

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 050

IN THE MATTER of an appeal under Clause 14 of Schedule 1
of the Resource Management Act 1991 (**the
Act**)

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND (AUCKLAND REGION)
(ENV-2010-AKL-000321)

ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED
(ENV-2010-AKL-000324)

Appellants

AND AUCKLAND COUNCIL (FORMERLY
RODNEY DISTRICT COUNCIL)

Respondent

Topic: *Variation 132*
Hearing: At Auckland, Monday 8 April 2013
Court: Environment Judge J A Smith, sitting alone pursuant to Section
279 of the Act
Appearances: Mr D A Kirkpatrick & Mr P R Gardner for Federated Farmers of
New Zealand (**Federated Farmers**) and Manaia Properties
Limited (Section 274 party)
Ms C E Kirman for Environmental Defence Society Incorporated
(**EDS**)
Mr J Glasson for himself (Section 274 party)
Ms C L L Faesenkloet for Auckland Council (**the Council**)
Other Section 274 parties did not appear

ORAL DETERMINATION OF THE ENVIRONMENT COURT



- A. **The Planning Maps to Variation 132 are to be altered, as set out in Annexure A.**
- B. **The provision of Variation 132, and consequently the Rodney District Plan, are to be altered in accordance with the provisions of Annexure B.**
- C. **There is no order as to costs.**

REASONS FOR DECISION

Introduction

[1] In Decision No. [2012] NZEnvC263 this Court made orders in relation to several properties affected by the overlay for the West Coast Policy Area (**the Policy Area**). It also determined the final wording for Policy 7.8.1.2.7 and Policy 7.8.1.2.6. The Court also issued instructions for further consultation and caucusing to deal with issues of mapping, wording of rules, building activity status criteria and subdivision criteria i.e. the wording in Rule 7.15.3.

LANDSCAPE

[2] The area to be covered by the Policy Area is now the subject of revised Maps 1 – 9 (these are annexed to this decision) and set out the extent agreed by a caucus of landscape experts.

[3] The Gibbs' property and SH16 property have been removed, and there have also been several other minor adjustments to the maps which were agreed between the parties. The exact extent of these changes was not able to be put to the Court. From our observation it appears that the areas are generally similar to those annexed to the original decision.

[4] In practical terms the extent of the Policy Area was a pragmatic decision and given the caucus agreement of the landscape experts, I endorse the result reached.



RULES AND OTHER PROVISIONS

[5] Given that a differently constituted court was involved in the landscaping matters, I have issued this determination as Judge alone. Nevertheless, I was assisted by a differently constituted court in considering the provisions of the rules and relevant tables that apply.

[6] The parties agreed most of the provisions, with the exception of the status of dwellings within the Policy Area where there was an underlay of General Rural Area, and also the vegetation clearance rules which should apply.

[7] Evidence was originally circulated for Federated Farmers that the activity status for dwellings in the General Rural Area should be Permitted. This was opposed by both the Council and the EDS expert witnesses. The question of the status for Significant Natural Areas and which rules should apply were obliquely covered in evidence. Nevertheless, it was the Council's position that special provision should apply given the purpose of the Policy Area.

[8] The matter was set down for hearing, evidence exchanged and read by the Court. Accordingly, the Court as a whole is generally familiar with the issues which were to be resolved.

SETTLEMENT

[9] On Monday 8 April 2013, the Court advised that settlement had been reached on Saturday 6 April 2013, and the parties are now agreed on all of the rules which should apply.

[10] Annexed hereto and marked **B** are the provisions of the Plan now agreed by the expert witnesses. Many of these had already been covered in a previous caucusing meeting, such as the status on farm or forestry accessory buildings both over and under 40ha. But others, such as the household unit provision as Restricted Discretionary, were not.



STATUS OF DWELLINGS

[11] There were arguments in both directions for the inclusion of dwellings within the General Rural Area as Permitted or Restricted Discretionary. In general terms, both approaches would meet the purpose of the Act under Section 32, and as one witness pointed out, the outcomes in terms of an application for resource consent would often be exactly the same. The power to decline a resource consent for a dwelling would be rarely exercised.

[12] In practical terms, the likely outcome would be that if a particular site was considered to be inappropriate, restricted discretionary status would give the ability for the Council to suggest alternative sites which might better meet the Policy Area objectives.

[13] Therefore, we think there was a justification for the Restricted Discretionary status in achieving the purpose of the Act and the policy in question. Nevertheless, we acknowledge that there may be from time to time be effects on general farming practice.

[14] Overall we have concluded that the outcome agreed between the parties is the better outcome available to us on the evidence we have seen, at least, uncontested as it eventually was. I certainly agree that the result now proposed is one which could properly reached on the evidence available to them and that it has been appropriately recorded in the changes to the provisions.

[15] Accordingly, we endorse the status change, particularly in respect of dwelling within the West Coast Policy Area General Rural Zone to Restricted Discretionary.

[16] In relation to vegetation removal, the parties appear to have now agreed that the general provisions of the West Coast Policy Area overlay should apply.

[17] However, there is one exception. As Mr Kirkpatrick pointed out, there was a concern that Section 330 of the Act did not provide power to individual owners to undertake emergency works, particularly where for example, livestock was in immediate danger.



[18] We agree and consider that the addition to 'J' at Policy 7.9.4.1.1.1 makes it clear that such emergency works can appropriately be undertaken without creating an offence under the Act.

[19] We note that this exception is limited to areas which are not SNAs but these are relatively small areas within the Policy Area.

[20] Mr Kirkpatrick properly acknowledged that it would be unlikely that a Council would prosecute in such circumstances, but nevertheless, greater clarity would make the rights of farm owners in this situation clearer. We agree and consider again that the clearance control provisions are otherwise generally appropriate given the purpose of the Policy Area.

CONCLUSION

[21] I have concluded that both of these agreed arrangements should now be endorsed by the Court by way of issue of determination. These are the only appeals that are still outstanding to the Rodney Plan, and particularly Change 132.

[22] No party has sought costs from the Court, and accordingly, I direct that the Council make the alterations in the attached appendices forthwith to the Plan, and I would anticipate that it be made operative by the Council as soon as possible.

DATED at AUCKLAND this

9th

day of

April

2013

For the Court:

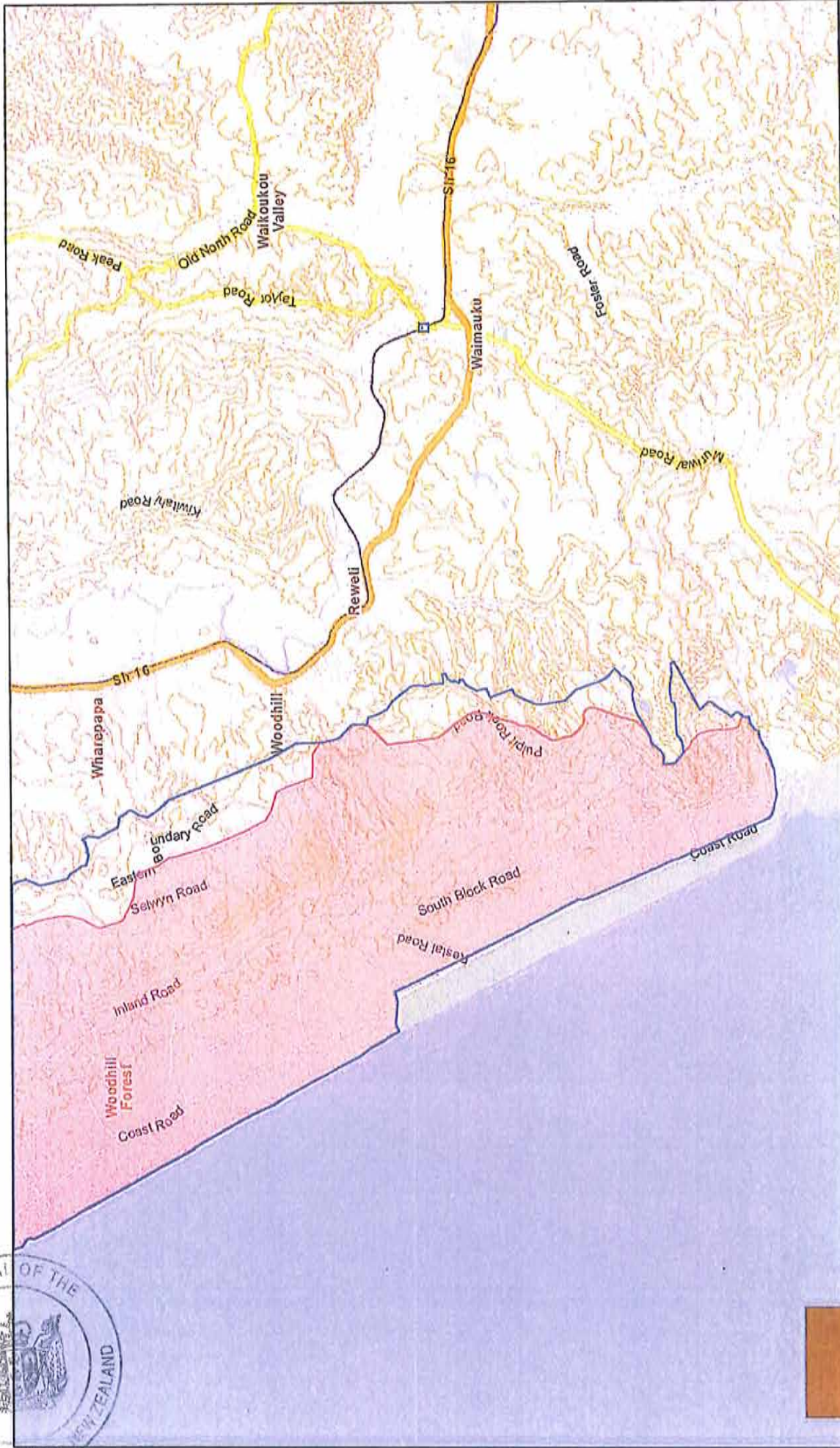


J A Smith
Environment Judge

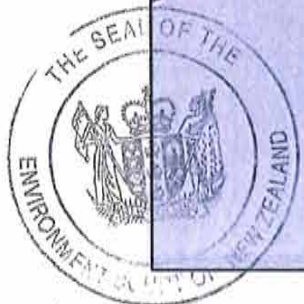


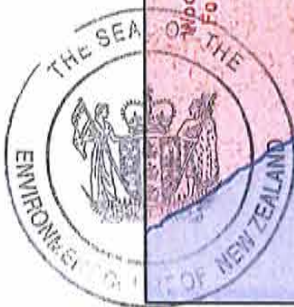
Annexure A

- Photopoints (where applicable)
- Recommended extent of West Coast Rural Policy Area
- Notified Version Boundary
- Revised Boundary Recommendations

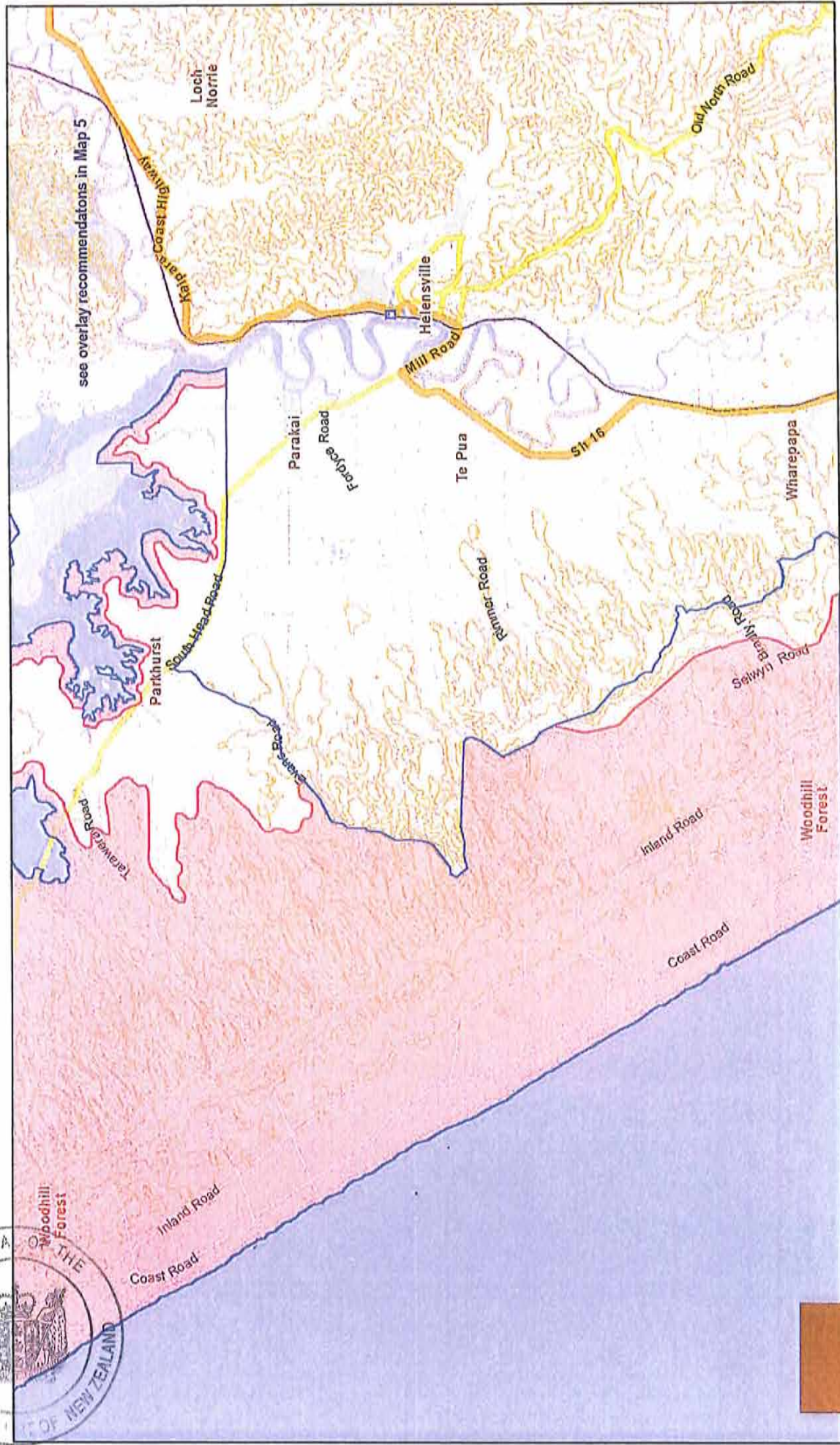


West Coast Policy Area - Landscape Recommendations: Map 1
AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012





