managing the Hauraki Gulf Policy 13 sets out to both identify and protect natural, historic and physical resources that have important cultural and historic association for people and communities.
168. The Policy of seeking to identify such resources is understandable, but whether they need to be protected would depend on the circumstances, and this aspect of the policy should be qualified (for example with reference to the words “where appropriate”). The Policy would also usefully specify by what means such resources are identified, and what the outcome of that might be (for example mapping overlays).
169. B.7.4 Managing the Hauraki Gulf Policy 16 is opposed for the reasons set out at paragraph 161 in relation to Objective 7 (relating to the aspiration of no further degradation), and should be amended accordingly.
170. Similarly, and for reasons addressed earlier in these submissions in relation to B.4.3.4, the concept of “no net loss” is opposed as being unworkable. That aspect of this Policy should be deleted, implying also as it does that there might be some form of offsetting otherwise in relation to sensitive marine ecosystems, for which no framework is put in place by this part of the Unitary Plan.

Decisions Sought

171. MOWF seeks the following decisions in relation to B.7:
- (a) Amend introductory statement to B.7.1 to acknowledge implications for owners of private land in providing access to the coast, including that this may require payment of compensation to them, and only be secured through private negotiation (or where land owners elect to subdivide).
 - (b) Add words “or reduced” to end of B.7.1 Policy 2(a).
 - (c) Amend B.7.1 Policy 3 by deleting the functional need test and so as to simply provide for subdivision, use and development for activities in appropriate areas in the circumstances stated in the policy.
 - (d) Amend Policy 5 (B.7.2) to refer to a need to restrict public access in relation to farming and livestock requirements.
 - (e) Add a further regulatory method “Walkways” at the end of section B.7.2 and add word “farming” in final bullet point of explanatory statement after word “airport”.

- (f) Amend B.7.4 Objective 7 to refer to any further significant degradation or significant adverse effects on life supporting capacity within the objective.
- (g) Amend Policy 2 (B.7.4) to remove any absolute protection requirement relative to ecological values and life supporting capacity.
- (h) Delete Policy 3 (B.7.4).
- (i) Amend Policy 4 (B.7.4) by replacing the word “compromise” with “significantly affect” and referring to the natural resource and natural heritage overlays as defining the areas of identified significant value.
- (j) Amend Policy 13 (B.7.4) by adding the words “where appropriate” after the word “protect” and stating the means by which important resource values will be identified.
- (k) Amend Policy 16 (B.7.4) to refer to further *significant* degradation and by deleting the words “or net loss”.

B.8- RURAL ACTIVITIES

Reasons for Submissions

- 172. As submitted at the outset, the B.8.1 Rural activities objectives and policies are generally supported. However, those aspects addressing issues of landscape character, particularly relative to ONL and the natural character of the coastal environment, are opposed as being unnecessary. These dimensions of the RMA are adequately addressed in B.4.3.1 and B.4.3.2.
- 173. B.8.1 Rural activities Policy 9 in particular should be deleted. B.8.1 Rural activities Policy 3(b) is opposed for the reasons (and to the extent) addressed in paragraphs 218 to 220 below in relation to D.6.1.2 (Rural character and amenity values) and should be deleted.
- 174. B.8.1 Rural activities Policy 7 is supported; and addressed later in these submissions in relation to the subdivision topic. Conversely, B.8.3 Rural subdivision is opposed to the extent and for the reasons stated in paragraphs 314 to 327 of these submissions).

Decisions Sought

- 175. MOWF seeks the following decisions in relation to B.8:
 - (a) Retain B.8.1 Rural Activities Objectives and Policies except delete Policy 3(b) and Policy 9.

- (b) Delete B.8.3 Rural Subdivision Objective 2 and Policy 5 or amend them so that they provide for rural subdivision on the Hauraki Gulf Islands.

PART 2, CHAPTER C PROVISIONS

Reasons for Submissions

C.5.2 Earthworks

176. MOWF opposes C.5.2 Earthworks:
- (a) Objective 1, that earthworks and disturbance activities be undertaken in a manner that “protects people” and the environment; the questions left open being from what and to what extent? The Objective should be deleted.
- (b) Objective 3, that sediment generation from earthworks and land disturbance activities is *minimised* (sediment generation would be minimised by avoiding the activities all together). The Objective should be amended to reference best practice land management practices, so as to better integrate with C.5.2 Earthworks Policy 2 (as to the manner in which earthworks effects should be managed).

C.5.3 Vegetation Management

177. C.5.3 Vegetation Management Policy 1 is opposed to the extent that it seeks to protect all vegetation in sensitive environments, regardless of value and whether indigenous or exotic.
178. The policy should be amended to focus on significant indigenous vegetation or vegetation that plays an active role relative to the services provided by such vegetation, e.g. as outlined in the background statement to C.5.3 Vegetation Management.
179. C.5.3 Vegetation Management Policy 6 should be reframed so as to refer to minimising vegetation disturbance through selection of building platforms and the location and methods for the proposed works (rather than necessitating any assessment of alternative locations, and for reasons addressed earlier in these submissions (at paragraphs 71 to 72)).

C.5.11 Rural Production Discharges

180. While the provisions of C.5.11 Rural Production Discharges are generally supported, MOWF:

- (a) Questions the practical ability to apply C.5.11 Policy 3(b), in terms of determining what the “assimilative capacity” of soil and vegetative cover is in any given case, such that the policy can be administered effectively; and
 - (b) Opposes C.5.11 Rural Production Discharges Policy 4 to the extent that it seeks to avoid the discharge of contaminants generated from rural production activities directly into water bodies and artificial water courses. Complete avoidance, particularly of discharges into artificial water courses (including farm drains) may be not be possible in all cases, and the policy should be qualified with “practicability” aspect.
181. C.5.11 Rural Production Discharges Policy 5(b) is unworkable to the extent that it would only provide for discharges to land (that could run overland into water) where there are *no* adverse effects on Mana Whenua values associated with fresh water. The absolute nature of the policy (*no* adverse effects) along with the broad compass of what would be caught within the policy (Mana Whenua values associated with fresh water resources) makes the policy problematic if not unrealistic.
182. Furthermore, if Policy 5(a) is adhered to, it is likely that Mana Whenua values would be provided for, and the policy item (b) could be deleted accordingly.

C.5.12 Natural Hazards

183. C.5.12 Natural Hazard Risk Management Policy 1 is opposed for classifying that any land within a horizontal distance of 20 metres from the top of any cliff with a slope angle of greater than 1 in 3 may be subject to natural hazards.
184. Much of the north eastern coastline of Man O'War Farm is within what the HGI Plan defines as the “coastal cliffs” Landform, and would likely be caught by this policy.
185. The Council cannot simply assume that any land within 20 metres of a cliff, across all soil types and circumstances within the region, warrants classification as land potentially subject to a natural hazard. This aspect of the policy should be deleted, particularly given the implications of C.5.12 Natural Hazard Risk Management Policy 2, whereby an engineering assessment would be required for any development on such land.
186. Equally, as it triggers application of restricted discretionary activity status under H.4.11, without sufficient section 32 justification for that activity status, on such a blanket and generic basis. As matters stand Policy 2 is opposed and should be deleted.

