

Practice and Guidance note

Rural Subdivision

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1 Introduction

The [Auckland Unitary Plan \(Operative in Part\)](#) ('**AUP (OP)**') rural subdivision provisions have been developed to align with the strategic direction of the Auckland Plan. [Chapter B9](#) (Rural Auckland) has a priority to protect the region's highly productive soils from activities that reduce their productive potential, manage subdivision to prevent undue fragmentation of large sites in ways that restrict rural production activities, and ensure that growth and residential development will be focused in satellite towns, rural and coastal villages and Countryside Living zones.

The Auckland Plan 2050 Development Strategy states that residential growth in rural Auckland will be focused mainly in the towns which provide services for the wider rural area, particularly the rural nodes of [Pukekohe](#) and [Warkworth](#). Less growth is anticipated in the smaller towns and villages.

Rural lifestyle growth will be focused into those areas zoned as Rural - Countryside living (**CSL**) zone, away from the most environmentally sensitive and productive rural areas. Only a small amount of growth is anticipated in the wider rural area (meaning the Rural - Rural Production zone, Rural - Rural Coastal zone, Rural - Mixed Rural zone, and Rural - Rural Conservation zone in relation to this Practice Guidance Note). This growth is likely to relate to environmental enhancement and existing vacant lots.

The objectives and policies of the B9.4 Rural Subdivision Chapter of the AUP(OP) Regional Policy Statement emphasise this (e.g. refer to B9.4.1 and B.9.4.2 respectively).

To achieve the outcomes sought by the Auckland Plan and to give effect to the AUP(OP) Regional Policy Statement, key objectives and policies in [Chapter E39](#) of the AUP(OP) seek to ensure that:

- the productive potential of rural land is maintained;
- reverse sensitivity effects are avoided or minimised;
- fragmentation of rural production land is avoided where elite soils are present or avoided where practical where prime soils are present;
- the dispersal of rural lifestyle lots throughout rural and coastal areas via further subdivision is avoided;
- provisions are provided for limited in-situ subdivision and transfer of subdivision opportunities to the CSL zone through protection and enhancement of significant indigenous vegetation, wetlands and revegetation planting, while maintaining natural features and landscapes and rural character and amenity.

The [Chapter E39](#) objectives and policies also refer to land being subdivided to achieve the objectives and policies of the zones (i.e. Objective E39.6.2(1) and Policy E39.3(1)).

While the AUP(OP) provides a similar approach to some legacy plans with respect to the provision of subdivision opportunities based upon environmental protection and enhancement, it is recognised that the AUP(OP) introduces a new regime and suite of provisions to protect the qualities of the rural environment, retain productive capacity within rural zones, enhance and protect ecological areas and to manage growth. Reversing historic rural land fragmentation trends, protecting highly productive soils, enhancing and protecting indigenous biodiversity, and supporting the uptake of rural-residential subdivision opportunities in CSL zones, are all key themes of the AUP(OP) rural subdivision provisions.

Given the region-wide approach taken to rural subdivision, including the ability to transfer donor site opportunities from rural zones to receiver sites in identified CSL zones, it is critical that the AUP(OP) framework is applied consistently by staff and the wider planning community to ensure the anticipated outcomes are achieved and to maintain the quality of experience for our customers. The following guidance explains the key concepts and requirements for rural subdivision under the AUP (OP) and explores process, interpretation and practical application matters for these provisions.

2 Rural subdivision appeals background

Some of the recommendations made by the Independent Hearing Panel (**Panel**) on the rural subdivision provisions in the Proposed Auckland Unitary Plan were rejected by Auckland Council in 2016 when it made its decisions on the Panel's recommendations on submissions. This was because the council considered that the Panel's recommended provisions were too enabling of rural subdivision and would lead to the undermining of the anticipated outcomes such as the protection of productive soils, retention of rural character and amenity, and addressing potential reverse sensitivity effects within rural zones.

The council's rejection of the Panel's recommendations resulted in an appeal process that was finally resolved with the final provisions confirmed by the Environment Court in 2021. The Court issued three final decisions which need to be read together:

- *Cabra Rural Developments v Auckland Council* [2020] NZEnvC 153 ¹

¹ [\[2020\] NZEnvC 153 Cabra Rural Developments Limited v Auckland Council](#)

- *Cabra Rural Developments v Auckland Council* [2021] NZEnvC 010 ²
- *Cabra Rural Developments v Auckland Council* [2021] NZEnvC 032 ³

The outcome sought by the council through the appeals was to prevent widespread rural-residential development in the working/productive rural zones and instead incentivise it in the CSL zone through the opportunity of the Transferable Rural Sites Subdivision ('TRSS') pathway. The reasons behind the council's approach related to the need to address the loss and fragmentation of rural production land, reverse sensitivity effects, the effects on rural character and amenity and landscape and natural character values, and the potential pressure on infrastructure, which may result from inappropriate subdivision in rural areas.

The Court⁴ found that 'in-situ'⁵ subdivision was less desirable than TRSS subdivision. This is because TRSS would result in significant environmental benefits from the protection, management and fencing of wetlands, indigenous vegetation and indigenous revegetation planting in the SEA overlay or that meets one or more of the SEA factors in Policy B7.2.2(1) without any other associated rural-residential development within rural areas. This is summarised at paragraph 94:

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

- a) *Transferrable Rights maintain the openness and natural aspect of these areas without buildings, roads and other infrastructure and pressures that occur as a result of additional people in the rural area.*
- b) *There is a tension between the desire to protect the indigenous features and extend them, and retaining the existing amenities, particularly those relating to naturalness, character and landscapes which arise in certain parts of the rural area and particularly in many coastal locations.*
- c) *The Policy support for in-situ subdivision in the rural area is less pronounced. In short, a subdivision should be for a purpose:*
 - i) *to enable proper management of rural activities; or*

² [\[2021\] NZEnvC 010 Cabra Rural Developments Limited v Auckland Council](#)

³ [\[2021\] NZEnvC 032 Cabra Rural Developments Limited v Auckland Council](#)

⁴ Paragraphs 85-119 of the September 16 2020 decision

⁵ 'In-situ' subdivision is where a rural zoned property is subdivided and the new 1-2ha sites are created on the same site as the indigenous vegetation or wetland subject to protection (as opposed to that development opportunity being transferred to a different property in the Rural – Countryside Living zone via the TRSS pathway).

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

Overall, the Court concluded that there should be a clear preference in the AUP(OP) for the transfer of rural site subdivision opportunities to the Countryside Living Zone.

Key points from the Court's decisions:

- The introduction of a difference between the threshold areas for the protection of areas of wetland or indigenous vegetation to enable the creation of in-situ sites and TRSS opportunities to incentivise the TRSS pathway. The higher threshold for in-situ site creation is purposefully designed to incentivise the transferring of subdivision opportunities out of the wider rural area and into the CSL zone.
- That TRSS is to be incentivised, and for this reason the number of sites able to be created via in-situ subdivision is capped and the required protection is greater on a per site basis.
- The Court also noted at paragraph 125⁶ with respect to in-situ subdivision that *Where the Council concludes that the impacts on the landscape, natural character and amenity are not appropriate, this might be addressed by appropriate conditions or refusal of consent.*” This is particularly important when it comes to in-situ subdivision because of the sensitivity of issues that arise, which the Court set out in the earlier decisions.

It is recommended that planners processing rural subdivisions review and refer to the Environment Court’s decisions linked above to gain an understanding of the background to the formulation of the final provisions.

3 Subdivision Activity Types

Tables E39.4.1 and E39.4.2 of [Chapter E39](#) of the AUP (OP) provide for a range of subdivision activities. In some cases, an activity listed in the first table may also trigger a consent in the second table, or vice a versa, meaning that the activity will have two reasons for consent from the subdivision chapter. As an example, Rule E39.4.1(A5), relating to subdivision establishing an esplanade reserve, may be applied in addition to a subdivision activity listed in Table E39.4.2. For example, in relation to Rule E39.4.2 (A14) Subdivision in the Rural – Countryside Living Zone complying with standard E39.6.5.2.

This is conveyed within the preamble at ‘E39.4 Activity Table’ through the following text: *“Where a proposed subdivision activity fits into activities listed in Table E39.4.1*

⁶ [\[2020\] NZEnvC 153 Cabra Rural Developments Limited v Auckland Council](#)

and those listed in Tables E39.4.2, E39.4.3, E39.4.4, or E39.4.5, then the activity status listed for each activity in each table also applies.”

The AUP (OP) may not specify all types of subdivision that were available under legacy plans and it is necessary to identify the correct activity type based on the facts and specifics of each application. If a legacy plan subdivision method is not listed in the E39 activity tables (e.g. in-situ subdivision in exchange for open space/reserves) then that activity is classified as a Non-complying activity under activity Rule (A27).