Recommended extent of West Coast Rural Policy Area
Notified Version Boundary
Revised Boundary Recommendations

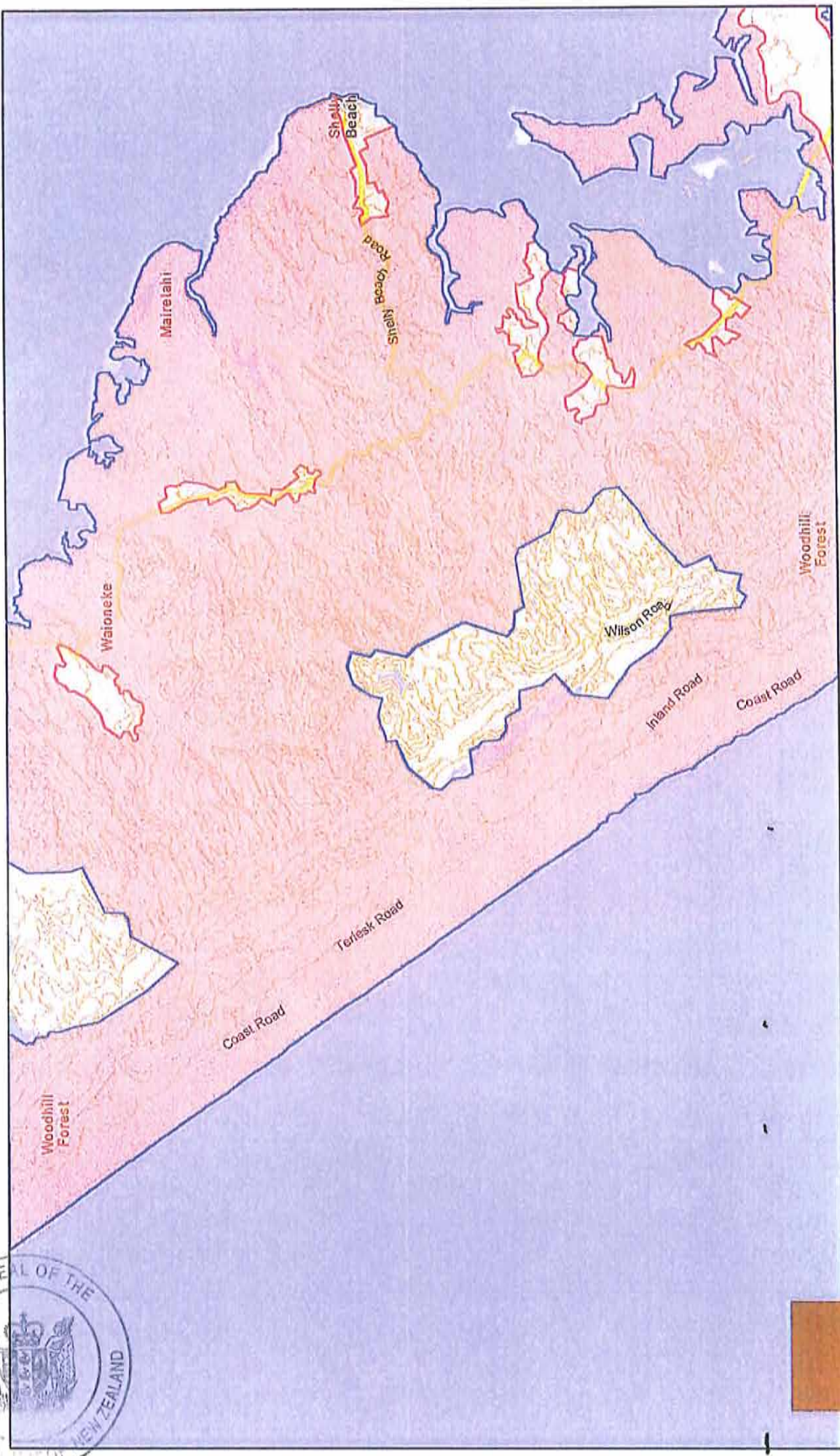


West Coast Policy Area - Landscape Recommendations: Map 2
AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012





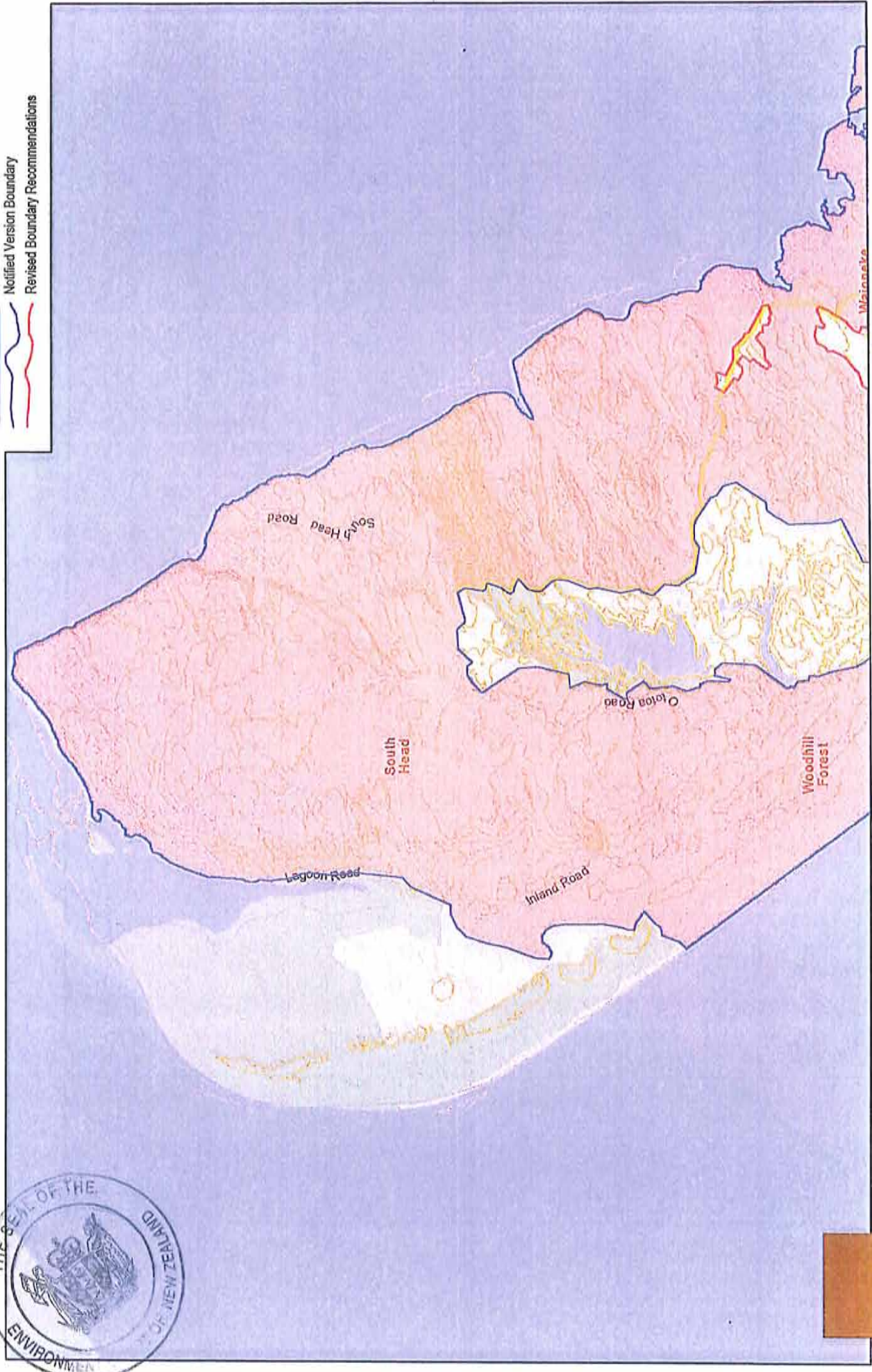
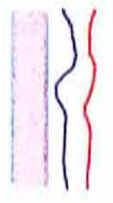
Recommended extent of West Coast Rural Policy Area
Notified Version Boundary
Revised Boundary Recommendations