187. C.5.12 Natural Hazard Risk Management Policy 4 item (c) is opposed in referring to the need to assess the consequences of natural hazards *in relation to more or less vulnerable activities*. There are a number of references to “vulnerable” activities within this policy framework and the term should be defined. That aside, the words “more or less” are unhelpful and should be deleted from Policy 4 item (c).
188. Item (f) of this policy is opposed (requiring assessment of effects on landscape values) as the relevance of such an assessment in a coastal hazards context is too remote, and this item should be deleted.
189. C.5.12 Natural Hazard Risk Management Policy 10 should be deleted as it replicates C.5.12 Bushfire Risk Mitigation Policy 11.
190. C.5.12 Coastal Inundation and Sea Level Rise Policy 15 is opposed for requiring avoidance of development and subdivision in greenfield areas affected by coastal inundation, taking into account a projected sea level rise by 2 metres over 100 years.
191. This exceeds any established projection of sea level rise within the forthcoming 100 year period including by the IPCC (Fifth Report) which projects a range between 0.26 and 0.96 metres. The policy should be amended to refer to 1 metre rather than 2 metres.
192. Similarly, Policy 16 should refer to 1 metre rather than 2 metres.

C.5.14 Lakes, Rivers, Streams and Wetland Management

193. C.5.14 Lakes, Rivers, Streams and Wetland Management Objective 2 is opposed in seeking to restore, maintain and enhance all of Auckland’s lakes, rivers, streams and wetlands. Whether any such water body should be restored, maintained or enhanced would depend on its current resource value state (or attribute state under NPSFM amendment and National Objective Framework Proposals).
194. The objective should also be reframed to be consistent with Objective A2 of the NPSFM (overall quality to be maintained or improved) rather than requiring restoration, maintenance and enhancement across the board, and for all water bodies.
195. Similarly, C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 1 is opposed to the extent that it seeks to avoid “any” adverse effects of activities on water bodies within (and including) Natural Stream Management Areas. Complete avoidance may not be possible without significantly undermining existing activity in the extensive areas mapped with those overlays under the

Unitary Plan. If an avoidance priority is to be adopted in the Policy, it should have a qualification that any such avoidance be “where practicable”.

196. C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 3(c) is opposed for its reference to the “no net loss” concept and for the reasons addressed earlier in the submissions (paragraph 108). That item of the policy should be deleted.
197. C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 4 is opposed for the reasons addressed earlier in relation to C.5.11 Rural Production Discharges Policy 5(b) (paragraph 181). The Policy should be deleted.
198. C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 6(d) needs to be amended to provide for additional purposes for structures within water bodies, including as necessary to provide access to and within rural properties (roading, bridges, culverts) along with fencing.
199. Item (e) of the policy is opposed for the reasons referenced above at paragraph 197, and should be deleted.
200. C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 7(b) needs to be amended in the same manner as Policy 6(d), and item (c) of the policy is opposed for the same reasons as noted in the preceding paragraph.
201. C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 11 is opposed to the extent necessary relative to MOWF’s submissions in paragraphs 272 to 285 below regarding the methods that follow from this policy and in particular as found in H.4.13 (Rule 2.7 Livestock Access).
202. C.5.14 Lakes, Rivers, Streams and Wetland Management Policies 12 and 13 are opposed to the extent that they establish a blanket policy provision requiring protection and enhancement of all riparian margins of lakes, rivers, streams and wetlands, regardless of the importance and quality of the water body in question, and for referring to acquisition of land and protection of land through various means to that end.
203. These policies should be amended so as to qualify the circumstances in which any protection or enhancement function is applied, and sought to be achieved through legal protection.

C.5.15 Water

204. C.5.15.1 Water Objective 1 is opposed through its reference to areas of “high” freshwater quality (and areas of significant Mana Whenua values) that are to be protected from degradation.

205. The NPSFM does not require absolute protection of any (and every) water body from degradation; and it is unclear within the objective as to how areas of "high" freshwater quality would be identified (along with areas of significant value to Mana Whenua). The objective should be reframed to better give effect to NPSFM objective A2.
206. C.5.15.1 Water Policy 8 is opposed in referring to controlling land use activities (rather than managing them) to prevent or minimise adverse effects (without specifying what type of adverse effects the policy is directed at).
207. The policy should either be deleted or amended to address these concerns.
208. C.5.15.2 Water Quantity, Allocation and Use Policies 13 and 14 should be amended to provide for the construction of dams in a rural context to enable provision of water for animal drinking water requirements.
209. Only the aspects of C.5.15.2 Water Quantity, Allocation and Use Policy 15(e) should apply to dams of that kind.

Decisions Sought

210. MOWF seeks the following decisions in relation to the Chapter C provisions referred to in the preceding paragraphs (from paragraph 176):
 - (a) Delete C.5.2 Earthworks Objective 1.
 - (b) Delete word "minimised" within C.5.2 Earthworks Objective 3 (to refer to management of sediment generation from earthworks instead).
 - (c) Amend C.5.3 Vegetation Management Policy 1 so as to only apply to significant indigenous vegetation.
 - (d) Amend C.5.3 Vegetation Management Policy 6 to refer to minimising vegetation disturbance through selection of building platforms (and deleting any requirement for an assessment of alternative locations).
 - (e) Clarify what is meant by "assimilative capacity" or as to how that term would be applied in the context of C.5.11 Rural Production Discharges Policy 3(b).
 - (f) Amend C.5.11 Rural Production Discharges Policy 4 relative to artificial water courses (such that avoidance is only required where practicable).
 - (g) Delete C.5.11 Rural Production Discharges Policy 5(b).
 - (h) Delete C.5.12 Natural Hazard Risk Management Policy 1(a) and Policy 2.

- (i) Delete from C.5.12 Natural Hazard Risk Management Policy 4 item (c) the words "in relation to more or less vulnerable activities" and delete item (f) of that policy;
- (j) Delete C.5.12 Natural Hazard Risk Management Policy 10.
- (k) Amend C.5.12 Coastal Inundation and Sea Level Rise Policy 15 and 16 by deleting any reference to "two metres" and replacing it with "one metre".
- (l) Amend C.5.14 Lakes, Rivers, Streams and Wetland Management Objective 2 to refer to maintaining or enhancing the overall quality of water within Auckland's lakes, rivers, streams and wetlands.
- (m) Amend C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 1 such that any avoidance requirement only applies "where practicable".
- (n) Delete C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 3(c) and Policy 4.
- (o) Amend C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 6(d) and 7(b) to provide additional purposes for which structures and disturbance activities may take place (including providing for access to land within rural properties along with fencing) and delete item (e) of Policy 6 and item (c) of Policy 7.
- (p) Delete C.5.14 Lakes, Rivers, Streams and Wetland Management Policy 11.
- (q) Amend C.5.14 Lakes, Rivers, Streams and Wetland Management Policies 12 and 13 to qualify the circumstances in which any protection or enhancement requirement applies relative to the importance and quality of the water body in question, and to confine the circumstances in which legal protection over marginal strips would be required.
- (r) Amend C.5.15.1 Water Objective 1 so as to better give effect to NPSFM objective A2 rather than requiring absolute protection of all water bodies including those with high fresh water quality.
- (s) Delete C.5.15.1 Water Policy 8.
- (t) Amend C.5.15.2 Water Quantity Allocation and Use Policies 13 and 14 so as to provide for construction of dams in a rural context, and such that only the criteria set in Policy 15(e) applied to such dams.

