



**HEARING OF PLAN MODIFICATION 166 - TE ARAI
HELD ON 7-10 OCTOBER 2013
IN THE COUNCIL CHAMBERS, LEVEL 1, OREWA SERVICE CENTRE, 50
CENTREWAY ROAD, OREWA, COMMENCING AT 9.30am**

COMMISSIONERS:	Leigh McGregor Melean Absolum Mark Farnsworth Conway Stewart	Chair
COUNCIL OFFICERS:	Peter Vari Ryan Bradley Robert Scott Simon Cocker Ray Smith Dr Tim Lovegrove Dr Mark Seabrook- Davison Andrew Beer Matthew McNeil Wendy Stephenson	Team Leader Planning – North West Planner Reporting Planner Planning Consultant Landscape Architect Development Engineer Avian Fauna Specialist, Natural Heritage Open Space Planner Coastal Processes Expert Democracy Advisor - Hearings

The following persons attended the hearing in order to present evidence to the Commissioners:

On behalf of the Te Arai Coastal Lands Trust (“TACL”):
Mike Holm (Legal Counsel)
Vicky Morrison-Shaw (Legal Counsel)
Peter Hall (Planning Consultant)
John Darby (Joint Venture Partner and Landscape Architect)
Russell Kemp (Te Uri o Hau Trustee)
Deborah Harding (Acting CEO, Te Uri o Hau)
Peter Wilson (Business Consultant)
Rachel de Lambert (Landscape Architect)
Dr Leigh Bull (Ecologist)
Professor John Craig (Avian Fauna)
Dr Rod Clough (Archaeologist)
Mikaera Miru (Cultural Impacts)
Philip Kelsey (Hydrogeologist)
James Dahm (Coastal Processes Engineer)

Submitters:
Sheryl Poynter
Anna Wild
Dr Kirsten Wild
Reginald and Lynette Whale
Jennifer Hendrickson
Marie Alpe
Heather Rogan
Te Arai Beach Preservation Society represented by: Chris Wild, Burnette O'Connor (Planning Consultant)
Tabled evidence:
A letter signed by Kelsey Serjeant was tabled on behalf of the Environmental Defence Society Inc

DECISION OF THE COMMISSIONERS

1.0 INTRODUCTION

- 1.1 A request for a change to the Auckland District Plan: Rodney Section (“the District Plan”) was lodged with the Council by the Te Arai Coastal Lands Trust (“the applicant” or “TACL”) and was adopted for processing by the Council on 15 September 2011. The proposed change sought that special provision be made in the District Plan for subdivision and development arrangements for 616.4 ha of land held in three titles adjacent to the coast at Te Arai (“the site”).
- 1.2 Subdivision and development of this land for rural residential activity is already enabled by the District Plan. The existing provisions in rule 7.15 allow up to 46 sites to be established there, subject to consent for subdivision being granted utilising the Significant Enhancement Planting (“SEP”) provisions in the District Plan.
- 1.3 In essence, the proposed Plan Change seeks a site-specific rule to enable subdivision applications to create a total of 43 rural residential sites in return for additional reserve land being provided to a public body such as the Council, with three further lots to be held as balance titles. As notified, the rural residential sites would have been developed in a nominated 230ha development area. This development area was proposed to be located centrally on the land but subsequent modifications split the originally proposed central development area into three separate areas, to be based on the three lots comprising the land concerned. A total of 172ha of reserve area would be added to the existing Te Arai reserve, thereby allowing it to extend beyond the northern banks of the Te Arai Stream and creating an ecological corridor to wetlands a little further inland.
- 1.4 The purpose of the hearing conducted by the Commissioners was to consider the merits of the plan change pursuant to section 32 of the Resource Management Act 1991 (“the Act”), as well as the content of the submissions that were lodged with the Council, both for and against the proposed measures, and evidence in support of the plan change application.
- 1.5 This report sets out the decision of the Commissioners who were appointed by the Auckland Council to hear and decide the matter. Pursuant to section 34 of the Resource Management Act 1991 (“the Act”), the Commissioners have been granted full responsibility to make a decision on proposed Plan Change 166 (“PPC166”) on behalf of the Governing Body of the Council.

- 1.6 The decision covers the matters that were addressed in evidence and legal submissions presented at the hearing as well as technical discussions contained in the application for the Change and also the report and recommendations prepared on behalf of the Council which we term “the section 42A report” as it is required by that section of the Act. Given the quantity of information supplied and the fact that many issues were not directly contested, we are not repeating the background material except to the extent that is necessary to explain our findings and our overall decision. Full copies of the materials, including the evidence presented at the hearing, are retained by the Council.

2.0 BACKGROUND AND SITE DESCRIPTION

- 2.1 PPC166 is the latest in a number of attempts made by Te Uri o Hau to gain permission to develop its land. The Te Arai block was acquired following settlement of its claims under the Treaty of Waitangi.
- 2.2 The land is at the northernmost point of the Auckland region’s jurisdictional boundary. It abuts the Mangawhai Wildlife Reserve – which was gazetted as a wildlife refuge in 1982 and which includes the Mangawhai spit to the north that forms the southern entrance to the Mangawhai estuary. The plan change site has a long coastal frontage of 7.1 kilometres. Its southern boundary is adjacent to a Council reserve at Te Arai Point. Mangawhai spit and the Mangawhai township are on the other side of the estuary to the north and lie outside the Auckland Council’s jurisdictional boundary.
- 2.3 To the north of the plan change site, the gated “Tern Point” residential subdivision has been established further along the Mangawhai estuary from the wildlife reserve and its easternmost lots adjoin the western boundary of the plan change land. None of the submitters who appeared at the hearing had opposed that subdivision when it was proposed. The wildlife reserve contains a number of nesting sites of the endangered NZ fairy tern, which ornithologist Dr Craig explained to us when delivering his evidence. The nearest nesting site is 1 kilometre from the edge of the Tern Point subdivision but is further away from the plan change land at 1.76km from the northern boundary. Immediately beyond this boundary an 18-hole golf course is currently being developed on the plan change land. The closest residence if the plan change proceeds would be more than 3.76km from the fairy tern nesting sites at the wildlife reserve, being at least three times the distance of the closest house at Tern Point.
- 2.4 A large part of the plan change land has been utilised as the “Mangawhai North Forest” for several years. Trees were originally planted for dune stabilisation purposes. We were told the forestry operation did not prove to be a particularly successful proposition. The Te Arai Stream runs through the land from the west around 1.5km from the boundary with the Council controlled Te Arai Point reserve. In the hinterland are a number of lifestyle and farming blocks, some including small wetland areas. Public access to the coast is achieved by way of Pacific Road which runs from west to east through approximately the centre of the site. Access through other parts of the site is restricted because of the forestry operations.
- 2.5 Subdivision consent has previously been granted to subdivide the plan change site into three large lots, namely Lot 1 – 230ha, Lot 2 – 150ha, Lot 3– 236.29ha. From south to north these have been labelled as areas A (Lot 3), B (Lot 1) and C (Lot 2) by TACL. Area C contains the golf course area that abuts the Department of Conservation wildlife refuge.

- 2.6 Existing District Plan rules 7.14.1.2(a)(i) and 7.14.4 enable resource consent to be sought to further subdivide each of the three lots in accordance with maximum entitlements provided for by rule 17.14.4.3(b). This would enable Lot 1 to be subdivided into 16 separate lots, Lot 2 to be subdivided into 11 lots, and Lot 3 into 16 lots in return for establishment of native re-vegetation under the District Plan's SEP provisions. The existing 43 lot entitlement when combined with the 3 lots from the existing subdivision consent would therefore enable a total of 46 lots on the site, provided consent was granted to a detailed subdivision proposal. PPC166 does not propose any increase in the number of lots that may be created.

3.0 THE PROPOSED PLAN CHANGE

- 3.1 As notified, the proposed Plan Change sought a site-specific Scheduled Activity in Chapter 14 of the District Plan (rule 14.8.2) to enable subdivision to create 44 rural residential lots on the site (with two additional balance lots) in return for 172ha of land to be vested in a public body such as the Council and thereby added to the existing public reserves at Te Arai. The parts of the District Plan that are affected by the proposed Change are Chapter 14 Scheduled Activities, Chapter 14.8.2 Scheduled Activity Table, and Maps 2 and 42 in volume 3.
- 3.2 The Plan Change utilises the current concept in rule 7.14.7 'Subdivision for Additional Reserve Land' whereby rural residential sites can be created in return for adding land to an existing reserve. Rule 7.14.7 allows for a maximum of three lots to be created where up to 12ha of land is added to a reserve. TACL considers that the proposed plan change is necessary because the current District Plan subdivision mechanism does not enable subdivision beyond three lots, or vesting of a public reserve in excess of 12ha in respect of this particular site. The Plan Change sought a site-specific Scheduled Activity to be included in Chapter 14 of the District Plan (rule 14.8.2) to enable subdivision applications to create 44 rural residential lots on the site (with two balance titles) in return for the 172ha of land to be vested as reserve. The applications would be required to be considered as a restricted discretionary activity.
- 3.3 It is intended that the yield of lots from the proposed subdivision rule would not exceed the maximum yield allowed under the current SEP provisions in rule 7.14.4 of the District Plan.
- 3.4 A report and recommendations on the proposed Change which was prepared for the hearing on behalf of the Council ("the section 42A report") advised that when compared with the existing subdivision entitlements under the SEP provisions, the main differences between the rule proposed by the Plan Change and the existing rule were:
- The requested rule is for a one-off subdivision rule providing for (then) 44 rural residential lots to be created in return for 172ha of public reserve, whereas the existing SEP rule has a sliding scale of subdivision depending on the size of the parent site;
 - The requested rule would result in a large area adjoining the Coastal Marine Area/marginal strip and the existing Te Arai Point Reserve being in public ownership, available for recreation or scientific/ecological purposes or a combination of both. However, the land would not be improved and the commercial pines trees on the site would remain on site and any maintenance or felling of the trees or improvements to the land would be a Council responsibility. Under the SEP rule, the land would be in private ownership but would be planted in native vegetation in accordance with the native vegetation

planting standards in section 7.14.2 of the District Plan. It would result in high biodiversity/ecological values but no public access or use;

- The proposed rule would allow the development as a one-off opportunity and only if the SEP entitlement has not already occurred. The proposal for the Plan Change stated that this would avoid the prospect of “double-dipping” in the future to obtain a yield greater than 46 lots. A set of specific assessment criteria was proposed which would be applied to any subdivision application to give effect to the proposed new rule. The proposed criteria included many of the matters relevant to subdivision under rules 7.14.4 (Subdivision for Significant Enhancement Planting) and 7.14.7 (Subdivision for Creating Additional Public Reserve Land) as well as site specific matters and matters relevant to taking reserves.

3.5 A restricted activity is proposed to the area seaward of the existing Outstanding Natural Landscape (“ONL”) classification along the foredunes. The ONL classification is made in the Auckland Council Regional Policy Statement (“ARPS”) and its boundary is also more or less the boundary between the seaward reserve area proposed to be vested and the proposed development area. The restricted activity would limit planting in that area to “native coastal species of the area”. The site is already subject to Scheduled Activity 101 in the District Plan which relates to provision of a range of recreation activities in former Crown forests including the Mangawhai North Forest. It is intended as part of this Plan Change to retain the existing scheduled activity in addition to the proposed scheduled activity.

3.6 This is illustrated by the map below which shows the originally proposed configuration (later modified to three proposed development areas rather than the central development area shown):

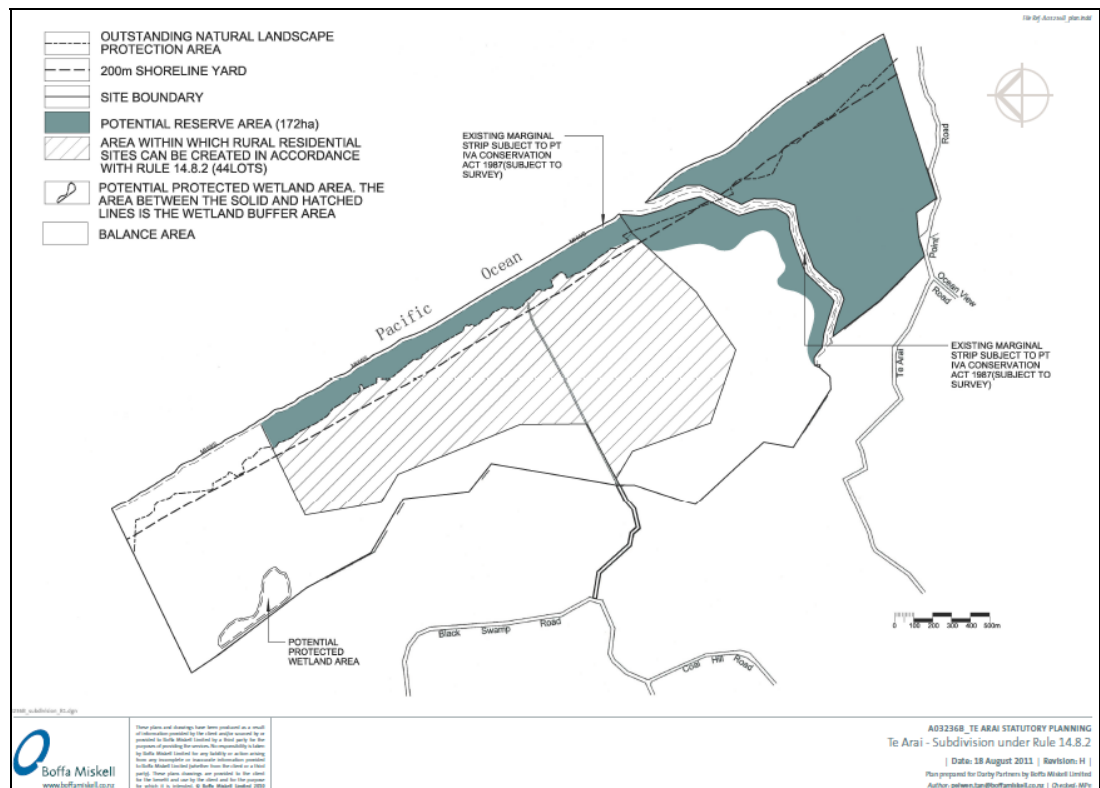


Figure 1: Proposed Subdivision under Proposed Rule 14.8.2 (as notified)

4.0 MODIFICATIONS MADE TO THE PROPOSED PLAN CHANGE

- 4.1 Following public notification TACL lodged a submission seeking amendments to the proposed Plan Change. The relief it requested sought greater flexibility by allowing the same maximum development yield of the rural residential sites and balance sites to be achieved using a combination of subdivision for creating the additional public reserve and subdivision for significant enhancement planting.
- 4.2 The requested amendments sought a proposed minimum reserve area of 136 hectares to be vested or taken when the first site is subdivided. Thereafter, additional lots could be created using either SEP (at a rate of 1 site for every 6 hectares of planting) or additional reserve area (at a rate of 1 site for every 4 hectares of reserve). A maximum of 10 sites was proposed to be allowed using SEP, in order to ensure the majority of benefit was provided through the creation of public reserve. The revised provisions as proposed by this submission would also enable up to four rural residential sites to be located outside the identified development area provided they were supported by significant enhancement planting.
- 4.3 Following the close of the further submissions period TACL asked for processing of the Plan Change to be suspended while further consultation was undertaken with some submitters. During the ensuing period it obtained written support from the Department of Conservation, the Royal Forest and Bird Protection Society of New Zealand, the Environmental Defence Society and the New Zealand Historic Places Trust.
- 4.4 Support by those parties involved some further changes to the proposed scheduled activity rules and the proposed public reserve/subdivision layout being offered as part of any future subdivision proposal. The amended provisions were provided to the Council and a copy sent to each submitter on the proposal.
- 4.5 The section 42A report advised, by way of summary, that the changes agreed between the parties to those discussions had built on the relief sought in the TACL submission and now involved:
- Re-alignment of the proposed reserve area so that it would run the entire length of the property to connect with the Mangawhai Wildlife Refuge which is administered by DOC and therefore giving rise to the prospect of DOC being gifted the reserve under rule 7.14.7.2. In this regard, during the course of the hearing a letter from the Minister of Conservation, Dr Nick Smith, was tabled stating that the Department would consider accepting vesting of the reserve area. The new reserve layout varied in width between around 100 and 200m;
 - Creation of a riparian corridor connecting the Te Arai Stream to a 11.76ha wetland on Coal Hill Road ("Coal Hill Road wetland") which is on private land adjacent to the site but which nevertheless forms part of the riparian network of the Te Arai Stream;
 - The reserve south of the Te Arai stream was reduced in area but retained a 50m wide riparian corridor along the southern bank and a width along the CMA boundary of approximately 150-200m;
 - The revised reserve layout provided a second connection to Pacific Road as well as to the public Mangawhai Wildlife Refuge. Previously, access to the reserve would have been provided only by way of the coastal end of Pacific Road or across the Council reserve at Te Arai point;

- A new 36ha inland reserve area with a specific recreation focus, namely mountain biking and horse trails, was proposed adjoining Pacific Road;
- A reduced area for the proposed house sites to be located in each of areas A, B and C resulting in 43 house sites and 3 balance lots altogether being one less house site than was notified. Area A provides for one house, Area B for 38 house sites, and Area C for 4 house sites;
- The text was amended to reflect those changes and also to provide an additional rule setting out the prerequisites for removing production forest and replanting in native species across the coastal foredune and a 50 metre riparian buffer along the Te Arai Stream (i.e., public reserve areas). There was a requirement for a vegetation management plan to manage the transition from pine trees to native vegetation in the areas identified for public reserve. This would be required to be achieved prior to creation of the first lot under the proposed rules;
- A new rule imposing a ban on keeping cats and dogs on any sites was proposed as was a further new rule requiring preparation of a Shorebird Management Plan prior to the creation of sites under the plan change. The proposed rule also set out the required contents of the Shorebird Management Plan, including mechanisms to ensure that its requirements would be funded and binding on future land owners;
- Additional assessment criteria were included regarding: a prohibition on further subdivision by way of consent notice and covenants; preventing cats and dogs as pets; measures to protect shorebirds and threatened plants; recognition of the New Zealand Coastal Policy Statement policies on “Indigenous biological diversity” (Policy 11) and “Preservation of natural character” (Policy 13);
- Limits were included on the placement of a dwelling in Area A with regard to its potential visual effects on reserve areas;
- An amendment to the proposed provisions would enable sites of any size to be created rather than the “rural residential” sites which the District Plan requires to be between 1-2ha in area. The reason for this was to enable a measure of design flexibility.

4.6 This was the version of the proposed Change that was considered at the hearing. However, and as will be apparent later, some of its content was amended again before the public hearing was formally closed.

5.0 THE LEGAL FRAMEWORK

5.1 Several provisions in the Act apply to any consideration of plan changes with additional requirements in the case of those that are privately sponsored as this one is.

5.2 Clause 21 of the First Schedule to the Act recognises that any person may request a change to a district plan. The form the request is to take and other administrative matters are covered by clauses 22-28 of that Schedule. Under clause 29(4) we may decline the Plan Change, or approve it, or give approval subject to modifications being made to the Change. Reasons must be given for the decision.

- 5.3 Section 32(1)(d) requires that the person who requests the plan change is to carry out an evaluation before the proposed change is notified. As already noted, a section 32 evaluation was submitted as part of the request for Plan Change 166. Under section 32(2)(a) a further evaluation must be made by the local authority if the council decides to accept the proposed change for processing. This evaluation was undertaken by Mr Scott and Mr Bradley and was incorporated into the report prepared for the hearing along with various expert assessments undertaken on behalf of the Council.
- 5.4 A section 32 evaluation must examine: the extent to which each objective is the “most appropriate” way to achieve the purpose of the Act; whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the “most appropriate” for achieving the objectives; the benefits and costs of the policies, rules or other methods; and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.
- 5.5. In this case, no new objectives or policies are proposed. The section 32 evaluations considered whether the existing objectives and policies are the most appropriate for the purpose of Plan Change 166 and whether in turn they are consistent with the purpose of the Act. In both instances, the conclusion was positive.
- 5.6 Section 74 of the Act establishes the matters to be considered when changing a district plan. Regard must be had to any proposed regional policy statement or proposed regional plan in regard to any matter of regional significance, any management plans and strategies prepared under other Acts, any relevant entry in the Historic Places Register, and any relevant planning document recognised by an iwi authority. This has been done in the present case. Section 75(3) requires that a district plan must give effect to a regional policy statement and in that context an assessment of PPC166 in terms of the operative Auckland Regional Policy Statement (“ARPS”) is required. In the next section we examine the proposed Auckland Unitary Plan which was publicly notified for submissions the week before this hearing commenced.

6.0 RELEVANT PLANNING DOCUMENTS

- 6.1 A number of planning instruments are relevant to the assessment of PPC166. These were addressed in the application and also by the section 42A report. Some, but not all, were addressed by some submitters also. Our comments on PPC 166 in relation to these planning instruments follow but prior to that it is desirable to itemise those we have considered:

- Resource Management Act 1991
- Hauraki Gulf Marine Park Act 2000
- Historic Places Act 1993
- New Zealand Coastal Policy Statement
- Auckland District Plan: Rodney Section
- the Proposed Auckland Unitary Plan, notified on 30 September
- Auckland Regional Policy Statement
- Auckland Regional Plan: Air Land and Water.

- 6.2 We also considered the following planning instruments which were covered in the section 42A report but decided that they are not determinative of the decision we have to make for the reasons set out in the officers' report. These instruments are: the Auckland Regional Plan: Sediment Control, the Auckland Regional Growth Strategy, the Long-term Council Community Plan, the former Rodney District Council's Open Space Strategy, and the Auckland Regional Physical Activity and Sports Strategy.

Resource Management Act 1991

- 6.3 The starting point for the statutory assessment of PPC166 is the Resource Management Act 1991 ("the Act") and in particular Part 2 which contains its purpose and principles. Our decision is subject in all respects to the Part 2 provisions.

- 6.4 Section 5(1) of the Act provides that "*the purpose of this ACT is to promote the sustainable management of natural and physical resources*". Section 5(2) defines sustainable management thus:

*"In this Act **sustainable management** means managing the use, development, and protection of natural and physical resources in a way or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while–*

- a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- c) avoiding, remedying, or mitigating any adverse effects of activities on the environment".*

- 6.5 We have set out this section in full as it is fundamental to our consideration of PPC166. We note in particular that section 5 requires both management of resources for people and communities and the protection and conservation of resources. An overall balanced judgement is required over the degree to which PPC 166 will satisfy both the needs of people and the needs of the environment. It is our judgement, as we elaborated on later, that PPC166 does meet the needs of people while protecting the environment and therefore represents sustainable management of natural and physical resources as defined in section 5.

- 6.6 The principles of the Act are set out in sections 6 to 8. Section 6 requires that all persons exercising powers and functions in relation to the use of resources must recognise and provide for matters of national importance that are listed in the provision. The evidence was that a number of the matters identified in s.6 as matters of national importance are present at Te Arai. These include

- preservation of the natural character of the coastal environment, and lakes and rivers, and outstanding natural features and landscapes, and historic heritage and the protection of them from inappropriate subdivision use and development
- protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna
- maintenance and enhancement of public access to and along the coast

- the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

6.7 Section 6 requires action: it is not sufficient simply to identify these matters. Consequently we focussed on the measures proposed in PPC166 in order to address the matters of national importance. We will comment in more detail later but at this stage we record that -

- the Act specifically requires the protection of habitat but not of the fauna itself;
- it is proposed to include the coastal margin (basically the foredune), which is an Outstanding Natural Landscape, in a reserve;
- land along the riparian margins of the Te Arai Stream is to be similarly reserved;
- development in the area set aside for subdivision cannot be seen from the beach, although removal of pine trees - which is a permitted forestry activity - will be visible;
- the land subject to PPC166 is situated in the rohe of Te Uri o Hau and is in their ownership. Development of this land will recognise and provide for the relationship of Te Uri o Hau with their ancestral land (and will also provide for their health and wellbeing as anticipated by section 5).

These matters were addressed in the application and also in the officers' report and in evidence at the hearing.

6.8 Section 7 is headed "Other Matters". It requires all persons exercising powers and functions in relation to the use of resources to have particular regard to a number of matters. For Te Arai, the relevant section 7 matters are:

- kaitiakitanga
- the ethic of stewardship
- the efficient use and development of resources
- maintenance and enhancement of amenity values and the quality of the environment
- the intrinsic values of ecosystems
- the effects of climate change.

6.9 All those matters were addressed to us in evidence and/or are contained in PPC166 and the section 42A report. We are therefore satisfied that "particular regard" has been had to them. We make further comment on this later when we cover the principal issues in contention.

6.10 Section 8 requires that all persons exercising powers and functions in relation to the use of resources are to take the principles of the Treaty of Waitangi into account. These principles are not a definitive list. They will continue to evolve and reflect changes in circumstances over time. We received no evidence which specifically addressed Treaty of Waitangi principles but there was compelling evidence from Te Uri o Hau witnesses and others that the development proposed by PPC166 would benefit the hapu and that they were looking forward to being able to use the potential of the land as a springboard to reach their vision of self-determination and parity with the rest of New Zealand. The land in question was purchased by Te Uri o Hau as a

part of the Treaty of Waitangi settlement negotiated with the Crown using money obtained as part of that package.

- 6.11 We were told that that purchase was made on the express understanding that the land was intended to be enhanced and commercially developed by Te Uri o Hau in order to provide for the ongoing wellbeing of Te Uri o Hau into the future. While that may be the case, it does not mean that development is an automatic consequence as Resource Management Act processes nevertheless have to be worked through.
- 6.12 No reason was provided to conclude that PPC166 does not take account of the Treaty principles. In fact the evidence of Te Uri o Hau witnesses strongly suggested that PPC166 is consistent with the outcome envisaged by the Treaty settlement.

National Policy Statements

- 6.13 The officer's report identified three national policy statements ("NPS") which are potentially relevant to PPC166. These NPS are
- Assessing and Managing Contaminants in Soil to Protect Human Health
 - Human Drinking Water Standard
 - Air Quality Standard
- 6.14 The section 42A report concluded that either the matters raised by the NPS can be more appropriately addressed at the time of subdivision, or do not apply. There was no evidence to the contrary and we accept the officers' conclusions in this respect.

New Zealand Coastal Policy Statement 2010 ("NZCPS")

- 6.15 In part 6 of the application documents TACL carried out an assessment of the proposal against the New Zealand Coastal Policy Statement provisions. A number of relevant policies were identified by this analysis. These include policies relating to preservation (and rehabilitation) of natural character, subdivision and development, avoidance of adverse effects on threatened species, provision of public access and open space, biological diversity, and control of vehicles on beaches. The applicant's overall conclusion was that PPC166 gives effect to the NZCPS by preserving the natural character and indigenous biological diversity of the coastal environment through limiting the subdivision yield to that already provided for by the District Plan in a location where it is most appropriate, in exchange for the vesting of a significant new area of coastal reserve.
- 6.16 The s.42A report agreed with the applicant's conclusions, subject to a number of changes proposed by the Council's experts particularly relating to the size and configuration of reserve areas. By the end of the hearing there was agreement between the applicant and officers as to those matters.
- 6.17 Planning consultant Burnette O'Connor drew our attention to policies 13, 14, and 15 in the NZCPS. She did not go so far as to say that PPC166 is contrary to these but that we should have particular regard to whether the PPC166 does give effect to them. Marie Alpe also addressed the NZCPS in her presentation. She referred to policies 3 (which requires a precautionary approach to use and development) and 11 (which requires the avoidance of effects on at-risk or threatened indigenous species and indigenous biological diversity). She believes PPC166 is contrary to these policies.