West Coast Policy Area - Landscape Recommendations: Map 3
AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012

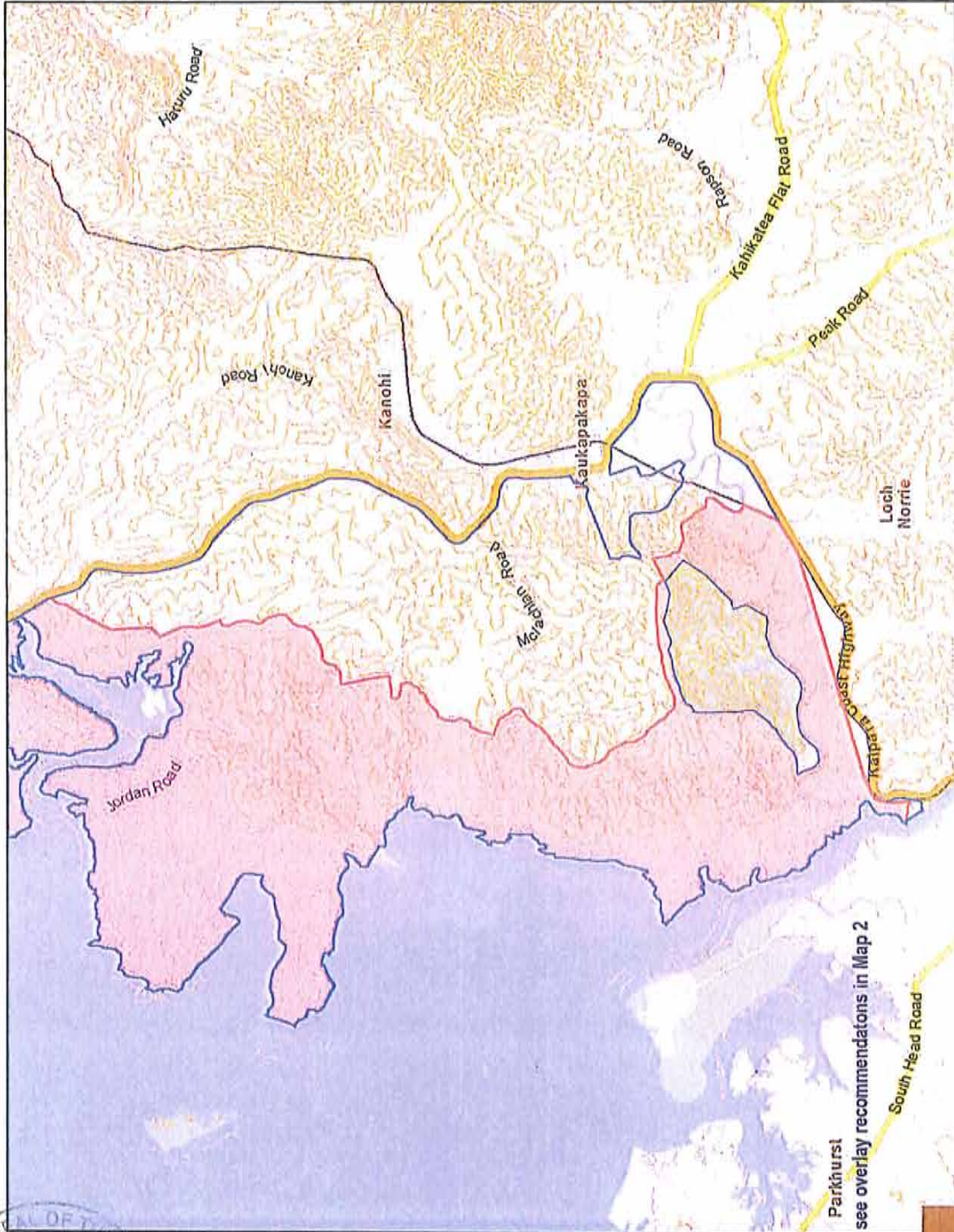


Recommended extent of West Coast Rural Policy Area
 Notified Version Boundary
 Revised Boundary Recommendations



West Coast Policy Area - Landscape Recommendations: Map 4
 AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012

Recommended extent of West Coast Rural Policy Area
 Notified Version Boundary
 Revised Boundary Recommendations