PART 2, CHAPTER D PROVISIONS

D.6 – RURAL ZONES

Reasons for Submissions

211. MOWF makes the following submissions on the assumption that either a Rural Coastal or Rural Production zone would apply to Man O' War Farm from the point at which the Hauraki Gulf Islands become subject to the Unitary Plan.
212. MOWF supports D.6.1.1 Rural economy Objective 1 as being consistent with B.8.1 Rural activities objectives and associated policies, subject to the amendments referenced in paragraph 175 of these submissions.
213. D.6.1.1 Rural economy Policy 1 is supported in particular in terms of enabling activities based on production from the land or use of the land resource, and recognising them as a primary function of Auckland's rural areas.
214. MOWF is concerned however that D.6.1.1 Rural economy Policy 2 may effectively negate or undermine Policy 1 through the requirement to treat adverse effects "on site" to the fullest extent practicable to protect natural environmental values.
215. There is no requirement under RMA for all effects to be internalised, certainly to the point at which the activity can no longer proceed, as this would be inconsistent with the enabling dimension of s 5(2) (*Winstone Aggregates v Matapiako District Council* 11 ELRNZ 48). Activities are only required to internalise their effects to the extent it is reasonable to do so. As the Court stated in *Winstone Aggregates*:
- That said, it is recognised that having done all that is reasonably achievable, total internalisation of effects within the site boundary will not be feasible in all cases and there is no requirement in the RMA that it must be achieved.
216. D.6.1.1 Rural economy Policy 2 should be amended so as to refer to rural production activities containing or treating their effects "on site" to the extent "reasonably practicable" (rather than fullest extent).
217. D 6.1.1 Policy 4 is opposed in its reference to preventing use of rural land for countryside living and Policy 5(a) is opposed, for the reasons addressed below in relation to subdivision (paragraphs 314 to 341).
218. D.6.1.2 Rural Character and Amenity values Objective 1 is opposed to the extent that it seeks to "maintain" the character and amenity values of rural areas, as is associated Policy 1(a) that seeks to "retain" rural character.

219. Any "maintenance" or "retention" aspiration is opposed as being inconsistent with Section 5(2) (c) of RMA. However, if it is retained then a realistic and workable definition of "rural character" needs to be included within the Unitary Plan.
220. This definition would need to include the characteristics of rural zones listed D.6.1.2 Rural Character and Amenity values Policy 3 (presence of large numbers of farmed animals, noise, odour, dust, accessory buildings etc) but also the presence of dwellings and other accommodation necessary to support farm workers. For example, MOWF accommodates up to 48 workers within buildings on its property at any one time, albeit on a seasonal basis.
221. D.6.1.2 Rural Character and Amenity values Policy 3 is otherwise supported, but there is a typographical error (the second reference "to accept" should be deleted).
222. Specific Policy provision or reference also needs to be made for residential activities within the rural zone, at least to the extent provided for as a permitted activity within the Rural zones (I.13).
223. D.6.1.3 Rural industries, services and non-residential activities Objective 1 and Policy 3 (enabling non-residential activities) are supported, the latter to the extent that it makes provision for wineries and associated structures/buildings, and noting that the definition of farming (as provided for as a permitted activity in the rural coastal and rural production zones) includes viticulture. The reference to 'tourist facilities and services' under Policy 3 is also supported given the significance of tourism to the Waiheke Island economy.
224. D.6.1.3 Rural industries, services and non-residential activities Objective 4 is supported except to the extent it refers to retaining rural character, which is opposed for the reasons addressed above at paragraphs 218 to 219.
225. This same tension or degree of conflict referred to above at paragraph 214 exists within the objectives for the Rural Production zone.
226. D.6.2 Rural Production zone Objective 1 seeks to provide for a wide range and diversity of rural production activities, and is supported; but Objective 2 requires activities to "largely" manage their adverse environmental effects on site.
227. The term "largely" is unclear and would seem to set some type of "percentage" internalisation requirement, regardless of the reasonable practicability of measures to internalise effects while enabling rural production activities to continue. D.6.2 Rural Production zone Objective 2 should be deleted.

228. D.6.2 Rural Protection zone Policy 6 is opposed to the extent it seeks to avoid any structures (other than fences and pump houses) in coastal yards, riparian margins, wetlands, and existing areas of indigenous vegetation. That would set up effective prohibited activity status for such structures that may have a functional need to locate in such areas, for example as acknowledged in D.6.4 Rural Coastal Zone Policy 9(d). The Policy should be reframed so as to discourage rather than avoid such activity.

Rural Coastal Zone- D.6.4

229. MOWF assumes that the most likely zone applied to its Waiheke and Ponui Island properties under the Auckland Unitary Plan would be the rural coastal zone.
230. That said, and as addressed further below in paragraphs 343 to 347 of these submissions, MOWF strongly recommends that the Council consider application of a specific rural precinct to Man O' War Farm to enable adoption of a "tailored outcome", given the significant yet diverse nature and range of land and other resources within the 1,785 hectare property, comprising a substantial portion of eastern Waiheke Island, along with a substantial portion of Ponui island, that make up the farm.
231. As the Rural Coastal zone description records, it extends beyond the coastal environment, as would be identified applying the NZCPS 2010 criteria. Further, the most significant resource values within the zone would be covered by overlays that have their own tailored objectives, policies and rules.
232. MOWF therefore submits that the zone provisions themselves (objectives, policies and rules) need go no further than acknowledge the rural character and amenity values of the zone; all s 6 matters of national importance being appropriately recognised and provided for elsewhere in the Unitary Plan, and through the overlays.
233. Against that background MOWF:
- (a) Supports D.6.4 Rural Coastal Zone Objective 1 to the extent that it seeks to enable rural production activities while managing any adverse effects; but
 - (b) Requests deletion of the references to "high" natural character, landscape, biodiversity, ecological, amenity, and Mana Whenua cultural heritage values within Objective 1; and

- (c) Similarly the references to “high” natural values and “high” natural character, landscape, biological and ecological values” throughout the other Objectives (2 and 3).
234. Those values and resources are sufficiently recognised and provided for in other sections of the Unitary Plan. The provisions also presume all land within the Rural Coastal zone would have ‘high’ resource values of the kind referred to, which is not (or would not) necessarily be the case.
235. The same request is made relative to the associated policies (deletion of reference to resources and values addressed elsewhere in the Unitary Plan). Without limitation, D.6.4 Rural Coastal Zone Policy 1 item (a) should simply refer to the ‘degree’ of naturalness, not the ‘high’ degree, and the word ‘high’ should be deleted from the beginning of item (b).
236. D.6.4 Rural Coastal Zone Objective 4 and Policy 7 are strongly opposed for reasons addressed below in relation to subdivision (paragraphs 314 to 326), and should be deleted.
237. D.6.4 Rural Coastal Zone Policy 2 is supported to the extent that it enables the continuation of rural production activities and the construction of accessory buildings and structures for farming purposes; but it also needs to provide for accommodation for farm workers and staff.
238. D.6.4 Rural Coastal Zone Policy 5 is opposed as being inconsistent with D 6.1.3 Policy 3 which provides for tourist facilities and associated development. The focus of any such policy should be on ‘significant effects’ rather than ‘areas of buildings’ per se, as a large winery building with associated tourist facilities may need to have a relatively significant footprint, but could have minimal effects if designed and located appropriately, especially on a property as large as Man O’ War Farm. Item (f) should be deleted, as traffic movements will be essential to support and access such activities.
239. D.6.4 Rural Coastal Zone Policy 8 should be amended to refer to “managing” rather than “controlling” the number, location, size and visual impact of dwellings and other non-residential buildings, and then only *beyond those necessary for farm workers or staff*.
240. Both Policies 8 and 9 should be amended by deleting reference to “high quality natural” and “high levels” or “high” amenity values (for the reasons stated above), and simply refer to the level of amenity and local rural coastal character that the zone might have.

241. Specifically, and without derogating from the submissions made earlier in relation to the maintenance imperative in the provisions of D.6.1.2 (at paragraphs 218 to 220) redraft Policies 8 and 9 as follows:

“8. [Maintain] the rural coastal character and amenity values of the zone by *managing* the number, location, size and visual impact of dwellings and other non-residential buildings, *beyond those dwellings or other buildings needed to house farm workers or staff within the zone*, and their curtilage and access ways.

9. Manage the individual and cumulative effects of buildings and other significant structures to [maintain] the levels of amenity and local rural coastal character by: ...”

Decisions Sought

242. MOWF seeks the following in relation to D.6 – Rural Zones:
- (a) Retain D.6.1.1 Rural Economy Objective 1 and Policy 1.
 - (b) Amend D.6.1.1 Rural Economy Policy 2 to refer to containing adverse effects on site to the extent “reasonably practicable” rather than “fullest extent practicable”.
 - (c) Amend D.6.1.1 Rural Economy Policy 4 by deleting the words “and prevent its use for urban development or countryside living” from Policy 4 and deleting Policy 5(a).
 - (d) Amend D.6.1.2 Rural Character and Amenity Values Objective 1 and Policy 1(a) to delete reference to maintaining or retaining rural character and amenity values and/or define rural character in the manner outlined at paragraph 220 above.
 - (e) Retain D.6.1.2 Rural Character and Amenity Values Policy 3 but amend it to correct the typographical error, and to refer to residential activities as provided for within rural zones as part of rural character.
 - (f) Retain D.6.1.3 Rural Industries, Services and Non-Residential Activities Objective 1 and Policy 3, in particular reference to wineries and tourist facilities.
 - (g) Retain D.6.1.3 Rural Industries, Services and Non-Residential Activities Objective 4 but delete words “while the area’s rural character is retained” from the end of that objective.
 - (h) Retain D.6.2 Rural Production Zone Objective 1.

- (i) Delete D.6.2 Rural Production Zone Objective 2.
- (j) Amend D.6.2 Rural Production Zone Policy 6 to refer to discouraging (rather than avoiding) buildings and structures.
- (k) Delete word "high" throughout D.6.4 Rural Coastal Zone Objectives 1 to 3, and Policies 1(a) and 1(b).
- (l) Delete D.6.4 Rural Coastal Zone Objective 4 and Policy 7.
- (m) Retain D.6.4 Rural Coastal Zone Policy 2 but amend it to provide for accommodation for farm workers and staff.
- (n) Amend D.6.4 Rural Coastal Zone Policy 5 to refer to avoidance of significant effects rather than significant areas of buildings and by deleting item (f).
- (o) Amend D.6.4 Rural Coastal Zone Policies 8 and 9 as set out at paragraph 241 above.

PART 3, CHAPTER G PROVISIONS

Reasons for Submissions

G.2 – General rules and special information requirements

- 243. MOWF opposes G.2.2 activities not provided for Rule (1) whereby any activity not specifically listed in the Unitary Plan is set as a non-complying activity.
- 244. MOWF submits that any activity not provided for should be set as a discretionary activity with reference to section 87B of RMA, and the general presumption that the least restrictive activity status should be applied under the Act. This is certainly the case absent specific section 32 evaluation to justify a more stringent activity status – which cannot be undertaken relative to the full range of potential activities to which this rule would apply, as they are essentially unknown.
- 245. Default "non-complying activity status" in those circumstances is therefore inappropriate.
- 246. G.2.3 Rule Infringements Rule (2) is supported and whereby non-compliance with a development control is a restricted discretionary activity. However G.2.3 Rule Infringements Rule (3) should include additional matters of discretion relating to the purpose of the activity in question, along with any positive effects associated with it, to avoid the situation faced by the High Court in *Auckland City Council v John Woolley Trust* [2008] NZRMA 260.

247. The same comment applies in relation to G.2.3 Rule Infringements Rule (4).
248. G.2.5 Accidental Discovery Protocols Rule (2) is opposed to the extent that “all site works” must cease in the event of discovery of artefacts, and the entire “site” must be secured with all further work at the site suspended (items (a) to (c) and (i) of the rule).
249. These requirements should only apply in the immediate vicinity of the find and the Rule should be redrafted accordingly, rather than referring to “site” which may be taken to imply an entire certificate of title regardless of size or proximity to the find.
250. G.2.7 Information Requirements for Resource Consent Applications is opposed in its entirety as being excessive and potentially disproportionate to any given resource consent application. Most consent applicants would find the information requirements impossible or very difficult to comply with. The information requirements go well beyond those set by section 88 and Schedule 4 to the Act, and would frustrate Government reform initiatives aimed at simplifying and reducing costs associated with resource consent processes.
251. This section of the Unitary Plan needs to be substantially revised and refined but in its present form MOWF requests that it be deleted (that is all of G.2.7).

Decisions Sought

252. MOWF seeks the following decisions in relation to G.2 – General Rules and Special Information Requirements:
- (a) Amend Rule 1 to provide for any activity not otherwise specifically listed as a discretionary activity.
 - (b) Include additional matters of discretion relating to the purpose of the activity in question along with any positive effects in G.2.3 Rules 3 and 4.
 - (c) Confine application of G.2.5 Accidental Discovery Protocols Rule 2 to the immediate vicinity of the site within which a discovery was made (rather than the entire site) throughout.
 - (d) Delete entire section G.2.7.

PART 3, CHAPTER H PROVISIONS

Reasons for Submissions

H.4.2 Earthworks

253. A general issue raised with Chapter H is that it is unclear which rules apply to the Man O' War Farm, effectively un-zoned at present under the Unitary Plan. As noted earlier in paragraph 17, the intent is the regional provisions in Parts 2 and 3 apply to the HGI Plan areas, but many of the rules (including regional rules) apply on a 'zone' basis. The Council should clarify the situation through any necessary amendments to the Unitary Plan to assist understanding of the implications of the various provisions for landowners.
254. In the meantime, these submissions are made on Part 3 (Chapter H) on the understanding that a rural zoning would apply to Man O' War Farm, and likely the Rural Coastal zone).
255. Tables 1.1 and 1.2 make provision for earthworks up to given areas volumes, but without defining the areas of land (or period of time) over which such earthworks may take place.
256. The earthworks prescription should be specified on a *per hectare* and *per annum* basis to achieve certainty over how the rules are intended to apply; and the limit needs to be reasonable relative to the nature of activities sought to be enabled within rural zones.
257. This is particularly important for a property as large as Man O' War Farm (1785ha). The 1000m² and 1000m³ default for general earthworks not expressly permitted (Table 1.1, Rural zones except Rural conservation) is otherwise opposed as being unnecessarily and unreasonably restrictive, as are the limits in Table 1.2 for ONL's and HNC's (50m² and 250m³).
258. Provision needs to be made for new farm tracks within the HNC and ONL overlay areas, not just maintenance (Table 1.2). Man O' War Farm has some 23 kilometres of farm roads and tracks on its property, and new roads will be needed over time. It is notable that the HNC and ONL overlays have been applied notwithstanding the existing 23 kilometres of farm tracks and roads on the Waiheke property).
259. The requirement for restricted discretionary consent for all land drainage works (below ground level) in Table 1.2 seems nonsensical; this activity should be permitted.

H.4.3 Vegetation Management

260. The restriction in Table 1.1 to 250 m² of native vegetation removal on a site over a 10 year period is opposed. To explain, Man O'War Farm comprises titles up to 800 ha in area and restricting native vegetation clearance to 250 m² over such an extensive area, and over a 10 year timeframe, is unreasonable.
261. This aspect of Table 1.1 should be amended to refer to a vegetation removal per site area basis (rather than simply "per site").
262. The provision for existing forestry and farming activities within Table 1.1 is supported and should be retained but it is unclear whether any ancillary vegetation removal as part of farming (eg, pasture management) is intended to be provided for within the rule, and the table should be clarified (to include express reference to ancillary vegetation removal as part of existing farming).
263. Alternatively the item within Table 1.1 relating to vegetation alteration or removal for a range of activities (existing tracks, lawns, etc) should expressly reference existing farming activities.
264. The same applies relative to the equivalent provisions in Table 1.2.
265. Where restricted discretionary activity consent is required for vegetation removal under Tables 1.1 and 1.2, the assessment criteria (Rule 4.1(1)) should be amended to include reference to the reason why vegetation clearance is sought. Relative to Man O'War Farm, this will likely be to provide for sites for horticultural or pastoral farming purposes (having regard to site topography and orientation to the sun etc).
266. Specifically it is requested that H.4.3 Vegetation Removal Rule 4.1(1) be amended to include the following criterion:
- The need for vegetation removal to establish a site for horticultural or pastoral farming purposes.
267. To the extent necessary, equivalent provision is sought within H.4.3 Vegetation Removal Rule 4.2(1).

H.4.10 Rural Production Discharges

268. H.4.10 Rural Production Discharges Rule 2.1.3 (1)(a) is opposed. Fertiliser application on Man O'War Farm is frequently by way of aerial spraying (helicopters). It may not be possible in all cases to exclude the discharge of any fertiliser to land within 20 metres of a stream in a natural stream management area (such as applied to its property). This rule should be amended only apply to land based application of fertilisers.

H.4.11 Natural Hazards

269. For reasons earlier submitted in paragraph 183, MOWF opposes the structure of H.4.11 in providing for any new building in areas that may be subject to natural hazards (in the manner set by C.5.12 Natural Hazard Risk Management Policy 1) as a restricted discretionary activity, and whereby an engineer's report is required for any development on such land, confirming that it is not subject to coastal erosion and inundation or land instability.
270. MOWF will need to undertake additions or alterations to farm structures including fences on areas within 20 metres of the top of cliffs on its property (for stock protection purposes) and restricted discretionary consent and an engineer's report under those circumstances is simply not warranted.
271. The activity table should be amended to provide for the first item listed as a permitted activity, and Rule 2.2 should be deleted, unless the changes requested elsewhere in relation to C.5.12 Natural Hazard Risk Management Policy 1 are made.

H.4.13 Lakes, rivers, streams and wetland management Areas and I.6 Coastal

272. H. 4.13 Lakes, rivers, streams and wetland management areas Rule 2.7 (and related Rule I.6 Coastal – General Coastal Marine Zone Table 1.4 and Rule 2.9) are strongly opposed.
273. MOWF's island farm has a number of characteristics which make fencing against livestock access to any water body and the CMA undesirable, inappropriate and plainly unworkable including:
- (a) The sheer scale of the property (1,785 hectares), along with the fact that it is interspersed with a number of streams and wetlands, including natural stream management areas identified on the overlay maps;
 - (b) The property is surrounded on "three sides" by the CMA;
 - (c) There is a range of individual fenced paddock areas that may themselves be larger than some entire farms within the region, such that many kilometres of new fencing would be required by the rules;
 - (d) The streams and natural stream management areas identified on the overlay maps are largely within areas of substantial riparian (remnant or regenerating) native vegetation; the understory of which is grazed to a greater or lesser extent (and has been so for over 100 years of pastoral use of the property).

- (e) Barging of stock directly off the beach can be required.
274. It would simply not be possible to fence stock from the CMA, and the streams and natural stream management areas on Man O' War Farm, without at the same time either:
- (a) Running fence lines through the riparian vegetated areas (currently protected from clearance or disturbance under the HGI plan, with many such areas scheduled as sites of ecological significance under that plan); or
 - (b) Fencing off the entire vegetated areas and thereby substantially reducing available grazing land.
275. There is a range of reasons relating to the additional costs associated with an island farming operation why access to the full property is essential in order to sustain the viability of the overall farming operation.
276. The requirement in I.6 Coastal – General Coastal Marine Zone Rule 2.9 would require many kilometres of additional fencing at substantial cost. That rule should be deleted; along with the prohibition in Table 1.4 (I.6 Coastal – General Coastal Marine Zone) on livestock access to the CMA.
277. The farm operations manager has assessed that as many as 40 kilometres of fence would be needed to fence wetland and water bodies on the property alone, at a likely cost in the vicinity of \$6-800,000. This excludes fencing off the coastline, and which could be that amount or similar again.
278. A further consequence of requiring fencing of all streams and wetlands on the property would be the need to construct additional dams to supply water for stock watering purposes, along with new fencing, bridges and culverts across streams to provide stock access into remaining available areas.
279. Yet these very activities may be precluded by the rules (for example bridges and culverts within natural stream management areas under Table 1 of 4.13).
280. On the other hand, stocking rates on the property are relatively low and unlikely to exceed the threshold (stock unit rate) set within the definition of "*intensively grazed production land*" in Part 4 of the Unitary Plan.
281. The farm operations manager has assessed that stocking rates would range no higher than 10 to 12 stock units per hectare (the threshold in the definition being 18).
282. There is however no certainty that MOWF's calculations reflect the intent of the Unitary Plan as to the manner in which stock units are to be calculated.