- 6.18 Our assessment is that PPC166 gives effect to the NZCPS in a number of ways. First, a substantial (both in length and area) reserve is proposed along the coastal margin. Second, a significant reserve along the Te Arai stream is proposed to provide both access and ecological linkages. Third, a revegetation programme is proposed before residential development occurs and such development shall not be visible from the beach. Fourth, subdivision in the area covered by PPC166 must provide funding for a ranger. Fifth, a Shorebird Management Plan and a Weed and Pest Management Plan will be required before any development proceeds on the land.

Proposed Auckland Unitary Plan (“PAUP”)

- 6.19 The Proposed Auckland Unitary Plan was notified for submissions after the close of submissions on PPC166 and preparation of the s.42A report, but before the hearing was held. The objectives and policies in the PAUP have immediate effect while the rules do not.
- 6.20 The Council officers provided a summary of the relevant objectives and policies and we have examined these to see how they might affect our decision. In general terms the objectives are designed to address –
- protecting historic heritage, historic character, and natural heritage
 - sustainably managing our natural resources
 - sustainably managing our coastal environment
 - sustainably managing our rural environment
 - responding to climate change.
- 6.21 After considering the matters summarised, we have concluded for the purpose of the PAUP that
- the scale of subdivision proposed is appropriate to the environment in which it is located
 - the proposed development will significantly enhance the ability of mana whenua to pursue their social and cultural objectives
 - the land has very little productive potential
 - the proposed development will be an efficient use of the land
 - public access to the coast will not be affected and access to the coastal environment (i.e. behind the coastline itself) will be enhanced
 - the remote coastal landscape character of the land will not be affected
 - significant habitats of indigenous plants and animals will be protected and enhanced
 - the protection of threatened shore birds will be assisted by the measures proposed by PCC166, and those measures will complement the existing, mainly volunteer, efforts
 - the subdivided lots will not require urban services and will not impose a burden on rural services such as roads
 - there is no scope to apply transferable development rights

- there is no risk arising from climate change/sea level.
- 6.22 Section 5 of the PAUP addresses issues of significance to mana whenua. PPC166 is entirely consistent with these provisions. The prime reason for the applicant proposing PPC166, as the latest in a line of applications for use of the land, is because of the desire of Te Uri o Hau, as the legal owners and also mana whenua, to be in a position to realise some reasonable financial return from their purchase of the land at Te Arai.
- 6.23 We were told about, and appreciate, the difficulties faced by Te Uri o Hau over many years relating to the future of this land. We understand that the mana and wellbeing of present and future members of Te Uri o Hau depends on a decision that will enable them to generate income for projects which will benefit their people in the long term and thereby support the social and cultural needs of Te Uri o Hau.
- 6.24 The PAUP contains a specific Te Arai North Precinct. Its objectives include the desire to maintain and enhance existing landscape, ecological, heritage, biodiversity values and riparian margins. The provisions include reference to development opportunities on the Te Uri o Hau land.
- 6.25 Having considered the relevant provisions of the PAUP we consider that PPC166 is consistent with and gives support to it.

Hauraki Gulf Maritime Park Act 2000 (“HGMPA”)

- 6.26 We sought confirmation that the Hauraki Gulf Marine Park Act 1991 includes the land subject to PPC166. This confirmation was provided by Mr Vari and Mr Scott. TACL referred to the HGMPA in its evidence and concluded that PPC166 will give effect to it. This was confirmed in the section 42A report and there was no other evidence to the contrary.

Auckland Regional Policy Statement

- 6.27 The Auckland Regional Policy Statement (“ARPS”) is relevant to consideration of PPC166. Chapter 2 in particular contains overarching strategic objectives and policies for managing regional growth. The Plan Change application, the section 42A report and a number of submissions as well as evidence presented at the hearing addressed the relationship of ARPS and proposed PPC166.
- 6.28 The two most significant ARPS policies relating to PPC166 are those dealing with urban development, and access to heritage resources including those having amenity and recreation value.
- 6.29 We consider that the weight of the evidence is that the development envisaged by the Plan Change for Te Arai is not “urban”. In general terms we note the amount of development proposed by PPC166 is similar to that presently anticipated by the District Plan by way of a discretionary or restricted discretionary activity application. The main difference between the existing District Plan provisions and PPC166 is that the Plan Change provides for an integrated and comprehensive development which includes provision of reserves and management proposals which in turn will ensure the removal of weeds and pests and thereby assist the survival of threatened shorebirds.
- 6.30 This leads to consideration of the second ARPS policy relating to heritage resources (chapter 6). The natural heritage of Auckland includes: indigenous flora and fauna, terrestrial, marine and freshwater ecosystems and habitats, landforms, geological

features, soils and the natural character of the coastline. The proposals contained in PPC166 for creating a coastal reserve and a riparian reserve, together with a planting plan, a weed and pest management plan, and a shorebird management plan will contribute in a major way to the achievement of this policy.

- 6.31 The section 42A report concluded that PPC166 is consistent with the ARPS and we agree with that.

Auckland District Plan: Rodney Section – Objectives and Policies

- 6.32 PPC166 does not propose any change to the existing objectives and policies in the operative District Plan. For that reason the s.32 analysis carried out for the application was not required to address whether “*each objective is the most appropriate way to achieve the purpose of this Act*” (s.32(3)(a)). However the section 42A report did contain an exhaustive analysis of the relevant District Plan objectives and policies as did Mr Hall’s material for the applicant.

- 6.33 The conclusions in the Council’s report are that PPC166 is broadly consistent with the objectives and policies. The report states

“The proposed provisions seek a scale and intensity of development which is broadly consistent with the current SEP provisions that apply to the site. The provisions sought also grant the Council a wide discretion to consider the matters listed in the above objectives and policies including matters associated with natural and rural character, biodiversity, special rural character, amenity values and cumulative effects. The Council would also retain the overall discretion to grant or decline any subdivision proposal (including the offer of a public reserve) enabled by the proposed scheduled activity after consideration of the above objectives and policies”.

- 6.34 We heard no evidence to the effect that PPC166 is inconsistent with the objectives and policies in the District Plan. We therefore conclude that while PPC166 has proposed new rules to provide for a new site-specific subdivision regime at Te Arai this does not conflict with the existing objectives and policies.

7.0 NOTIFICATION AND SUBMISSIONS ON THE PLAN CHANGE

- 7.1 The proposed Plan Change was notified on 3 November 2011 with the primary submission period closing on 19 December 2011. The further submissions period opened on 3 April 2012 and closed on 19 April 2012. Five further submissions were lodged with the Council. While the agenda prepared for the hearing had listed 8 parties as having lodged further submissions, three of those were actually primary rather than “further” submissions. The section 42A report had recorded on page 6 that 2,263 further submissions had been received. This is an error.

- 7.2 The total number of submissions lodged with the Council was 2,255 of which 583 were in support, 1,670 were opposed to the Change, and two were neutral. They were contained in nine volumes. The Commissioners resolved to strike out the submission of W Woods on the grounds that it contained rude and offensive language.

- 7.3 We pointed out during the hearing that the number of submissions that happen to be lodged on any resource management matter does not determine the outcome. As has been stated many times, including in Environment Court decisions, the Resource Management Act is not a numbers game. If it were otherwise, one well-considered and reasoned submission could not be expected to defeat a proposal.

- 7.4 When we raised the number of submissions which had been lodged with Ms Wild, she informed us that most of the opposing submissions had been generated from two websites with the intention being to persuade the Ministry for the Environment to fund those opposed to the plan change proposal in the event that there are any appeals later. In the reply to the evidence, Mr Holm characterised these as “virtual submissions”. A noticeable number of the submissions had failed to state any reasons for the decision being requested by individual submitters. Many submission forms had also been filled out by visitors and overseas tourists when attending a local market. The submissions in support were mostly pro forma, having been lodged by Te Uri o Hau beneficiaries from throughout the country.
- 7.5 The informality of many of the opposing submissions has caused difficulties for the Council as many also had incomplete and/or dated address details. It also transpired that a number of addresses included on the master index that was prepared as submissions arrived contained errors and these were not corrected before the index was forwarded to the Council’s Hearings team to facilitate that team’s preparation of the hearing agenda.
- 7.6 The main topics emerging from the submissions were: public access to the coast, provision of public reserves, effects on water quality, protection of ecological values, economic development, effects on recreational values, protection of remote and natural character values, effects on archaeological sites, and effects on the local road network including on the road surfaces. Despite the volume of submissions lodged with the Council, the issues for the hearing fell within a relatively narrow range: the potential effects on endangered birds at Te Arai, the prospect of development on the unspoiled Te Arai coastline and its effects on public access to and within the area, some infrastructure queries, and the benefits to be realised from future development for beneficiaries of Te Uri o Hau.
- 7.7 Deeper consideration of a range of issues was paid by the submissions lodged by parties such as the Department of Conservation, the Conservation Board, the Royal Forest & Bird Society of NZ and the Environmental Defence Society. As previously mentioned, the detailed submission lodged on behalf of TACL itself sought amendments to the content of the Change as it had been notified.

8.0 PRINCIPAL ISSUES IN CONTENTION AND ASSOCIATED FINDINGS

- 8.1 The range of issues traversed at the hearing was narrower. The focus for debate was on protection of endangered species and technical questions relating to other matters were raised by the Commissioners. We also heard detailed evidence of the history and aspirations of Te Uri o Hau and we discuss this first. That discussion is followed by our findings on the issues that were actively raised during the course of the hearing.

Cultural effects

- 8.2 The section 42A report provides a useful summary of cultural effects. It records that Te Uri o Hau is a Northland hapu who have strong historical and genealogical connections with Te Arai. Their kaitiaki responsibility was recognised by the Te Uri o Hau Settlement Act 2002. The Te Uri o Hau Settlement Trust is the legal entity established to receive and manage the settlement package negotiated with the Crown following a Waitangi Tribunal inquiry into historical grievances. Te Uri o Hau purchased the Te Arai land from the Crown with money that formed part of the settlement package. The land was intended to be improved and developed by Te Uri o Hau in order to provide for the ongoing social and economic well-being of the hapu.

Te Uri o Hau has partnered with New Zealand Lands Trust for the development of Te Arai and together these parties are the applicant, Te Arai Coastal Lands Ltd (TACL).

- 8.3 The Plan Change is intended to provide a development outcome which will give a return to Te Uri o Hau, and enable the hapu to provide for the economic, social and cultural wellbeing of its people. As a development partner with kaitiaki (responsibility) over the site, Te Uri o Hau will ensure that development is appropriate with respect to Maori cultural values.
- 8.4 Evidence was presented on behalf of Te Uri o Hau by three witnesses. Ms Deborah Harding, the acting Chief Executive Officer of the Te Uri o Hau Settlement Trust, described the Trust, the iwi's aspirations, and the benefits that the proposed plan change would have for the hapu and the wider community. She emphasised that their intentions for the property had been signalled to both local authorities¹ and government departments before and after the Treaty settlement. Without development of the land proceeding, the Trust's stance is that Te Uri o Hau will then be denied the benefits intended by the Treaty settlement.
- 8.5 Ms Harding told us that the pine forest previously located on the land behind the Te Ari foreshore did not provide a sufficient economic basis for providing for its beneficiaries in accordance with the Trust's vision and responsibilities. She stressed the importance of the PPC166 is that it will provide the means to unlock the benefits flowing from the proposed development while enabling Te Uri o Hau to carry out its kaitiaki role; being a role which encompasses the whole Te Arai area, extending to the beach environments and shore birds in particular. Te Uri o Hau are determined to have an ongoing kaitiaki role with management of the reserve after vesting through conducting the shore bird management/monitoring initiatives and other activities.
- 8.6 Mr Russell Kemp is a trustee of the Te Uri o Hau Settlement Trust, a director of Te Ari Coastal Lands Limited and also of Renaissance Group Limited. He gave evidence of the Treaty settlement, its relevance to the land at Te Arai, and the challenges Te Uri o Hau have faced in attempting to provide for development of their Te Arai land. The Te Uri o Hau Deed of Settlement was finalised on 13 December 2000 and the goal for Te Uri o Hau was to secure assets and finance that could serve to improve the wellbeing of its beneficiaries so that they could be on an equal footing with other New Zealanders. The expectation was that Te Arai could support a commercial development and he said that was the basis on which the land had been purchased from the Crown. It has now been 10 years since the land purchase and as a direct consequence of the development hurdles faced since then, Te Arai is now a cost burden for the hapu.
- 8.7 Mr Kemp told us Te Uri o Hau have occupied this area since Māori first settled in New Zealand. The Treaty claims process ensured that their relationship with this area was formally recognised. Their desire is to use their land in Te Uri o Hau's rohe for the benefit of their people, as happened for centuries (albeit in a different manner).
- 8.8 Mr Mikaera Miru, the Kaiarahi of the Maturanga Maori Education Transformation Project for the environmental arm of Te Uri o Hau, provided a cultural assessment of PPC 166. His evidence included a summary overview of the Te Uri o Hau's rohe and whakapapa and, in particular, he gave an overview of the Te Arai sites of cultural significance. His view was that PPC166 and the resulting development would produce the following positive cultural impacts:

¹ Rodney District Council and the Auckland Regional Council

- i) Ongoing protection and recognition of cultural footprints
- ii) Recognition of kaitiakitanga, especially in terms of the proposal for co-management of the proposed reserve area, and
- iii) Enabling kaitiaki nga manu – protection and enhancement of bird habitats and to assist with ensuring their survival.

8.9 Mr Miru also identified that there could potentially be negative cultural impacts on:

- i) The four known midden sites and the midden/terrace/firescoop site;
- ii) Potential archaeological finds which may be discovered when works are conducted on the site in the future; and
- iii) The cultural significance of Te Arai Point.

8.10 He recommended a series of measures to address the potential cultural impacts which have been advanced through the proposed Change. He was satisfied that any negative cultural impacts could be avoided or mitigated through the location of the development to avoid the midden sites and Te Arai point; implementing measures to recognise and protect the middens; the presence of kaitiaki onsite during earthworks; and compliance with a cultural monitoring protocol.

8.11 Submitters also referred to Te Uri o Hau's position. Dr David Griffiths' written submission on the Change stated that developing around the beach would be "gravely at odds with the stated claims the tribe have to a stewardship relationship with its ancestral land". His submission stated that as a matter of law Maori interests cannot operate as an absolute veto over land development in modern New Zealand, and the corollary of this legal fact is "that asserted Maori interests cannot be used as a knockdown argument to force land development to go ahead".

8.12 On the other hand, the submission lodged by the late Owen McShane included the following statement:

"It seems to me that proposed outcome of those opposing the Proposed Plan Change is to deny Te Uri o Hau of that reasonable use on the grounds that the area of land has greater value to the people of Auckland as a park for conservation purposes. ... Therefore I am concerned that the Te Uri o Hau will be deprived of their reasonable rights and therefore can only support those opposing reasonable use if compensation payable is pre-negotiated so that all parties are aware of what costs and benefits they will incur and who will pay the compensation costs".

8.13 The Resource Management Act does not provide for a compensation regime.

8.14 Ms Marie Alpe appeared at the hearing and said she appreciated that her position was odds with that of Te Uri o Hau. She said she was genuinely sorry that Te Uri o Hau would be in a position where a new grievance could be created because their ability to derive sufficient economic benefit would be restricted if the proposed Plan Change proposal did not proceed. She hoped that alternatives could be found. This sentiment was repeated by a number of submitters in opposition. For instance, Ms Christine Wild suggested a mechanism to resolve the situation could be for subdivision rights to be transferred to another area or the current SEP provisions could be utilised.

- 8.15 It was evident to us that, while there was some appreciation of Te Uri o Hau's economic position, there was a very poor understanding of the mana whenua relationship of Te Uri o Hau with Te Arai and their need to be able to exercise a kaitiaki role, while achieving an economic return at the same time - albeit a greatly reduced one from the original expectation. The transfer of subdivision rights advanced as a possible solution would require third party input and we cannot place requirements on a third party; furthermore there is no certainty that any such transfer would necessarily occur in Te Uri o Hau's rohe.
- 8.16 The recently notified PAUP includes a series of objectives which address tangata whenua under the following headings:
- Recognition of Te Tiriti o Waitangi partnerships and participation;
 - Recognising mana whenua values through integrating *mātauranga* and *tikanga* in the sustainable management of Auckland's natural and physical environment.
- 8.17 We agree with the closing legal submission on behalf of TACL that the proposed Unitary Plan:
- (a) Strengthens the recognition to be given to Maori aspirations to develop commercial redress land subject to relevant environmental considerations and processes;
 - (b) Retains the existing provisions for subdivision – i.e. through SEP or creation of reserve;
 - (c) Provides a new precinct for Te Arai which recognises that the special characteristics, opportunities and constraints of Te Arai require a customised approach.
- 8.18 After considering all of the representations put to us we have concluded that PPC166 has been tailored so that it will:
- Create a significant reserve area, especially at Te Arai Point;
 - Allow Te Uri o Hau to express mana whenua in its own rohe;
 - Result in a scaled back development that should nevertheless afford the opportunity for economic redress for Te Uri o Hau as well as an ongoing involvement; and
 - provide for an active and ongoing kaitiaki role.
- 8.19 As modified following notification and subsequently, the proposal now meets many of the concerns expressed by submitters in opposition, especially the prime concerns of protecting the coastal margin and the southern Te Arai point area, and the protection of shorebirds. We agree with Mr Miru and the section 42A report that the proposed measures will be generally positive in terms of cultural effects.
- 8.20 During the course of the hearing it was revealed that Te Uri o Hau has prepared a Hapu Environment Management Plan entitled "*Te Uri o Hau Kaitiaki o Te Taiao – Hapu Environmental Management Plan*". This plan was lodged with the Auckland Council earlier this year, with its receipt having been formally acknowledged by the Council's Auckland Plan Committee on 13 August 2013.

- 8.21 The closing submissions noted that when changing a district plan a consent authority must take account of any relevant planning document recognised by an iwi authority and lodged with the relevant council to the extent its content has a bearing on the resource management issues for the district. The Te Uri o Hau Settlement Trust is the mandated representative body for this hapu. However, it is not an “iwi authority” in the sense intended by the Act. On behalf of TACL Mr Holm submitted that given the terminology used in the relevant sections of the Act, caution is warranted in terms of the Commissioners being bound to take the hapu environmental management plan into account, but nevertheless it is highly relevant material to weigh alongside all the relevant evidence presented. We have treated it that basis.
- 8.22 Policy 44 of the Hapu Environmental Management Plan specifically addresses the proposed development at Te Arai, including this stated objective which closely mirrors section 5 of the Act:
- “Development of Te Uri o Hau commercial redress properties at a rate and in a manner that is economically and environmental sustainable for future generations”.*
- 8.23 After considering the content of the Hapu Environment Management Plan, Mr Hall’s opinion was that the policies, objectives and methods it contains are consistent with and support the Plan Change. No contrary view was advanced.
- 8.24 In reaching our conclusion on this aspect we have taken into account the specific provisions relating to tāngata whenua under Part 2 of the Act, namely sections 6(e), 7(a) and 8 matters (outlined earlier). We accept, and acknowledge, that Te Arai is in Te Uri o Hau’s rohe, that there is a long and uninterrupted history of association, and that the hapu need to actively exercise their rights of mana whenua. We recognise the frustration that Te Uri o Hau has faced as successively, over a period of many years, they have attempted to tailor various proposals to meet both planning requirements and the concerns of objectors. What submitters did not appear to recognise, or perhaps avoided acknowledging, is the unique Māori view of the world, their relationship with their land, and the relationship of their culture and traditions with all natural and physical resources with its basis in whakapapa; coupled with their concern over the mauri of this area and their ongoing kaitiaki role in it.
- 8.25 We have concluded that PPC166 will foster Te Uri o Hau’s aspirations and, for reasons set out elsewhere, that the development PPC166 envisages will be undertaken in a sensitive manner with due regard for the cultural and natural qualities of this area with valuable input from those who have centuries of association with this land.
- 8.26 However, the fact that Te Uri o Hau may aspire to benefit financially from any subsequent development of this land is not relevant to our decision – any land developer hopes to do that, irrespective of who they may happen to be. Whether any profit will be realised from a project, or how a particular proposal might be financed, are not resource management considerations. It would therefore be incorrect to suggest that our overall conclusion that PPC166 should proceed has been based on that particular aspiration of Te Uri o Hau has been based on a ‘.. *knockdown argument to force land development to go ahead*’.
- 8.27 We turn now to the issues directly concerned with the effects on the environment of this plan change proposal and whether it represents an opportunity for the sustainable management of the natural and physical resources of Te Arai.

Outstanding Natural Landscape (“ONL”)

- 8.28 Ms de Lambert confirmed that an ONL applies to the coastal foreshore of the site and had been identified, initially, in a 1984 Regional Landscape Assessment and confirmed in the 2006 Auckland Regional Landscape Review resulting in its inclusion in Change 8 to the Auckland Regional Policy Statement. She explained that the “*broadly delineated ‘desktop’ ONL line on the ARC maps*” has subsequently been more specifically defined on the site through detailed field observations of the line of change between production forest and foredune vegetation cover.
- 8.29 The ONL line is shown on a number of plans provided to us. In the area south of the golf course it is close to, or seaward of, the 200m minimum setback line of the Shoreline Yard, except in the vicinity of the Te Arai Stream mouth. Here it continues across the 200m setback line for a short distance on the northern side of the stream but across a larger area to the south of the stream. The whole of the ONL to the south of the golf course is contained in the proposed reserve in the final iteration of the proposed PPC 166 plan.
- 8.30 In contrast, the ONL in the golf course area is almost entirely on the landward side of the proposed reserve boundary, although it is entirely within the 200m setback. As vegetation removal along the coastal edge of the golf course has already occurred, it was impossible for the Commissioners to determine what vegetation has been removed from the area between the ONL line and the proposed reserve boundary. We do note, however, that a significant portion of this ‘gap’ is proposed to be planted as part of the 24ha of Significant Enhancement Planting required as part of the golf course project, as shown on Mr Hall’s Annexure 1.
- 8.31 No evidence was provided by submitters to contradict Ms Lambert’s findings in relation to the ONL. We find that in adopting the revised PPC provisions offered at the close of the hearing, the ONL will be protected during future development work. Although vegetation clearance appears to have already occurred on northern parts of the ONL, this has been allowed either by the golf course consent or as a permitted forestry activity. We note that further enhancement of the ONL area will be undertaken as part of the reserve revegetation proposed under PPC 166 and it is conceivable that were the ONL to be re-identified at some point in the future, once native species have been established across the reserve, it may extend further inland in some places than it does at present.

Natural character

- 8.32 Natural character is a relevant consideration not only because it was raised numerous times in submissions opposed to the Plan Change but also because preservation of the natural character of the coastal environment is required by section 6 (a) of the Act. Protection of outstanding natural landscapes from inappropriate subdivision, use and development is a requirement of section 6 (b).
- 8.33 Ms de Lambert explained that the proposed vesting of the full length of the site’s coastal frontage, including almost all of the Outstanding Natural Landscape, as reserve through PPC 166 is a significant mechanism for recognising and preserving the natural character of the coastal environment.
- 8.34 Having been planted in production pine forest in the 1960s to stabilise the natural dune system, the site is clearly a modified natural environment. Enhancement of the natural character of the coastal environment is facilitated through PPC166 by retention of the sand dune landform in the coastal reserve; identification of defined development areas where residential development can occur; and the replacement of

production pine forest and associated undesirable exotic species in the coastal reserve with locally appropriate native dune species that will also improve indigenous biodiversity.

- 8.35 Ms de Lambert also confirmed that the beach will retain its unbuilt, natural character and dominant coastal qualities, even after the residential development has been completed. Our site visit to the area already under development as a golf course confirmed that where pine trees have been removed, the natural character of the adjoining coast has already been enhanced to some extent.
- 8.36 Although some of the written submissions and those who appeared before us suggested that the natural character of the coast would be undermined by residential development on the land, no independent and objective evidence was provided to support of this contention. We find that in adopting the revised PPC provisions offered at the close of the hearing, that the natural character of the coastal environment on and adjoining the site will be enhanced.

Provision of Reserves

- 8.37 At the time PPC166 was notified, it contained a site-specific rule which would have enabled subdivision in return for additional reserve land. The extent of subdivision was proposed to be calculated in accordance with the maximum entitlements provided for in rule 17.14.4.3(b) of the District Plan in return for establishment of native re-vegetation under the significant enhancement planting provisions of the District Plan. As noted in the s42A report, when compared with the existing subdivision entitlements under the SEP provisions, one of the differences in the proposal was:

The requested rule would result in a large area adjoining the CMA/marginal strip and the existing Te Arai Point Reserve being in public ownership, available for recreation or scientific/ecological purposes or a combination of both. However, the land would not be improved and the commercial pine trees within the site would remain on site and any maintenance or felling of the trees or improvements to the land would therefore become a Council responsibility. Under the SEP rule, the land would be in private ownership but would be planted in native vegetation in accordance with the native vegetation planting standards in section 7.14.2 of the District Plan. It would result in high biodiversity/ecological values but no public access or use.

- 8.38 The TACL submission on the Change sought greater flexibility to enable the same maximum development yield by using a combination of subdivision for creation of additional public reserve and subdivision for SEP. Importantly, the same area of reserve, 172ha, was still to be provided under these revised provisions put forward in its submission.
- 8.39 A number of submitters queried the location of the proposed reserve and exclusion of the coastal strip adjacent to the northern part of the site where the golf course is currently being constructed. As a result of its discussions with DOC, the Royal Forest and Bird Protection Society, the Environmental Defence Society and the New Zealand Historic Places Trust, TACL further modified the changes it was seeking to PPC166 including substantial changes to the location of the proposed reserve which are explained elsewhere in the decision.
- 8.40 By the end of the hearing and in response to amendments to the reserve sought through the s42A report and to questions from the Commissioners, further changes had been made to both the PPC166 provisions and the location of the reserve areas.

As noted in the closing submissions on behalf of TACL there will no longer be any provision to allow a mixture of SEP and reserve creation with the consequence that the subdivision will be based entirely on the creation of new reserve and that reserve will be 172 ha; and configuration of the reserve areas had been amended to a hybrid of that proposed by the Council in its report and that proposed by TACL.

- 8.41 We find that the revised reserve area will provide an appropriate connection between the Mangawhai Wildlife Refuge to the north of the site and the Te Arai Point Reserve to the south, encompassing the whole of the sensitive foredune area, except for those parts already affected by the golf course development works. Additionally, it will provide a connection between the neighbouring Coal Hill Road Wetland and the coast, along the margins of the Te Arai Stream.
- 8.42 The final PPC166 provisions also include a requirement for the full width of the reserve along the coastal edge and the riparian margins (50m width) each side of the Te Arai Stream reserve to be cleared of production forest and re-vegetated in appropriate native species.
- 8.43 As well as the 172ha of reserve to be provided, the PPC166 provisions also require restoration and ongoing protection of a 4.26ha wetland and surrounding 1.4ha buffer area on the north-western edge of the site. Before any sites are created on the property, the perimeter of the wetland and buffer must be fenced; a comprehensive weed and pest management plan and a planting plan must be prepared and undertaken prior to titles for the sites being issued; and the whole area is to be protected in perpetuity by way of a covenant.

Public Access and Circulation

- 8.44 A number of submitters were concerned about the public gaining access to the more sensitive dune areas of the site and the potential impacts of that on rare plants and animals, and particularly on shorebirds in the area. In response, several TACL witnesses commented on the proposed public access in and through the site. In particular, Mr Darby provided a plan (his Appendix 1A) which indicated the existing carparks, access points to the beach and forestry trails, and which identified the locations of those which will form part of the public circulation network in future.
- 8.45 Following the changes to the reserve areas we described earlier, Mr Hall described how the public access network is now envisaged by the PPC166 plan Appendix 14AL (attached). A public track will be created near the western boundary of the site from the reserve frontage to Pacific Road circulating through the reserve to the north of Te Arai Stream and connecting with the beach at the existing access point to the south of Pacific Road shown on Mr Darby's Appendix 1A.
- 8.46 Connecting with this track and running along the eastern edge of "Development Area B" will be a 50m wide buffer area where public access will be provided, either on private land or on additional reserve land, running across Pacific Road and as far north as the boundary of Lot 1 where there is another, existing access point to the beach. The final provisions also included a requirement for the existing public easement over Pacific Road itself to be widened to an average width of a least 50m to allow for safe public access by foot, bike or horse.
- 8.47 A similar loop track is also anticipated to the south of the Te Arai Stream, connecting with the existing Te Arai Point Reserve both to the west and east of "Development Area A", running along the Te Arai Stream but outside the ecologically sensitive riparian margin and connecting with the existing beach access point shown on Mr Darby's appendix.

- 8.48 Generally, we find that provision of public access through the site and to the beach, as just described, is appropriate. However, we were informed by Mr Reg Whale, the voluntary pest trapper who works on behalf of both the Te Arai Dotterel Care Group and the New Zealand Fairy Tern Trust, that the existing indicative access point to the beach south of Pacific Road and north of Te Arai Stream, is too close to nesting areas of the NZ dotterel at the Te Arai Stream mouth.
- 8.49 The Commissioners visited this access point as part of our site inspection and were able to see dotterel from the foredune summit. We accept Mr Whale's advice that the current indicative access point is an inappropriate location for public access to be provided to the beach and accordingly require the point of public access to the beach closest to the Te Arai Stream on its northern side to be further north than the existing one.
- 8.50 In support of this we note in the Draft Shorebird Management Plan discussed in Dr Bull's evidence, under 3.2 Shorebird and Habitat Protection, there is a requirement in 3.2.1 that "*formal access points to the beach will be restricted to a minimum 500m from the Te Arai Stream mouth*". The distance of the access point on Mr Darby's Appendix 1A is only around 100 metres, so the 500m distance Dr Bull referred to could logically not be achieved. We prefer the evidence of both Dr Bull and Mr Whale in this regard. The exact location of the five public access points is a detail that will be finally confirmed when the reserve area is vested, subject to the access closest to the Te Arai Stream being at least 500m north of the stream mouth, but we expect them to be generally in the locations indicated on Mr Darby's map.

Ecology and endangered species

- 8.51 The Te Arai area is home to a number of threatened or endangered flora and fauna species or at-risk species. The Council's ecological assessment of the proposed Change was prepared by ecologists Dr Seabrook-Davidson and Dr Lovegrove who provided a full description of the ecological values at Te Arai, including:
- Dune systems, which were regarded as largely unmodified and with high ecological value including threatened shore skinks, pacific gecko, green gecko and katipo spiders. Threatened plants, including sand tussock, pingao, sand coprosma, sand dune kanuka. Some of the species live on the coast, some in the dunes and forested areas, and some in the wetland and riparian areas;
 - The "Marsden Road wetland" near the north-western end of the site which is considered significant due to its abundance of native plants and wetland fauna;
 - Threatened species - including eight shorebird species (variable oyster catcher, pied stilt, New Zealand dotterel, banded dotterel, Caspian tern, white fronted tern, New Zealand fairy tern, banded rail, and grey duck). The ecologists regard Mangawhai and Te Arai as one ecological unit for shorebirds and other taxa because both sites form part of the normal home ranges of several species, including fairy terns, New Zealand dotterels and variable oystercatchers. Some of the species live on the coast, some in the dunes and forested areas, and some in the wetland and riparian areas. With respect to the NZ fairy tern, the ecologists recorded:

This stretch of coastline is especially important for the Nationally Critical fairy tern, New Zealand's rarest breeding bird (which in 2012-13 had a total adult population of just 27 birds including only 10 adult females), and the Nationally Vulnerable New Zealand dotterel. It is the single most important breeding site globally for both species, supporting 5 of 10 known breeding pairs and the

largest post-breeding flock site of the fairy tern, and 40-45 pairs of NZ dotterels (c.6% of global population)). While fairy terns and NZ dotterels are vulnerable to introduced predatory mammals, and also to domestic cats and dogs at their breeding and roosting sites, the proposed development also poses significant risks to both species through increased human disturbance. Shorebirds are known to suffer negative effects from human disturbance both in New Zealand and overseas.

- 8.52 The particular focus for the hearing was the fairy tern and the NZ dotterel. The local fairy tern population is eight to 10 breeding pairs and the total world population is around 30 to 40 birds. The NZ dotterel is more numerous with around 2200 individuals here.
- 8.53 Fairy terns are critically endangered. They nest at only four sites in the North Island of New Zealand. One of these sites is the Mangawhai Wildlife Refuge, which is 100m north of the northern boundary of the PPC166 site. There was great anticipation last year when a breeding pair took up residence at the Te Arai Stream mouth and two eggs were then laid, only to disappear one night before they hatched.
- 8.54 In the Change as lodged with the Council, TACL had relied on a previous ecological assessment undertaken by Boffa Miskell Limited. That assessment acknowledged the numerous ecological values on the site and its adjoining coastal margins, including threatened and endangered shorebird species. The proposed location for subdivision and development is at least 1km from the nesting areas for fairy terns in the DOC administered Mangawhai Wildlife Refuge (to the north) and the feeding/resting area at the mouth of the Te Arai Stream would be included in the proposed reserve. The assessment also recognised the need to impose restrictions on residents keeping cats and dogs. These restrictions could be imposed at the subdivision stage.
- 8.55 At the hearing Dr Bull provided an overview on behalf of the applicant of the ecology of the Te Arai property. Her opinion was that the subdivision outcomes enabled by the Plan Change would have a number of ecological benefits including establishment of an ecological corridor from the coast past the Te Arai stream and through to the Coal Hill wetland, would provide a level of certainty in relation to the location of development, and would also ensure protection of the ecological values, species and habitat at Te Arai and the surrounding environment.
- 8.56 Dr Bull noted that a shorebird management plan had been prepared which had sign-off from the Department of Conservation, the Environmental Defence Society and the Royal Forest and Bird Society. Her opinion was:
- “The proposed plan provisions of PPC166 and the subsequent consent processes required for any subdivision development will appropriately deal with all of the ecological issues raised by submitters and ... the proposed plan change provisions are appropriate for the Te Arai site”.*
- 8.57 Evidence given by Dr John Craig for TACL specifically addressed the Te Arai birds. His opinion is that the greatest threat to indigenous wildlife comes from introduced pests such as rabbits, cats, rats, mustelids, possums and hedgehogs. He said it is only because people are actively engaged in managing these pests that allows many of our native birds and plants to survive.
- 8.58 Thus Dr Craig said the survival of the NZ fairy tern is dependent on human intervention. Without that intervention the species will become extinct in the short term. Evidence of this can be seen at Te Arai in the success of the trapping

programme being carried out by the New Zealand Fairy Tern Charitable Trust, the Te Arai Dotterel Care Group and the voluntary ranger system which has seen an increase in the number of fledglings.

- 8.59 Dr Craig commented on what he termed as inaccuracies in the Council's ecological report regarding use of the PPC166 site as a breeding area, pointing out that the majority of New Zealand dotterel pairs and all of the NZ fairy tern pairs actually breed in the Mangawhai Wildlife Refuge. The closest public access to the beachfront of the subdivided area will be 2 kilometres south of the boundary with the Mangawhai Wildlife Refuge.
- 8.60 His view was that inaccuracies in the ecologists' report purported to show Te Arai as being more important than it actually is. He said the beach frontage of the area covered by PPC166 does not support more than 1% of NZ fairy terns and in a few years time would it have 1% of NZ dotterel. By contrast, the Mangawhai Wildlife Refuge supports more than 1% of both.
- 8.61 Dr Craig's opinion was that PPC166 will provide major advantages for rare birds that breed and feed in the wider Te Arai – Mangawhai area. The most important provisions included pest control throughout the PPC166 area along with financial provision being made for a Shorebird Management Plan that would specifically provide for wardens to care for the birds. He concluded that the proposed Change contains all the necessary features to ensure the outcome for the birds will be positive. He supported this conclusion by recording that even with current management interventions 40% of eggs and chicks are being lost to predators. The Plan Change would allow for the extra care required to assist the birds and to mitigate the negative effects (especially predators) that currently exist in this area.
- 8.62 Various conservation and protective measures were proposed by the Plan Change as originally drafted and were later amended by TACL as a result of discussions with the Council and other parties. In summary, the final details of the proposed measures are:
- creation of a reserve extending along the entire beach frontage of the applicant's property and including all the foredune
 - creation of a riparian reserve along the Te Arai Stream
 - an indigenous planting programme, particularly on the dunes
 - a ban on inappropriate domestic pets
 - a weed and pest management plan
 - a shorebird management plan
 - provision for funding a conservation ranger
 - protection of wetland areas
 - restricting access over the dunes to specified locations.
- 8.63 Most of the submitters who appeared at the hearing belong to the groups which have been established to protect indigenous fauna and flora at Te Arai. Put simply, the dominant concern of these people, and also many submissions in opposition, is that the 46 new houses and the people who will live in them will put extra pressure on the rare and endangered species. They also fear that the proposed 46 houses may not be the end of development of this area. In summary the opposing views expressed to us on this issue were:

- Ms Christine Wild, a bio-geographer, informed us that humans are considered predators by both the New Zealand dotterel and the fairy tern, and that studies have demonstrated that human disturbance negatively affects shorebirds by modifying key behavioural traits which are crucial to their survival and reproduction. The foremost effect of PPC166 is the change in people present on the beach which is currently limited by the Pacific Road carpark (30 car spaces), and increased visitor numbers resulting from PPC166 which would lead to increased disturbance. The second major environmental impact is the change from a pine forest ecosystem to a housing development as human habitation would bring an increase in pests. Ms Wild questioned the overall net ecological benefit to be derived from PPC166. She concluded by noting that Te Arai has outstanding natural and amenity values and potential risk to its environment or its species “should not be permitted in an attempt to sort out human grievances”.
 - Mrs Heather Rogan presented us with an overview of the work of the New Zealand Fairy Tern Charitable Trust noting the conditions required for successful breeding. She pointed out the importance of predator control and the vital criteria associated with breeding success, namely suitable nesting sites near foraging areas. Her view was that the Te Arai Stream mouth at the site is an ideal area for the fairy tern to expand its breeding sites. She concluded by advising that the Trust supported the finding of the Council’s ecologists that the safest option is to maintain the status quo.
 - Dr Kirsty Wild’s view was that Te Arai is the last chance for the Fairy Tern. If development proceeds she envisages there will be a problem in managing the presence of humans. She believes the present exotic forestry land use strikes the right balance in enabling a financial return on the land without destroying the “extremely sensitive” coastal environment that adjoins it. She suggested the developer has a poor environmental record. Dr Wild (and others) also noted that there is no evidence that dog and cat free subdivisions work.
 - Mr and Mrs Whale described their experiences working with Fairy Terns and their observations of the pair that attempted to breed at the Te Arai Stream mouth during the last breeding season. Their view was that no mitigation could stop the impact of humans.
 - Ms Jennifer Hendrickson’s opinion was that building houses in the area is not compatible with the concept of enhancing the natural environment. She said Mangawhai already has a surplus of house sites for sale, most of which are located conveniently near necessary services and not near habitats of endangered species. She expressed concern that proposed replanting of the pines with other species will not be successful due to the sandy nature of the soil coupled with exposure to strong salt-laden winds;
 - Ms Jan Gillespie told us she was representing the fairy tern and that housing will inevitably increase human activity in the area. She said fairy terns need isolation, and that the people of Te Uri o Hau have already profited sufficiently. They need to let the fairy tern have their isolation and a chance to live in her opinion.
- 8.64 Thus a particular concern for those who appeared is the potential for extended periods of disturbance to nesting and chick rearing dotterel and fairy terns. With the beach currently being used only by day-trippers, the dotterel and fairy tern have

some respite from daytime disturbance and feed during summer evenings. With permanent residents close by and with ready access to the beach available to occupants of the 46 houses, the submitters were concerned that increased disturbance and stress could result in the abandonment of nests and loss of chicks.

- 8.65 Another concern they have is whether a cat and dog prohibition would be effective. During the hearing, and in response to both submitters and questions from the Commissioners, the applicant proposed extending the prohibition to include “inappropriate domestic pets”. We attempted to elicit evidence about positive and negative experiences with this form of control but had little success. However, the measures proposed by PPC166 differ from a normal situation. In this case the new owners will be advised of the prohibition at the time of purchase and that it will be secured by way of a covenant. Rules to be set up by the landowner will also require them to contribute financially on an annual basis, in perpetuity, for a ranger, and to both the weed and pest management programme and the shorebird management plan. This gives certainty to the conservation programme and assigns responsibility for it to an identified individual (or individuals). In our view this is an advance on the current, mainly voluntary, system.
- 8.66 It is clear that increased human disturbance is one of the key effects to be addressed by both the design and management of the reserve adjoining the residential development along with the proposed covenants and financial contributions that will be required from future owners. The section 42A report reflected the concern that the increased numbers of people at the beach could place more pressure on shorebirds and said there was already evidence of human disturbance of the dunes and shorebirds at Te Arai. The adverse effects of human disturbance described to us include:
- Disruption of natural bird behaviour patterns;
 - Trampling or destruction of nests, eggs and chicks by humans or their pets;
 - Trampling and disturbance of other dune fauna such as lizards and invertebrates;
 - Trampled dunes which would then be more susceptible to wind erosion creating blowouts;
 - Crushing of fragile dune plants.
- 8.67 However the context of the proposed change must be borne in mind when considering the magnitude of such effects. PPC166 will allow no more than 46 houses and it is reasonable to assume that not all of them will be occupied permanently or even at the same time. We note also that public access across the dunes is to be restricted to five defined points. Our assessment therefore is that the number of extra people occupying the new houses who may then visit the dunes and the beach will be small in comparison with the existing situation. The number of people who visit this beach was highlighted by the hundreds of submissions in opposition which stated that the submitters concerned spend at least part of the summer season there.
- 8.68 There was no dispute that this coastal margin has high ecological values or that this stretch of coastline is especially important for the nationally critical fairy tern and other endangered shorebirds. We acknowledge the volunteer work (bird monitoring, predator control, etc) undertaken by the New Zealand Fairy Tern Charitable Trust, the Te Arai Beach Preservation Society and community members, particularly Mr

Whale. But we were not persuaded by the submitters in opposition that this proposed plan change would automatically result in the apprehended adverse effects, particularly when the conservation and protective measures that have been proposed are taken into account.

- 8.69 Nevertheless, this issue is finely balanced. No one can ever be certain that the domestic pet prohibition measures will be completely successful but having considered all the evidence that was provided we consider that the potential benefits for the wildlife outweigh the risk of failure. We also consider that the risk with doing nothing is that the NZ fairy tern in particular will become extinct as the measures to save it appear to depend on the energy of a handful of people and their skills as fund raisers. We did not hear from the Department of Conservation as to how it intends to carry out its fairy tern recovery programme but we do note that the Department now supports the plan change proposal.
- 8.70 The section 42A report supported amendments to PPC166 restricting vehicle and pedestrian access to the beach and recommended further amendments to convey the ecological importance of restricting human and vehicle access to the beach more strongly. These amendments were adopted by TACL and we agree with them.
- 8.71 We agree also with Mr Holm's final submission, which relied on Dr Craig's conclusion, that if development proceeds the proposed Plan Change will supply major advantages for the rare birds that breed and feed in the wider Te Arai – Mangawhai area. We find that PPC166, with the revised reserve area of 172 hectares, strikes the right balance between coastal protection, conservation values and a development that should ultimately enable an appropriate subdivision while at the same time protecting and potentially enhancing the sensitive coastal environment, the Te Arai Stream margin, and providing for endangered shorebirds through the shorebird management plan and the measures it contains. If the proposed development proceeds with all of the proposed conservation measures, including a requirement that many of the measures must be locked in before any houses can be built, we consider the proposed development will be a positive contribution to the protection and enhancement of the coastal environment of Te Arai and the indigenous flora and fauna that lives in it.

Gardens and planting

- 8.72 Some submissions in opposition referred to risks associated with residential development in ecologically sensitive areas and the apprehension that exotic and inappropriate plant species would be introduced to gardens and then 'escaping' to become pest plants. The Council's ecological evaluation report (Appendix 10 of the s42A report) addressed this issue and supplied recommendations as to how the risk should be managed through the PPC166 provisions. The evaluation recommended that an additional rule and an additional assessment criterion be added to the proposed provisions. These read:

Plants listed in the Auckland Regional Pest Management Strategy (including the research list) are not permitted in the development in private gardens or amenity plantings; and

The adequacy of measures to ban plants listed in the Auckland Regional Pest Management Strategy (including the research list).

- 8.73 Both were included in the final version of the PPC166 provisions provided at the end of the hearing. We find that those proposed provisions appropriately address the risk of exotic plants becoming problem pests at Te Arai.

Helicopters

- 8.74 The impact of potential helicopter use was raised by the Commissioners during the hearing. We inquired whether there were any specific rules controlling use of helicopters on the site and in particular whether such use would impact on shorebirds negatively.
- 8.75 The closing submissions addressed this query noting that planners for both the Council and the applicant had discussed the issue and agreed:
- There are no specific rules in the District Plan that relate to helicopters;
 - Landing on private land is permitted by the Rodney Section of the District Plan provided the applicable district plan noise controls can be complied with at the site boundary;
 - A designated heliport would require consent;
 - A commercial operation where use of a helicopter is an integral part of that operation would also require consent;
 - The existing controls in the District Plan are sufficient and there was therefore no need to include a rule in the Plan Change regarding use of helicopters.
- 8.76 The final submissions drew attention to Dr Craig's response to our questions about helicopters when he had pointed out that shorebirds quickly adapt to them. He illustrated this by referring to a project where he had been required to review the literature on the impact of helicopters on shorebirds. The findings of that review and his later conclusion had been that shorebirds adapt to them very quickly and were actually far more concerned with researchers or rangers on the ground than with helicopters.
- 8.77 Having considered the advice given, we accept the submission on behalf of TACL that: *"the existing controls in the District Plan are sufficient and there is therefore no need to include a rule in the Plan Change regarding helicopter use"*.

Infrastructure

- 8.78 The evidence addressed the potential infrastructural requirements should PC166 proceed. The s42A report provided a full assessment of the infrastructural options for water supply, wastewater, stormwater and roading.
- 8.79 For the purposes of this decision it is not necessary to provide a comprehensive summary of the assessments other than to note:
- In terms of domestic water supplies there are both roof water and bore water supply options;
 - Each site will have on-site wastewater treatment and disposal systems suitable for rural residential development as anticipated by the District Plan. Any applications for on-site discharges will be assessed through the subdivision and building consent process in terms of the Council's Technical Publication 58 *On Site Wastewater Systems: Design and Management Manual*. The soil types are expected to require primary and secondary or advanced secondary systems with shallow dripper irrigation. Applications for consent will need to be accompanied by a site assessment involving soils classification, percolation rates, and clearances from groundwater and overland flows. Traditional septic tank systems would not be approved under

the Council's TP 58 requirements and it is likely that aeration systems, sand filters or packed bed reactors along with associated maintenance contracts would be recommended at the appropriate time. These systems are expected to ensure treatment to a high standard before disposal to land and therefore contamination of the water table is not expected to occur;

- The Rodney section of the District Plan requires hydrological neutrality for flows, volume and timing of stormwater runoff. Stormwater neutrality will be achieved by use of a range of low-impact stormwater devices such as grass swales and rain gardens. The s42A report noted that from an infrastructural/engineering perspective all of these methods are appropriate for a coastal situation with the finer details to be provided at the subdivision stage. It recommended an additional assessment criterion be added to ensure that stormwater runoff is hydrologically neutral. TACL agreed to that additional requirement;
 - In terms of roading, those reporting on PPC166 anticipated that some upgrading works for roads and intersections will be required to mitigate potential increased traffic effects. But the section 42A report also reminded us of the number of sites – namely, the same quantity – that could potentially be developed under current rules by SEP and went on to note the capacity and state of the surrounding roads and intersections may not be able to be addressed as part of this process. Approval of PPC166 and subsequent approvals to subdivide and create all the lots at one time will likely result in accelerated growth and adding the road upgrading works to the Council's Long Term Plan. The Council would then be required to find additional funding for those works. The report recommended that if PPC166 is approved, consideration be given to including assessment criteria which will require the ability of the local road network to be assessed as being suitable for servicing the development proposal on the site. In practice, this would involve submitting a traffic impact assessment with any future subdivision application. Any ensuing recommendations for upgrades to the local road network would be carried out and paid for by the developer unless those works are already covered by the Council's relevant Long Term Plan. In the event that the works are contained in that plan and have not been completed at the time of development, Auckland Transport has the ability to enter into an agreement with the developer to fund the works ahead of time.
- 8.80 Some submissions raised the adequacy of the infrastructure to support housing at Te Arai, including the submission lodged by the neighbouring Kaipara District Council. One of the Council's development engineers assessed infrastructural requirements and concluded that there is sufficient ability to provide onsite water supply (by roof water or bore water), stormwater disposal, and wastewater disposal. The engineer also concluded that roading infrastructure could accommodate the proposal and recommended specific assessment criteria to address the impact on local roads when a subdivision application is made.
- 8.81 Submissions also commented on the potential impact of any development on water quality but those comments were not supported by any hard evidence. As there was no contrary evidence of any probative value, we accept the opinion in the s42A report that there is sufficient ability to dispose of wastewater and stormwater on the site without having an adverse effect on water quality.
- 8.82 We are therefore satisfied that there has been adequate consideration of the infrastructural requirements that will be generated by PC166 and that infrastructural matters will be adequately addressed during the subdivision consent process.

Coastal processes

- 8.83 A coastal processes assessment was made on behalf of TACL by relying on evidence by coastal scientist James Dahm which had been presented at a previous hearing. Mr Dahm appeared and presented evidence at the current hearing also. His assessment of the application material had reached the following conclusions:
- The existing dune system is in “dynamic equilibrium”, whereby fluctuations in the shoreline of up 30m can occur with fluctuations of up to 100m in the vicinity of the Te Arai Stream;
 - With respect to sea level rise, it has been estimated that a rise of 0.5 - 0.8m could result in a landward retreat of the dune system of 25 - 30m;
 - Storm fluctuations and sea level rise could potentially result in 55 to 80m of erosion inland from the coast. It was considered that the proposed subdivision area would easily accommodate erosion of this magnitude.
- 8.84 Based on Mr Dahm’s assessment, a proposed setback for all dwellings of 200m (or more) from MHSW had been adopted in the proposed change and this is consistent with the existing setback rule that applies to the site under the District Plan provisions. Mr Dahm concluded that a setback of 200m would provide a high level of protection from coastal hazards. He had considered the potential implications of climate change and his opinion was that the ‘Bruun Rule’ assumptions are reasonably applicable to the Mangawhai-Pakiri beach system. We were told that the beach is likely to adjust to sea level rise by sediment transfers within the beach system, and that the Bruun Rule is the most appropriate of the available shoreline response methodologies to provide an indication of the erosion that could accompany any adjustment.
- 8.85 Mr Dahm said that the worst likely coastal erosion over the next century would be in the order of:
- a. Up to 20-30 metres associated with dynamic shoreline fluctuations, plus
 - b. Up to 10 metres from sand mining, plus
 - c. Up to 50 metres with a 1 metre rise in sea level.
- 8.86 This totals 90 metres of net erosion potential. Mr Dahm’s opinion was the proposed setback of 200 metres is more than adequate to provide protection from coastal erosion.
- 8.87 Mr Dahm’s evidence was not contested. While submitters in opposition had expressed concern about the potential impact of climate change on sea levels, no objective evidence was offered to support those allegations. The proposed building setback line was reviewed by Matthew McNeil, a Council Consents & Compliance advisor and coastal processes expert. He did not dispute Mr Dahm’s conclusion that 200m would provide an adequate buffer from erosion, sea-level rise and coastal storms but recommended that a 280m setback for any dwellings would provide an additional level of safety.
- 8.88 Mr McNeil supported prohibiting vehicle access to the coast to help manage the erosion risk, the proposed rules regarding removal of pines and planting those areas with appropriate native plants to ensure stabilisation, and establishment of limited

pedestrian access points to manage the adverse effects of human disturbance on the foreshore dunes.

- 8.89 Overall, and subject to his recommended increase in the building setback line to 280m, Mr McNeil concluded that PPC166 will enable subdivision and development that will have no more than minor effects on the environment from a coastal processes perspective.
- 8.90 As discussed earlier, during the final stages of the hearing TACL and the Council staff supplied an agreed 'compromise reserve area' of 172 hectares which will effectively result in a setback adjacent to the golf course (where any residential development will be over 500m from MHWS) of something in the order of 100 metres and an effective 250 metre setback along the central coastal margin from the mouth of the Te Arai Stream north to southern boundary of the golf course. We find that in adopting this agreed reserve area in PPC166 the potential effects of coastal processes and climate change will be appropriately accommodated.

Effects on the Te Arai Surf Break

- 8.91 Some opposing submissions claimed there would be adverse effects on the surf break at Te Arai if development of this land was to proceed. For completeness, we record that while the NZCPS lists several specific surf breaks to be of national significance (in Schedule 1) Te Arai is not one of those listed.
- 8.92 At the hearing no submissions were made, or evidence presented, in relation to this assertion. The s42A report noted that it is not known how this plan change proposal could actually have any effect on the quality of the surf at Te Arai given that there were no activities being proposed below the line of Mean High Water Springs. The report went on to encourage submitters to provide further detail of this allegation at the hearing.
- 8.93 The Commissioners agree with the observations made in the s42A report that as no development activities at all are proposed below Mean High Water Springs, it is not possible for the Te Arai surf break to be impacted. Our inspection of the site confirmed this.
- 8.94 Our finding as a result is that those submissions calling for the proposed Plan Change to be declined on the grounds that it will impact on the surf break at Te Arai lack substance and are to be rejected accordingly.

Archaeology

- 8.95 Archaeologist Dr Rodney Clough's evidence was that any effects of future development resulting from the plan change on archaeological values will be 'less than minor'. In reaching his conclusion he noted:
- Five archaeological sites are known to be located at the site. However, all five sites lie outside the proposed areas where house sites would be located;
 - Three of the sites which are located on or near to the golf course development will be avoided and protected from development by fencing/cording off and replanted as suggested by Te Uri o Hau's Cultural Impact Assessment and a Clough and Associates 2012 report and recommendations;
 - None of the known archaeological items will be affected by proposed future development;

- There is limited potential for unrecorded subsurface archaeological sites to be present on the site;
 - An archaeological authority has already been granted by the New Zealand Historic Places Trust for development of the golf course. Accidental discovery protocols will apply.
- 8.96 The s42A report acknowledged that planting of the pines and movement of the dunes over time make a systematic assessment difficult and for that reason archaeological remains could be uncovered during development. In response to the submission lodged by the New Zealand Historic Places Trust the applicant had commissioned a further report and engaged in further consultation with the NZHPT. The work undertaken satisfied NZHPT and it withdrew its submission.
- 8.97 The officers' report advised:
- Should PPC166 be approved, further detailed archaeological investigations will be required for every consent application and standard conditions of consent would then be applied to those consents requiring protocols to be followed in the event that any archaeological remains are exposed during development;
 - PPC166 will have no adverse effects on the identified archaeological sites and contained sufficient controls and protocols to manage any new sites that may be discovered during subdivision and development.
- 8.98 No evidence to counter this was presented. We have therefore found no reason not to adopt the recommendations of both Dr Clough and the Council's officers on this aspect.
- 8.99 As will be apparent from the various findings made above, our overall conclusion is that PPC166, as modified, contains adequate measures to ensure that adverse effects on the environment, as identified by the reports and as apprehended by submissions on the change, will be appropriately avoided or managed.

9.0 DECISION

- 9.1 Having considered all the information supplied by the private plan change request, all the submissions received, the further amendments promoted by TACL in consultation with various submitters, the evidence and submissions presented at the hearing and having undertaken an analysis of the relevant national, regional and district planning instruments, and subject to the changes presented during the hearing, the Commissioners consider the proposed Plan Change rules are an appropriate means to achieve the relevant objectives of the District Plan. The proposed Change is consistent with the relevant provisions of the NZCPS and the Hauraki Gulf Marine Park Act 2000 as well as the Auckland Regional Policy Statement. The proposal also accords with the intent of the proposed Auckland Unitary Plan as it stands at this early stage in its progress.
- 9.2 Consequently, pursuant to clause 29(4) of Part 2 to the First Schedule of the Resource Management Act 1991 proposed Private Plan Change 166 to the Auckland Council District Plan: Rodney Section 2011 is **approved** subject to the amendments and modifications set out in the provisions and the map which are attached to this decision (as amended in accordance with this decision).

- 9.3 The Auckland Council is directed to amend the Rodney Section of the District Plan in accordance with the content of each attachment.
- 9.4 Those submissions and further submissions that supported acceptance of the PPC166 request are accepted, or accepted in part, in accordance with this decision. The submissions and further submissions which opposed the Plan Change request are rejected in whole or in part in accordance with the findings made.



Leigh A McGregor (Chair):

Date: 4 November 2013

**ATTACHMENT: COPY OF APPROVED PLAN CHANGE AND APPENDIX 14L
(APPROVED PLANNING MAP)**

Add the following Scheduled Activity to Rule 14.8.2, and amend Planning Map 2 by adding the symbol for Scheduled activity number 213 to the land described in the scheduled activity."

Activity Number	Details	
213	Map Reference	2
	Location	Lot 1 DP 453130 (ID 581090), Lot 2 DP 453130 (ID 581091), Lots 3-5 DP 453130 (ID 581092)
	Activity Status	<p>Subdivision for the Creation of Additional Public Reserve for a maximum of both 43 new sites and 3 balance area sites (total 46 sites) complying with the standards in this rule shall be a restricted discretionary activity.</p> <p>Subdivision that is not in accordance with this rule shall be a non complying activity.</p>
	Rules	<p>Subdivision for creation of up to 43 new sites in addition to the 3 existing sites shall comply with the following rules:</p> <p>(a) The identified house sites associated with the 43 new sites created under this rule shall be located in the areas marked "A", "B" and "C" and identified on the plan in Appendix 14AL: 'Scheduled Activity 213 and Restricted Activity 352' as "Areas In Which New House Sites Can Be Created In Accordance With Rule 14.8.2" in the following manner:</p> <ul style="list-style-type: none"> (i) No more than 1 new house site shall be located in the area marked "A"; (ii) No more than 38 new house sites shall be located in the area marked "B"; (iii) No more than 4 new house sites shall be located in the area marked "C". <p>(b) Prior to creation of any sites under (a) above, a Vegetation Management Plan shall be submitted to the Council for approval to ensure that:</p> <ul style="list-style-type: none"> i) there is adequate vegetative screening or back-drop associated with any subdivision to protect or enhance the high landscape values of the area and the subdivision will not adversely affect those values in more than a minor way having regard to the landscape's ability to absorb change in respect of other factors, including the nature and variability of local terrain and the extent and distribution of vegetation

Activity Number	Details
	<p>cover; and</p> <p>ii) the subdivision, including the location of building platforms, will not adversely affect the natural character of the coastal environment, and the degree to which development associated with the subdivision would affect the natural landforms and vegetation cover that affects such character and values is minimised having regard to:</p> <ul style="list-style-type: none"> • current levels of naturalness of the area in the Scheduled Activity and adjoining areas and the integrity of that part of the coastal environment; and • screening and integration potential afforded by natural landforms and existing vegetation. <p>iii) an appropriate staging of pine removal and its replacement with native vegetation in the areas identified in the second and third bullet points of rule (c)(iii) and in the area marked “Northern Boundary Planting” on the plan in ‘Appendix 14AL: Scheduled Activity 213 and Restricted Activity 352.</p> <p>(c) Subdivision in accordance with this rule is subject to the following:</p> <p>(i) The full area of public reserve, of no less than 172 hectares, shall be vested or taken prior to issuing the Section 224(c) certificate for the first site created under rule 14.8.2;</p> <p>(ii) The final surveyed boundaries of the Additional Public Reserve Land shall be generally in accordance with the area identified on the plan in ‘Appendix 14AL: Scheduled Activity 213 and Restricted Activity 352’ as “Proposed Reserve Area” (“Reserve Plan”), and subject to:</p> <ul style="list-style-type: none"> • The reserve shall have sufficient width to allow for a public walking trail along the back of the foredunes in Lot 1 DP 453130; • The inland reserve boundary in Lot 1 DP 453130 shown on the Reserve Plan shall be a minimum of 200m wide from Mean High Water Springs with the exception of the transitional area shown near the northern boundary of Lot 1 DP 453130, and located to respect both the physical topography of the land and provide for a walking trail alignment that: <ul style="list-style-type: none"> • protects ecological values and revegetation of the foredunes and the buffer areas referred to below; • provides a buffer between the foredunes and the walking trail to protect the foredune structure; and

Activity Number	Details
	<ul style="list-style-type: none"> • provides a buffer between the walking trail and the adjacent boundary of a site created under these rules. • Additional reserve may be provided in the blue hatched area shown on the Reserve Plan where such reserve is required to meet the objectives above. <p>(iii) The following shall be undertaken in the reserve:</p> <ul style="list-style-type: none"> • A public walking trail alignment shall be provided for along the back of the foredunes from the public beach access point at the Pacific Road car park, northwards to a beach access point in the reserve near the northern boundary of Lot 1 DP 453130, and southwards to a beach access point at least 500m north of the Te Arai Stream mouth; • Production forest shall be removed from the entire coastal section of the reserve, including the area of the reserve abutting the Te Arai stream up to a line 500 metres inland from and perpendicular to Mean High Water Springs, and this area revegetated in native dune species; • Production forest shall be removed from the riparian edge, being a 50m corridor to both sides of the Te Arai stream, and this area revegetated in native species to provide for a connection from the Coal Hill Road Wetland to the coastal environment; • The above work may be undertaken in a staged manner aligned to any staging of titles, provided that the work shall be completed within five years of vesting the reserve. <p>(iv) The minimum width of the riparian reserve along the Te Arai stream shall be 50m (including the marginal strip).</p> <p>(v) In Lot 1, the existing public easement over Pacific Road shall be widened to an average width of at least 50 metres to provide for safe pedestrian, cycle and equestrian use. The widened public easement may be subject to realignment for better integration with the existing landform. At the Council's election, the widened public easement on Pacific Road may be vested as public road.</p> <p>(vi) The area proposed to be vested as reserve shall be subject to an easement in favour of Lot 3 of up to 25m wide that provides ongoing legal access to Lot 3 from Te Arai Point Road as generally shown on Appendix 14AL: Scheduled Activity 213 and</p>

Activity Number	Details
	<p>Restricted Activity 352.</p> <p>(vii) Easements of sufficient width and practically located shall be provided over the reserve for conveying water, telecommunications and power, including over parts of Lot 1 and 3 as generally shown on Appendix 14AL: Scheduled Activity 213 and Restricted Activity 352.</p> <p>(d) The following rules from rule 7.14.7 Subdivision for the Creation of Additional Public Reserve Land: Specific Subdivision Requirements shall apply:</p> <p style="padding-left: 40px;">7.14.7.1: General Requirements</p> <p style="padding-left: 40px;">7.14.7.2 (c) – (d): Design of Subdivision – Area for Incorporation into Public Reserve</p> <p style="padding-left: 40px;">7.14.7.3 (b) – (f): Design of Subdivision – Site for Rural Residential Purposes</p> <p style="padding-left: 40px;">7.14.7.5 – Minimum Frontage and Access.</p> <p>(e) Domestic pets (including, but not limited to, cats, mustelids, dogs, goats, rabbits and rodents) are not permitted on any site created under this rule.</p> <p>(f) Prior to creation of any sites under this rule, a minimum of 4.26 hectares of wetland plus a minimum 1.4 ha buffer area as identified on the plan in Appendix 14AL: Chapter 14: ‘Scheduled Activity 213 and Restricted Activity 352’ as “Potential Protected Wetland Area” shall be protected in accordance with the following:</p> <p>(i) The applicant shall provide a Comprehensive Weed and Animal Pest Control Plan. The plan shall demonstrate how weeds and invasive plants (including climbing asparagus) and pest animals (including pest fish, feral pigs, rats, possums and mice) are to be eradicated or controlled in the protected area(s) on an on-going basis. Any chemical control to be used must be suitable for the purpose and for the environment in which it is to be used.</p> <p>(ii) The applicant shall clearly and accurately provide a Planting Plan for the 1.4 ha wetland buffer area identified on the plan in Appendix 14AL: ‘Scheduled Activity 213 and Restricted Activity 352’.</p> <p>(iii) A stockproof fence as specified in one of clauses 6, 7 or 8 of the Second Schedule of the Fencing Act 1978 shall be constructed around the perimeter of the wetland and buffer to be protected. The fence shall be a minimum of 10 metres from the wet area (except where constrained by property boundaries). No gates shall be installed in the fence.</p> <p>(iv) <u>Completion Certificate Requirement</u></p>

Activity Number	Details
	<p>All weed and pest control, planting and fencing required by (f) (i)–(iii) shall be completed prior to issuing the Section 224(c) certificate for the first rural residential site. For the purpose of this rule “control” means weed populations are reduced to a level whereby the landowner may remove re-infestations by using chemical or non-chemical control up to three times a year.</p> <p>(v) <u>Protection of Wetland and Buffer Area</u></p> <p>All conditions for protection of the wetland and buffer area shall be complied with on a continuing basis by the subdividing owners and all subsequent owners and shall be the subject of consent notices to be registered under the Land Transfer Act 1952.</p> <p>(vi) The wetland shall be protected in perpetuity through a covenant.</p> <p>(g) Prior to creation of any site under this rule, and in consultation with the Auckland Council, the Department of Conservation, the Environmental Defence Society, the Royal Forest & Bird Protection Society of NZ and Te Uri o Hau, the applicant shall prepare a Shorebird Management Plan. The Shorebird Management Plan shall include the following methods to protect shorebirds:</p> <ul style="list-style-type: none"> (i) pest and predator control and monitoring, including establishment of buffer zones on the site to protect shorebird habitats; (ii) management of people to avoid shorebird habitats, particularly during breeding; (iii) management of earthworks and construction activities to avoid shorebird habitats, particularly during breeding; (iv) management and protection of threatened plant species and associated shorebird habitat; (v) mechanisms to ensure that the Shorebird Management Plan and its requirements are binding on and funded by future landowners; (vi) conservation management including pest control, protection of shorebirds from disturbance and habitat restoration; (vii) long term monitoring and reporting on shorebird habitat; (viii) a full time equivalent conservation ranger shall be appointed and permanently employed by the future landowners to implement the Shorebird Management Plan; (ix) The Shorebird Management Plan shall contain the

Activity Number	Details
	<p>following information:</p> <ul style="list-style-type: none"> • A review of current information on the status of all shorebird species in the area; • Survey methodologies to gather baseline information on species present, the size of populations and the state of their habitats; • Identification of the threats to local shorebird populations; • Proposed methods for conservation management including pest control, protection from disturbance and habitat restoration; • Proposed methods for long term monitoring and reporting; • Details of how the conservation ranger and other costs will be funded; • Communication and public education plans. <p>(x) The Shorebird Management Plan shall be submitted for approval to the Council's reserve administrator prior to subdivision. When the reserve is vested with the public body that will administer it, the Shorebird Management Plan may then be amended by that body's reserve administrator without the need to consult with the other parties.</p> <p>(h) Plants listed in the Auckland Regional Pest Management Strategy (including the research list) are not permitted in the development in private gardens or any amenity plantings.</p>
Matters for Discretion and Assessment Criteria	<p>The Council will have regard to the Matters for Discretion in section 7.15.1 and the Assessment Criteria in section 7.15.2 of Chapter 7 – Rural.</p> <p>In addition to the criteria in 7.15.2, the Council will also have regard to the following criteria:</p> <p><u>Additional Criteria for Subdivision at Te Arai</u></p> <p>(a) The adequacy of measures proposed such as covenants or consent notices to ensure that no further subdivision for creation of residential or rural residential lots or sites occurs in perpetuity.</p> <p>(b) The adequacy of measures proposed to ban cats and dogs and other inappropriate domestic pets.</p> <p>(c) The adequacy of measures to protect shorebirds and threatened plant species, during earthworks and the construction period and thereafter.</p> <ul style="list-style-type: none"> • Where the measures in (a) – (c) are not provided,

Activity Number	Details
	<p style="text-align: center;">the subdivision will be considered to be inappropriate.</p> <p>(d) Whether the subdivision maintains the special character and amenity described in the zone description for the Landscape Protection Rural Zone (7.8.3.3) including whether the subdivision will avoid adverse effects, including cumulative effects, on the rural character anticipated in the Landscape Protection Rural Zone.</p> <p>(e) Whether the subdivision, including provision for access and utilities, would require extensive landform modification and whether the adverse effects on the landscape and amenity values of the particular area are avoided or appropriately mitigated. Where this is not achievable, the subdivision will be considered to be inappropriate.</p> <p>(f) Whether the subdivision and site development, including provisions for access and utilities, uses the existing landform as a basis as far as is practicable so that adverse effects on the landscape and discharge of silt are avoided or appropriately mitigated.</p> <p>(g) Whether the subdivision and associated works will have adverse effects on the natural quality of any waterbodies, including streams flowing to the sea and the sea itself.</p> <p>(h) Whether the building platform/s identified in the subdivision allow for any house or structure to be built below the brow of any ridge or hill on which it would be sited so that the highest point of any building or structure is below the landform or any existing trees or bush screening the building site, when the site (or sites) is viewed from any public road or public land including any beach, the sea or regional park. Where this is not achievable, the building platform/s will be considered inappropriate.</p> <p>(i) Whether the building platforms on the proposed site(s) would allow development that would adversely affect stands of mature native forest that can be seen from any public road or public land including any beach, the sea or reserve area. Where this occurs, the building platform/s will be considered inappropriate.</p> <p>(j) Whether exterior lighting, including any street lighting, will be provided in such a way as to not be prominent, particularly against a dark background, when viewed from any public place including the coast.</p> <p>(k) Whether the subdivision protects or enhances the high landscape values of the area having regard to the local landscape's ability to absorb change in respect of other factors, including the nature and variability of local terrain, the extent and distribution of vegetation cover, and the location and nature of existing development and structures</p>

Activity Number	Details
	<p data-bbox="641 277 695 304">in it.</p> <p data-bbox="553 327 1377 478">(l) Whether the subdivision, including the location of building platforms, protects or enhances the natural character of the coastal environment, and the degree to which it would affect the natural landforms and vegetation cover that affect such character and values having regard to:</p> <ul data-bbox="641 506 1377 642" style="list-style-type: none"> <li data-bbox="641 506 1377 562">• current levels of naturalness and the integrity of that part of the coastal environment; and <li data-bbox="641 583 1377 642">• screening and integration potential afforded by natural landforms and vegetation. <p data-bbox="553 663 1377 758">(m) Whether the subdivision and development will protect and not adversely affect in a more than minor way the natural functioning of coastal processes.</p> <p data-bbox="553 779 1377 894">(n) Whether the subdivision will have significant adverse effects on each of wildlife, flora and ecological values and whether such effects can be avoided or effectively mitigated.</p> <p data-bbox="553 915 1377 1073">(o) Whether the subdivision and subsequent development will adversely affect any flora or fauna species including threatened or endangered species on the site or in the surrounding area, including the area of land that extends down to the mean high water mark.</p> <p data-bbox="553 1094 1377 1272">(p) Whether the subdivision avoids adverse effects of activities on: threatened or at risk species; indigenous ecosystems and vegetation types that are threatened in the coastal environment or are naturally rare; and areas containing nationally significant examples of indigenous community types.</p> <p data-bbox="553 1293 1377 1608">(q) Whether the subdivision avoids significant adverse effects and avoids, remedies or mitigates other adverse effects of activities on: areas of predominantly indigenous vegetation in the coastal environment; habitats that are important during the vulnerable life stages of indigenous species; and indigenous ecosystems and habitats that are found only in the coastal environment and which are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones and saltmarsh, and ecological corridors.</p> <p data-bbox="553 1629 1377 1913">(r) Vehicle access to sensitive areas should be avoided and walkway access shall be limited to a small number of defined walking paths to ensure that the adverse effects on the quality and/or remote character of the environment in the Landscape Protection Rural zone and the adverse effects on the ecological values of the dunes are avoided. Vehicle access to the beach from the site shall not be allowed except for emergency responses or management purposes.</p>

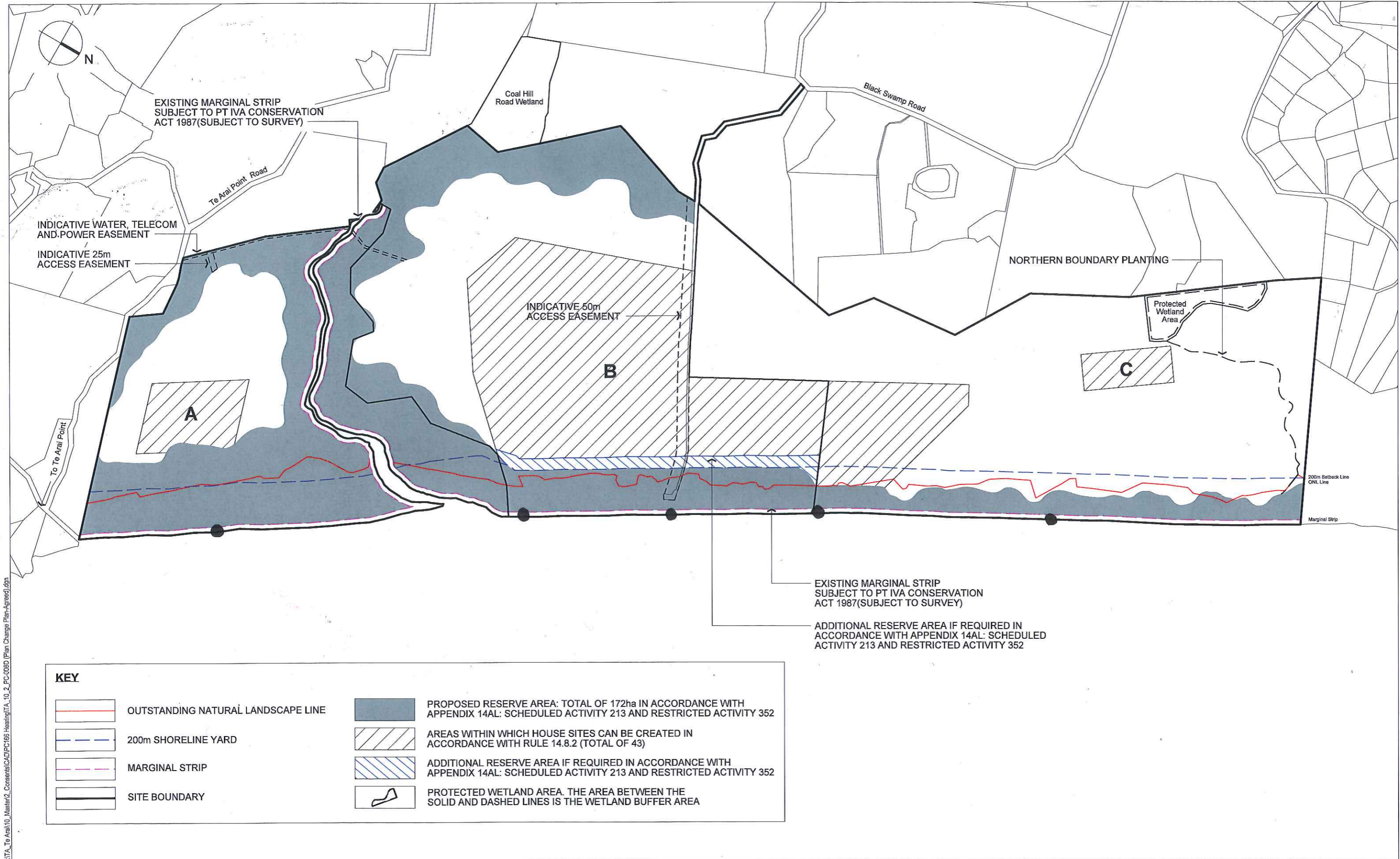
Activity Number	Details
	<p>(s) Whether creation of any site will result in retention of a rural rather than urban character.</p> <p>(t) Measures at the time of subdivision to ensure that buildings on the new site created in area "A" on the plan in 'Appendix 14AL: Scheduled Activity 213 and Restricted Activity 352' as "Areas In Which Rural Residential New Sites Can Be Created In Accordance With Rule 14.8.2" are not visible from Te Arai Point Road, Te Arai beach, and existing local and regional reserve land (excluding any new public reserve on land in Scheduled Activity 213).</p> <ul style="list-style-type: none"> • In circumstances where one or more of the above criteria are not met, the proposal may be considered inappropriate and the Council in its discretion may refuse consent, or grant consent to a lesser number of sites, and/or to a different design of subdivision. <p>(u) Whether the local road network will function safely and efficiently when subjected to the increased traffic movements associated with any subdivision of the site.</p> <p>(v) Whether stormwater runoff from roof and paved areas is discharged in a manner that is hydrologically neutral where excess flows, volumes and timing of runoff in excess of pre-development runoff, is discharged to ground through suitable storage and soakage systems.</p> <p>(w) The adequacy of measures to ban plants listed in the Auckland Regional Pest Management Strategy (including the research list).</p> <p>(x) The extent to which the density of the proposed development will provide for the sustainable land management of the properties.</p> <p><u>Additional Criteria for Consideration of the Public Reserve Created with the Subdivision</u></p> <p>(y) Whether the area for incorporation into the public reserve is physically suitable for the purpose for which the reserve is created.</p> <p>(z) Whether the area for incorporation into the public reserve is to be held as reserve able to be accessed by the public at large or is set aside for conservation or scientific purposes (subject to the Reserves Act 1977).</p> <p>(aa) Whether the area for incorporation into the public reserve will make an appreciable improvement to the quality or quantity of the public recreation resource available in the district.</p> <p>(bb) Whether the area for incorporation into the public reserve is of an appropriate size, shape, and contour to enable the intended function of the reserve to be achieved.</p> <p>(cc) Whether the area for incorporation into the public reserve</p>

Activity Number	Details	
		<p>has adequate physical and practical access to enable the intended function of the reserve to be achieved.</p> <p>(dd) Whether there is an adequate vegetation management plan to ensure the outcomes specified in rule (b) i) to iii) and the gradual replacement of production pines with native species in areas set aside for conservation reserve.</p>
	Explanation and Reasons	<p><i>The intention of this rule is to provide for subdivision which significantly increases conservation and public access reserves at Te Arai, provides for environmental enhancement through significant native planting, protection in perpetuity of an existing wetland, creation of ecological corridors and the protection of endangered native fauna.</i></p> <p><i>This rule requires a public reserve of 172 hectares to be created with subdivision. This reserve area comprises the coastal dunes, a riparian margin along the Te Arai Stream and a connection between the coast and the Coal Hill Road wetland. It provides the opportunity for a series of walking trails to be established which will avoid ecologically sensitive areas and ensure buffers between such trails and the dune structure and sites created under this rule. The rule also requires that 4.26 hectares of existing wetland plus a buffer area of 1.4 hectares on the site is to be enhanced and protected in perpetuity.</i></p> <p><i>In exchange for these public benefits, 43 new lots, each capable of accommodating a household unit, may be created by the landowner.</i></p> <p><i>This rule requires the 43 new house sites to be located in the three areas identified on the plan in Appendix 14AL in order to maintain the amenity and natural character values of the surrounding land, avoid impacts on ecological and cultural heritage values of the site, including endangered shorebirds, and enable a design solution which will maintain the rural character of the area.</i></p>

Add the following Restricted Activity to Rule 14.8.3 and amend Planning Map 2 by adding the symbol for Restricted Activity 352 to the land described in the Restricted Activity

Activity Number	Details	
352	Map Reference	2

Activity Number	Details	
	Location	Lot 1 DP 453130 (ID 581090), Lot 2 DP 453130 (ID 581091), Lots 3-5 DP 453130 (ID 581092)
	Restrictions on the Activity/Site	Replanting with other than in eco-sourced native coastal species of the area seaward of the Outstanding Natural Landscape line identified on the plan in 'Appendix 14AL: Scheduled Activity 213 and Restricted Activity 352' shall be a non-complying activity.
	Explanation and Reasons	<i>The intention of this rule is to ensure that following felling of the existing pine trees appropriate native coastal species are replanted to enable better long term management and enhance the amenity of the coastline.</i>



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KEY	
	OUTSTANDING NATURAL LANDSCAPE LINE
	200m SHORELINE YARD
	MARGINAL STRIP
	SITE BOUNDARY
	PROPOSED RESERVE AREA: TOTAL OF 172ha IN ACCORDANCE WITH APPENDIX 14AL: SCHEDULED ACTIVITY 213 AND RESTRICTED ACTIVITY 352
	AREAS WITHIN WHICH HOUSE SITES CAN BE CREATED IN ACCORDANCE WITH RULE 14.8.2 (TOTAL OF 43)
	ADDITIONAL RESERVE AREA IF REQUIRED IN ACCORDANCE WITH APPENDIX 14AL: SCHEDULED ACTIVITY 213 AND RESTRICTED ACTIVITY 352
	PROTECTED WETLAND AREA. THE AREA BETWEEN THE SOLID AND DASHED LINES IS THE WETLAND BUFFER AREA

EXISTING MARGINAL STRIP
SUBJECT TO PT IVA CONSERVATION
ACT 1987(SUBJECT TO SURVEY)

ADDITIONAL RESERVE AREA IF REQUIRED IN
ACCORDANCE WITH APPENDIX 14AL: SCHEDULED
ACTIVITY 213 AND RESTRICTED ACTIVITY 352

SCALE: 1:7,500 (A1)

PLAN STATUS:
PLAN CHANGE

NOTE:
Compromise plan as agreed at meeting between Auckland Council and TAAL Representatives, 9 October 2013

APPENDIX 14AL: Scheduled Activity 213 and Restricted Activity 352

DESIGNED/DRAWN: ZC/DT
APPROVED: DT
DATE: 16.10.13

DRAWING NO:
TA_10_2_PC-008F