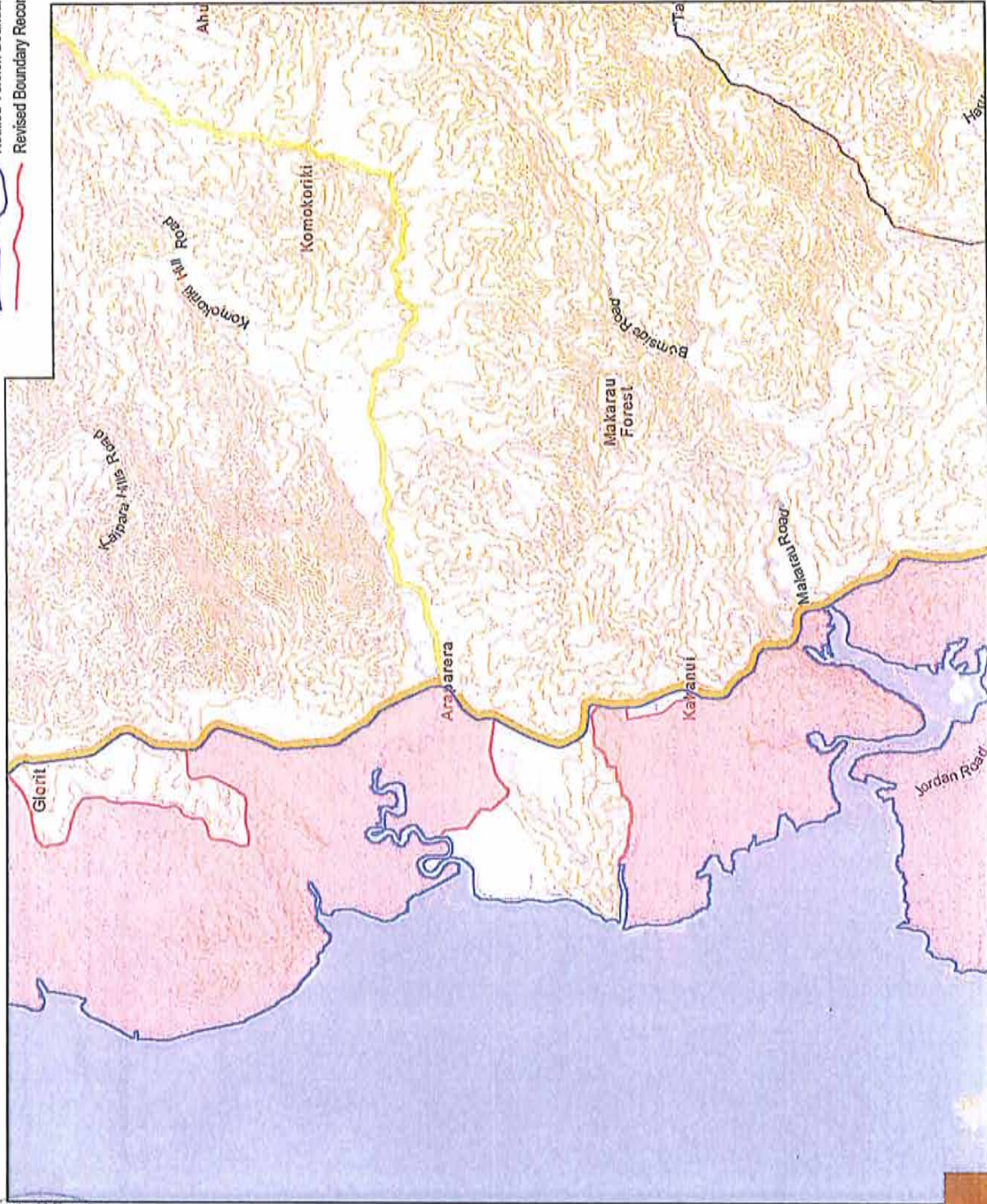


Parkhurst
 see overlay recommendations in Map 2





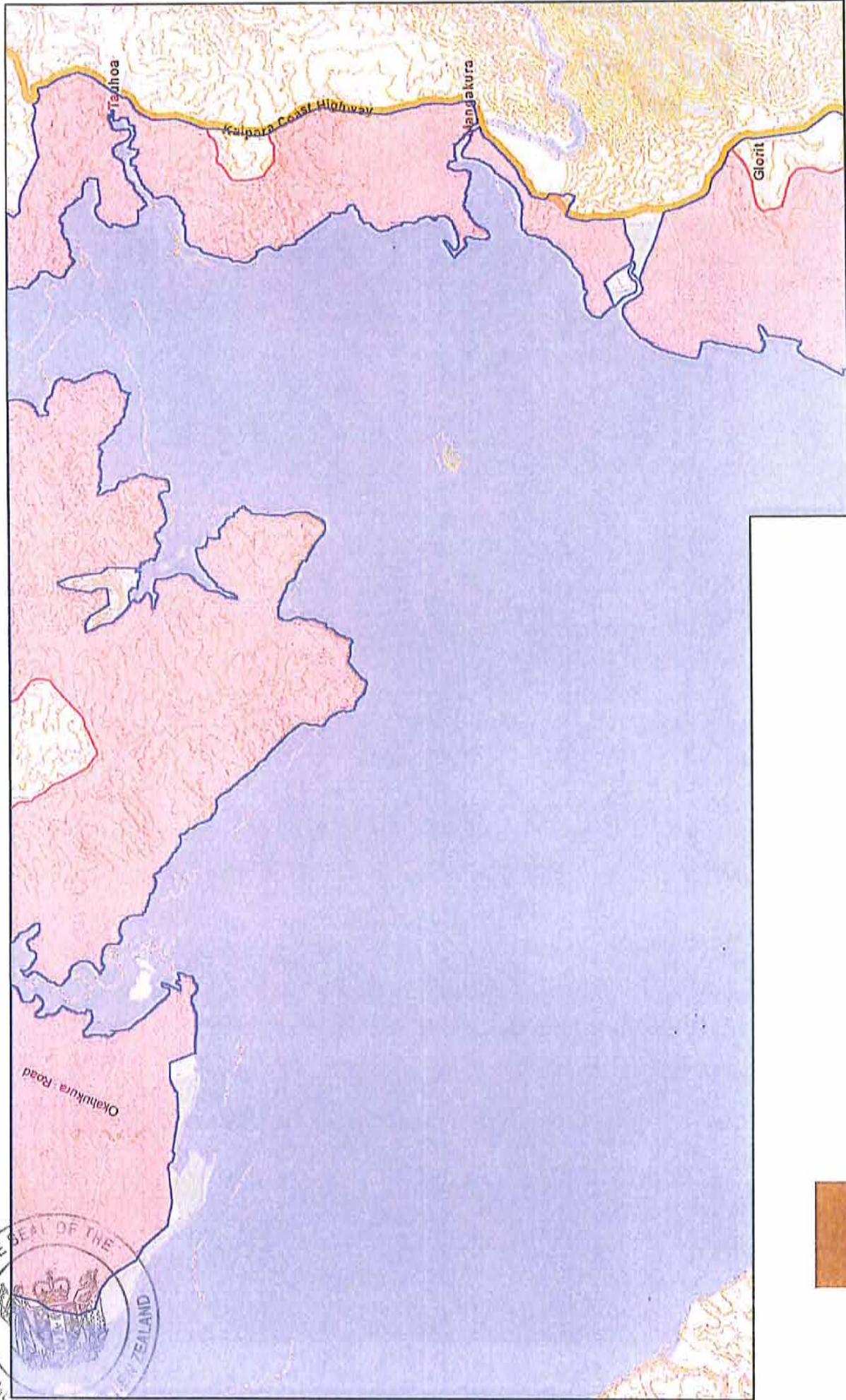
Recommended extent of West Coast Rural Policy Area
Notified Version Boundary
Revised Boundary Recommendations



West Coast Policy Area - Landscape Recommendations: Map 6
AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012