283. MOWF seeks certainty that H.4.13 Lakes, rivers, streams and wetland management areas Rule 2.7 does not apply to its property, as would be achieved by incorporating a calculation table or formula within the definition of *intensively grazed production land* such that (for example):
- One mixed age ewe equals one stocking unit
 - One mixed age cattle beast equals seven units.
284. These points aside, Policy 5.4.49 of the Regional Air, Land and Water plan is to *discourage* stock access through a range of tools including advocacy and partnerships; with a work programme prescribed prior to introduction of regulation through a variation/ change including:
- A s 32 evaluation
 - Consultation with interested parties
 - Investigation of funding options for implementation of voluntary initiatives
 - Collection of baseline data
 - Setting of targets
 - Liaison with territorial authorities
 - Integration with voluntary initiatives
 - Provision of best practice examples.
285. MOWF is not aware of any work programme having been completed to that effect. The rural sector generally has a legitimate expectation this will occur, and so it must, before proposed Rule 2.7 takes effect.
286. MOWF also seeks to include specific permitted activity provision for construction and repair of fences along or over the bed of any stream or wetland, along with construction of bridges and culverts for farm tracks and access purposes, within Table 1 of H.4.13.
287. Table 1 appears adequate in that regard except in relation to the issue of fences which should be specifically provided for (under the new structures section).
288. The limitation within Table 4.13 on channel clearance of less than 100 metres is opposed, certainly absent in understanding of whether that is a per annum (or

some other period) based limitation. Equally it would not make sense to compel farmers to clear only 100 metre sections of a drain at any one time.

289. Beyond that discretionary and non-complying activity status for channel clearance, bridges, pipes and culverts within Natural Stream Management Areas as applied to Man O'War Farm is opposed.

H.4.14 Stormwater Management

290. The storm water management provisions in H.4.14 may be appropriate in an urban context, but are inappropriate "work" in a rural environment.
291. The definition of 'impervious area' in Part 4 is broad and would cover the 23 kilometres of metal roads on Man O' War Farm. Tables 1.1 and 2.1 would necessitate a consent application to construct and discharge storm water from those roads, or any other equivalent or similar areas.
292. These rules should be confined in their application to an urban context where there is not an ability to attenuate storm water (and any associated contaminants) within adjacent land.
293. The simplest way to achieve this would be to amend the definition of impervious area to exclude hard stands and tracks within rural zones, and to expressly permit the discharge of stormwater from all such areas.

H.4.17 Taking, Using, Damming and Diversion of Water

294. The H.4.17 taking, using, damming and diversion of water activity table needs to be amended to provide for on stream dams applied to animal drinking water requirements as a permitted (or at worst controlled) activity.
295. H.4.17 Rule 3.1.5 contains appropriate rules to ensure there would be no significant adverse effects associated with such dams, and that would likely be of a minor scale given the purpose limitation inherent in the requested provision.
296. It is unclear within the activity table whether the limits on water take and use of groundwater for all zones (5m³ per day up to 20m³ when averaged over consecutive five day period) are in addition to (or intended to provide for section 14.3(b)(ii) RMA water takes (drinking water for animals). If they are, more realistic limits sufficient to provide for farming activities need to be included within the table. The position should at least be clarified within the rules.

H.6.2 Noise and Vibration

297. H.6.2.1 Noise and Vibration Rural Zone Rule 5 should be amended so that noise limits only apply to any other rural property that is not owned by the person generating the noise. Man O War Farm comprises a number of properties and there is no need to apply noise limits on what is effectively a “within site” basis relative to operations on the farm across the various properties comprising Man O War Farm.

Decisions Sought

298. MOWF seeks in relation to the Chapter H provisions referred to in this part of the submissions, the following decisions:
- (a) Clarify that the earthworks limits in H.4.2 Tables 1.1 and 1.2 apply on a per hectare and per annum basis failing which amend general earthworks (for activities not expressly permitted or requiring consent elsewhere in each table) to provide for more reasonable annual or per hectare limits.
 - (b) Provide within Table 1.2 for new farm tracks within HNC and ONL overlay areas.
 - (c) Amend Irrigation or Land Drainage in Table 1.2 (Overlays) to permit that activity.
 - (d) Amend the H.4.3 Vegetation Management Table 1.1 provision of 250m² vegetation removal over a 10 year period (for example expressing that to be the rate over an annual period) and/or set any extent of vegetation clearance on a per area of land rather than a per site basis.
 - (e) Clarify within H.4.3 Vegetation Management Table 1.1 and Table 1.2 that the activity provision for existing forestry and farming activities includes ancillary vegetation removal.
 - (f) Include a new matter of discretion under H.4.3 Rule 4.1 and 4.2 as set out in paragraphs 266 to 267 above.
 - (g) Delete H.4.10 Rural Production Discharges Rule 2.1.3(1)(a).
 - (h) Amend H.4.11 Natural Hazards Activity Table 1 to provide for new buildings, structures and infrastructure on land that may be subject to natural hazards as a permitted activity, and delete Rule 2.2.
 - (i) Delete H.4.13 Lakes, Rivers, Streams and Wetland Management Areas Rule 2.7, along with related Rule 1.6 Coastal – General Coastal Marine

Zone Table 1.4 (prohibiting stock access to the CMA) and associated Rule 2.9.

- (j) Amend H.4.13 Lakes, Rivers, Streams and Wetland Management Areas Activity Table 1 to provide for construction and repair of new fences in water bodies along with bridges, pipes and culverts in all overlays as a permitted activity.
- (k) Amend H.4.13 Lakes, Rivers, Streams and Wetland Management Areas Activity to delete the 100m limitation on channel clearance, and provide for that as a permitted activity in all overlays.
- (l) Amend H.4.14 Stormwater Management rules such that they do not apply to rural hard stands and tracks, through amendment to definition of impervious area in Part 4 of Unitary Plan or otherwise, and so as to expressly permit the discharge of stormwater from all such areas.
- (m) Amend H.4.17 Taking, Using, Damming and Diversion of water to provide for on-stream dams applied to animal drinking water requirements as a permitted activity.
- (n) Amend H.4.17 to clarify that the water take limits in the Activity table are in addition to section 14(3)(b) entitlements.
- (o) Amend H.6.29 Noise and Vibration so that the noise limits only apply to any other rural property that is not owned by the person generating the noise.

CHAPTER I.13 RURAL ZONES

Reasons for Submissions

- 299. MOWF naturally supports provision for farming as a permitted activity within the Rural Coastal and Rural Production zones (Activity Table), and bearing in mind the broad definition of farming so as to include horticulture and viticulture.
- 300. MOWF also supports provision for on-site primary produce manufacturing, which would include winemaking, within those zones as a permitted activity, but seeks clarification with the definition of that term (in Part 4) that it does include wineries.
- 301. MOWF also supports provision for restaurants and cafes in Rural Coastal and Rural Production zones as a restricted discretionary activity.
- 302. MOWF seeks provision for retail sales of goods produced as part of on-site primary produce manufacturing, in particular the retail sale of wine produced as

part of on-site winemaking activities, as a permitted activity in the Rural Coastal and Rural Production zones.

303. MOWF requests provision for visitor accommodation as a restricted discretionary activity in the Rural Coastal zone, as any impacts of this activity can be appropriately managed within the relevant criteria.
304. MOWF supports provision for dwellings within the Rural Coastal zone as a permitted activity but with I.13 Rural Zone Rule 2.6 amended to set an appropriate area based (rather than per site) limit; 'sites' as defined on Man O War Farm extending to up to 800 ha in area. It also seeks deletion of Clause 1(d) of Rule 2.6. The restriction on gross floor area in I.13 Rural Zone Rule 3.5 is opposed as being unnecessarily restrictive, and should again be set on a site area basis rather than simply 200 m² per site.
305. The Coastal Protection yard specified for the Rural Coastal and Rural Production zones is excessive and should be reduced to a more appropriate setback distance of 20 metres.

Decisions Sought

306. MOWF seeks the following decisions in relation to I.13 Rural Zones:
- (a) Retain permitted activity status for farming and onsite primary product manufacturing, but clarify definition of the latter activity to expressly include wineries.
 - (b) Provide for retail sales of goods produced as part of onsite primary product manufacturing as a permitted activity within the Rural Coastal and Rural Production zones.
 - (c) Retain restricted discretionary provision for restaurants and cafés in the Rural Coastal and Rural Production zones and make visitor accommodation in those zones a restricted discretionary activity.
 - (d) Retain provision for dwellings within the Rural Coastal zone as a permitted activity but amend Rule 2.6 so as to apply an appropriate site area (rather than one dwelling per site) control, and delete Rule 2.6(1)(d).
 - (e) Amend Rule 3.5 so as to apply a GFA limitation on buildings for intensive farming on a per site area rather than per site basis.
 - (f) Reduce the coastal protection yard for the Rural Coastal and Rural Production zones to 20 metres.

CHAPTER J, OVERLAY RULES AND ASSOCIATED MAPPING

Reasons for Submissions

J.5.2 Sites and Places of Value to Mana Whenua and J.6.2 ONL/ HNCs

307. Two sites or places of value to Mana Whenua are scheduled on MOWF's property.
308. MOWF opposes that scheduling absent adequate justification for it in s32 terms.
309. That aside, and if the scheduling is to remain, MOWF submits that the separation distance of 50 metres inherent in the activity table (J.5.2) and rule framework of this part of the plan is excessive and should be reduced to 20 metres (in line with the Environment Court decision in *Federated Farmers of NZ Inc v Auckland Council* [2012] EnvC 226).
310. MOWF also opposes the provisions of J.6.2 as apply to ONL and HNC overlay areas and seeks that they be deleted in their entirety at least insofar as they apply to Man O'War Farm (Waiheke and Ponui Islands).
311. For the reasons addressed earlier in these submissions, MOWF opposes and seeks deletion in their entirety of the natural heritage overlays applied to its property (Waiheke Island and Ponui) and in particular the ONL and HNC overlays.
312. MOWF also opposes the natural resource overlays applied including the Natural Stream Management Area overlays applied to Man O' War Farm, and seeks that they be deleted in their entirety. Clime Asset Management opposes the significant ecological area overlay applied to its Stanley Point Road properties.

Decisions Sought

313. MOWF and Clime Asset Management seek the following decisions in relation to Chapter J, Overlay Rules and Associated Mapping:
 - (a) Delete all natural resource and natural heritage overlays as applied on the Unitary Plan maps to Man O'War Farm including the ONL and HNC overlays, along with the Natural Stream Management Area overlays.
 - (b) Delete the Sites and Places of Value to Mana Whenua overlays as applied to Man O'War Farm.

- (c) Amend Rule J.5.2 Sites and Places of Value to Mana Whenua 50 metre separation requirement to 20 metres.
- (d) Delete the provisions of J.6.2 as they apply to Man O'War Farm (Waiheke and Ponui Islands).
- (e) Delete the significant ecological area natural resource overlay as applied to 70, 76, 80, 90 and 92 of Stanley Point Road.

SUBDIVISION

Reasons for Submissions

- 314. As identified earlier in these submissions at paragraph 44, MOWF has recently completed an Environment Court hearing dealing specifically with subdivision of its property.
- 315. Specifically, MOWF challenged the 25 hectare minimum site area requirement set for Landform 5 as applies to over 1,100 hectares of Man O' War Farm under the HGI Plan. Landform 5 is clear of any sites with ecological significance, and the most sensitive coastal margin and landscape areas; all of which fall within other landforms (dune systems, coastal cliffs, regenerating bush etc).
- 316. MOWF's case requested application of a 15 hectare minimum site area within the parts of its property that fall outside the Change 8 ONL (being determined by the Court in the context of the Change 8 appeal hearing, also mentioned earlier in these submissions). This ONL mapping would cover those areas of the coastal environment on Man O' War Farm that have high natural character.
- 317. In Unitary Plan terms, this would be consistent with applying a 15 hectare minimum site area to those parts of Man O' War Farm that fall outside the HNC overlay and/ or the ONL overlay subject of J.6.2 of the Unitary Plan.
- 318. It would also be consistent with B.8.1 Rural activities Policy 7, (maintaining a range of site sizes, to enable choice for activities) which is supported. Evidence given to the Court in the HGI Plan hearing was that 15 hectares was more consistent with enabling investment in viticulture on Waiheke Island.
- 319. Under the Unitary Plan however, and assuming a Rural Coastal zone, there would be no provision for any subdivision across the entire farm (it would be prohibited under Activity Table 5 of H.5 Subdivision).
- 320. This is apart from transferable rural site subdivision, but where the receiver site cannot be in the Rural Coastal zone (H.5. Subdivision Rule 2.3.3(4)(c)).

321. This effective prohibition of subdivision within the Rural Coastal zone is strongly opposed.
322. Neither s6 (a) nor (b) of RMA themselves (or indeed with the NZCPS) justify a prohibition approach across the board and throughout the entire Rural Coastal zone, and the restriction is (at least arguably) ultra vires.
323. This absolute prohibition approach is not warranted under the provisions of the Unitary Plan itself, including those specifically addressing issues of natural character (coastal environment) and outstanding natural landscape value in B 4.3.1 and B 4.3.2.
324. Parts of Man O' War Farm within a likely Rural Coastal zone will fall outside any ONL or HNC overlay (including as determined in line with the Court's decision in the Change 8 context as addressed earlier in these submissions at paragraph 31).
325. Even in areas of the coastal environment with high natural character, and in outstanding natural landscape areas, appropriate subdivision should be provided for, as under Change 8, applying specific guidance as to how the question of appropriateness is determined in the circumstances of any given case.
326. There is also no basis on any "urban containment" pretext to prohibit subdivision within rural areas of the Hauraki Gulf Islands and whereby the Rural Urban Boundary defines the metropolitan urban area as the primary focus for urban growth on the mainland (B.2.1).
327. B.8.3 Rural Subdivision Objective 2 and Policy 5 is opposed accordingly, at least in so far as they relate to the Hauraki Gulf Islands. These provisions should provide for subdivision on the Hauraki Gulf Islands, as they would otherwise effectively direct prohibition of what the operative HGI Plan allows in the interim period. C.6 Subdivision Objective 9 should also not apply to the HGI Plan areas, and this should be clarified in the Unitary Plan.
328. C.6 Subdivision Objective 11 is opposed in referring to maintaining the "distinctive landscape and spacious character of identified locations". The objective should either be deleted or it should be clarified what "identified" locations with characteristics of the kind referred to in the objective are, e.g land within the natural heritage or resource overlays?
329. C.6 Subdivision Policy 6(c) should be amended to refer to the costs of providing or upgrading local infrastructure *to service the subdivision* (as being met by the developer), not provision or upgrading of local infrastructure more generally.

330. C.6 Subdivision Policy 1 is opposed in requiring a structure plan, framework plan, concept plan and/or precinct plan for any subdivision. Requirements for such plans in relation to basic (minor, eg 2 or 3 lot) subdivisions are unnecessary, and the circumstances in which such plans are required should be clarified (eg, confined to urban subdivision or subdivision with 10 or more proposed sites).
331. C.6 Subdivision Policy 27 is equally opposed for the reasons set out above in relation to its application to the HGI Plan areas (from the point at which they would apply).
332. C.6 Subdivision Policy 30 requires consequential amendment to include reference to Rural Coastal zones (at least within the HGI Plan areas) as comprising appropriate receiver areas.
333. Item (h) of the policy should be amended to delete the word "avoid" and replace it with the word "integrate" or "manage".
334. C.6 Subdivision Policy 31 similarly needs to be amended in its application to HGI Plan areas (so that additional rural living sites can be accommodated within Rural Coastal and Rural Production zones in such areas).
335. C.6 Subdivision Policy 35 should be amended in the following respects:
- (a) By having the words "do not" at the commencement of item (c).
 - (b) By deleting the words "and avoid fragmentation of existing rural activities" from item (e); any subdivision will necessarily have that effect.
336. C.6 Subdivision Policy 36 needs to be amended in relation to the type of situation faced by MOWF and whereby a substantial component of its property is "scheduled" as ONL and HNC. It would not be appropriate (or reasonable) to require all such areas be permanently and legally protected "at the time of subdivision". Any such requirement should be confined to those parts of any scheduled area or feature that are subject of the subdivision and specifically put forward by the applicant for protection in order to meet the relevant RMA and Unitary Plan criteria, by reference to which the subdivision would be approved.
337. C.6 Subdivision Policy 37 should be amended to refer to esplanade strips (as well as esplanade reserves) being required on subdivided land adjoining the coast and other qualifying water bodies.
338. C.6 Subdivision Policy 38 should be amended to clarify that the criteria for waiving or reduction of an esplanade reserve strip are not all additive. For example if criteria (e) or (f) apply in all circumstances, then only subdivision for business activities would ever qualify for such a waiver or reduction. This point

is made bearing in mind the text in Part 1A.4.1 (Structure of the Unitary Plan) to the effect that lists should be regarded as cumulative except where indicated otherwise by the use of "or".

- 339. H.5 Subdivision Activity Table 5 is opposed, and H.5 Subdivision Rule 2.3.3 is opposed in its entirety.
- 340. An appropriate degree or extent of subdivision must be provided for within the Rural Coastal zone and in particular on the Hauraki Gulf Islands, from the point at which they come within the ambit of the Auckland Unitary Plan.
- 341. Amendments need to be made to the objectives and policies of Part B, C.6 Subdivision and H.5 Subdivision before any application to the Hauraki Gulf Islands to provide for this opportunity.

Decisions Sought

- 342. MOWF seeks the following decisions in relation to Unitary Plan provision addressing the issue of Subdivision and in particular:
 - (a) Delete B.8.3 Rural Subdivision Objective 2 and Policy 5 or amend them so they provide for rural subdivision on the Hauraki Gulf Islands.
 - (b) Delete C.6 Subdivision Objective 9.
 - (c) Amend C.6 Subdivision Objective 11 to clarify what distinctive landscapes and identified locations it applies to, including with reference to natural heritage or resource overlays.
 - (d) Amend C.6 Subdivision Policy 1 so as to only require a concept or structure plan for urban subdivision (rather than rural) and/or with 10 or more proposed sites.
 - (e) Amend C.6 Subdivision Policy 6(c) to refer to subdividers meeting the cost of providing or upgrading local infrastructure to service the subdivision in question.
 - (f) Amend C.6 Subdivision Policy 27 so as to enable subdivision for rural living within the HGI Plan areas and similarly amend C.6 Subdivision Policies 30 and 31 so that receiver sites and additional rural living sites can be accommodated within Rural Coastal and Rural Production zones in such areas, and amend Policy 30(h) by replacing the word "avoid" with "manage" or "integrate".
 - (g) Amend C.6 Subdivision Policy 35 in the manner set out in paragraph 335.

- (h) Amend C.6 Subdivision Policy 36 in the manner set out in paragraph 336.
- (i) Amend C.6 Subdivision Policy 37 so as to provide for the taking of esplanade strips as well as esplanade reserves.
- (j) Amend C.6 Subdivision Policy 38 so that the criteria for waiver or reduction of an esplanade reserve are alternatives, rather than additive.
- (k) Delete H.5 Subdivision Activity Table 5 and H.5 Subdivision Rule 2.3.3 in its entirety, or at least insofar as it applies to the HGI Plan areas and Man O'War Farm (Waiheke and Ponui Islands) in particular, and replace them so as to provide for rural subdivision in the HGI Plan areas.

EASTERN WAIHEKE- RURAL PRECINCT

- 343. During the course of the HGI plan hearing, the Environment Court indicated acceptance of a submission made by MOWF, that there is a number of unique circumstances relative to Man O' War Farm that warrant application of a "tailored" approach to the sustainable management of the relevant resources (water, coastal, ecological, land) across the property.
- 344. As demonstrated by the submissions made on various "off the shelf" rule prescriptions (along with policy frameworks) set under the Unitary Plan, a "one size fits all" proposition does not lend itself well to application to the circumstances of Man O' War Farm.
- 345. MOWF specifically requests an opportunity to engage with Council towards development of a tailored solution, and whereby an 'Eastern Waiheke' rural precinct is identified for inclusion within the Unitary Plan, in similar fashion to the Weiti and other rural precincts established under Chapter F.
- 346. MOWF understands that no SEAs are applied for the Hauraki Gulf Islands above the line of mean high water springs. MOWF further requests that the detailed mapping, confirmed by the Environment Court, and through which the sites of ecological significance ("SES") were confirmed under the HGI plan, are used to derive the boundaries of any SEAs applied to its property, in the future.
- 347. The tailored approach (a specific Eastern Waiheke precinct) provides an appropriate opportunity to apply the confirmed resource mapping of Man O' War Farm.

Decision Sought

- 348. All decisions sought in paragraphs 75, 98, 123, 125, 134, 148, 171, 175, 210, 242, 252, 298, 306, 313 and 342 of these submissions.

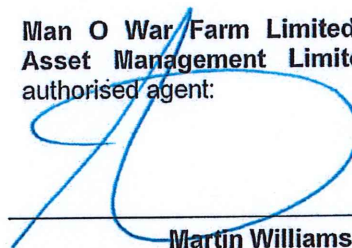
349. Such further or other including consequential relief as the Hearings Panel may grant pursuant to its powers under RMA and the Local Government Auckland (Transitional Provisions) Amendment Act 2013 to address the issues raised in these submissions.

The submitters wish to be heard in support of their submission.

350. If others make a similar submission, the submitters will consider presenting a joint case with them at any hearing.

Signature:

**Man O War Farm Limited and Clime
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authorised agent:



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28 February 2014

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