The most common subdivision activity types specifically provided for under the AUP (OP) are summarised below:

3.1 Standard Subdivision in Rural Zones other than in the Countryside Living Zone (Rules E39.4.2 (A12) & (A13))

These Rules address the basic form of subdivision, being the division of an existing site into one or more new allotments. Rule (A12) [Chapter E39](#) applies to where the sites proposed comply with Standard E39.6.5.1 and Rule (A13) applies where the proposed sites do not comply with Standard E39.6.5.1.

Standard E39.6.5.1 specifies the minimum site sizes for the particular zone. This type of subdivision is not based specifically upon any environmental protection/enhancement or amalgamation to qualify for additional sites. Subdivision that complies with Standard E39.6.5.1 is a discretionary activity, and subdivision that does not is a non-complying activity. In either case, if the proposed subdivision is found to be inappropriate in terms of the extent of adverse effects that may result or that it is contrary to the relevant objectives and policies of the AUP (OP), consent may be refused.

Figure 1 below depicts the minimum site sizes and average minimum site sizes across the zones. Where subdivision is sought below these minima the Environment Court has stated that the onus is on the applicant to demonstrate that subdivision to a smaller site size is needed to meet the policies of the zone.⁷

Note that these minimum site sizes and average minimum site sizes are intended to retain the productive potential of rural sites and to prevent further fragmentation in these zones. It should also be noted that the minimum site sizes in the AUP (OP) are not intended to be the equivalent of the minimum size a rural site will necessarily be economically viable.

⁷ *Barbican Securities Limited v Auckland Council* [2023] NZEnvC 174 at [71], currently subject to an appeal to the High Court.

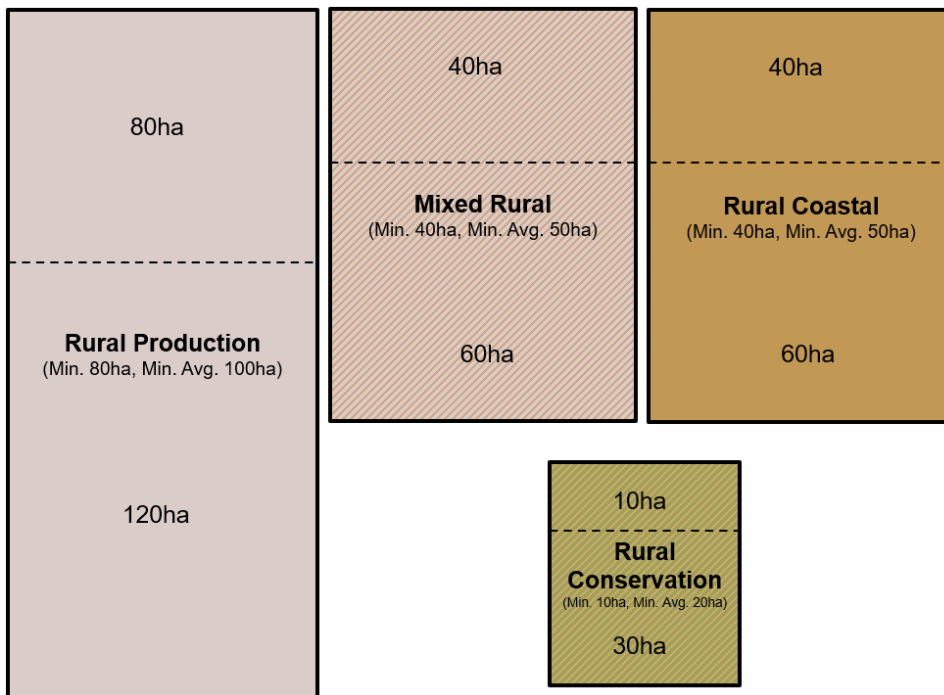


Figure 1: The minimum site sizes and minimum average site sizes in the rural zones

3.2 Standard Subdivision in the Countryside Living Zone (Rules E39.4.2(A14) & (A15))

The basic form of subdivision, being the division of an existing site into one or more new sites where the minimum net site sizes as specified for the CSL zone are met (i.e., Rule E39.4.2(A14)), or are not met (i.e. E39.4.2 Rule(A15)). Subdivision under Rule (A14) [Chapter E39](#) is a discretionary activity and subdivision under Rule (A15) is a non-complying activity. This type of subdivision is not based upon the TRSS provisions. The minimum net site size in the CSL zone is generally 2ha (net). However, some areas of CSL zone have different minimum net site sizes and minimum average net site sizes so reference must be had to Table E39.6.5.2.1.

3.3 In-situ subdivision through protection of indigenous vegetation, wetland or indigenous revegetation planting (Rules E39.4.2 (A16), (A17), (A17A - A17D), (A18) &(A19))

In-situ subdivision is the creation of an additional rural-residential site (or sites) on the same parent site located within Rural zones on which the wetland, indigenous vegetation or indigenous revegetation planting is located. Limited in-situ subdivision is provided for on the basis of the protection of a qualifying area of indigenous vegetation, wetland and/or indigenous revegetation planting. This is because the AUP (OP) provisions place a greater emphasise on pursuing TRSS subdivision where the subdivision opportunities are transferred to the CSL zone to reduce the likelihood of adverse effects upon productive use of rural land, as well as rural

character, amenity, and reverse sensitivity, that may occur as a result of unrestricted in-situ subdivision.

The wetland or indigenous vegetation to be protected to enable the creation of the in-situ lots must be of SEA quality. This can be by either the wetland or indigenous vegetation being already identified as a terrestrial SEA within the AUP(OP) SEA overlay (Rules A16 and A17), or if it is assessed as meeting one or more of the SEA factors (Rules A17C and A17D). The SEA factors are listed in Policy B7.2.2(1). Rules A17A and A17B apply to specific sites on Kawau Island.

In-situ subdivision can also occur through establishing indigenous revegetation planting (Rules A18 and A19).

The rural subdivision provisions relating to in-situ subdivision have been structured to require a greater level of environmental protection (i.e. wetland/indigenous vegetation protection or indigenous revegetation planting) to enable the creation of in-situ sites than the thresholds that apply to TRSS subdivision. The provisions also specify a maximum number (or 'cap') of in-situ sites that may be created whereas there is no maximum in relation to the creation of TRSS opportunities through the protection of wetland or indigenous vegetation (however there is a cap of 6 new TRSS sites for indigenous revegetation planting). Refer to Table E39.6.4.4.1 [Chapter E39](#) for the maximum number of new rural residential sites that may be created.

Appendices [15](#) and [16](#) also set out the requirements that must be followed in relation to these subdivision pathways.

3.4 Transferable Rural Sites Subdivision ('TRSS') through protection of indigenous vegetation or wetland or indigenous revegetation planting, or amalgamation of qualifying donor sites (Rules E39.4.2 A20, A21, A21A – A21D, A22, A23, A24 & A25)

The TRSS process is based upon the transfer of a qualifying subdivision opportunity, or opportunities, (**Donor Site TRSS Opportunities**) from a Rural zoned site (called a 'donor site') to a site or sites within the CSL zone (called a 'receiver site').

The TRSS provisions within the AUP(OP) were introduced to:

- ensure the ability to use, and the potential use of, rural production land was not diminished;
- ensure rural character and amenity were not compromised as a result of further widespread in-situ rural residential subdivision;
- recognise ecological benefits in rural zones obtained through the protection and management of areas of wetland, indigenous vegetation and indigenous revegetation planting;

- retain the existing attributes within rural areas, particularly those relating to naturalness, character and landscapes;
- Avoid or minimise the creation of reverse sensitivity effects that may arise from the creation of in-situ sites within areas zoned for rural production activities.

The TRSS Opportunities can be generated through the creation of significant environmental benefits at a donor site. These include the same methods as for in-situ subdivision outlined above:

- Protecting and maintaining SEA quality wetlands/indigenous vegetation (Rules A20, A21, 21C and 21D);
- Indigenous revegetation planting (Rules A22 and A23).

There is also an additional TRSS method available for generating subdivision opportunities (Rules A24, A25). This is via amalgamation of donor sites between 1ha – 20ha that are classified as having at least 90% elite or prime (Land Use Capability classes 1-3) soil, including sites identified in Appendix 14 Land amalgamation incentivised area.

The rationale behind the TRSS pathways is to encourage rural areas to stay rural and be productive (e.g. horticulture, livestock, forestry) while simultaneously protecting or enhancing significant indigenous biodiversity or wetland, and primarily limiting rural-residential development to the CSL zone.

TRSS enables a site in the CSL zone to be subdivided to create sites of smaller size, and hence greater density, than the AUP(OP) provisions would otherwise allow using Rules (A20) – (A25). Generally, the CSL zone has a 2ha minimum net site size (see Table E39.6.5.2.1 [Chapter E39](#)). However, through TRSS a Countryside Living landowner can subdivide a site down to a minimum of 8,000m² (and a minimum average of 1ha). A TRSS subdivision that complies with all the relevant standards will be a Restricted Discretionary Activity under the relevant rules and a Non-Complying Activity if it does not. It is important to keep in mind that under certain circumstances it may be found that consent should be refused for an application that is a Restricted Discretionary Activity. The Environment Court emphasised this at paragraph 122 of its decision *Cabra Rural Developments v Auckland Council* [2020] NZEnvC 153⁸

[122] Those matters were addressed in evidence at the earlier hearing and are able to be identified now and covered by the assessment criteria and thus we see little practical advantage to a change from restricted discretionary to full discretionary. More importantly, we see the identification of assessment criteria on a restricted discretionary basis (especially given the AUP comments on the use of their classifications) will encourage applicants to seek to protect indigenous vegetation

⁸ [2020] NZEnvC 153 *Cabra Rural Developments Limited v Auckland Council*

to achieve subdivision, rather than seeing it as an impediment to such activities. In doing so, we are still minimising the potential impact upon the natural character and landscapes and amenity, by limiting the overall development, rather than just one criteria. To be clear, we note that such potential impact is a matter identified for assessment for an RDA and consent can be declined on this basis.

An applicant for a TRSS subdivision of a site within the CSL zone of 4 hectares or greater may wish to only utilise the number of TRSS opportunities that would be necessary as if the site had been already subdivided to create two or more 2 hectare net sized allotments as a first stage.

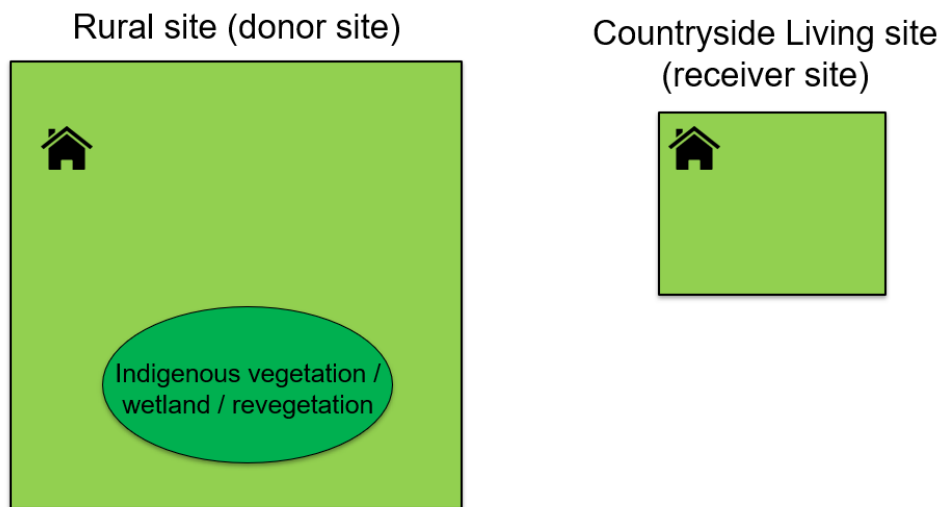
For this approach to be acceptable the applicant must demonstrate within the application, via a subdivision scheme plan, that the 2 hectare minimum net site area for each site, which could be created within an initial stage of the subdivision, can be achieved in compliance with the relevant provisions, including that all relevant standards e.g. access, Specified Building Areas (SBAs), SEA, etc can be met.

In addition, the applicant must also demonstrate that the TRSS subdivision of each of those 2 hectare sites will achieve the minimum net site area of 8,000m² and the average minimum net site area of 1 hectare and therefore the number of TRSS donor site opportunities being relied upon is correct. The processing planner, within their planning report, will need to confirm their agreement that the relevant provisions have been met for all stages of the subdivision.

It is important to note that the CSL zone is the only receiver area for TRSS (Policies B9.4.2(3) and (5)), (Objectives E39.2(9) and (14)(b)), (Policies E39.3(3)(b) and (12)), and Appendix 15.3.1(2)). Furthermore, only the CSL zones specified in the Subdivision Variation Control can receive transferable titles (see Table E39.6.5.2.1 [Chapter E39](#)).

A simple illustration of the implementation of the TRSS pathway based upon protection of indigenous vegetation/wetland protection or indigenous revegetation planting is shown in Figure 2 below.

Step 1: Existing sites



Step 2: TRSS subdivision

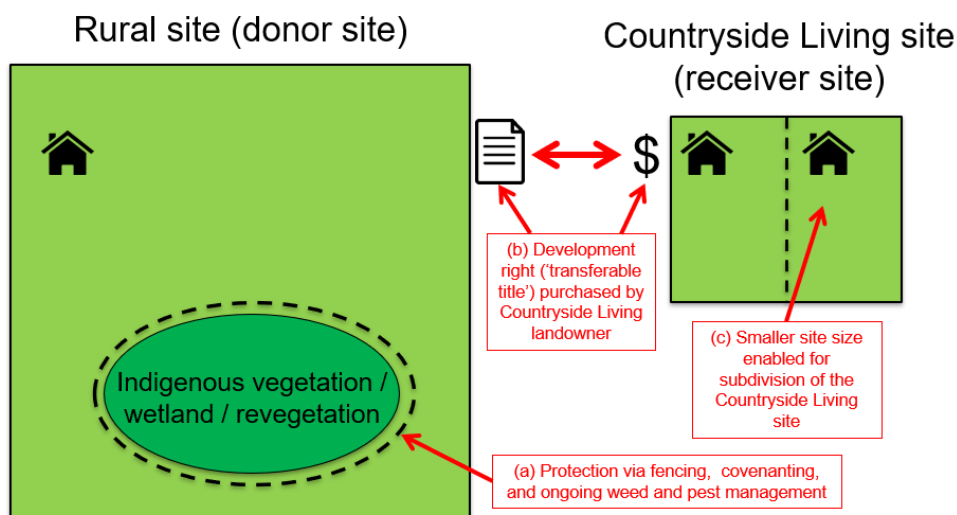


Figure 2: Diagram of a TRSS subdivision

Within Table E39.6.4.4.1 there is no maximum for the number of donor site TRSS opportunities that can be generated through protection of SEA quality wetland or indigenous vegetation for use in TRSS subdivision. However, Table E39.6.4.5.1 [Chapter E39](#) specifies that in relation to the undertaking of indigenous revegetation planting within a site a maximum of 6 donor site TRSS opportunities can be generated for use in TRSS subdivision/s.

Once a subdivision consent is granted for the receiver site in the CSL zone, and before a certificate can be issued under section 224(c) of the Resource Management Act 1991 ('**RMA**') in relation to the TRSS receiver site subdivision, the consent holder must:

- provide evidence that the qualifying areas of indigenous vegetation, wetland or indigenous revegetation planting, as well as any other existing indigenous vegetation or wetland area/s, within the donor site have been suitably protected via a registration of a covenant, acceptable to the council, upon the Record of Title for the donor site, and that the areas to be protected at the donor site have been fenced, the revegetation planting has met specified survival and canopy closure specifications and that ongoing weed and pest control are being undertaken to the specified standard, and that any other relevant works have been satisfactorily completed, as set out within the relevant consent conditions relating to the donor site; or
- in the case of a TRSS receiver site subdivision in the CSL zone granted on the basis of the amalgamation of lots with elite or prime land within a rural zone, provide evidence that the donor sites have been amalgamated (and the new site is subject to a legal protection mechanism which confirms that the donor site must not accommodate any further residential development unless it is allowed as a permitted activity or via a resource consent, and that the site cannot be further subdivided other than by amalgamation or boundary adjustment and has no further potential to be used for the purpose of a TRSS subdivision).

Processing donor and receiver applications concurrently

Where the qualifying area of indigenous vegetation, wetland or indigenous revegetation planting within the donor site is of such a large area that more than one Donor Site TRSS Opportunity is available, then more than one TRSS receiver site subdivision consent application utilising those Donor Site TRSS Opportunities may be submitted.

In such cases all the TRSS applications for subdivision consent utilising the TRSS opportunities available at the Donor Site must be submitted to the council prior to any subdivision consent being granted.

The AUP (OP) TRSS provisions do not provide for the ‘banking’ of donor site TRSS opportunities. Rather, Table 15.3.1.1 of Appendix 15 requires an application/s utilising all the donor site TRSS opportunities being generated to be made at the same time (i.e., both are part of step 2 in the table). In addition, Standard E39.6.4.4(7) states “*Areas of indigenous vegetation or wetland to be legally protected as part of the proposed subdivision must not already be subject to legal protection*”. Therefore, all TRSS subdivision consent applications utilising donor site TRSS opportunities at a receiver site/s must be submitted prior to a subdivision consent being granted for any TRSS subdivision utilising one of the Donor Site TRSS Opportunities.

This seeks to ensure that the effects resulting from TRSS subdivision opportunities are able to be assessed in a holistic manner and that no application for subdivision consent is received after the qualifying area of wetland or indigenous vegetation has

already been protected. It also helps to ensure that the donor site TRSS opportunities are utilised within the lifetime of the AUP (OP).⁹

Any subsequent subdivision consent application relying on a portion of the already protected feature would be a non-complying activity. Another benefit of ensuring all TRSS receiver site subdivision consent applications are processed at the same time is that all consent conditions relating to the donor site and protection and management of the qualifying area of indigenous vegetation, wetland or revegetation planting will be consistent.

Appendices [15](#) and [16](#) set out the requirements that must be followed in relation to the TRSS subdivision pathway.

3.5 Combination of In-Situ Subdivision and TRSS through utilisation of the protection of indigenous vegetation or wetland or indigenous revegetation planting at the donor site

It is anticipated that some sites within the rural zones could contain a mixture of qualifying indigenous vegetation and wetland, and that the landowner may also wish to undertake indigenous revegetation planting. In addition, the landowner and the owner/s of a receiver site/s in the CSL zone may wish to apply at the same time to undertake both an in-situ subdivision of the donor site and a TRSS subdivision of the receiver site within the CSL zone utilising the qualifying feature/s within the donor site.

The first and subsequent threshold areas specified within Table E39.6.4.4.1 [Chapter E39](#) relating to the qualifying areas of indigenous vegetation/wetland required to enable in-situ and TRSS receiver site subdivision are different. Therefore, 'Advice Note (2)' following Table E39.6.4.4.1 and Standard E39.6.4.4(2B) provides guidance on the method to calculate the yield applicable when a combination of in-situ and TRSS subdivision consent applications are submitted.

As with the processing of subdivision consent applications that solely create TRSS receiver site sites based on the protection of qualifying features at a donor site, the application for subdivision consent to create the in-situ sites and the application/s to create the TRSS receiver site sites based on the protection of the qualifying feature/s at the donor/in-situ subdivision site must be submitted to the council at the same time (or before the first application is determined).

The council will not know which of each of the in-situ and TRSS receiver site subdivision/s will be completed first (i.e., certification under s.224(c) of the RMA issued). Therefore, the consent conditions for all subdivision consents granted would need to address this by being consistent with each other in terms of ensuring that the

⁹ Standard E39.4.4(8) also requires that areas of indigenous vegetation or wetland to be legally protected as part of a proposed subdivision must not have been used to support another transferable rural site subdivision or subdivision under the AUP(OP) or a previous district plan.

protection, fencing, weed and pest control, etc relating to the qualifying feature/s within the donor site is completed prior to the s.224(c) certificate issuing for the first completed subdivision.

The protection of the qualifying feature/s on the donor/in-situ site would either be achieved via:

- imposing a consent condition on the in-situ subdivision consent requiring the issue of a consent notice, including the conditions relating to protection and management, etc of the qualifying feature being protected, and another consent condition to address that the TRSS receiver site subdivision consent/s may be completed first, which would therefore require the provision of evidence that an enduring covenant to protect and manage, etc of the qualifying feature had been registered on the Record of Title for the donor site; or
- the TRSS receiver site subdivision consent/s including a condition requiring the provision of evidence of the registration of an enduring covenant on the Record of Title for the donor site to ensure protection and ongoing maintenance of the qualifying feature/s, and the imposition of another condition, to cater for the in-situ subdivision being completed first, which would require the provision of evidence that a consent notice had been registered on the donor site that would result in the protection and ongoing maintenance of the qualifying feature/s.

Any covenant that is to be registered on a Record of Title to protect wetland, indigenous vegetation and/or indigenous revegetation planting must be enduring. The council's Subdivision Team should be consulted to verify that this will be the case and to confirm the text within the covenant is in accordance with the relevant consent condition/s.

3.6 Boundary adjustments

Rules E39.4.1 (A4) and (A10) provide for minor alterations to the boundaries of existing sites. Boundary adjustment subdivisions do not involve the creation of any 'additional' sites. More details specific to this pathway can be found in the [PGN Rural Boundary Adjustment](#).

4 General Standards

All rural subdivision consent applications must comply with, and include the information set out within the General Standards E39.6.1 of [Chapter E39](#). These standards include:

- demonstrating that a Specified Building Area of at least 2,000m² free from natural hazards, etc is available within each proposed site;
- providing legal and physical access from a road to each proposed site;
- the need to demonstrate that for each proposed site provision is made for all of the specified services e.g. power, telecommunications, water, wastewater disposal and stormwater disposal;

- provision of a plan of the site/s that illustrates any areas of SEA, and all areas of indigenous vegetation, wetlands, waterways, streams, rivers and lakes (E39.6.1.6).

4.1 Provision of Services - Standard E39.6.1.3

Standard E39.6.1.3 'Services' is the relevant standard that sets out the nature of services that must be provided to each new rural site proposed to be created through a subdivision consent application:

“(1) For all proposed sites capable of containing a building, or for cross-lease, unit title, strata title or company lease, each building must be designed and located so that provision is made for all of the following services:
(a) collection, treatment and disposal of stormwater;
(b) collection, treatment and disposal of wastewater;
(c) water supply;
(d) electricity supply; and
(e) telecommunications.”

To comply with this Standard an application for subdivision of a rural site should contain sufficient information to demonstrate that the provision of wastewater, stormwater and potable water can feasibly occur in relation to each specified building area within each of the additional sites proposed to be created. It should also be confirmed within the application that both power and telecommunications will be provided to each of the additional sites proposed.

In the case of power supply, it is expected that a physical connection to the National Grid power supply will be provided to each additional site unless there is an exceptional reason for provision of an alternative viable and appropriate power supply (e.g. solar power).

With the availability of wifi telecommunication, a physical cable or fibreoptic telecommunication connection to the site may not be necessary. However, the applicant will need to provide confirmation from a utility provider that a suitable wifi connection is available to each specified building site identified. If it is demonstrated wifi connections are suitable the relevant standard consent condition and associated consent notice condition should be imposed.

Standard E39.6.1.3.(2) specifies that *“Where no reticulated water supply is available, sufficient water supply and access to water supplies for firefighting purposes in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 must be provided.”*

A subdivision consent application that does not demonstrate compliance with this standard, which is often the case as a firefighting water supply for a rural site will be installed after the subdivision is completed, would, for an activity type specified in Table E39.4.1, be a discretionary activity under Rule E39.6.4.1(A9).; or for a

subdivision type listed Tables E39.4.2 – E39.6.5 that is listed as a Controlled or a Restricted Discretionary Activity ('RDA') the application would be an RDA under Rule C1.9(2) and for any activity listed as Discretionary or Non-Complying within those Tables that matter, i.e. non-provision of a fire fighting water supply, would be assessed under that activity status.

The [Standard Rural Subdivision Consent Conditions chapter](#) of the Conditions Manual includes a consent notice condition that addresses the need for a future owner to demonstrate compliance with Standard E39.6.1.3.(2) at the time a building consent application is submitted for a dwelling to be located within the site.

5 Further detail on some of the subdivision pathways

5.1 Subdivision in the Countryside Living zone E39.4.2 (A14) & (A15)

The CSL zone is expected to accommodate the majority of additional rural residential development in the rural areas. The zone applies to a number of different locations throughout the region, typically on the fringes of metropolitan Auckland and around the outskirts of smaller rural and coastal towns. In each particular CSL zone location, minimum net site areas and minimum average net site areas have been set (see Table E39.6.5.2.1 [Chapter E39](#)) to achieve an appropriate balance between rural character and lifestyle living, taking into account contextual factors and/or constraints.

TRSS is the only method in which the AUP (OP) anticipates that sites less than 2ha can be created through subdivision of a site within the CSL zone. The ability to subdivide a CSL zoned site to create lots with a 1ha average is considered an incentive to use the TRSS process, which results in significant ecological benefits such as protection of SEA quality wetland or indigenous vegetation while maintaining rural production and avoiding rural character and amenity effects, as well as potential reverse sensitivity effects, at the donor site through reducing, or avoiding, the number of in-situ rural residential sites created in the wider rural area.

The subdivision variation control layer on the AUP (OP) maps indicates the areas of the CSL zone where sites are eligible for TRSS subdivision. It is noted that the CSL zone specifically refers to 'net site area'. The net site area excludes any legal right of way, entrance strip or access site less than 7.5 metres in width. As in residential zones, this is to ensure that the site is not overly constrained by a driveway which would effectively reduce the 'useable' portion of the site.

Any subdivision consent application submitted that proposes to create lots smaller than the 2ha minimum for the CSL zone, without using the TRSS subdivision process, will be a non-complying activity. Any such application will be assessed on a case-by-case basis under sections 104D and 104(1) of the RMA to ascertain if the proposed subdivision is acceptable in the context of all relevant matters, including the applicable objectives and policies of the AUP (OP). The potential for precedent and plan integrity effects of such an application may also be relevant as a section 104(1)(c) matter.

5.2 Subdivision based upon the Protection of indigenous vegetation or wetland in the Significant Ecological Area overlay or that meet the Significant Ecological Area factors identified in Policy B7.2.2(1)

The AUP (OP) provides for additional rural residential sites to be created on the same site (in-situ), and/or for the transfer of that Donor Site TRSS Opportunity to the CSL zone through the protection of sufficient areas of indigenous vegetation or wetland in the SEA overlay (or that meet at least one of the SEA factors identified in Policy B7.2.2(1)).

The maximum number of in-situ lots that can be created through the protection of indigenous vegetation is capped at 12, and the number of in situ lots that can be created through the protection of wetland is capped at 3, in accordance with Table E39.6.4.4.1. Any additional sites generated beyond the stated in-situ maximums (e.g., through very large areas of wetlands/indigenous vegetation) would need to be used for TRSS receiver site subdivision/s and transferred off the donor site.

Standard E39.6.4.4(11)(a) specifies that all indigenous vegetation or wetland, on the site is to be protected as part of the application, even if this means protecting indigenous vegetation or areas of wetland larger than the minimum qualifying area.

This essentially makes this type of subdivision a 'one time only' application where the applicant is incentivised to use all their subdivision opportunities in the one subdivision application. The applicant will be unable to come back in the future for another subdivision based on the protection of wetland/indigenous vegetation on the site as Standard E39.6.4.4(11)(a) will have required all of the wetland/indigenous vegetation to be legally protected. Therefore, any future application would not meet E39.6.4.4(7) that areas of indigenous vegetation must not already be subject to legal protection.

Where a site has large areas of wetland/indigenous vegetation the AUP (OP) provisions require that the entire area of the feature/s is be protected at the completion of the first subdivision application. As noted above, all the application/s for subdivision consent to create in-situ and/or TRSS sites must be submitted to the council at the same time or at least prior to the first application being determined.

Table 1 E39.6.4.4.1

Feature Protected	Transferable rural site subdivision (TRSS) Yield		In-situ Subdivision Yield	
	Area of Feature protected	Maximum number of new sites for TRSS	Area of Feature Protected	Maximum number of new in-situ sites
Indigenous vegetation	2ha – 9.9999ha	1	4ha – 9.9999ha	1
	10ha – 14.9999ha	2	10ha – 20ha	2
	15ha – 19.9999ha	3	Thereafter for every additional 10ha	+1 To a total of 12 maximum
	20ha – 30 ha	4		
	Thereafter for every additional 10ha	+1 No maximum		
Wetland	0.5ha – 0.9999ha	1	0.5ha – 1.9999ha	1
	1ha – 1.9999ha	2	2ha – 3.9999ha	2
	2ha – 3.9999ha	3	4ha and over	3 maximum
	4ha – 9ha	4		
	Thereafter for every additional 5ha	+1 No Maximum		

Assessing the areas of indigenous vegetation identified as SEA (in the SEA overlay)

Standards E39.6.4.4(1) and E39.6.4.6(1) of the AUP (OP) do not require an ecological assessment to establish whether a feature within the SEA overlay, either indigenous vegetation or a wetland, has significant ecological value and may be protected as part of a regulatory incentive subdivision opportunity. Being identified within the SEA overlay indicates that the area holds ecological value.

The focus of the consent assessment including the ecological assessment is the verification of the size of the feature, its current quality i.e., pests and weeds present and the management of the area.

The protection should ensure long term health and viability of the feature. Standard E39.6.4.4(12) provides for this via the requirement to submit a Management Plan

with all applications. This document is expected to include details such as establishment of stock exclusion fencing, weed and animal pest control.

A feature may have been identified within the SEA on the basis of meeting a variety of factors and sub-factors such as representativeness, threat status and rarity or diversity. If the council GIS, or more recent aerial photography, and/or a site visit reveals open areas (i.e. grassed areas) within the area proposed for protection, the processing planner will need to discuss this further with the council's Ecologist.

Standard E39.6.4.4 refers to the area of 'indigenous vegetation' to be protected. Any exotic vegetation within an area of indigenous vegetation would therefore not form part of the qualifying feature. However, the entire area of SEA, or entire area of the qualifying feature being protected, must be protected including any areas of exotic vegetation, and any areas of grass, within the bounds of the SEA or the qualifying area being protected.

The pest plant and pest animal management plan will need to address the eradication and control of any invasive exotic pest plants, including pine trees, within the protected area. This may include the need to undertake planting of indigenous vegetation within those open areas, grassland areas or cleared areas of exotic vegetation to inhibit the establishment of weeds.

Assessment of indigenous vegetation or wetland not identified in the Significant Ecological Areas Overlay but meeting the Significant Ecological Area factors identified in Policy B7.2.2(1)

The AUP (OP) provides for additional rural residential sites to be created via in-situ subdivision and/or for the creation of Donor Site TRSS Opportunities through the protection of indigenous vegetation or wetland not identified in the SEA Overlay but meeting one, or more, of the SEA factors identified in Policy B7.2.2(1) and complying with Standard E39.6.4.4.

For an applicant to utilise an area/s of indigenous vegetation or wetland that is not identified within the SEA Overlay for in-situ or TRSS subdivision, the area/s must be assessed by a suitably qualified and experienced person (e.g. an ecologist) who must determine that it meets at least one of the SEA factors identified in Policy B7.2.2(1) and detailed in the factors and sub-factors listed in Schedule 3 Significant Ecological Areas – Terrestrial Schedule. A report by that person must be prepared and submitted to support the application for subdivision consent.

Where indigenous vegetation is proposed to be protected and the qualifying area used to create in-situ sites or Donor Site TRSS Opportunities in accordance with Table E39.6.4.4.1, the area of indigenous vegetation to be protected can consist of a combination of indigenous vegetation identified in the SEA overlay and indigenous vegetation that meets the SEA factors.

For example, where the area of indigenous vegetation to be protected comprises 1ha of indigenous vegetation identified in the SEA Overlay and 1ha meeting the SEA factors identified in Policy B7.2.2(1), the 2ha contiguous area will be sufficient to generate one site for TRSS.

Where applications relate to the protection of wetlands that are not identified in the SEA Overlay but are proposed to meet the SEA Factors listed in B7.7.2.1 consideration needs to be given to the following matters:

Size of the wetland feature

The ecologist assessing the size and quality of the wetland for the applicant will need to provide the outcome of their assessment using appropriate methods, which the Council ecologist will review. Inclusion within the application of certification from a licenced land surveyor that they have surveyed the extent of the wetland as delineated by the applicant's ecologist would also assist the processing of the application.

It may be that a site meeting may need to be undertaken with the applicant's agents attending, to ensure the edges of the wetland are agreed. It is recommended that the applicant's surveyor also attends that meeting to ensure the agreed extent of the wetland matches the area that had previously been surveyed.

5.3 Creating in-situ sites and/or Donor Site TRSS Opportunities through establishing indigenous revegetation planting (E39.4.2 (A18), (A19), (A22) & (A23))

In-situ subdivision through establishing an area of revegetation planting meeting the relevant area thresholds set out in Table E39.6.4.5.1 is provided for as a restricted discretionary activity by Rule E39.4.2(A18). If the proposed planting or subdivision do not comply with Standard E39.6.4.5, then the subdivision is a non-complying activity under Rule E39.4.2 (A19). Appendices [15](#) and [16](#) also set out the requirements that must be followed in relation to this subdivision pathway.

TRSS receiver site subdivisions can also occur through the establishment of qualifying areas of indigenous revegetation planting and will be a restricted discretionary activity under Rule E39.4.2(A22) if compliance with Standard E39.6.4.6 is achieved or a non-complying activity under Rule E39.4.2(A23) if compliance with the standard is not achieved. Standard E39.6.4.6 requires the indigenous revegetation planting being utilised for TRSS receiver site subdivisions to also comply with Standard E39.6.4.5.

Some of the key standards that apply to proposals to establish indigenous revegetation planting in Standard E39.6.4.5 are that the planting:

- is not located on land containing elite soil or prime soil;
- is located outside any Outstanding Natural Character, High Natural Character or Outstanding Natural Landscape overlays;
- is contiguous with existing indigenous vegetation or wetland identified in the SEA Overlay or meeting the SEA factors identified in Policy B7.2.2(1);
- is in accordance with the criteria set out in Appendix [15](#) Subdivision information and process and Appendix [16](#) Guideline for native revegetation plantings.

To establish whether the indigenous revegetation planting is located on land containing either elite soil or prime soil the FARM LUC maps (via Geomaps) should be referred to. If highly productive land (elite or prime soils) is present, the AEE should also address, or be updated to address, the effects generated from the conversion of that productive land to protected indigenous vegetation, as well as the provisions of the National Policy Statement for Highly Productive Land (2022). Any soil report and analysis submitted in support of the application will need to be reviewed by a council specialist (soil scientist) within the Air, Land & Biodiversity Team.

With respect to the need for the indigenous revegetation planting to be contiguous with existing indigenous vegetation or wetland identified in the SEA Overlay or meeting the SEA factors, the Environment Court concluded within its September 2020 decision at paragraph [184] ¹⁰ that “*We conclude that areas for revegetation should connect to an area meeting the relevant criteria for wetland or SEA*”. The Court found at paragraph [33] ¹¹ of its February 2021 decision that the requirement in Standard E39.6.4.5(1)(c) for revegetation planting to be 'contiguous with' existing indigenous vegetation or wetland intends there to be a substantive connection between the revegetation planting and existing indigenous vegetation or wetland “*as opposed to a minor or separated connection, i.e. separated by a road*”.

Where the area of revegetation planting is large and/or in steep topography that is difficult to access for maintenance purposes, an applicant may wish to provide access for the maintenance of the planting as well as pest plant and pest animal control. This may be acceptable but only if any access is kept to a minimum width in to provide access for a 4 wheeler or side by side farm vehicle for plant maintenance purposes only. Such tracks, if approved, must not be excluded from the area to be protected but the area of them cannot be included within the calculation of the minimum area planting required.

An application to Council for consent to subdivide to create in-situ sites or subdivide CSL zoned TRSS receiver sites based on indigenous revegetation planting will need to confirm the planting will be in accordance with Appendix [16](#) and should, as a minimum, include the following:

- a pre-planting site assessment;
- a planting plan assessment; and

¹⁰ [\[2020\] NZEnvC 153 Cabra Rural Developments Limited v Auckland Council](#)

¹¹ [\[2021\] NZEnvC 010 Cabra Rural Developments Limited v Auckland Council](#)

- an annual monitoring programme.

Note: Bonding for the establishment of the indigenous revegetation planting for either in-situ or TRSS subdivision consent applications is not acceptable to the Council. This is for a number of reasons, including because the planting is the specific basis of the subdivision, the unpredictable climatic conditions that can affect establishment of the planting, and the high cost involved.

However, if at the time a consent holder applies for the issue of a section 224(c) certificate for the subdivision, the consent holder demonstrates that the planted vegetation has been in the ground for at least 12 months and it has grown at least 300mm since having been planted, the Council may agree to enter into a bond to cover the remaining period of the 5-year maintenance period. The requirement for the 300mm growth is to provide a level of assurance the plants have established. However, whether this is an acceptable approach will need to be determined on a case-by-case basis.

If a bond for the maintenance of the planting is agreed to by the Council, the relevant standard condition should be imposed as well as the addition of an advice note to advise the consent holder that the bond should be transferred to the new owner of any relevant site should the site over which the bond is held be sold.

Note: A Biodiversity Management Plan is to be provided with all applications, which is expected to include details such a fencing, weed and pest animal control. These requirements are ongoing (i.e. not just for the 5 year maintenance period).

5.4 TRSS receiver site subdivision via amalgamation – (E39.4.2(A24) & (A25))

TRSS receiver site subdivision through amalgamation is a specific subdivision opportunity that narrowly targets Auckland’s fertile rural soils and seeks a reversal of historic land fragmentation trends in these areas, particularly in the Pukekohe area.

It is important to note that this subdivision opportunity is not open to all rural sites.

While there may be benefits from some rural sites amalgamating and the development opportunities being transferred to the CSL zone, the subdivision opportunities under Rules (A24) and (A25) are only available to specific sites (as outlined below). There is only a limited amount of receiver capacity in the CSL zone and it is assigned to the specific TRSS opportunities in the AUP (OP).

Standard E39.6.4.7(1) states that the qualifying donor sites for TRSS subdivision via amalgamation must:

- be abutting;
- not contain a dwelling within at least one of the sites;
- be within the specified Rural Zones;
- be between 1ha and 20ha in area;

- contain at least 90 percent elite or prime soil within each site prior to amalgamation;
- be in existence or be shown on an approved subdivision scheme; and
- not comprise part or all of a closed road, road severance, or designation.

The basis of the maximum 20ha threshold for this TRSS pathway is because of the level of rural production related benefit that results within rural zones where the TRSS opportunity is being generated. The greatest level of benefit in terms of rural production is gained by amalgamating smaller sites. The removal of smaller sites (more likely to be used for rural residential purposes) also has the benefit of reducing the likelihood of adverse reverse sensitivity effects occurring. The AUP (OP) only incentivises amalgamation of titles to create new sites of up to 40ha. There are no incentives in the AUP(OP) to amalgamate titles to sizes over 40ha.

Land use capability soil assessments

A Land Use Capability (**LUC**) assessment is required to support all applications under the TRSS amalgamation Rules (A24 and A25) to confirm that the donor sites contain at least 90 per cent elite land or prime land (see Standard E39.6.4.7(1)(d)).

The detailed site-specific LUC soil assessment must be undertaken by a suitably qualified and experienced person. This assessment needs to be based on an actual physical site investigation utilising an appropriate soil sampling methodology.

The requirement for the donor sites to contain at least 90 per cent elite land or prime land applies to the entire site irrespective of whether the land may be covered in production forestry or indigenous vegetation.

The assessment will need to be reviewed by a council specialist (soil scientist) within the Air, Land & Biodiversity Team.

6 Access / Shared Driveways

A technical document is being prepared by the Development Engineering Team in relation to the number of access points, treatment and design of driveways and access to rural sites and subdivisions.

This is currently under development and until then generally matters to consider include:

Environmental elements:

- Earthworks, cut/fill;
- Number of lots utilising the access and whether provision of a road would be a more appropriate form of access;
- Design, including possible effects on rural character and amenity from any earthworks required to create the access, or glare from driveways, etc.;

- Fish passage through any culverts over any watercourses;
- Flooding, culvert capacity.

It is known that in some cases a large number of lots accessing off a driveway may result in future problems with respect to maintenance, cost sharing and on-going ownership of the right of way or jointly owned access lot. To address this, where a large number of lots are proposed to gain access via a shared driveway, consideration should be given, as part of the processing of the application, to the option of providing access to the sites via a formal road and vesting the relevant lot as road with Auckland Transport.

7 FAQs

7.1 Does the applicant need to identify and protect all other wetlands and areas of indigenous vegetation on the donor site and/or parent site over and above those qualifying areas of wetland/indigenous vegetation on which the subdivision is based on?

Yes.

Standard E39.6.1.6 states that *“All subdivision plans, excluding boundary adjustments subdivision plans, must show any of the following features that exist on, or on the boundary of, the land being subdivided:*

(a) any areas identified as an Significant Ecological Area in the D9 Significant Ecological Areas Overlay; or

(b) any other areas of indigenous vegetation, wetlands, waterways, streams, rivers and lakes.”

The plain meaning of Standard E39.6.1.6(1) is that any of the features listed within paragraphs (a) and (b) of Standard E39.6.1.6(1) must be shown on a plan submitted with the subdivision consent application where such features exist on, or on the boundary of, the land being subdivided.

For a subdivision involving existing indigenous vegetation or wetland on a site, standard E39.6.4.4.1 (11)(a) requires:

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

When these provisions are read as a whole it is apparent that these standards require all existing areas of indigenous vegetation or wetland on the site, which is the subject of a subdivision application, to be depicted on the survey plan and protected.

This interpretation is supported by Policy E39.3(20) which requires subdivision to, amongst other things, “(20)(a) recognise topography including steep slopes, natural features, ridgelines, aspect, water supplies, **and existing vegetation**” and Matter of discretion E39.8.1(6)(a)(iii) which refers to “**the location of the indigenous vegetation, wetland and/or revegetation planting relative to proposed new sites and to existing vegetation**” and which is relevant to both the assessment and consideration of in-situ and TRSS subdivision consent applications.

Standard E39.6.4.4(11) requires that any areas of indigenous vegetation on a site or wetland on a site must be made subject to a legal protection mechanism whether or not it is being used as the basis for the subdivision in question (i.e. E39.6.4.4(11)(a) “*protection of all the indigenous vegetation or wetland and buffer existing on the site at the time the application is made,*”

This outcome reflects the guidance provided by Policy E39.3(17) “*Require indigenous vegetation or wetland within a site being subdivided to be legally protected in perpetuity.*”

Furthermore, requiring the protection of all indigenous vegetation or wetland within site, “*even if this means protecting vegetation or a wetland larger than the minimum qualifying area*” also reflects the requirement within Standard E39.6.4.5(5)(a) to protect all existing indigenous vegetation on a site in addition to any indigenous revegetation planting that is undertaken i.e.

“(5) *Areas subject to revegetation planting must be subject to a legal protection mechanism that:*

(a) protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any revegetation planting;”

Therefore, in light of the above, it is apparent that there is a requirement within the relevant Standards to protect all indigenous vegetation or wetland existing within a site at the time that either an in-situ subdivision is undertaken, or the creation of a TRSS opportunity is occurring.

This requirement applies even if the subdivision is only based on the protection of wetland or only on the protection of indigenous vegetation. The use of the word ‘or’ in this standard conveys the possibility that only one of the mentioned features may be present within a site or they may be both present, not that they both have to be present.

Wetlands

The additional areas of wetland to be protected on a donor site are any area/s of 'wetland' that meet the RMA definition of wetland. These additional wetlands need to be protected in addition to the areas of SEA wetland or wetland meeting the criteria under Policy B7.2.2(1) that the subdivision is relying upon. The AUP (OP) provisions do not specify a minimum area for an additional wetland that needs to be protected.

RMA wetland definition:

wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

Standard E39.6.4.4(3) also requires the protection of buffers, therefore a 20m buffer should also be provided around all identified wetland areas.

The council's ecologist will need to confirm they agree the plan does illustrate all the features specified, including wetland, within the site. This may involve a desktop assessment and/or a walk over the donor site to identify any possible wetland areas as part of the site visit.

7.2 Can environmental protection of wetlands/indigenous vegetation etc be required in the Countryside Living Zone?

Yes, in some cases.

Standards for in-situ and TRSS subdivisions require the protection of all indigenous vegetation and wetlands that exist on the rural zoned site being subdivided/ donor site.

Those standards do not apply to the receiver site in the CSL zone, nor do they apply to a standard subdivision of a CSL zoned site. However, in the case of some applications there is the scope to assess the effects of the subdivision on any existing indigenous vegetation, wetland or riparian area within the CSL zoned site.

Standard subdivision in the CSL zone is a Discretionary activity and therefore there is scope to consider all relevant effects. TRSS subdivision is a Restricted Discretionary activity and the matters of discretion at E39.8.1(6)(a)(i) - (x) and E39.8.1(7)(a)(i) provide for the assessment of effects on rural character, landscapes and amenity, including the location of the proposed new sites relative to existing vegetation and wetlands.

Section 108AA of the RMA requires that conditions must not be included in a resource consent for an activity unless the applicant agrees to the condition or the condition is directly connected one or more of an adverse effect of the activity on the environment, or a regional or district rule (or national environmental standard) that is

applicable. 'Applicable' requires that the rule must be one of the 'triggers' for resource consent.

In this instance there is no rule that requires the protection of existing indigenous vegetation, wetland, etc on a receiver site in the CSL zone. However, where it has been found that there will be adverse effects generated by the subdivision on the indigenous vegetation or wetland or watercourse present it may be appropriate to impose consent conditions to avoid, remedy or mitigate those adverse effects. However, this would need to be determined on a case-by-case basis.

7.3 Do the areas of wetland or indigenous vegetation need to be contiguous to meet the first and subsequent area thresholds?

Yes – although with respect to indigenous vegetation the second and subsequent area thresholds can be met by adding areas of SEA indigenous vegetation or wetland or indigenous vegetation or wetland meeting the SEA factors together.

For an area of indigenous vegetation (whether identified as SEA or meeting the SEA factors) to qualify as a donor site TRSS opportunity there must be at least 2ha of contiguous qualifying indigenous vegetation. For that area of indigenous vegetation to provide for the creation of an in-situ allotment there must be a minimum of 4ha of contiguous indigenous vegetation.

For any wetland (whether identified as SEA or meeting the SEA factors) to qualify for either a donor site TRSS opportunity or creation of an in-situ site a minimum contiguous area of 5,000m² of SEA wetland must be provided for each separate area of wetland being protected.

This reflects the Court's intention, and that of the AUP (OP) provisions, of incentivising TRSS subdivision through the setting of a lower qualifying area threshold to achieve a TRSS opportunity. This would not be achieved if in-situ subdivision could occur through provision of an area of qualifying feature less than the first area threshold specified in the relevant table for that nature of subdivision.

The following extract from the Courts decision *Cabra Rural Developments v Auckland Council* [2020] NZEnvC 153 ¹² indicates it is intended that the first threshold area is to be met by the one contiguous area of the relevant feature:

[94] We recognise that with a 4-hectare minimum for SEA and a 0.5ha minimum for wetlands, the amount of in-situ subdivision may be slightly quicker in the initial stage, particularly for those persons outside the Countryside Living Zone with sufficient land to sustain a further subdivision. However, experience would suggest that the amount of existing SEA meeting the

¹² [2020] NZEnvC 153 *Cabra Rural Developments Limited v Auckland Council*

required standard and the amount of existing wetlands meeting the required standard, is likely to be relatively minimal. Overall, we consider that protecting any SEAs may have the significant benefit of identifying those areas not yet mapped and protecting them in the first instance. This will encourage subdivision transfer into the Countryside Living Zone for smaller subdivisions.

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

7.4 Can coastal wetlands be protected and used for in-situ or TRSS subdivision?

No.

Only terrestrial SEA wetlands (or terrestrial wetlands meeting one or more of the SEA factors) can be used for subdivision under E39.6.4.4 and E39.6.4.6.

This is apparent as any wetland not identified in the SEA Overlay must be assessed against the factors identified in Policy B7.2.2(1). This policy refers to “Schedule 3 Significant Ecological Areas – **Terrestrial Schedule**” [bold added for emphasis]. There is no reference made to Schedule 4 Significant Ecological Areas - Marine Schedule.

7.5 Can areas of existing regenerating indigenous bush be considered as part of the ‘planting’ for indigenous vegetation planting subdivision?

No.

Existing areas of regenerating indigenous vegetation on a site cannot be considered “revegetation planting” under the indigenous revegetation planting subdivision opportunities in [Chapter E39](#) (i.e. Rules E39.4.2(A18), (A19), (A22) and (A23)). This is because the vegetation exists, and was not planted. Therefore, it cannot be considered to be ‘planting’ in the context of these provisions.

Any attempt to count existing regenerating indigenous vegetation as “revegetation planting” would be a non-complying activity under Rule E39.4.2(A27) as “any subdivision not provided for” in Tables E39.4.1 or E39.4.2 [Chapter E39](#).

If the existing regenerating indigenous vegetation areas on the site meet the SEA factors (one or more) then those areas may possibly be used for subdivision opportunities for protection of existing SEA quality indigenous vegetation (under Rules E39.4.2(A17C), (A17D), (A21C), and (A21D)).

If the existing regenerating indigenous vegetation areas on the site are not of SEA quality, they are still required to be protected in any case based on Standard E39.6.4.5(5)(a) *“Areas subject to revegetation planting must be subject to a legal protection mechanism that: (a) protects all the existing indigenous vegetation on the site at the time of application as well as the additional area subject to any revegetation planting”*.

It is important to keep in mind that the indigenous revegetation rural subdivision pathway is to allow for a subdivision opportunity on the basis of creating a specified level of ecological benefit. That benefit, in relation to indigenous revegetation planting, is created through the addition of the specified area of indigenous planting over and above any existing indigenous vegetation within the site, which must also be protected as mentioned above.

7.6 Can areas of previously planted indigenous vegetation be considered as part of the ‘planting’ for indigenous vegetation planting subdivision?

No.

The provisions of Standard E39.6.4.5 and Appendices [15](#) and [16](#) specify that a planting plan, addressing the relevant criteria, must be provided to the council with the subdivision consent application and that the planting plan must be implemented prior the section 224(c) certificate issuing for the subdivision.

On this basis if an application is based upon, or includes an area of, existing planted indigenous vegetation the application would be a non-complying activity in accordance with the relevant rules as the required area of new indigenous revegetation planting will not be provided. In that case the applicant would need to acknowledge the non-complying activity status of the application and provide sufficient information to detail the nature of the planting that has already occurred (e.g. as a minimum the planting density, species composition, weed and animal pests present and, as relevant, the survival rate and canopy closure achieved).

The council ecologist reviewing the application will need to confirm the existing planting meets the outcomes intended within Appendix [16](#) and [Chapter E39](#) and that the overall ecological benefit anticipated to be provided for the number of subdivision opportunities proposed will be achieved.

Another matter to consider is that the area of existing planted indigenous vegetation would be required to be protected in addition to the indigenous revegetation planting that the subdivision is based upon via the provisions of Standard E39.6.4.5(5)(a).

7.7 Can wetland buffer areas be less than 20m?

Generally not.

Applicants may apply for consent to include a buffer less than 20m width. However, this would generally not be supported by council unless there was some physical reason to make a 20m buffer width impractical for a small portion of the buffer length and an acceptable level of mitigation was being proposed.

The council ecologist reviewing the application should provide comment as to whether the buffer being provided is sufficient to ensure the ecological effects upon the wetland will be acceptable and that the anticipated level of ecological benefit is being achieved.

7.8 How do you treat sites that straddle the edge of the Land Amalgamation Incentivised Area (LAIA)?

Where part of a site is within the LAIA and rest of the site is outside of it, the threshold for the site to be considered in the LAIA is that the site must contain at least 1ha of land fully inside the LAIA. The 1ha threshold relates to standard E39.6.4.7(1)(e) which states that each qualifying site for transferable rural site subdivision through the amalgamation of donor sites must have a net site area between 1ha and 20ha.

7.9 Can you subdivide a rural property along its zone boundaries even if the minimum site sizes for the zones are not met?

No.

Unlike E38 – Urban Subdivision (activity (A7)), there is no activity provided in E39 to enable subdivision along zone boundaries. Split zoning of sites often occurs in rural areas due to the relatively larger site sizes. A common split zoning is between the

Rural - Rural Production zone and the Rural - Rural Coastal zone. This is because the Rural - Rural Coastal zone often attempts to follow natural features which do not necessarily match up to cadastral boundaries. Irrespective of whether a rural site has a split zoning, the minimum site sizes relevant to applicable zone still need to be met for a subdivision under (A12).

7.10 What types of legal protective mechanisms are considered satisfactory?

The acceptable protection mechanisms to be registered on the relevant Records of Title to ensure the protection of wetland, indigenous vegetation or indigenous revegetation associated with rural subdivision types must result in the enduring protection of the feature and be in an acceptable form to the council. This will need to be considered on a case-by-case basis. The provisions of Appendix [15](#) should be referred. Acceptable forms of protection may be:

- A council-imposed consent notice with the wording based upon that within the Rural Subdivision Conditions Chapter of the Resource Consent Conditions Manual.
- A covenant instrument, entered into between the donor site owner and the council, which will also be binding on future owners of the site, that is registered on the relevant Record of Title, with the wording based upon that within the Rural Subdivision Conditions Chapter of the Resource Consent Conditions Manual.
- A conservation covenant under the provisions of the Reserves Act 1977 with the wording based upon that within the Rural Subdivision Conditions Chapter of the Resource Consent Conditions Manual.
- A QEII covenant registered on the relevant Record of Title, plus, where relevant, a council-imposed consent notice for those aspects not covered by the QEII covenant, with the wording based upon that within the Rural Subdivision Conditions chapter of the Resource Consent Conditions Manual.

7.11 Can you subdivide a site of less than 2ha from a Countryside Living site without using the TRSS pathway?

No.

An application proposing to create a lot less than 2 ha within the CSL zone without reliance on the TRSS pathway would be a non-complying activity and would need to be considered on a case-by-case basis.

The Transferable Rural Site Subdivision (TRSS) system is incorporated throughout the rural provisions of the AUP (OP). This is notably within section B9 of the RPS, the subdivision provisions of E39, and the Subdivision Variation Control identified on the planning maps, where the creation of sites of less than 2ha is enabled. The

minimum average lot size of 1ha (using TRSS) is the incentive to use the TRSS pathway.

If applicants can subdivide a site within the CSL zone to create a site less than 2ha without utilising the TRSS pathway, it undermines any incentive to utilise a TRSS opportunity in the first place. Accordingly, the anticipated benefits to biodiversity (through bush protection etc.) and benefits to rural productivity (reversing fragmentation through the amalgamation of land parcels), as well as the opportunity of fulfilling the objectives of minimising rural character and reverse sensitivity effects, are not achieved, or not achieved to the level anticipated, by not following the TRSS pathway.

The Environment Court within its decision *Cabra Rural Developments v Auckland Council* [2020] NZEnvC 153¹³ expressed its preference for the TRSS pathway, see Section 2 above where the relevant extract is included.

7.12 What forms of legal protection already in place disqualify an environmental protection subdivision from being made?

The processing planner should check the application and the Record of Title for all donor sites to confirm that there is no legal instrument, encumbrance, consent notice, covenant, bond, or Emissions Trading Scheme contract that already protects the wetland and/or indigenous vegetation that an applicant is proposing to protect in order to support a rural subdivision consent application for either in-situ or TRSS subdivision.

The processing planner should also check the council's consent database to confirm that there has not been a previous unimplemented subdivision consent that has already utilised the protection of the same areas of wetland and/or indigenous vegetation as the basis of that subdivision.

The Record of Title should also be checked to see if a consent notice condition or covenant is registered on the Title that restricts further subdivision of the site as a result of a previous subdivision having been granted.

7.13 Can I subdivide a minor dwelling from the principal dwelling in rural zones?

No.

Subdividing a minor dwelling from the principal dwelling is prohibited activity under Rule E39.4.2(A26). However, if the sites proposed to accommodate both the principal dwelling and minor dwelling comply with the minimum site size requirement

¹³ [\[2020\] NZEnvC 153 Cabra Rural Developments Limited v Auckland Council](#)

for subdivision in the applicable zone (i.e. if the minimum site size was met in relation to both dwellings), then potentially, subject to gaining the necessary land use consent, the minor dwelling could become the principal dwelling within that site.

If that is the case, the applicant would need to apply for, and gain, land use consent to convert the minor dwelling to a second dwelling within the parent site prior to the subdivision consent application being submitted to avoid the subdivision being a prohibited activity. To ensure that the subdivision of the site does occur, and the location of two principal dwellings within a site does is not consented for an unrestricted period of time, the land use consent should include a condition specifying an expiry date, which should be no longer than 12 months from the grant of the consent. A 12-month period would be sufficient for the applicant to then obtain subdivision consent and to complete the subdivision.

7.14 What to do if there is disagreement between an applicant's ecologist and the council ecologist reviewing the application?

A council ecologist may disagree with the views expressed within an ecological assessment of a wetland or an area of indigenous vegetation undertaken by a rural subdivision applicant's ecologist, particularly in regard to whether the wetland or area of indigenous vegetation meets an SEA factor identified in Policy B7.2.2(1). There may also be disagreement between an applicant's ecologist and the council ecologist in relation to the species and numbers of particular plant species that should be planted when indigenous revegetation planting is proposed to enable rural subdivision.

Where any such disagreement is encountered the processing planner should advise their Team Leader and arrange to meet with the ecologist to gain an understanding of the basis for the disagreement. It may be beneficial to involve the manager of the Ecological Advice Team in those discussions to enable a process to resolve the disagreement.

A site meeting, possibly also involving the applicant's surveyor, maybe be beneficial to understand how the classification and size of a wetland was determined, or in the case of indigenous vegetation or indigenous revegetation planting how the SEA factors are met to allow for inclusion of that area or for a connection to that area respectively.

7.15 Can the specified building area be smaller than 2,000m²?

Yes – but only in some cases.

The relevant Standard E39.6.1.1(3)(a)(i) states that the identified specified building area ('SBA') must *"include a single area of at least 2,000m² clear of all of the following:"*

An applicant may apply to have a specified building area less than 2,000m² for example where there are site constraints that restrict development.

The application would need to identify the constraints that result in the specified building area being less than that specified and that there is still sufficient area to provide a developable rural-residential building site (i.e. to provide for a dwelling and accessory buildings and reasonable area for outdoor living).

For clarity, the specified building area within which an existing dwelling within a proposed site needs to be located must also be at least 2,000m² and meet the other relevant standards within Standard E39.6.1.1.

If the size or layout of the site limits the building area available, then the area for wastewater disposal may also be compromised. If that may be the case, the indicative primary and reserve wastewater fields will need to be identified within the information submitted to support the application. This information will need to include identification of any wetlands, or permanent or intermittent streams on the proposed lots as there will be additional restrictions on the location of the wastewater disposal field. This also applies to steep sites and areas covered by indigenous vegetation.

The relevant standard, referred to above, does provide for an SBA to be larger than 2,000m². If that is proposed, the appropriateness of that would need to be assessed on a case-by-case basis and take into account any overlays or other site constraints.

Also of relevance is that Standard E39.6.1.1(3)(c) states:

"(3) The specified building area must meet all of the following:

- (c) be identified as the only place within the site where dwellings, any accessory buildings, and related parking and manoeuvring areas can be located;"*

7.16 Can a new site provide solar power for electricity provision rather than a physical connection to the main network?

Yes – but only in exceptional cases.

The accepted method of supplying electricity to a site involves the installation of the mains power source from the network to the site. The provision of this service would need to occur prior to section 224(c) certification for the subdivision.

However, there may be times when an applicant seeks to provide an alternative power supply to a site (e.g. solar power at the time a dwelling is built).

It should be noted that provision of solar power without a grid connection can come at a significant cost to any purchaser of the site and can have significant implications for other nearby sites. Therefore, any such applications should be assessed on a case-by-case basis to ensure that such a proposal is appropriate in terms of the provisions of the AUP (OP) and any adverse effects on other parties.

Should an alternative method of power supply for sites being created via a subdivision consent be found to be acceptable, then it would be necessary to impose a consent notice condition to advise any future owner of the site that it will be their responsibility to install and maintain that alternative power supply, as described in the relevant report provided with the subdivision consent application, and that all associated costs will need to be met by the landowner.

8 Links to other relevant documents

- [Rural boundary adjustment PGN](#)
- [Standard Rural Subdivision Condition Chapter of the Standard Conditions Manual](#)
- [Consents Procedure Manual](#) (internal only)
- [Private Way Guidance](#)
- [Access/Shared Driveways guidance](#) – [Check with your DE](#).
- Environment Court decision(s) on the rural subdivision provisions in the AUP(OP) – [Westlaw](#)