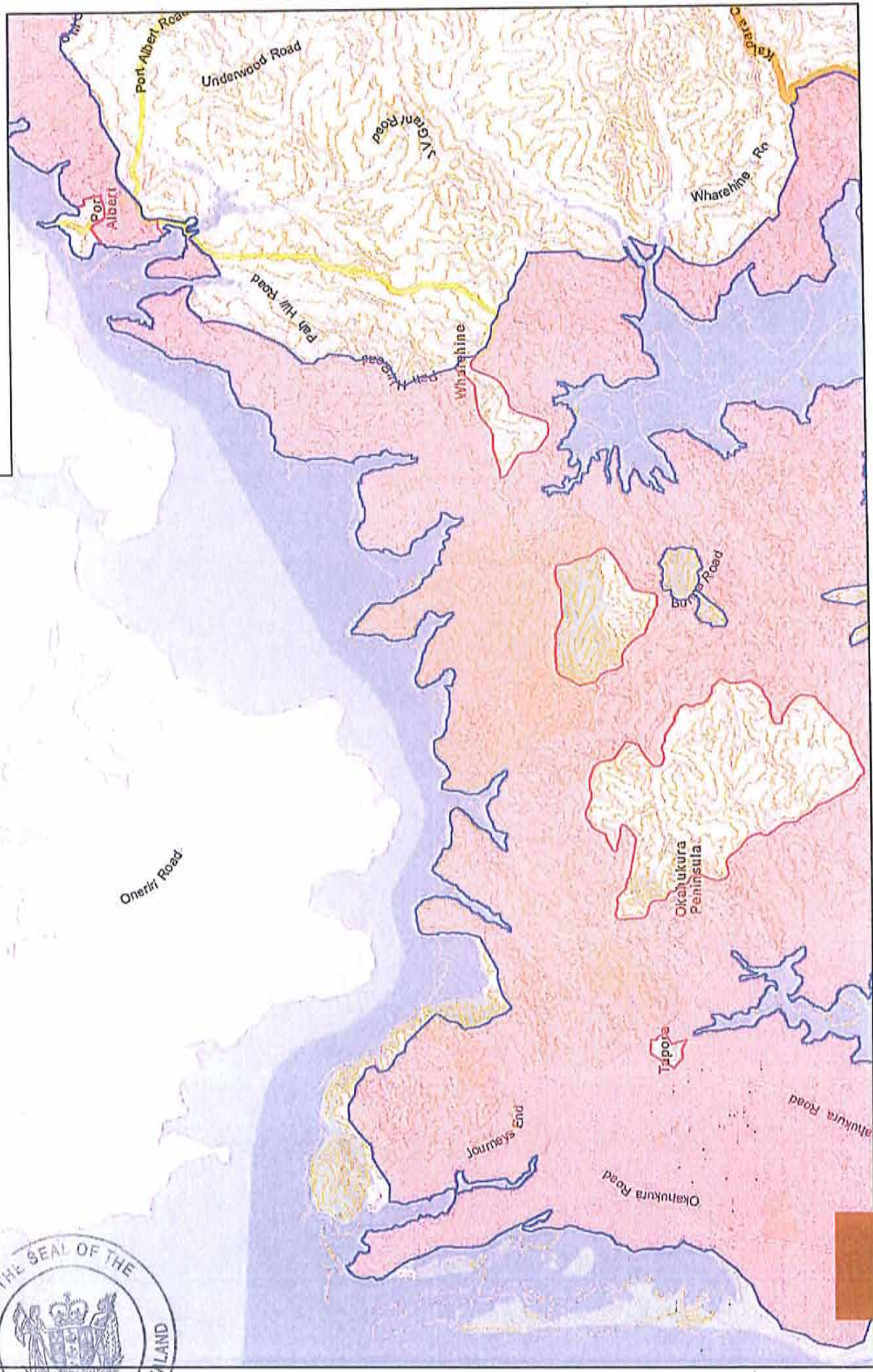
Recommended extent of West Coast Rural Policy Area
 Notified Version Boundary
 Revised Boundary Recommendations



West Coast Policy Area - Landscape Recommendations: Map 7
 AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012



Recommended extent of West Coast Rural Policy Area
 Notified Version Boundary
 Revised Boundary Recommendations

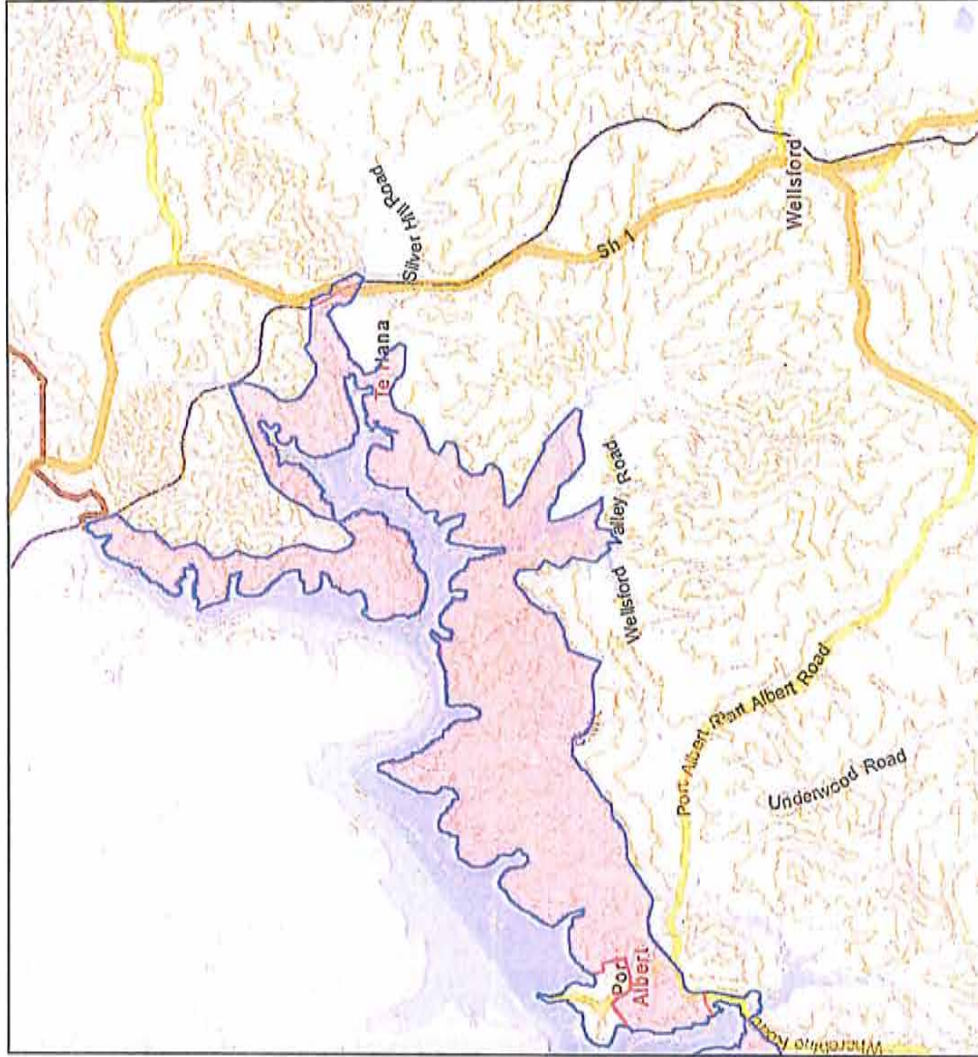


West Coast Policy Area - Landscape Recommendations: Map 8
 AUCKLAND COUNCIL VARIATION 132 REVIEW DECEMBER 2012





Recommended extent of West Coast Rural Policy Area
Notified Version Boundary
Revised Boundary Recommendations



Annexure B

Additions are shown by underlined text, deletions are shown by struck-through text

Zone Description:

7.8.1.3

General Rural Zone Description

.....
South Head and the coast of the Kaipara Harbour while generally meeting the above description, are noted as areas which are also recognised as being under pressure for development that is not directly related to rural production activity due to the coastal location and proximity to metropolitan Auckland. ~~The subdivision and development controls of the General Rural Zone adequately protect the rural character and amenity values,~~ However there are areas of significant landscape – identified in the Auckland Regional Policy Statement as ~~‘Significant Landscape Sensitivity’~~ and ~~‘Significant Landscape Quality’~~ which are considered to be at risk of degradation. Control over the built environment in these areas is considered prudent in order that the semi-remote character and the rural/coastal landscape, environmental and amenity values present are retained. An overlay approach is used which identifies these areas as ‘West Coast Policy Area’. The overlay is appropriate as normal rural activities such as farming and forestry can continue as permitted activities, albeit subject to more stringent environmental controls (relating to buildings ~~greater than 50m²~~, earthworks on sites 40 hectares and less in area (that are not already provided for as a Permitted Activity), tree and bush removal, and wetland/watercourse modification to ensure they respond sensitively to the landscape qualities present.

[Amendment 132 – Decision – not operative] [Subject to 4 appeals]



Activity Table:

Rule 7.9.2

Activity Table 1

Activity Table 1

General Rural Zone, Countryside Living Rural Zone (excluding the Okura Policy Area), Countryside Living Town Zone

In the following table:

- P** = Permitted Activity
- C** = Controlled Activity
- RD** = Restricted Discretionary Activity
- D** = Discretionary Activity
- NC** = Non-complying Activity
- NA** = Not Applicable
- PRO** = Prohibited Activity

Note: Words in capitals are defined in Chapter 3.

ACTIVITY	General Rural Zone	Countryside Living Rural Zone (excluding the Okura Policy Area)	Countryside Living Town Zone
Any activity not listed in this Activity Table	NC	NC	NC
Any Permitted, Controlled or Restricted Discretionary Activity not complying with the Development Controls and Performance Standards in rule 7.10.	RD	RD	RD
BUILDINGS other than a HOUSEHOLD UNIT or ACCESSORY BUILDING within an area identified as SNA except for buildings associated with Mineral Extraction and Processing Activities of Identified Significant Mineral Extraction Resources shown on the Planning Maps.	NC	NC	NC
BUILDINGS other than a HOUSEHOLD UNIT within an area identified as SNA associated with Mineral Extraction and Processing Activities of Identified Significant Mineral Extraction Resources shown on the Planning Maps.	D	PRO	PRO



ACTIVITY	General Rural Zone	Countryside Living Rural Zone (excluding the Okura Policy Area)	Countryside Living Town Zone
<p>The ERECTION, relocation, DEMOLITION, addition to, or alteration of BUILDINGS and ACCESSORY BUILDINGS for any Permitted Activity in this Table (except FARMSTAY/HOMESTAY, OUTDOOR RECREATION) <u>except in areas identified as a SNA and subject to Rule 7.9.4), and except in the West Coast Policy Area.</u> [Amendment 132 – Decision – not operative] [Subject to 4 appeals]</p>	P	P	P
<p><u>On SITES 40 hectares and less, the ERECTION, relocation, DEMOLITION, addition to, or alteration of farm or forestry ACCESSORY BUILDINGS in the West Coast Policy Area where the accessory building does not exceed 200m² GFA and the density of farm or forestry accessory buildings does not exceed one accessory building per 10 hectares of site area, and where the building complies with the performance standards in Rule 7.10.8.</u></p> <p><u>*The extent of the West Coast Policy Area is shown in Appendix 8 of the Planning Maps.</u></p>	P	NA	NA
<p><u>On SITES greater than 40 hectares, the ERECTION, relocation, DEMOLITION, addition to, or alteration of farm or forestry ACCESSORY BUILDINGS in the West Coast Policy Area where the accessory building does not exceed 300m² GFA and the density of farm or forestry accessory buildings does not exceed one accessory building per 10 hectares of site area, and where the building complies with the performance standards in Rule 7.10.8.</u></p> <p><u>*The extent of the West Coast Policy Area is shown in Appendix 8 of the Planning Maps.</u></p>	P	NA	NA
<p><u>Farm fencing, stockyards, artificial shelter belts; and maimai no greater than 5m² and with a height not exceeding 2 metres, in the West Coast Policy Area only.</u></p>	P	NA	NA
<p><u>DEMOLITION OF BUILDINGS AND ACCESSORY BUILDINGS for any Permitted Activity in this table except in areas identified as SNA and subject to Rule 7.9.4 [Amendment 132 – Decision – not operative] [Subject to 4 appeals]</u></p>	P		
<p><u>The ERECTION, relocation, DEMOLITION, addition to, or alteration of BUILDINGS and ACCESSORY BUILDINGS for any Restricted Discretionary Activity in this Table except in areas identified as a SNA.</u></p>	RD	RD	RD



ACTIVITY	General Rural Zone	Countryside Living Rural Zone (excluding the Okura Policy Area)	Countryside Living Town Zone
<p>The <u>ERECTION, relocation, DEMOLITION, addition to, or alteration of BUILDINGS and ACCESSORY BUILDINGS for any Discretionary Activity in this Table except in areas identified as a SNA.</u></p> <p><u>Consent for vegetation removal associated with the proposed household unit and/or accessory building and any required access within the SNA must be obtained under Rule 7.9.4.1.3.</u></p>	<u>D</u>	<u>D</u>	<u>D</u>
<p><u>HOUSEHOLD UNITS: one per SITE where the SITE meets the requirements of Rule 23.8.4 to 23.8.10 inclusive, provided that:</u></p> <p><u>Where the HOUSEHOLD UNIT is to be located on land in the Countryside Living Rural and Countryside Living Town Zones, the HOUSEHOLD UNIT shall be sited at least 50 metres from the boundary of any RURAL ZONE other than Countryside Living Rural and Countryside Living Town (except in areas identified as a SNA or in the West Coast Policy Area).</u></p>	<u>P</u>	<u>P</u>	<u>P</u>
<p><u>HOUSEHOLD UNITS - one HOUSEHOLD UNIT in addition to an existing HOUSEHOLD UNIT per SITE, on:</u></p> <p><u>(a) Any SITE over 40 hectares used for FARMING or FORESTRY;</u></p> <p><u>or</u></p> <p><u>(b) Any established horticultural SITE with more than 8 hectares in PERMANENT CROPS; or</u></p> <p><u>(c) Any Greenhouse unit with 2,500m² or more growing area permanently under cover</u></p> <p><u>except in the West Coast Policy Area</u></p>	<u>P</u>	<u>NC</u>	<u>NC</u>
<p><u>HOUSEHOLD UNITS and ACCESSORY BUILDINGS; other than ACCESSORY BUILDINGS for farm or forestry purposes that meet the permitted activity standard; in the West Coast Policy Area.</u></p>	<u>RD</u>	<u>NA</u>	<u>NA</u>

Vegetation Removal:

Rule 7.9.4.1.1.1

Permitted Activities

Permitted Activities (except within Significant Natural Areas)

- (a) The cutting, damaging or destroying of any exotic tree or area of exotic trees not listed as protected in Appendix 17C, or not listed as part of a Restricted Activity in Rule 14.8.3,
- (b) The cutting, damaging or destroying of any native tree planted specifically for forestry or cropping purposes except in the Okura Policy Area.
- (c) The cutting or removal of plants planted for farming and forestry.
- (d) The removal of vegetation (excluding removal of native bush) to maintain pasture, cropping areas and orchards.
- (e) The cutting, damaging or destroying of any native vegetation



understorey in any exotic or native plantation forest as part of forestry operations, except in the Okura Policy Area.

- (f) The treatment or removal of dead, damaged or diseased native trees or other works relating to native trees immediately necessary to avoid any actual or potential damage to the, health or property on the site on which the trees are located or any adjacent site.
- (g) The operation of any statute or delegated legislation which may conflict with this part of the District Plan or to which this part of the District Plan is subordinate.
- (h) The cutting or removal of vegetation for walking tracks up to and including 1.7 metres in width **except** within areas identified as a Significant Natural Area on the Planning Maps.
- (i) The removal of any plant pest identified pursuant to the Biosecurity Act 1993 or listed as a plant pest in the Auckland Regional Pest Management Strategy 2007-2012.
- (j) In the West Coast Policy Area, the removal of, or other works involving, the minimum amount of native bush, native trees or native vegetation immediately necessary to remedy any actual or potential danger to human or animal life or health on the site on which the vegetation is located, subject to the area being subsequently protected to allow for regeneration of the vegetation as soon as practicable after the danger has been remedied.

Rule 7.9.4.1.9.3

Permitted Activities (within the West Coast Policy Area)

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

Permitted Activities (within the West Coast Policy Area)

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

- (a) The Permitted activities in 7.9.4.1.1.1
[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**
- (b) The cutting, damaging or destroying of any individual native tree or number of trees constituting native bush, which is
 - (i) less than or equal to 3 metres in height, and
 - (ii) less than or equal to 250m² in area, provided that this is the maximum area cut, damaged or destroyed on the site after 10 September 2009.

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

Rule 7.9.4.1.9.4

Restricted Discretionary Activities (within the West Coast Policy Area)

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

Restricted Discretionary Activities (within the West Coast Policy Area)

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

- (a) the cutting, damaging or destroying of any individual native tree or



number of trees constituting native bush, which is
 (i) greater than 3 metres in height, or
 (ii) greater than 250m² in area.
 [Amendment 132 – Decision – not operative] [Subject to 4 appeals]

Development Controls:

Rule 7.10

**Rule 7.10.1
 Maximum Building Height**

Rule 7.10.1.1

DEVELOPMENT CONTROLS AND PERFORMANCE STANDARDS

Maximum Building Height

Subject to Rule 7.10.1.2 and Rule 7.10.1.4 below, the maximum height of any building shall be:

Zone	Height (metres)
General Rural Zone	A = 9m B = No limit
<u>West Coast Policy Area</u>	<u>A = 5m</u> <u>B = 9m</u> <u>C = 7m</u>
Islands General Zone	7m
Kawau Island Zone (both Policy Areas)	7m
Countryside Living Town and Rural Zones	9m
Landscape Protection Rural Zone	A = 4m A* = 7m B = 7m
East Coast Rural Zone	A = 4m A* = 7m B = 7m
Dune Lakes Zone	A = 4m A* = 7m B = 7m



- A = Maximum height for household units and accessory buildings for household units and buildings incorporating accommodation.
- A* = Maximum height for household units and accessory buildings for household units and buildings incorporating accommodation where those parts of the building exceeding the height in A have an average roof slope greater than 22 degrees. For curved roofs to comply with this exception, no more than half of the total area of the roof can have a slope less than 22 degrees.
- B = Maximum height for all buildings and structures other than those in A above and A* above.
- C = Maximum height for all farm or forestry ACCESSORY BUILDINGS in an OUTSTANDING NATURAL LANDSCAPE.

Explanation and Reasons:

....
 The Landscape Protection Rural, East Coast Rural and Dune Lakes Zones consist of areas of high natural or amenity value and are often steeper land. In this context buildings have greater potential to adversely affect the visual quality of an area. A lower limit of 4m is therefore appropriate in these zones for buildings with predominantly shallow pitched or flat roofed buildings for households. In some circumstances two storey buildings with variously pitched or curved roofs can integrate well into sensitive rural landscapes, make efficient use of sloping sites, and reduce the extent of earthworks needed. A 7 m limit is therefore provided in these zones for buildings incorporating these features. The Islands General Zone and the Kawau Island Zone (both Policy areas) have some of the same sensitive visual qualities and a 7m limit is appropriate in these zones. In the West Coast Policy Area, which overlays parts of the General Rural Zone, a slightly higher height of 5 metres is applied for household units, with a 7 metre maximum applied to farm and forestry rural accessory buildings within an identified Outstanding Natural Landscape, to reflect the values associated with the underlying General Rural zoning.

Definitions:

As a result of the above rule a definition of Outstanding Natural Landscape would also be required to be added to Chapter 3 of the Plan. The following wording is suggested:

OUTSTANDING NATURAL LANDSCAPE means an area of land identified as an **OUTSTANDING NATURAL LANDSCAPE** in the Auckland Regional Policy Statement and related plan changes.



Rule 7.10.8

Buildings in the West Coast
Policy Area

Buildings in the West Coast Policy Area

Standards:

- a) All BUILDINGS shall comply with the following
- i. the use of natural timber or stone, or unpainted concrete as exterior building materials, such materials not being subject to (ii) below; OR
 - ii. exterior building materials which, when graded using the British Standard BS5252:1976 Framework for Colour Co-ordination for Building Purposes, meet the following standards:
 - a. Where the materials are not used for a roof cladding, they are of a colour which has a reflectivity value of no more than:
 - i. 60 per cent for greyness groups A or B,
 - ii. 40 per cent for greyness group C,
 - b. Where the materials are used for a roof cladding, they are of a colour which has a reflectivity value of no more than 40 per cent for greyness groups A, B or C.

Provided that (ii) does not apply to windows, window frames, bargeboards, stormwater guttering, downpipes or doors. These items may be of any colour.



Land Use Assessment Criteria:

Rule 7.12.3

Buildings for any Permitted and Restricted Discretionary Activities in Specified Zones

The Erection, Demolition, Addition to, or Alteration of Buildings and Accessory Buildings for any Permitted or Restricted Discretionary Activity in the Landscape Protection Rural Zone, Dune Lakes Zone, East Coast Rural Zone, Kawa Island Settlement Policy Area; or any Restricted Discretionary Activity in the General Rural Zone, West Coast Policy Area or in the Countryside Living Rural and Town Zones or in the Kawau Island Zone - Bush Policy Area

Rule 7.12.3.1

Matters for Discretion

Matters for Discretion

The Council will restrict its discretion to the following matters:

- (a) Building siting, height, design and external appearance.
- (b) Landscape and landform modification.

Subdivision Assessment Criteria:

7.15.3

Assessment Criteria: All Subdivision Within the East Coast Rural Zone, the Landscape Protection Rural Zone, the Dune Lakes Zone and the Kawau Island Zone – Bush Policy Area only or the West Coast Policy Area

Assessment Criteria: All Subdivision Within the East Coast Rural Zone, the Landscape Protection Rural Zone the Dune Lakes Zone and the Kawau Island Zone – Bush Policy Area only or the West Coast Policy Area

[Amendment 132 – Decision – not operative] **[Subject to 4 appeals]**

In addition to the criteria in 7.15.2 and any other appropriate criteria, when considering an application for the subdivision of land within the East Coast Zone, Landscape Protection Zone, Dune Lakes Zone, or the Kawau Island Zone – Bush Policy Area, or the West Coast Policy Area the Council will have regard to the following criteria:



