



Proposed Plan Change B (PCB)

Improving consistency of provisions in Chapter F Coastal, Chapter J Definitions, Appendix 7 and the viewer of the Auckland Unitary Plan
(Operative in part)

SECTION 32 EVALUATION REPORT

18 October 2018 version (for committee report)

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1. Introduction

1.1 Scope and purpose of the report

This report is prepared by Auckland Council (Council) to fulfil the statutory requirements of section 32 of the Resource Management Act 1991 (**RMA**) for proposed Plan Change B (**PCB**) to the Auckland Unitary Plan (Operative in part) (**AUP**).

PCB is one of a series of four plan changes to address technical issues across the AUP. These plan changes follow on from *Plan Change 4 – Corrections to technical errors and anomalies in the Auckland Unitary Plan (Operative in part) version (PC4)*. The series of proposed follow-up plan changes have a slightly broader scope than PC4 to enable a number of the technical issues that did not meet the criteria for inclusion within PC4 to be addressed. Other plan changes in the series include:

- Plan Change A: Auckland-wide and Overlays
- Plan Change C: Zones
- Plan Change D: AUP Viewer

PCB introduces amendments within Chapter F Coastal, Chapter J Definitions, Appendix 7 and the Viewer of the AUP.

The proposed amendments address identified technical issues only and retain the current policy direction of the plan. In particular, the amendments proposed in PCB are to:

- amend provisions that are ambiguous or unclear;
- amend the provisions to achieve vertical and horizontal alignment across the AUP where there are current gaps or a misalignment of provisions; and
- improve integration of different chapters within the AUP.

The plan change document for PCB is set out in **Attachment 1** and shows the proposed amendments to the AUP, including any consequential amendments. The matters addressed in PCB are set out in Table 1.1.

Table 1.1 Summary of amendments and their purpose.

Theme	Topic	Purpose of change
1.	Accidental discovery rule	Clarifying that the accidental discovery rule applies in the coastal marine area.
2.	Marina date inconsistency	Addressing the inconsistency in dates in the marina extension objective and rules (i.e. date the plan was notified or made operative).
3.	Sediment quality indicators	Clarifying which sediment quality indicators are referred to in the coastal discharges background section.

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Theme	Topic	Purpose of change
4.	Reclamation, structures and minor infrastructure upgrades	Clarifying how the provisions for reclamation, structures and minor infrastructure upgrades apply to facilities such as seawalls. This includes a consequential change to Chapter E26 Infrastructure.
5.	Functional need and existing structures	Clarifying whether the non-complying activity rule for activities that do not have a functional need to be in the coastal marine area applies to re-consenting activities in or on existing structures and extensions to such structures.
6.	Exclusive occupation	Clarifying whether consent is needed for exclusive occupation in areas where there are permitted activities for some structures.
7.	Existing occupation consents	Clarifying whether consent is needed for new activities in areas that have an existing occupation consent.
8.	Activity tables overlaps and inconsistencies	Addressing several overlaps and inconsistencies in the activity tables that mean it is not clear whether a proposal is to be addressed under multiple rules or not (in particular the rules for structures, disturbance, and use of the coastal marine area).
9.	Discharges from hull bio-fouling and vessel maintenance	Simplifying and clarifying the provisions for discharges of hull bio-fouling from vessel cleaning and passive discharge to make the rules more effective; and clarifying that any hull cleaning that results in discharges of bio-fouling to the coastal marine area is captured by the rules for discharges from vessel cleaning.
10.	Coastal marine area boundary points at rivers	Correcting the grid references in Appendix 7 (coastal marine area boundaries) to remove the inconsistency between the appendix and the GIS viewer maps; and adding a new 'information' map layer to show the Appendix 7 points as dots where the indicative coastline crosses the listed rivers.
11.	Fire and Emergency	Amending the provisions to replace 'The New Zealand Fire Service' with 'Fire and Emergency New Zealand'.
12.	Infrastructure affecting use of the Mooring Zone	Clarifying that policy F2.16.3(24) relates to infrastructure that affects access to a Mooring Zone as well as use of moorings within a Mooring Zone.
13.	Aquaculture rules and definitions	Amending the aquaculture rules and definitions so that they use consistent wording.
14.	Discharges to water default rules	Clarifying that the two rules for discharges to water 'not otherwise provided for' relate to whether the standards are met or not.
15.	Dredging, disturbance and depositing inconsistencies	Addressing the inconsistencies in the related rules and standards for dredging, disturbance and depositing material.
16.	Boat ramps	Specifying 'boat ramps' in a separate activity table line due to the confusion regarding whether they are within the rule for 'marine and port accessory structure and services'.

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Theme	Topic	Purpose of change
17.	Significant infrastructure	Amending the references to 'significant infrastructure' to 'infrastructure' to be consistent with the rest of the AUP.

Section 32 of the RMA requires that before adopting any objective, policy, rule or other method, the council shall have regard to the extent to which each objective is the most appropriate way to achieve the purpose of the RMA, and whether the policies and rules or other methods are the most appropriate way of achieving the objectives. A report must be prepared summarising the evaluation and giving reasons for the evaluation. In accordance with section 32(6) of the RMA and for the purposes of this report:

- the 'proposal' means PCB,
- the 'objectives' means the purpose of the proposal (PCB) and the objectives of the AUP, and
- the 'provisions' means the policies, rules or other methods that implement, or give effect to, the objectives of the proposal and of the Plan.

The AUP contains existing objectives and policies which set the direction for how coastal areas will be managed. PCB is not altering or re-litigating the intent and direction of any of these provisions. This evaluation report relates to technical issues within the existing policy framework of the AUP. The policy approach remains unchanged, and this report will not re-evaluate it.

This evaluation will continue to be refined in relation to any new information that may arise following notification, including during hearings on PCB, as required by RMA section 32AA.

1.2 Background to the proposed plan change

The structure of the AUP is complex. It is a combined plan pursuant to section 80 of the RMA, bringing the regional policy statement, the regional plan (including the regional coastal plan) and the district plan into a single document. This plan applies to almost the entire Auckland region, excluding only the district plan provisions in respect of the land area of the Hauraki Gulf Islands. The scale of such a combined planning exercise has never before been undertaken in New Zealand.

The separation of controls among overlays, zones, Auckland-wide and precinct provisions means that a single site or activity may be subject to four or more layers of plan provisions. Identifying accurately all of the provisions that may be relevant to a site or a proposal is integral to understanding the planning controls that might apply.

As a result of the nature of the layered provisions of the AUP, plan users and council planning staff have been identifying a number of technical issues. These issues affect the usability of the AUP and the overall integration between different parts of the plan. Since the AUP has become operative in part (15 November 2016), the council has been registering potential errors and issues that have been identified by both staff and members of the public. Issues have been sent through via email enquiry and then they have been registered,

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categorised and grouped, in a spreadsheet, by their respective AUP chapter, section, precinct, GIS mapping layer, provision/standard and/or property.

Over 2,000 potential errors or issues have been recorded to date and the number continues to grow as AUP users continue to identify and send potential issues to the council's enquiry line.

The issues identified so far are found in all components of the AUP (text and maps), and cover a range of matters.

There are four ways in which issues in the AUP can be corrected under the RMA:

- clause 16(2) of Schedule 1 to the RMA – for alterations of a minor effect, or the correction of minor errors where the plan is not yet operative/still subject to appeal;
- clause 20A of Schedule 1 to the RMA – for the correction of minor errors where the plan is operative;
- decisions made on matters subject to appeal; and
- plan change/s to the AUP.

Many of the issues that were registered when the AUP first became operative in part were clear errors or anomalies which, although minor in nature, could not be amended using clause 16 or clause 20A. In order to resolve these issues quickly, to enable the AUP to function how it was intended, PC4 was notified on 28 September 2017. The decisions on PC4 were notified on 14 June 2018.

Where an error or anomaly required further research and investigation, there were various possible scenarios or corrections, or where the impact of the correction was unclear, these issues were excluded from PC4.

At the conclusion of the preparation of PC4 the council was left with a list of issues which required further investigation for potential inclusion in a plan change that had broader scope than PC4. Additionally, a range of issues across the AUP continued to be added to the register. Consequently, the council decided to prepare a series of follow up plan changes to PC4 to continue to address technical issues within the AUP.

The series of proposed follow up plan changes, which PCB is part of, are proposed to have a slightly broader scope than PC4. This is to enable a number of the technical issues that did not meet the criteria for inclusion within PC4 to be addressed.

1.3 The resource management issue to be addressed

The resource management issue to be addressed through PCB is the uncertainty and inefficiency caused by the identified technical issues and the identified gaps in the horizontal and vertical alignment of provisions. The plan change will improve the workability of the plan and ensure that the AUP functions in an integrated way.

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The identified technical issues are creating confusion for plan users¹ and increasing the likelihood of debate and litigation when administering the AUP. The identified technical issues are also impacting on the integrity of the AUP by compromising the ability to fully implement the plan as intended.

1.4 Objectives of the proposed plan change

An evaluation under section 32 of the RMA must examine the extent to which the objectives of PCB are the most appropriate way to achieve the purpose of the RMA. The objective of PCB, or the purpose of the plan change, is to address the identified technical issues outlined in 'section 6: Evaluation of plan change provisions', to ensure:

- the wording of provisions is clear and unambiguous;
- the provisions of the AUP cascade vertically and horizontally;
- the plan functions in the way it was intended; and
- there is a high level of integration across the different chapters of the AUP.

The plan change should assist the council to carry out its functions in order to achieve the purpose of the RMA, being to promote the sustainable management of natural and physical resources.

The evaluation of the identified amendments to the AUP concludes that these are technical issues which have the potential to create confusion for plan users. The uncertainty or ambiguity created by the current provisions identified in section 6 impacts on the functionality and workability of the AUP and increases the risk of debate and litigation when administering the AUP. Amending the AUP to resolve these identified issues is the most appropriate way to achieve the purpose of the RMA, as outlined in the evaluation of options below.

1.5 Identification of options

Section 32 of the RMA requires an examination of whether the provisions in PCB are the most appropriate way to achieve the objectives of the proposed plan change by identifying other reasonably practicable options for achieving the objective. In the preparation of PCB, the following options have been identified:

Option 1 – Adopt a 'do nothing' approach (retain the status quo) with no change to the plan provisions.

Option 2 – Utilise non-regulatory methods to achieve the objective.

Option 3 – Undertake regulatory methods – a plan change to amend the identified technical issues in respect of the provisions identified in Section 6 (Evaluation of plan change provisions) of this report.

Option 4 – Undertake other regulatory methods – address technical issues at a later date, as part of a full AUP review.

¹ Council's resource consents department and external planning practitioners involved in consenting processes as well as the property owners themselves.

1.6 Evaluation of options

Option 1 – Adopt a ‘do nothing’ approach (retain the status quo)

The ‘do nothing’ option means the technical issues which have the potential to compromise the integrity of the AUP will not be addressed. By not amending the AUP, ambiguous provisions will continue to cause confusion for plan users increasing the risk of debate and litigation while implementing the plan. The AUP will continue to have gaps in the horizontal and vertical alignment of provisions that affect the ability of the AUP to promote the purpose of the RMA in an integrated way.

Option 2 – Non-regulatory methods

Non-regulatory methods to address the identified technical issues include practice notes, guidance or interpretation notes. This option is an alternative to addressing technical issues through a plan change.

Option 3 – Regulatory methods – A plan change to amend the identified technical issues.

This option will address the identified technical issues within the AUP, through a statutory process. The statutory plan change process allows the technical issues to be addressed in a clear and legally robust process.

Option 4 – Other regulatory methods – Address technical issues at a later date, as part of a full AUP review

Other regulatory methods to address the identified technical issues include waiting to amend the AUP to address the identified technical issues as part of the full plan review. This would involve incorporating the amendments proposed to address the technical issues into the review of the AUP which is approximately five to ten years away.

Table 1.2 - Summary of the analysis of the plan change under section 32(2) of the RMA.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1: Adopt a ‘do-nothing’ approach (retain the status quo)	The do-nothing option is not an effective or efficient option to achieve the objectives of PCB (to address technical issues to remove ambiguity and ensure the provisions align both vertically and horizontally across the AUP). The identified issues are a result of the current wording of	If users of the AUP interpret the AUP differentially because of the identified technical issues, there can be both an economic and environmental cost. The need to clarify the identified technical issues will slow down the consenting	As a plan change is not pursued under this option, there is no financial burden on the council to undertake a public plan change. This option allows the council more time to collate further technical issues and research appropriate solutions. There is a risk that in

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Options	Efficiency and effectiveness	Costs	Benefits
	<p>provisions and have arisen as the plan has been used. This option will do nothing to address the identified issues which are compromising the ability to implement the plan as intended. This option will also lead to inefficient implementation of the AUP as the plan users will have to clarify technical issues on a case by case basis.</p>	<p>process. There is also the potential for litigation and debate over the meaning of provisions. This in turn limits the productivity of the AUP.</p> <p>The identified technical issues compromise the ability to implement the plan as intended. This could result in outcomes that are not aligned with the objectives and policies of the AUP and in turn the purpose of the RMA.</p>	<p>trying to address an issue a further issue can be created. With no action, this can be prevented.</p>
<p>Option 2: Non-regulatory methods</p>	<p>Non-regulatory methods include practice notes, guidance or interpretation notes which do not have any statutory weight. This legal status may limit the effectiveness of this option in achieving the objectives of PCB as the guidance contained within non-statutory guidance can be challenged or ignored. Furthermore guidance notes themselves are open to interpretation and therefore there is a risk that these non-statutory documents have the potential to impact on the integrity and public opinion of the AUP.</p>	<p>Due to the non-statutory nature of practice notes, guidance or interpretation notes there is the potential for there is both an economic and environmental cost.</p> <p>Non-statutory guidance may be challenged and ignored by plan users, which could slow down the consenting process and increase the potential for litigation and debate over the meaning of provisions. This in turn limits the productivity of the AUP.</p> <p>The identified technical issues compromise the ability to implement the plan as intended. If non-statutory guidance is ignored or</p>	<p>This option requires limited staff time and resourcing, compared to a plan change. It also allows technical issues to be addressed in a timely manner as practice notes, guidance or interpretation notes do not need to go through a statutory process.</p>

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Options	Efficiency and effectiveness	Costs	Benefits
		<p>challenged this could result in outcomes that are not aligned with the objectives and policies of the AUP, and in turn the purpose of the RMA.</p>	
<p>Option 3: Regulatory Methods - A plan change to amend the identified technical issues in respect of the provisions identified in Section 6</p>	<p>A plan change can effectively address the technical issues identified in the AUP to remove ambiguity within the provisions and ensure there is both vertical and horizontal alignment across the plan. Through undertaking four plan changes based on the structure of the plan, a more efficient process can be followed, in comparison to processing a series of numerous smaller discrete plan changes addressing individual issues. It also ensures that similar issues can be grouped together while stopping the plan change from getting so large that it is difficult to manage and hard for plan users to interpret.</p>	<p>By addressing the identified technical issues within the AUP, consenting should become more efficient.</p> <p>The plan can be implemented as intended which ensures that the outcomes reflect the objectives and policies of the AUP and also the purpose of the RMA.</p>	<p>At present, PCB can be resourced through existing staff budgets. Depending on the submissions received and the issues that arise there may be the potential for higher costs in the future.</p>
<p>Option 4: Other regulatory methods – Address technical issues at a later date, as part of a full AUP review</p>	<p>This option involves a comprehensive review of the AUP which allows the identified technical issues to be comprehensively reviewed at the same time. Although it is efficient to review the issues as part of a</p>	<p>As the technical issues will remain in the AUP until it is reviewed the environmental and economic costs that are associated with these issues will remain.</p> <p>The need to clarify the</p>	<p>This option is cost efficient in that the technical issues can be addressed as part of a wider review of the AUP. As the timeframe for the review, however, is more than five years away, the costs of the technical</p>

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Options	Efficiency and effectiveness	Costs	Benefits
	wider review of the plan, this is not an effective approach as the issues will remain unresolved for the next five to ten years.	<p>identified technical issues will slow down the consenting process. There is also the potential for litigation and debate over the meaning of provisions. This in turn limits the productivity of the AUP.</p> <p>The identified technical issues compromise the ability to implement the plan as intended. This could result in outcomes that are not aligned with the objectives and policies of the AUP and in turn the purpose of the RMA.</p>	issues will significantly outweigh the benefits. These costs include costs caused by difficulty in plan interpretation.

1.7 Risk of acting or not acting

Section 32(2)(c) of the RMA requires this evaluation to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. There is considered to be sufficient information about the technical issues being addressed through PCB to proceed with the plan change.

This evaluation will continue to be refined in relation to any new information that may arise following notification, including during hearings on PCB, as required by RMA section 32AA.

2. Reasons for the proposed plan change

2.1 Reasons for the preferred option

The evaluation of options above concludes that a plan change is most appropriate option to address the identified technical issues.

Option 1, which is to maintain the status quo, is not recommended. The technical issues can result in differing interpretations of the AUP, delay consenting and have an overall impact on the functionality and integrity of the AUP.

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Option 2 which is to rely on a non-statutory approach, such as guidance material, is not recommended as this type of guidance does not have statutory standing and therefore can be challenged. This can reduce any gains in efficiencies in plan administration and also pose a reputational risk to the integrity of the AUP.

Both regulatory options (options 3 and 4) allow technical issues to be addressed in a legally robust manner and increase efficiencies in the administration of the AUP. While Option 4 is more holistic and cost efficient in the longer term, in the immediate term the issues will remain unresolved. Timeliness is an important dimension in addressing the issue as the potential costs and risks posed by these technical issues are significant and have a real impact on the way the coast is used in the present. Through proceeding with Option 3, the issues can be resolved so that the plan can be efficiently administered.

2.2 Scope of plan change

The scope of PCB is limited to addressing the technical issues (outlined in section 1.1 of this report) that are compromising the ability of plan users to efficiently interpret the AUP, and to ensure the subject provisions give effect to the objectives and policies of the AUP.

As such, the scope of PCB generally includes:

- Amendments to provisions that are ambiguous or unclear;
- Amendments to provisions to achieve vertical and horizontal alignment across the AUP where there are current gaps or a misalignment of provisions; and
- Amendments to improve integration of different chapters within the AUP.

PCB does not seek to alter the current policy direction of the plan. It will not alter the intent of the objectives and policies nor will it seek to add new objectives and policies. PCB does make minor changes to two objectives (F2.13.2(2) and F2.14.2(9)) and to five policies (F2.10.3(3), F2.13.3(2) and (3), F2.14.3(3) and F2.16.3(24)) that do not alter the policy direction of the objectives and policies.

3. Statutory evaluation under Part II and relevant sections of the RMA

3.1 Part 2 of the RMA and relevant sections of the RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources, as defined in section 5(2) of the RMA. The coastal provisions are required to achieve the purpose of the RMA.

In addition to the overall purpose of the RMA set out above, sections 6, 7 and 8 of the RMA identify, respectively, matters of national importance that shall be recognised and provided for, matters to which particular regard shall be had, and the requirement to take into account the principles of the Treaty of Waitangi.

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A number of the matters in Part 2 of the RMA are of particular significance to the coastal environment. This plan change does not affect the degree to which the AUP addresses these matters as it does not change the policy direction of the plan.

3.2 Other relevant sections of the RMA

There are relevant sections of the RMA that must be considered in context of the proposed plan change:

- Section 30 – Functions of regional councils under this Act
- Section 63 – Purpose of regional plans
- Section 66 – Matters to be considered by regional councils (plans)
- Section 67 – Contents of regional plans
- Section 68 – Regional rules
- Section 79 – Review of policy statements and plans
- Section 80 – Combined regional and district documents

3.3 Provisions with immediate legal effect

Sections 86B to 86G of the RMA specify when a rule in a proposed plan has legal effect.

When deciding the date a plan change takes effect, the RMA provides in section 86B(1) that 'a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified'. Exceptions are provided for in section 86B(3), 'a rule in a proposed plan has immediate legal effect if the rule –

- (a) protects or relates to water, air, or soil (for soil conservation); or
- (b) protects areas of significant indigenous vegetation; or
- (c) protects areas of significant habitats of indigenous fauna; or
- (d) protects historic heritage; or
- (e) provides for or relates to aquaculture activities.'

Certain types of rules in the AUP have immediate legal effect from the date of notification of PCB, provided that they fit within section 86B(3) of the RMA. Immediate legal effect means that a rule must be complied with from the day the proposed rule (or change) is notified.

All of the rules that are in PCB will have immediate legal effect on and from the date on which the PCB is publicly notified because they are all regional coastal plan provisions and so all 'relate to water' in terms of section 86B(3)(a).

4. National and regional planning context

In addition to the statutory evaluation detailed in section 3 of this report, there are a number of other statutes, regulations, national directives, policies and plans that are of relevance to PCB.

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4.1 New Zealand Coastal Policy Statement

Section 67(3) of the RMA requires that a regional plan must give effect to the New Zealand Coastal Policy Statement (**NZCPS**). PCB is limited to addressing identified technical issues as set out in section 1.1 of this report to ensure the subject provisions give effect to the objectives and policies of the AUP. PCB does not seek to alter the current policy direction of the plan, and therefore no amendment in PCB will alter how the AUP gives effect to the NZCPS.

4.2 National policy statements

National policy statements are instruments issued under section 52(2) of the RMA and state objectives and policies for matters of national significance. There are four national policy statements in place:

- National Policy Statement on Urban Development Capacity
- National Policy Statement for Freshwater Management
- National Policy Statement for Renewable Electricity Generation
- National Policy Statement on Electricity Transmission

At present, the Ministry for the Environment is in the process of developing a proposed National Policy Statement for Indigenous Biodiversity.

Sections 62(3), 67(3) and 75(3) of the RMA require that a regional policy statement, regional plan and district plan must give effect to any national policy statements.

PCB has a narrow purpose and seeks to amend technical issues within Chapter F Coastal, Chapter J Definitions, Appendix 7 and the AUP viewer through amending the provisions identified within Attachment 1. PCB is proposing amendments that are technical in nature and will not change the overall policy direction of the plan. Consequently, PCB gives effect to the purpose and principles of the national policy statements listed above.

4.3 National environmental standards

There are currently six national environmental standards in force as regulations:

- National Environmental Standards for Air Quality
- National Environmental Standard for Sources of Drinking Water
- National Environmental Standards for Telecommunication Facilities
- National Environmental Standards for Electricity Transmission Activities
- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
- National Environmental Standards for Plantation Forestry

At present, the Ministry for Primary Industries and Ministry for the Environment are in the process of developing a Proposed National Environmental Standard for Marine Aquaculture. A Proposed National Environmental Standard on Ecological Flows and Water Levels was developed by the Ministry for the Environment in 2008. This proposed NES is currently on hold, pending decisions on the Government's freshwater reform programme.

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Section 44A of the RMA requires a local authority to recognise national environmental standards.

PCB has a narrow purpose and seeks to amend technical issues within Chapter F Coastal, Chapter J Definitions, Appendix 7 and the AUP viewer through amending the provisions identified within Attachment 1. PCB is proposing amendments that are technical in nature and will not change the overall policy direction of the plan. Consequently, PCB is consistent with the purpose and principles of the national environmental standards listed above.

4.4 Other Acts and Regulations

Hauraki Gulf Marine Park Act 2000

The purpose of the Hauraki Gulf Marine Park Act 2000 (**HGMPA**) is to integrate the management of the national, historic and physical resources of the Hauraki Gulf, its islands, and catchments, and to recognise the relationship of the tangata whenua with the Hauraki Gulf and its islands. It also established the Hauraki Gulf Forum and the Park itself, and set out objectives for the management of the Gulf, its islands and catchments. The HGMPA establishes that the objectives of the HGMPA must be given effect to in a regional or district plan.

PCB is limited to addressing identified technical issues as set out in section 1.1 of this report to ensure the subject provisions give effect to the objectives and policies of the AUP. PCB does not seek to alter the current policy direction of the plan, and therefore no amendment in PCB will alter how the AUP gives effect to the HGMPA.

Local Government Act 2002

Council's functions and powers are derived from the purpose of the Local Government Act 2002 (**LGA**). The LGA mandates the purpose, funding, and governance duties of the council. There are also additional responsibilities for Auckland Council under the provisions of the Local Government (Auckland Council) Act 2009, including the preparation of a spatial plan.

Section 12 of the LGA states that a local authority has full capacity to carry on or undertake any activity or business, do any, or enter into any transaction with full rights, powers and privileges subject to any other enactment and the general law.

PCB is prepared under the RMA and overall is consistent with the LGA.

Local Government (Auckland Transitional Provisions) Act 2010

The purpose of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) is to resolve further matters relating to the reorganisation of local government in Auckland begun under the Local Government (Tāmaki Makaurau Reorganisation) Act 2009 and continued under the Local Government (Auckland Council) Act 2009.

In s3(2)(d) of the LGATPA it states this Act "*provides a process for the development of the first combined planning document for Auckland Council under the RMA*".

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Part 4 (sections 115-171) of the LGATPA outlines the process for development of the combined plan for Auckland Council. The development of the first combined plan followed the legislation set out in LGATPA, and the Independent Hearings Panel (**IHP**) was set-up under the LGATPA.

Although the AUP is now operative in part, and PCB is prepared under the RMA, the purpose of the plan change is to address technical issues that have arisen from the development of the first combined plan process. Consequently reference is made to the material developed in this process to support the proposed amendments included in PCB.

Resource Management (Marine Pollution) Regulations 1998

The Resource Management (Marine Pollution) Regulations 1998 control dumping and discharges from ships and off-shore installations in the coastal marine area. The Regulations deal with the dumping and incineration of waste, and discharges from vessels including oil, garbage and sewage. Certain forms of dumping and discharges are specified as permitted, discretionary or prohibited activities. The Regulations specify where a regional coastal plan may include a rule relating to the matters covered in the Regulations.

PCB is proposing to amend technical issues as set out in section 1.1 of this report. It does not change the overall policy direction of the plan. The plan change does not include any changes to the matters covered by the Regulations.

4.5 The Auckland Plan

The Auckland Plan (2012) is a 30 year strategy for Auckland's future growth and development required under the Local Government (Auckland Council) Act 2009. The Auckland Plan is a strategy prepared under other legislation to which regard should be had pursuant to section 74(2)(b)(i) of the RMA. The Auckland Plan specifically identifies the AUP as a means of implementing the Auckland Plan.

The overall vision stated in the Auckland Plan (2012) is for Auckland to become the world's most liveable city. The Auckland Plan (2012) identifies the need to achieve a balance between increasing the development potential of land in Auckland, and ensuring the protection of historic and natural heritage, integration with infrastructure, resilience to natural hazards and enabling housing choice. The RPS broadly gives effect to the strategic direction set out in the Auckland Plan.

The Auckland Plan has recently been reviewed to respond to planning framework changes since 2012, including the Unitary Plan decisions. The Auckland Plan 2050 (2018) is now available. The new plan sets out three key challenges Auckland will face over the next 30 years – our high population growth and its various impacts, sharing prosperity across all Aucklanders, and reducing environmental degradation. The plan is framed around six outcomes and a development strategy. The development strategy sets out how Auckland will grow and change over the next 30 years, including sequencing of growth and development.

The strategic directions in the Auckland Plan (2012) influenced the regional policy statement which the coastal provisions contained within Chapter F give effect to. The amendments to

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address the matters set out in section 1.1 of this report are technical in nature and do not change the way in which the AUP implements the strategic direction of the Auckland Plan (2012) or the Auckland Plan 2050 (2018).

4.6 Auckland Unitary Plan (Operative in part)

When preparing or changing a regional plan or district plan, council must give effect to any RPS and have regard to any proposed RPS. The RPS in Chapter B of the AUP identifies a number of issues of regional significance. Several of these are relevant to PCB, including those in:

B2: Tāhuhu whakaruruhau ā-taone - Urban growth and form

B8: Toitū te taiwhenua - Coastal environment

PCB is limited to addressing identified technical issues as set out in section 1.1 of this report to ensure the subject provisions give effect to the objectives and policies of the AUP. PCB does not seek to alter the current policy direction of the plan, and therefore the provisions will still give effect to the RPS.

4.7 Iwi management plans

Iwi management plan (**IMP**) is a term commonly applied to a resource management plan prepared by an iwi, iwi authority, rūnanga or hapū. IMPs are generally prepared as an expression of rangatiratanga to help iwi and hapū exercise their kaitiaki roles and responsibilities. IMPs are a written statement identifying important issues regarding the use of natural and physical resources in their area.

The RMA describes an iwi management plan as "*...a relevant planning document recognised by an iwi authority and lodged with the council*". IMPs must be taken into account when preparing or changing regional policy statements and regional and district plans (sections 61(2A)(a), 66(2A)(a), and 74(2A) of the RMA).

Council is aware that the following iwi authorities have an iwi management plan:

- Ngāti Whātua Ōrākei
- Te Kawerau-a-Maki • Ngāti Rehua • Ngāti Paoa
- Waikato – Tainui
- Ngāti Te Ata • Ngātiwai
- Ngāi Tai ki Tāmaki
- Te Uri o Hau

PCB is limited to addressing identified technical issues as set out in section 1.1 of this report to ensure the subject provisions give effect to the objectives and policies of the AUP. PCB does not seek to alter the current policy direction of the plan, and therefore the provisions will not change the degree to which the AUP addresses matters in an iwi management plan.

5. Development of proposed plan change

5.1 Develop the scope of PCB

First, council developed a statement on the scope of PCB. This is outlined in section 1.1 of this report. The statement on scope provided the criteria to determine which issues could be included in PCB.

5.2 Review of issues

A project team was established to review the issues that were out of scope of PC4 in addition to the issues that continued to be identified by both staff and members of the public. A scope statement for PCB was developed to guide this review.

The project team undertook a review of the potential issues registered at the time to determine one of the following courses of action:

- a) Correct the error through clause 16(2) or clause 20A;
- b) No further action; or
- c) Address the issue through PCB.

In recommending an appropriate course of action the project team considered the following four criteria:

1. Technical or policy matter

As outlined in section 1.1 of this report, PCB is limited to amending technical issues to improve the usability of the AUP, its clarity, and its overall integration. However, many of the registered issues related to dissatisfaction with various policy directions within the plan. Therefore the first task was to determine if the issues were technical or policy matters.

A technical issue is where a change is required so that the AUP will function in the way it was intended. The amendment of technical issues will not, by themselves, result in any substantive changes to the plan provisions. Technical issues may include:

- Format and language changes to clarify provisions or policies where the intent is not clear; and
- Amendments to achieve vertical or horizontal integration and alignment.

2. Vertical or horizontal integration and alignment

It is essential to the effectiveness of the AUP that it promotes the purpose of the RMA in an integrated way. This integration must also address the regional, coastal and district functions of the council. This means that to support integration and to align provisions where they are related, the plan should have vertical or horizontal integration and alignment.

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Many of the issues identified relate to a gap within the vertical or horizontal alignment of provisions through the AUP. To remediate these issues amendments are required in one of three directions:

- i. Down through provisions to give effect to a policy;
- ii. Up from methods to fill the absence of a policy direction; and
- iii. Across sections to achieve consistency of restrictions or assessments and the removal of duplicate controls.

3. Complexity of the issue

Once the project team had established whether the issues were technical or policy matters, they considered the complexity of the issue. This was in order to determine whether it was appropriate to address particular issues through an omnibus plan change (i.e. one that covered multiple issues) or whether an issue may be of a scale to warrant its own plan change.

As an example, it was decided that complex issues which relied on certainty of other parts of the plan (such as precincts) have a level of complexity that sits outside the scope of this plan change.

4. Alternative options

For many issues, there are alternative options available to resolving the issue, other than a change to the plan. The project team considered the alternative options in determining the course of action for each registered issue.

The alternative options include non-statutory methods such as practice notes, guidance or interpretation notes. Non-statutory methods have been utilised where guidance has been needed promptly. In many instances this non-statutory guidance has satisfactorily clarified the provisions thereby resolving the issue. Where this is the case, the council has not pursued amendments to the plan.

In some instances the issues relate to provisions that are the subject of appeals before the courts. There has occasionally been scope to fix the issue through that process.

Another alternative option is to take no further action in relation to an issue. This has been the recommended course of action where the council does not agree that there is enough evidence to show that this is an issue and will monitor the provisions to determine if a change is warranted in future.

In some limited circumstances, an amendment via PCB is not required as the issue may have been resolved via another process such as a separate plan change. Therefore no change is required to the AUP.

Results of the review of registered issues

As a result of this review the following courses of action were recommended:

- 160 errors were amended using clause 20A or clause 16;

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- 143 errors via another process (such as the appeals process or internal interpretation/guidance/practice notes);
- 136 potential matters were not progressed and had no further action; and
- 301 potential issues required further investigation for potential inclusion in a plan change that had broader scope than PC4.

The recommendations of the project team were audited by a review panel comprising of senior managers, representatives from the council's legal and resource consents departments, and Auckland Transport. The review panel sought to ensure the issues proposed to be included within PCB were within scope of the plan change and most appropriately addressed by the plan change.

5.3 Development of proposed amendments

Issue definition

The issues proposed for inclusion within PCB have been recorded verbatim from the original source email. As a first step the project team grouped similar issues and clarified the issues so that it was clear what the plan change is trying to achieve.

Research and collection of evidence

Once the issues had been clearly defined, the project team undertook background research to determine how the issue had come about and to build up an evidence basis to support or reject proposed amendments to the plan.

Depending on the issue, this process included reviewing recent consent decisions, seeking input from experts, undertaking site visits, consulting with internal and external stakeholders. The consultation is outlined in section 5.4 of this report.

Development of first draft of proposed amendments and draft section 32 evaluation

The project team drafted amendments to the AUP to address the various issues and documented the section 32 evaluation process.

Identify affected sections of the plan

The project team then identified an initial index of the sections of the AUP affected by proposed amendments to address the identified issues. The purpose of the index was to ensure that consequential amendments could be identified and to identify any crossover between different workstreams. It was also used in consulting with stakeholders to determine areas of interest.

Stakeholder review of draft amendments and section 32 evaluation

The proposed amendments and draft section 32 evaluation report was circulated to internal stakeholders for comment and feedback. The internal stakeholders included plan users across the council and council controlled organisations including the resource consents department, Auckland Transport, Watercare, Healthy Waters, Parks Services and Legal Services.

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Upon receiving this feedback, the proposed amendments and section 32 evaluation report were further refined.

5.4 Consultation undertaken

In accordance with clause 3 of Schedule 1 of the RMA, during the preparation of a proposed policy statement or plan, a council is required to consult with:

- a) the Minister for the Environment; and
- b) those other Ministers of the Crown who may be affected by the policy statement or plan; and
- c) local authorities who may be so affected; and
- d) the tangata whenua of the area who may be so affected, through iwi authorities; and
- e) any customary marine title group in the area.

A local authority may consult anyone else during the preparation of a proposed policy statement or plan.

A regional council which is preparing a regional coastal plan shall also consult:

- a) the Minister of Conservation generally as to the content of the plan, and with particular respect to those activities to be described as restricted coastal activities in the proposed plan; and
- b) the Minister of Transport in relation to matters to do with navigation and the Minister's functions under Parts 18 to 27 of the Maritime Transport Act 1994; and
- c) the Minister of Fisheries in relation to fisheries management, and the management of aquaculture activities.

Summary of general consultation undertaken

As PCB is focused on technical matters and does not include any shift in policy direction, no consultation was undertaken with the wider community prior to notification of the plan change.

Staff advised members of the public and internal staff within the council who had sent in potential issues to the email address (unitaryplan@aucklandcouncil.govt.nz) to advise them on the course of action in response to the issue raised. A number of these customers were advised that their potential issue would be addressed as part of a plan change process.

A draft version of PCB and its draft section 32 report was sent on 15 August 2018 to the relevant Ministers of the Crown listed in clause 3 of schedule 1 of the RMA. The plan was sent to the Minister for the Environment, Minister of Conservation, Minister for Biosecurity, Minister of Fisheries, Ministry for the Environment, the Department of Conservation and the Ministry for Primary Industries. A letter of support was received from the Minister for Biosecurity. Teleconference meetings were held with staff from Department of Conservation and the Ministry for Primary Industries to discuss several matters.

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A draft copy of PCB and its section 32 evaluation report were also sent to a targeted group of stakeholders who had been involved in the coastal topic for the AUP Independent Hearings Panel process. These stakeholders included the New Zealand Defence Force, Ports of Auckland Ltd, marina operators and several infrastructure providers (New Zealand Transport Agency, Transpower, Kiwirail, Spark, Chorus and Vector). Feedback was received from several of these parties and the draft plan change was amended in response.

Consultation with iwi authorities

Clause 3(1)(d) of Schedule 1 to the RMA states that local authorities shall consult with tangata whenua of the area who may be so affected, through iwi authorities, during the preparation of a proposed policy statement or plan.

Due to the nature and scale of PCB, council staff have identified, through the mana whenua-defined rohe maps, the following iwi authorities who the council must consult with on the content of the plan change:

- Ngāti Wai
- Ngāti Manuhiri
- Ngāti Rehua
- Te Runanga o Ngāti Whātua
- Te Uri o Hau
- Ngāti Whātua o Kaipara
- Ngāti Whātua o Ōrākei
- Te Kawerau a Maki
- Ngāti Tamaoho
- Te Akitai Waiohua
- Ngāti Te Ata Waiohua
- Te Ahiwaru
- Ngai Tai ki Tāmaki
- Ngāti Paoa
- Ngāti Whanaunga
- Ngāti Maru
- Ngāti Tamaterā
- Te Patukirikiri
- Waikato-Tainui

Clause 4A of Schedule 1 to the RMA states that local authorities must:

- Provide a copy of a draft proposed policy statement or plan to iwi authorities to consider
- Have regard to feedback provided by iwi authorities on the draft proposed policy statement or plan
- Provide iwi authorities with sufficient time to consider the draft policy statement or plan.

In addition to the above, recent legislation changes to the RMA introduced section 32(4A):

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(4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—

- (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and
- (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.

A copy of the draft plan change and a draft of this section 32 evaluation report were provided to the iwi authorities in the Auckland region on 14 August 2018 (along with the draft plan changes relating to the AUP Zones and the AUP GIS viewer). The only response received was from Ngāti Whātua Ōrākei who were supportive of the proposed plan changes. A hui was held with the planning representative from Ngāti Whātua Ōrākei to discuss the key points in the plan change.

6. Evaluation of plan change provisions

In accordance with section 32(1)(b) of the RMA, an evaluation report is required to examine whether the provisions in PCB are the most appropriate way to achieve the objectives of PCB and therein, the purpose of the RMA.

PCB introduces changes within Chapter F Coastal, Chapter J Definitions, Appendix 7 and the AUP viewer to the provisions identified in Attachment 1. PCB relies on the existing objectives and policies of the AUP. The proposed amendments can be categorised as shown in Table 6.1

Table 6.1 Summary of amendments and their purpose.

Theme	Topic	Purpose of change
1.	Accidental discovery rule	Clarifying that the accidental discovery rule applies in the coastal marine area.
2.	Marina date inconsistency	Addressing the inconsistency in dates in the marina extension objective and rules (i.e. date the plan was notified or made operative).
3.	Sediment quality indicators	Clarifying which sediment quality indicators are referred to in the coastal discharges background section.
4.	Reclamation, structures and minor infrastructure upgrades	Clarifying how the provisions for reclamation, structures and minor infrastructure upgrades apply to facilities such as seawalls. This includes a consequential change to Chapter E26 Infrastructure.
5.	Functional need and existing structures	Clarifying whether the non-complying activity rule for activities that do not have a functional need to be in the coastal marine area applies to re-consenting activities in or on existing structures and extensions to such structures.

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Theme	Topic	Purpose of change
6.	Exclusive occupation	Clarifying whether consent is needed for exclusive occupation in areas where there are permitted activities for some structures.
7.	Existing occupation consents	Clarifying whether consent is needed for new activities in areas that have an existing occupation consent.
8.	Activity tables overlaps and inconsistencies	Addressing several overlaps and inconsistencies in the activity tables that mean it is not clear whether a proposal is to be addressed under multiple rules or not (in particular the rules for structures, disturbance, and use of the coastal marine area).
9.	Discharges from hull bio-fouling and vessel maintenance	Simplifying and clarifying the provisions for discharges of hull bio-fouling from vessel cleaning and passive discharge to make the rules more effective; and clarifying that any hull cleaning that results in discharges of bio-fouling to the coastal marine area is captured by the rules for discharges from vessel cleaning.
10.	Coastal marine area boundary points at rivers	Correcting the grid references in Appendix 7 (coastal marine area boundaries) to remove the inconsistency between the appendix and the GIS viewer maps; and adding a new 'information' map layer to show the Appendix 7 points as dots where the indicative coastline crosses the listed rivers.
11.	Fire and Emergency	Amending the provisions to replace 'The New Zealand Fire Service' with 'Fire and Emergency New Zealand'.
12.	Infrastructure affecting use of the Mooring Zone	Clarifying that policy F2.16.3(24) relates to infrastructure that affects access to a Mooring Zone as well as use of moorings within a Mooring Zone.
13.	Aquaculture rules and definitions	Amending the aquaculture rules and definitions so that they use consistent wording.
14.	Discharges to water default rules	Clarifying that the two rules for discharges to water 'not otherwise provided for' relate to whether the standards are met or not.
15.	Dredging, disturbance and depositing inconsistencies	Addressing the inconsistencies in the related rules and standards for dredging, disturbance and depositing material.
16.	Boat ramps	Specifying 'boat ramps' in a separate activity table line due to the confusion regarding whether they are within the rule for 'marine and port accessory structure and services'.
17.	Significant infrastructure	Amending the references to 'significant infrastructure' to 'infrastructure' to be consistent with the rest of the AUP.

The evaluation that follows relates to these themes.

6.1 Theme 1: Accidental discovery rule

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.1 Zone description New standard F2.21.1.4

6.1.1 Status quo and problem statement

The AUP accidental discovery rules (in E11 Land disturbance – Regional, E12 Land disturbance – District, and E26 Infrastructure) ensure that if sensitive material is found during land disturbance, work will stop until the appropriate actions are taken to protect the site. However, these rules will not be triggered by any activity in the coastal marine area, including works that disturb the foreshore and seabed, because they are not part of the regional coastal plan component of the AUP.

This is an issue because archaeological and other heritage sites can extend into the coastal marine area, for example, shipwrecks, remains of foreshore structures, stone working sites in the intertidal zone, or midden or burial sites that are eroding. The accidental discovery rules also apply to protected New Zealand objects (including fossils and sub-fossils) and lava caves, and these also can extend beyond the line of mean high water springs into the coastal marine area.

The anomaly (of the accidental discovery rules applying on land and not in the coastal marine area) is an unintended consequence of the accidental discovery rule being moved during the IHP hearings process from the General Provisions section of the AUP to the land disturbance and infrastructure chapters. The Panel’s recommendation report summarised the recommended change to the proposed plan as follows:

“Confirming that all accidental discovery rules are consolidated into one standard included in E11 Land disturbance – Regional and E12 Land disturbance – District and are replicated in the consolidated infrastructure chapter E26 Infrastructure.”²

“Structural changes to the Plan and decisions made in other topics have resulted in changes in policy direction or changes such as relocation of some provisions, for example, accidental discovery protocols and infrastructure rules.”³

“For example, accidental discovery protocols arose in Topic 031 Historic heritage and Topic 038 Contaminated land. There was general agreement that these provisions should be Auckland-wide rules and relocated to E11 Land disturbance - Regional

² Auckland Unitary Plan Independent Hearings Panel 2016. Report to Auckland Council Hearing topics 036 and 037 Māori Land and Treaty, and Mana Whenua sites July 2016; page 4.

³ Ibid, page 5.

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and E12 Land disturbance - District (see also rule 26.7.5.1 Network utilities). The Panel also simplified the consolidated land disturbance rules for accidental discovery (See the Panel's Report to Auckland Council – Hearing topic 041 Earthworks and minerals July 2016.) These rules provide for Mana Whenua to be informed if the discovery is an archaeological site, Māori cultural artefact or kōiwi. Activity table D21.4.1 Sites and Places of Significance to Mana Whenua Overlay cross-references to these land disturbance rules.”⁴

There is currently a note in the description section for the General Coastal Marine Zone indicating that the accidental discovery protocols do apply in the coastal marine area. F2.1 Zone description states:

“Any site or place of significance to Mana Whenua that are identified prior to, or discovered during use and development in coastal marine area, must comply with accidental discovery rules in E11 land Disturbance – Regional and E12 land disturbance – District.”

In the notified version of the Unitary Plan, the equivalent description section referred to ‘clause 2.5 of the General Provisions’ which was the accidental discovery protocol. There does not appear to be any recognition in the IHP recommendations reports that moving the accidental discovery protocol would mean it no longer applied in the coastal marine area. The IHP amendment to the note at the beginning of F2.1 (to refer to E11 and E12 instead of clause 2.5 of the General Provisions) indicates that the Panel intended the accidental discovery rule to apply in the coastal marine area. There is, however, no rule within the AUP regional coastal plan rules that applies the note in the F2.1 description. It is unclear whether the note would be applied without a rule to implement it. The council accepted the IHP recommendations and did not make any amendments that affected this matter.

The omission of the accidental discovery rule from the coastal plan rules is an error, and requires amending to provide consistency and clarity within the AUP. Amendments to address this gap are within the scope of this plan change as the Plan already indicates that the rules apply in the coastal marine area. There is no policy shift in ensuring that the rules are consistent with the zone description and with the IHP intention that the accidental discovery rules apply to ‘any kind of land disturbance’, presumably including disturbance in the coastal marine area. The proposed amendments will improve the usability of the AUP as the F2.1 zone description will be consistent with rules of F2 Coastal – General Coastal Marine Zone.

6.1.2 Outline of the proposal options

Option 1 – Make no change to the existing provisions.

Option 2 – Replicate the accidental discovery rule (from E11, E12 and E26) in Chapter F2 General Coastal Marine Zone with minor amendments to correspond to coastal marine area activities rather than land disturbance. This option includes making the following amendments to the AUP:

⁴ Ibid, page 6.

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- Amend 'F2.1 Zone description' to change the reference to '*sites or places of significance to Mana Whenua*' to a fuller list of the matters covered by the accidental discovery rules.
- Insert a new standard into F2.21.1 ('All permitted activities, controlled activities and restricted discretionary activities') that duplicates the accidental discovery rules in E11, E12 and E26 but with modifications so that the rule relates to relevant activities in the coastal marine area. The modifications include using 'disturbance of the foreshore and seabed' rather than 'earthworks', and including additional points relating to the discovery of unknown material on the seabed such as munitions, cables and pipelines. The requirements in point (3) that refer to 'the owner of the site or the consent holder' is amended to replace 'owner' with 'the party undertaking the relevant permitted activity' as it is quite unusual for the coastal marine area to be privately owned. The point (3)(f)(iii) need to comply with the contaminated land requirements (in E30 Contaminated Land and the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011) are not included as they are not designed to apply to foreshore and seabed disturbance.
- The new text uses 'activities in the coastal marine area', to replace 'land disturbance', because the AUP definition of 'coastal marine area disturbance' excludes dredging, mineral extraction, depositing of material and disposal of material. These activities could lead to the accidental discovery of sensitive material, so a more general term than 'coastal marine area disturbance' is needed.

Option 3 – Amend F2 with a new standard that cross-references to the accidental discovery rules in E11 Land disturbance - Regional. This option includes making the following amendments to the AUP:

- Amend 'F2.1 Zone description' as per Option 2
- Insert a new standard into F2.21.1 as follows: "refer to E11 Land disturbance – Regional – Standard E11.6.1 Accidental discovery rule". A similar cross-reference is used in 'D21.6.1. Accidental discovery rules' in D21 Sites and Places of Significance to Mana Whenua Overlay. The General Coastal Marine Zone activity tables and standards already include several cross references to other chapters such as the noise, lighting and hazardous substances provisions.
- Annotate the heading of 'E11.6.1 Accidental discovery rules' with "[rcp/rp]" to show that it is part of the regional coastal plan.
- Amend E11 so that references to 'earthworks' also include disturbance of the foreshore and seabed and other works in the coastal marine area.

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6.1.3 Evaluation of the proposal against its objectives

Table 6.2 Summary of analysis under section 32(2) of the RMA for Theme 1: Accidental discovery rule.

Options	Efficiency and effectiveness	Costs	Benefits
<p>Option 1: Make no change to the existing provisions.</p>	<p>The current provisions are not an effective or efficient method for identifying sensitive material in the coastal marine area and have the potential for negative cultural and heritage effects that are managed more effectively by AUP provisions applying to land.</p> <p>Ineffective option as it does not remove the identified gap in the rules.</p>	<p>There are no additional costs for people undertaking disturbance activities under the current provisions, either through consents or under permitted activities. (However the person undertaking the activity has a duty to comply with relevant legislation (HNZPTA, Burial and Cremation Act, Crimes Act etc) so any differences in costs may be not be significant).</p> <p>There is no protection for historic heritage and Maori cultural artefacts, koiwi/human remains and significant natural heritage sites that are accidentally found during construction or other activities in the coastal marine area.</p> <p>No opportunity for material of scientific or educational importance to be recorded and if appropriate recovered and preserved, or for avoidance of effects to be negotiated.</p>	<p>There is no burden on the person undertaking disturbance activities to report or to stop operations if sensitive material is accidentally found.</p> <p>Potential for lower compliance costs to people undertaking activities in the coastal marine area.</p>
<p>Option 2: Replicate the accidental discovery rule (from E11, E12 and E26) in Chapter F2 General Coastal</p>	<p>Most effective option as it makes it very clear that the accidental discovery protocol applies in the coastal</p>	<p>Some additional cost for people performing work (consent holders and people working under a permitted</p>	<p>Recognises that sensitive material may be accidentally discovered in the coastal marine area</p>

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Options	Efficiency and effectiveness	Costs	Benefits
<p>Marine Zone with minor amendments to correspond to coastal marine area activities rather than land disturbance.</p> <p><i>(preferred option)</i></p>	<p>marine area, and modifies the wording so that it is more applicable to activities that could disturb sensitive material in the coastal marine area.</p> <p>Addresses the current inconsistency between the F2.1 description and the rules, and between accidental discovery on land and in the coastal marine area.</p>	<p>activity) if sensitive material is discovered.</p>	<p>and so contributes to protecting Historic heritage, Maori cultural artefacts, koiwi/human remains and significant natural heritage sites.</p> <p>Provides a clear and efficient process to be followed in the event of a discovery of sensitive material.</p> <p>Recognises the current AUP rules only applies accidental discovery protocols to 'land disturbance', and not in the coastal marine area.</p> <p>Provides an opportunity for affected people to determine the relevant statutory requirements and avoid inadvertent breaches of HNZPTA or other legislation.</p> <p>Provides guidance on the appropriate actions and relevant legislation if coastal activities lead to the discovery of seabed munitions, cables or pipelines.</p>
<p>Option 3: Amend F2 with a new standard that provides a cross reference to the accidental discovery rule in E11 Land disturbance - Regional.</p>	<p>This option is effective as it ensures that the accidental discovery rules apply in the coastal marine area.</p> <p>Addresses the inconsistency issues in the Plan.</p> <p>This option is less</p>	<p>Similar to option 2.</p> <p>The rule in E11 needs to be expanded so that it is applicable to disturbance of the foreshore and seabed. This could make E11 more complicated and harder to understand.</p>	<p>Similar to option 2 but less benefit as the rule is not tailored to activities in the coastal marine area.</p>

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Options	Efficiency and effectiveness	Costs	Benefits
	<p>effective than option 2 as it is not specific to activities in the coastal marine area.</p> <p>This is the same approach to that currently used in D21 Sites and Places of significance to Mana Whenua Overlay. In that case, there is a more limited range of permitted activities, and greater awareness that sensitive material may be present.</p>		

6.1.4 Summary

Section 32(1)(b)(iii) of the RMA requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending chapter F2 to include a new standard that replicates the accidental discovery rules in E11, E12 and E26 (with minor amendments to correspond to coastal marine area activities rather than land disturbance) is the most appropriate method to achieve the objective of the plan change because the amendment:

1. Is effective as it makes it very clear that the accidental discovery rule applies in the coastal marine area, and modifies the wording so that it is more applicable to activities that could disturb sensitive material in the coastal marine area.
2. Addresses the current inconsistency between the F2.1 description and the rules, and between accidental discovery on land and in the coastal marine area.
3. Recognises that sensitive material may be accidentally discovered in the coastal marine area and therefore protects historic heritage, Maori cultural artefacts, koiwi/human remains and significant natural heritage sites.
4. Provides for appropriate management in the case of any discovery of items that may contain oil, munitions, cables and pipelines.

6.2 Theme 2: Marina date inconsistency

Chapter of the AUP	Chapter F Coastal
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Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provisions	Objective F2.14.2(9) Policy F2.14.3(9) Rules F2.19.8 (A112) and (A113)

6.2.1 Status quo and problem statement

Objective F2.14.2(9) in the General Coastal Marine Zone provides for limited marina expansion after the AUP's 'date of notification', however, the corresponding rules (F2.19.8 (A112) and (A113)) state that they apply from the 'date the plan becomes operative'. The corresponding policy (policy (9)) refers to 'existing marinas', but has no date. The difference in dates could cause confusion as the AUP was notified in 2013 and the coastal plan provisions became operative in 2018. It is arguable whether this inconsistency actually affects the development potential of any existing marina, as there were no applications for marina expansions between the AUP's notification and operative dates. The inconsistency could cause confusion for Sandspit Marina, as that marina was consented but did not 'exist' in 2013, whereas it was constructed by 2018.

The marina expansion rules were added through the hearings process and there was agreement between the council and submitters that they apply from the operative date. The issue of inconsistent date references was identified when council staff were making clause 16 and clause 20A amendments to insert the relevant dates into the Plan for provisions that previously stated 'the date the plan was notified/operative'.

The purpose of the change is to have one date in the provisions, instead of multiple different dates; this will remove ambiguity and improve the usability of the AUP.

6.2.2 Outline of the proposal options

Option 1 – Make no change to the existing provisions.

Option 2 – Amend the objective to a more general reference to 'existing marinas'.

- Amend F2.14.2 Objective (9) to use 'existing marinas' instead of either 'marinas existing at the date of notification' or 'marinas existing at the date the plan became operative'.
- This approach is consistent with the wording of F2.14.3 Policy (9).

Option 3 – Amend the objective so that it refers to the AUP operative date instead of the notification date.

- Amend F2.14.2 Objective (9) from 'marinas existing at the date of notification' to 'marinas existing at the date the plan became operative (31 May 2018)'.

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- This approach makes the objective consistent with the rules in F2.19.8(A112) and (A113).

6.2.3 Evaluation of the proposal against its objectives

In contrast to most of the other issues identified in this report, this issue relates to an AUP objective rather than a policy or rule. Section 32(1)(a) requires that an evaluation report must examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA. Section 32(6) establishes that ‘objectives’ means objectives contained in a proposal (i.e. the plan change) and the purpose of a proposal.

The proposed amendment to objective F2.14.2(9) does not change the policy direction of the existing plan and so does not change the extent to which it achieves the purpose of the Act. Objective (9) is proposed to be amended as follows:

(9) Limited expansion of existing marinas ~~existing at the date of notification~~ into the Coastal – General Coastal Marine Zone is provided for, provided there is adequate infrastructure to support the expansion and adverse effects on the coastal environment are avoided, remedied or mitigated.

Providing for limited expansion of existing marinas responds to the RMA section 5 purpose to enable ‘people and communities to provide for their social, economic, and cultural well-being’ through providing facilities for boat storage and for the associated boating recreation. The objective’s qualification, with the expansion being dependent on adequate infrastructure and the management of adverse effects, corresponds with the section 5 requirements to ‘safeguard the life-supporting capacity of air, water, soil, and ecosystems’ and to ‘avoid, remedy, or mitigate any adverse effects of activities on the environment’.

For consistency with the rest of this report, this proposal is also assessed in terms of RMA section 32(2) as follows.

Table 6.3 – Summary of analysis under section 32(2) of the RMA for Theme 2: Marina date inconsistency

Options	Efficiency and effectiveness	Costs	Benefits
<p>Option 1: Make no change to the existing provisions.</p>	<p>This option is not effective at addressing consistency issues in the provisions created by the differences in dates in related provisions.</p> <p>It does not address the inconsistency in dates and retains wording</p>	<p>Additional cost as a result of time needed to clarify what dates the plan user needs to take into account.</p>	<p>No need for a plan change.</p>

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Options	Efficiency and effectiveness	Costs	Benefits
	that is confusing.		
Option 2: Amend the objective to a more general reference to ‘existing marinas’ (preferred option)	Effectively addresses the objective of the plan change as the amendment removes ambiguity of the objective when considered alongside the rules. Referring to ‘existing marinas’ is efficient in setting out the intent of the objective. The detail of what is meant by ‘existing’ can be established by referring to the rules		Makes the objective consistent with the policy. Less time for consent applicants considering whether the difference in dates indicates the rules do not relate to the objective.
Option 3: Amend the objective so that it refers to the AUP operative date instead of the notification date	This option is effective in that it recognises the identified inconsistency and makes the objective consistent with the rules. This option is slightly less efficient than option 2 as it uses unnecessary wording in the objective. What is meant by ‘existing’ can be established by considering the rules.	Leaves an inconsistency between the objective and policy.	Ensures that the objective and rule refer to the same date.

6.2.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Implementing the proposed amendment to use a more general reference to ‘existing marinas’ in the marina expansion objective is the most appropriate method to achieve the objective of the plan change because the amendment:

1. Makes the objective consistent with the policy and rules.

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2. Reduces the time consent applicants and council consent processing staff may take to consider whether the difference in dates indicates the rules do not relate to the objective.

6.3 Theme 3: Sediment quality indicators

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.11.1 Discharges – Background

6.3.1 Status quo and problem statement

The IHP recommendations (and the subsequent council decisions) removed the 'Sediment Quality Indicators Thresholds Effects Level' table from the General Coastal Marine Zone policies in the notified plan but retained a reference to 'existing sediment quality threshold effects levels' in a background paragraph. The IHP recommendations reports did not explain why the change was made. There is now nothing in the AUP to explain what thresholds might be used in assessing objectives and policies that refer to "excellent or good" and "degraded" coastal water and sediment quality.

The table was included in the notified plan (and the council's Topic 033/034 closing statement track changes) as D5.1.10 Discharges Table 1 and in the legacy Auckland Regional Plan: Coastal (**ARP:C**) as Table 20.1. The table included Thresholds Effects Levels (**TEL**) for zinc, copper, lead and High Molecular Weight Polycyclic Aromatic Hydrocarbons, and referenced the table as being from the 'Blueprint for monitoring urban receiving environments', ARC TP 168 revised edition, August 2004 (**TP 168**). TEL is an estimate of the concentration of a chemical below which adverse effects should rarely occur. The Technical Publication applies the TEL as environmental response criteria (**ERC**) for the coastal marine area to provide thresholds for assessing environmental quality in relation to stormwater and wastewater discharges.

The paragraph in 'F2.11.1 Discharges – Background' states (emphasis added):

The Council will work collaboratively with stakeholders to identify additional coastal water quality indicators and guideline values to complement **the existing sediment quality threshold effects levels**. This will help improve the evaluation of different discharge options through the resource consent process. This will be an interim measure as implementation of the National Policy Statement Freshwater Management 2014 and marine spatial planning is likely to result in additional measures to safeguard the values of coastal receiving environments.

It is unclear what is meant by 'the existing sediment quality threshold effects levels' and what any new measures will be 'additional' to. When the table was included in the policies, it was

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clearer that the background section referred to the environmental response criteria in TP 168⁵.

This matter was noted in an Environment Court judgment in June 2018 on an appeal seeking greater ability to develop land at Okura⁶. A key issue that judgment considered was whether heavy metals would be discharged at concentrations sufficient to cause significant effects on marine benthic ecology. The case included consideration of modelling of whether the proposed development would lead to zinc and copper concentrations in the Okura Estuary that exceed the relevant sediment quality guideline threshold.

The key guidelines currently used for TEL for Auckland are TP 168 and the 'Australian and New Zealand Guidelines for fresh and marine water quality' (ANZECC 2000). The ERC in TP 168 are conservative thresholds that provide an early warning of environmental degradation. They were intentionally set at relatively low levels to allow management responses to be properly assessed and implemented before serious degradation occurred. The ERC are prompts for further investigation. The differences between the TP 168 'red ERC' thresholds and ANZECC 2000 guidelines 'low values' are set out in an appendix to TP 168.

As the AUP "background" section notes, additional measures to safeguard the values of coastal receiving environments are likely to be developed in future. As preliminary steps in this work, the council has published two reports on the guidelines available and on the technical aspects of integrating water quality science in freshwater and coastal environments⁷. The council is working on a new technical report on how to monitor the indicators in TP 168. The new report will have updated methods for collecting and analysing samples for sediment contaminants.

A new version of the ANZECC (2000) guidelines has recently been published as 'Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Australian and New Zealand Governments and Australian state and territory governments, Canberra ACT, Australia' (ANZG 2018). The new guidelines are web-based and are available at www.waterquality.gov.au/anz-guidelines. The council has not yet determined whether it will prepare an update to TP 168 to incorporate the amended values in ANZG 2018.

Additional work on coastal water and sediment quality indicators may also be done as part of the council's work programme to implement the National Policy Statement for Freshwater Management (**NPS-FM**). Coastal water quality parameters will need to be utilised to set freshwater limits to achieve agreed coastal outcomes where the coast is a more sensitive receiving environment than the relevant freshwater domain. At present, it is not clear how coastal and freshwater attributes will be linked. The coastal ERC sediment guidelines are

⁵ TP 168 can be found at:

<http://www.aucklandcity.govt.nz/council/documents/technicalpublications/TP168%20Blueprint%20for%20monitoring%20urban%20receiving%20environment%20-%20revised%20edition%20Aug%202004.pdf>.

⁶ *Okura Holdings Ltd v Auckland Council* [2018] NZEnvC078. See paragraphs [118], [119], [241] to [244].

⁷ Technical Report 2017/035, Preliminary Assessment of Limits and Guidelines Available for Classifying Auckland Coastal Waters, April 2017. Technical report 2016/039, Technical aspects of integrating water quality science in freshwater and coastal environments, September 2016.

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for contaminant levels ‘accumulated in sediment’ whereas any potential NPS-FM copper and zinc attributes will be ‘in-stream’ concentrations. Contaminant load modelling will allow the council to set catchment loads that deliver improved in stream concentrations (numeric objectives) where required. Additional work is needed to consider how an in-stream load correlates to a level accumulated in coastal sediment.

6.3.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

- No changes made to the existing AUP provisions, however, indicators and guideline values could be included in the AUP as part of future plan changes to implement the National Policy Statement on Freshwater Management. Those plan change processes are expected to commence in 2019.

Option 2 – Amend policy F2.11.3(2) to include the TEL table.

- Insert the table from the legacy regional coastal plan (ARP:C table 20.1; notified plan and council’s Topic 033/034 closing statement track changes - 5.1.10 Discharges Table 1).
- Use a similar policy approach to the legacy and notified plans and list the table as a matter to ‘have regard to’ in consent processes.

Option 3 – Amend the background paragraph in F2.11.1 so that it is clearer what it means.

- Refer to TP 168 and ANZG 2018 as being ‘the existing sediment quality threshold effects levels’.

6.3.3 Evaluation of the proposal against its objectives

Table 6.4 - Summary of analysis under section 32(2) of the RMA for Theme 3: Sediment quality indicators.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1: No change	Not effective as it is not clear what is meant in the background paragraph.	Some cost to consent applicants as they try to determine what existing TEL to use.	No need for a plan change. A more comprehensive consideration of appropriate sediment quality TEL may be possible in the future plan changes to implement the National Policy Statement on Freshwater Management. A more

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			comprehensive approach to assessing sediment quality could be taken through this process.
<p>Option 2: Amend policy F2.11.3(2) to include the TEL table</p>	<p>Not much more efficient than option 3 as the plan user needs to consider the full technical report to understand what is meant by the table.</p> <p>Inefficient as the table does not use the same wording as in the objectives and policies.</p> <p>Effective in ensuring that appropriate TEL are is considered in consent processes.</p>	<p>Costs for consent applicants in having to demonstrate that they have considered the TEL in the table.</p> <p>Policy may need to be amended again in the plan changes for the NPSFM.</p>	<p>Clear for plan users regarding what is expected to be considered in a consent application.</p>
<p>Option 3: Amend the background paragraph in F2.11.1 to refer to TP 168 and ANZG 2018.</p> <p><i>(preferred option)</i></p>	<p>Effective as it removes the uncertainty regarding the meaning of the background paragraph.</p> <p>Efficient in addressing the confusion regarding the relevant threshold values to consider.</p>	<p>Some consent costs for applicants in demonstrating that they have considered the relevant documents.</p>	<p>Clarity for plan users.</p> <p>Greater certainty that the relevant indicators will be considered.</p> <p>Allows for further refinement of the measures in the NPSFM plan changes.</p> <p>Greater flexibility in applying the policy if additional measures are developed and are more relevant.</p>

6.3.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the background paragraph to refer to TP 168 and ANZG 2018 as being ‘the existing sediment quality threshold effects levels’ is the most appropriate method to achieve the objective of the plan change because the amendment:

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1. Is effective as it removes the uncertainty regarding the meaning of the background paragraph;
2. Is efficient in addressing the confusion regarding the relevant threshold values to consider.
3. While it would increase some consent costs for applicants in demonstrating that they have considered the relevant documents, it would be beneficial overall insofar as it would:
 - a. Provide clarity for plan users.
 - b. Provide greater certainty that the relevant documents will be considered.
 - c. Allow for further refinement of the measures in the NPSFM plan changes;
 - d. Provide greater flexibility in applying the policy if additional measures are developed and are more relevant.

6.4 Theme 4: Reclamation, structures and minor infrastructure upgrades

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.1 Activity table – Drainage, reclamation and declamation F2.19.10 Activity table – Structures F2.21 Standards

6.4.1 Status quo and problem statement

Existing provisions in the AUP relating to repairs and upgrades of seawalls alongside infrastructure, such as railways and roads are currently unclear and inconsistent regarding which rules and standards apply. The works appear to fall within the F2.19.1 and F2.19.10 activity table rules for:

- (A2) Maintenance or repair of a lawful reclamation.
- (A3) Minor reclamation for the purpose of maintaining, repairing or upgrading a lawful reclamation.
- (A4) Reclamation for any of the following: carried out as part of rehabilitation or remedial works; where it is required for the safe and efficient operation or construction of infrastructure; or where it is necessary to provide for safe public access to, within or adjacent to the coastal marine area.
- (A122) Maintenance, repair or reconstruction of existing lawful coastal marine area structures.
- (A124) Extension or alteration of existing lawful coastal marine area structures that are a component of infrastructure.
- (A131) Minor infrastructure upgrades.
- (A142) Hard protection structures.

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In addition, there are inconsistent standards where a seawall is either part of a reclamation and/or where it is a structure. These are not consistent with the standards used in other parts of the AUP for minor infrastructure upgrades.

‘Reclamation’ is defined in the AUP as “*permanent filling of the coastal marine area ... to create dry land*”. The definition excludes ‘filling behind seawalls unless the purpose of the seawall and filling is primarily for the purpose of creating land’. Often reclamation is edged by a seawall or rock revetments. In that case, the definition means that the seawall is part of the reclamation and falls under the reclamation activity table (F2.19.1) rather than the structures activity table (F2.19.10). A reclamation is the area of land created above the line of mean high water springs so the footings of a reclamation which extend seaward of that line, into the coastal marine area, are ‘structures’ rather than part of the ‘reclamation’. Seawalls are listed in the definition of ‘hard protection structures’.

Maintenance and repair of reclamation and an existing structure are both permitted activities (F2.19.1(A2) and F2.19.10(A122)). The standards for reclamation require that there is no change in the area of occupation but there is no control on the form and appearance of the reclamation edge. A seawall could be stood up from a sloping form to a vertical form as a permitted activity (if the extent of the seaward toe did not change) although such a change in form is also listed as part of the definition of ‘minor reclamation’. The standard for structures requires that the work does not alter the form or external appearance of the structure and that there is no change in the area occupied by the structure (except that with respect to network utilities⁸ the area of occupation must be within 2 metres of the existing alignment or location). This could mean that the same spatial area should be occupied for most structures, but for network utilities it can increase by 2 metres. Alternatively, it could mean that network utilities must occupy the same size area but it could be moved by 2 metres. With respect to a seawall, it appears to allow for a seawall of the same form and appearance to be reconstructed 2 metres to seaward. This could be a significant area of work if it was along a seawall edging a road or railway.

Minor reclamation for the purpose of maintaining, repairing or upgrading a lawful reclamation is a restricted discretionary activity (in the General Coastal Marine zone, discretionary in overlays). This includes standing up a sloping seawall and extensions up to 1.5 metres from the seaward extent of an existing reclamation. Extensions and alterations of existing lawful structures that are a component of infrastructure (e.g. a seawall along a road or railway) are also restricted discretionary in the General Coastal Marine Zone and discretionary in overlays. For network utilities, this would apply to extensions **beyond 2 metres** from the existing structure (allowed in the permitted activity standard) whereas a ‘minor reclamation’ to extend a seawall along a reclamation is restricted discretionary **up to 1.5 metres** from the existing reclamation.

The purpose of the 2 metre allowance for infrastructure related structures was to provide for works such as replacement stormwater outfalls adjacent to an existing outfall (with the same occupation area), or upgrades to cables and pipelines, not large seawall extensions over

⁸ The definition of “network utilities” includes: transformation, transmission, or distribution of electricity; stormwater drainage or sewerage reticulation systems; railway lines, tramways and roads; airports; and more.

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potentially hundreds of metres of coastline. These could be large structures that can be extended seaward by 2 metres along their length.

The 2 metre allowance for network utilities overlaps with '(A131) minor infrastructure upgrades' which is also a permitted activity. There is no definition of 'minor infrastructure upgrades' in the AUP. The standard for 'minor infrastructure upgrades' in F2.21.10.7 refers to the standards in E26 Infrastructure. In E26 the activity table and standards use "Minor infrastructure upgrading of network utilities". This is more limited than just "infrastructure". Ideally, consistent terms should be used in order to efficiently process consent applications for structures that cross from land into the coastal marine area.

Minor infrastructure upgrades 'must meet the standards in E26 Infrastructure' (F2.21.10.7) – E26.2.5.3(1) includes (h) alteration, replacement or relocation of water, wastewater or stormwater structures (excluding pipes) – structure must be located within 2m of existing alignment or location. Under (i) above ground pipes must not exceed 300mm increase in diameter and underground pipes must not exceed a 50 percent increase in the diameter of the pipe. E26.2.5.3(1) does not include seawalls. Network utilities includes 'road network activities'. E26.2.5.3(1) does not include roading related upgrades, but some of the activity tables for infrastructure works in overlays do set standards relating to roading works.

E26.2.5.3(1) includes "(k) Any upgrading of infrastructure that does not comply with the relevant standards for minor infrastructure upgrading specified above, shall be subject to the relevant activity status for that activity specified in Activity Table E26.2.3.1". In the coastal marine area, upgrading that does not meet the standards should be subject to rules in F2 not E26.

There does not seem to be a comparable standard to consider for retaining walls along rivers and streams. E3.6.1.11 'Maintenance and repair works' states that retaining walls along rivers and streams must not change the area occupied by the structure. E3.6.1.12 'Extensions and upgrades' states that retaining walls along rivers and streams must not have a total length of any extended structure exceed 30m measured parallel to the direction of water flow.

6.4.2 Outline of the proposal options

Option 1 – Make no change to the existing provisions.

Option 2 – Amend F2 Coastal – General Coastal Marine Zone to have more consistent treatment of minor works on reclamations and structures; to distinguish the different rules that could apply to seawalls related to network utilities; and to make it clearer that the minor infrastructure upgrading standards in E26 Infrastructure apply in the coastal marine area. This option includes making the following amendments to the AUP:

- Amend rule (A124) so that it applies to works that are not covered by (A131) Minor infrastructure upgrades.
- Amend activity (A131) to replace 'upgrades' with 'upgrading of network utilities' to be consistent with the corresponding rules in E26.

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- Include a new standard in F2.21.2.1 (reclamation) to be consistent with the permitted activity requirement for structures; that the work must not use materials which alter the form or external appearance of the reclamation in more than a minor way.
- Amend permitted activity standard F2.21.10.1(3) to remove the allowance for network utilities to move structures by 2 metres and to allow the area of occupation to be smaller than the existing footprint. Permitted activities will be limited to no more than the existing footprint unless the work falls within another rule such as (A131) ‘minor infrastructure upgrading of network utilities’ and the standards set in E26. The current wording ‘must not change the area occupied by the structure’ means the structure cannot be altered so that it has a smaller footprint.
- Amend standard F2.21.10.7 so that the heading corresponds to the amendment to the activity table; to clarify the reference to the standards in E26 by noting the particular standard; using the E26 standards wording for minor infrastructure upgrading for works in overlays (i.e. from E26.8.5.1(3), E26.10.5.1(1), E26.12.5.1(2), E26.13.5.1(1), E26.14.5.1(1); and to clarify that if network utility works in the coastal marine area do not meet the standard in E26, they fall under the relevant rule in F2 General Coastal Marine Zone and not E26 Infrastructure.
- Amend standard F2.21.10.8(1)(d) to correct the current reference to ‘the network utilities and energy rules’ to the relevant E26 Infrastructure standards.
- Consequential amendments to E26 to annotate the relevant standard for minor infrastructure upgrading (E26.2.5.3(1)) as [dp/rcp] to be clear that they are regional coastal plan provisions as well as district plan provisions.

6.4.3 Evaluation of the proposal against its objectives

Table 6.5 - Summary of analysis under section 32(2) of the RMA for Theme 4: reclamations, structures and minor infrastructure upgrades.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 – No change.	<p>Inefficient as it is inconsistent with the standards in E26 Infrastructure.</p> <p>Not effective as it is unclear which rules and standards apply.</p> <p>Utility owners could make unnecessarily complicated distinctions between reclamations and</p>	<p>Costs to network utilities in determining which rules and standards apply to maintaining and upgrading their assets.</p> <p>Possibly environmental costs in allowing long lengths of seawall to be extended up to 2m from the existing footprint.</p>	No plan change costs.

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Options	Efficiency and effectiveness	Costs	Benefits
	structures to allow more favourable standards depending on whether they wished to keep a seawall in the same form or extend it by 2m.		
<p>Option 2 – Amend F2 Coastal – General Coastal Marine Zone provisions to have a more consistent treatment of the relevant activities.</p> <p><i>(preferred option)</i></p>	<p>More effective as there is more consistency for works on reclamations and structures.</p> <p>More effective as it is clearer which rules different works fall under.</p> <p>More effective as there is greater consistency with the district plan standards in E26 for minor infrastructure upgrading.</p>	<p>Costs for network utilities as there is no longer an allowance for network utilities to extend structures by 2m (unless the work falls within the standards for ‘minor infrastructure upgrading’).</p>	<p>Consent processes can assess the environmental effects of extensions within 2m of existing structures.</p> <p>Allows for repair works to reduce the size of area occupied by the existing structure as well as reconstruction within the same area.</p>

6.4.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending Chapter F to contain more consistent provisions for minor works on reclamations and structures, and to distinguish the different rules that could apply to seawalls related to network utilities, is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as there is more consistency for works on reclamations and structures;
2. Are more effective as it is clearer which rules different works fall under;
3. Are more effective as there is greater consistency with district plan standards in E26; and
4. While there may be increased costs for network utilities as there is no longer an allowance for network utilities to extend structures by 2 metres (unless the work falls within the standards for ‘minor infrastructure upgrading’), would be beneficial overall insofar as consent processes can assess the environmental effects of extensions within 2 metres of existing structures.

6.5 Theme 5: Functional need and existing structures

Chapter of the AUP	F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	<p>F2.14.3(3) Policies – activities with no functional need</p> <p>F2.19.8(A85) – Use and activities table – activities with no functional need</p> <p>F2.19.10(A123) – Structures table – extensions and alterations</p> <p>F2.23.1 Matters of discretion</p>

6.5.1 Status quo and problem statement

Objectives, policies and rules in the AUP discourage activities in the coastal marine area that do not have a functional need for a coastal location. This relates to NZCPS policy 6(2)(d) which requires persons exercising functions and powers under the RMA to “*recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there*”. Activity rule F2.19.8(A85) sets out a non-complying activity rule for ‘*use and occupation by activities that do not have a functional need to be undertaken below mean high water springs, including activities in, or on, an existing building or structure, and that are not otherwise provided for*’.

For an existing activity with no functional need to be in the coastal marine area (e.g. a restaurant or apartment which extends into the coastal marine area) it is not clear if re-consenting, alterations and extensions to the structure that activity is in is:

- A non-complying activity under rule F2.19.8(A85) the ‘no functional need’ rule;
- A discretionary activity under rule F2.19.10(A121) for “coastal marine area structures unless provided for elsewhere”; or
- A restricted discretionary activity under rule F2.19.10(A123) for ‘extension or alteration of existing lawful structures or buildings’.

Table F2.19.10 has a note stating that it includes the “*use of a structure unless it is addressed more specifically in table F1.19.8*”. There is debate regarding whether the ‘no functional need’ rule is an example of being ‘addressed more specifically’ in terms of the note above table F2.19.10.

This matter was raised in a query relating to a proposal for a small extension to an existing café in a building which extended over the coastal marine area. The extension to the structure was a restricted discretionary activity, but it was not clear if this status applied only to the building extension or also to the activity inside that extension (as it was not clear if the

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activity was covered by the ‘structures’ activity table or whether it should be considered under the ‘activities’ table).

The purpose of the non-complying activity (rule (A85)) was to discourage new activities with no functional need, not to end all existing activities when their coastal permits expire, or to prevent modifications and extensions to existing structures.

This matter is within the scope of PCB as there is inconsistency between the policy and the rules, and a lack of clarity regarding which rule applies. The plan could be amended to retain the policy approach, but make the rules clearer.

6.5.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Clarify that the non-complying activity rule for activities that do not have a functional need for a coastal location applies to new activities, and not to re-consenting, alterations and extensions to existing activities in existing buildings and structures.

- Limit rule F2.19.8(A85) (non-complying activity) to “new or existing unlawful” activities. Re-consenting existing activities that do not have a functional need for a coastal location would then fall within rule (A84) as ‘activities that are not otherwise provided for’ which is a discretionary activity. Including ‘existing unlawful’ is needed to avoid creating an easier consenting regime for someone who establishes an activity and then seeks consent for it. This has occurred where boatsheds have been turned into apartments before retrospective approval is sought.
- Amend policy F2.14.3(3) to use ‘and’ instead of ‘or’ between the final clauses, to clarify that all of the clauses apply. The current wording indicates that the first three clauses do not need to be applied if ‘any necessary land-based infrastructure can be provided’. This does not give effect to the objectives and NZCPS.
- Amend policy F2.14.3(3) and rules F2.19.8(A84) and (A85) from “below mean high water springs” to “in the coastal marine area” to clarify that the rule applies to all activities (i.e. including those in buildings above the water), not only those below the height of the line of mean high water springs.
- Amend rule (A123) (alterations and extensions) to explicitly include the use of the extended or altered structure
- Amend assessment criteria F2.23.2(17)(g) (reconstruction or extension of existing structures) to include alterations and to include that additional matters of relevance from policy F2.14.3(3).

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6.5.3 Evaluation of the proposal against its objectives

Table 6.6 - Summary of analysis under section 32(2) of the RMA for Theme 5: Functional need and existing structures.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 – No change to the existing provisions.	Not effective as it is not clear which rules apply to re-consenting, alterations and extensions to existing activities which do not have a functional need to be in the coastal marine area.	Costs for consent applicants in determining which rules apply, and possibly being treated as a non-complying activity if it is determined that the most restrictive rule should apply.	No plan change costs.
Option 2 – Clarify that the non-complying activity rule for activities that do not have a functional need for a coastal location applies to new activities, and not to re-consenting, alterations and extensions to existing activities in existing buildings and structures. <i>(preferred option)</i>	More effective as it is clearer which rules apply. More efficient as the more onerous policy approach for activities with no functional need is limited to new activities and not existing activities.	Lower consent costs for applicants as there is less chance they will be treated as a non-complying activity.	Greater certainty for the continued use of existing buildings which extend over the coastal marine area.

6.5.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the provisions to clarify that the non-complying activity rule for activities that do not have a functional need for a coastal location applies to new activities, and not to re-consenting, alterations and extensions to existing activities in existing buildings and structures, is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as it is clearer which rules apply;
2. Are more efficient as the more onerous policy approach for activities with no functional need is limited to new activities and not existing activities;

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3. Would lower consent costs for applicants as there is less chance they will be treated as a non-complying activity; and
4. Would provide greater certainty for the continued use of existing buildings which extend over the coastal marine area.

6.6 Theme 6: Exclusive occupation

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone F3 Coastal – Marina Zone
Specific provision/s	F3.4.3(A30)

6.6.1 Status quo and problem statement

RMA section 12(2) specifies that no person may occupy⁹ any part of the common marine and coastal area unless it is expressly allowed by a national environmental standard, a rule in a regional coastal plan or a resource consent.

‘Exclusive occupation’ is where a coastal permit allows the consent holder to exclude all other people from using their structure. Generally, occupation is not exclusive and other people have a right to access privately owned structures and any space above or below the structure. This aspect of coastal permits is set out in the RMA in section 122(5):

RMA s122 Consents not real or personal property

(5) Except to the extent—

(a) that the coastal permit expressly provides otherwise; and

(b) that is reasonably necessary to achieve the purpose of the coastal permit,—

no coastal permit shall be regarded as—

(c) an authority for the holder to occupy a coastal marine area to the exclusion of all or any class of persons; or

⁹ The Act defines ‘occupy’ as:

occupy means the activity of occupying any part of the coastal marine area—

(a) where the occupation is reasonably necessary for another activity; and

(b) where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and

(c) for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense

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(d) conferring on the holder the same rights in relation to the use and occupation of the area against those persons as if he or she were a tenant or licensee of the land.

The application of this concept has been established by several court decisions which have established that the public can access the relevant structures¹⁰. Consent conditions can detail the extent of the exclusion of other persons (RMA s108(2)(h)).

In the AUP, it not clear whether the permitted activity rules that include RMA s12(2) occupation are intended to cover exclusive occupation. For example, the AUP Marina Zone includes a permitted activity rule for ‘marina berths’ which includes construction and occupation, but the AUP does not specify whether this includes exclusive occupation. Generally under the RMA, occupation is not exclusive, so it could be assumed that it is not exclusive occupation. It is not clear as the reference to s12(2) could mean all forms of occupation. If it does not include exclusive occupation, marina operators cannot restrict people from walking on marina berth accessways. It would be very unusual for a permitted activity to cover exclusive occupation. However, it is not clear in the Marina Zone which rule should be applied if a marina operator wishes to apply for exclusive occupation by marina berths. The policy approach in F3.3(8) makes it clear that exclusive occupation is an option to be considered in the Marina Zone.

Policy F3.3(8) Provide for public access to be restricted only where it is necessary for public health, safety, security or operational reasons.

The F2 General Coastal Marine Zone provisions also apply in the other coastal zones (unless the other zones have an inconsistent or overlapping provision). Objective F2.14.2(3) and policy F2.14.3(2) are clear that exclusive occupation should only be granted in limited circumstances.

Objective F2.14.2(3) Limit exclusive occupation to where it can be demonstrated it is necessary for the efficient functioning of the use and development or is needed for public safety, and any loss of public access and use as a result is minimised and mitigation is provided where practicable.

Policy F2.14.3(2) Provide for exclusive occupation rights in the common marine and coastal area only where it can be demonstrated this is necessary for the efficient functioning of the use and development or is needed for public safety, and will enable the most efficient use of space by activities in the common marine and coastal area and require that the loss of public access and recreational use is mitigated.

In the legacy Auckland Regional Plan: Coastal, construction of marina berths and ancillary structures was a permitted activity in Marina Management Areas under rules 23.5.2 to 23.5.4. Occupation by those structures was a restricted discretionary activity under rule 23.5.7 and the matters of discretion included ‘*b. the extent to which persons will be excluded from using the structure*’. Marinas have generally obtained exclusive occupation consent for

¹⁰ See *Hume v Auckland RC* [2002] 3 NZLR 363; (2002) 8 ELRNZ 211; [2002] NZRMA 422 (CA); *Coleman v Rodney DC* EnvC A122/05; *Hauraki Maori Trust Board v Waikato RC* HC Auckland CIV-2003-485-999, 4 March 2004.

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their marina berths, while the water space between berths, and structures such as breakwaters, are open for public access.

Occupation is included in the F2 restricted discretionary activities matters of discretion (F2.23.1) and assessment criteria (F2.23.2(9)). Assessment under these provisions includes consideration of the degree to which people are excluded. However, the permitted activity status for marina berths in the Marina Zone means these structures do not get considered against these provisions.

In the General Coastal Marine Zone most structures require a resource consent and the degree to which exclusive occupation is provided for is considered as part of the consent process. The activity status applied is that which applies for occupation, as the extent of any exclusive occupation is considered as part of the permit to occupy. The issue is more significant in the other coastal zones where there is expected to be a higher level of development and so various structures are classified as permitted activities. The other coastal zones apply to marinas, Defence areas, minor ports and ferry terminals, and can have safety or security reasons that justify exclusive occupation in some areas.

The General Coastal Marine Zone applies to all of the coastal marine area but section F1.2 specifies that where there is an inconsistency or overlap between the General Coastal Marine Zone and the other coastal zones, the provisions of the other coastal zones take precedence. If a provision is added to the General Coastal Marine Zone for exclusive occupation, it would apply in the other zones. However, there could still be some confusion regarding whether the more general reference to 'occupation' in the other zones would have precedence over an 'exclusive occupation' provision in the General Coastal Marine Zone.

Addressing this matter is within the scope of this plan change as it is consistent with the policy approach in objective F2.14.2(3) and policy F2.14.3(2) and the existing matters of discretion and assessment criteria. It addresses a gap between the policy framework and the unclear scope of the permitted activity rules that refer to 'occupation' without specifying whether they include exclusive occupation.

6.6.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Insert a new exclusive occupation rule in F2 Coastal – General Marine Zone and in the other coastal zones. This option includes making the following amendments to the AUP:

- Insert a new discretionary activity rule in F2.19.8 (rule (A114A)) for 'Exclusive occupation of the common marine and coastal area by a structure or activity that would otherwise be a permitted activity'; and
- Insert a new restricted discretionary activity rule for exclusive occupation in F3 Marina Zone, F5 Minor Port Zone, F6 Ferry Terminal Zone and F7 Defence Zone. The matters of discretion and assessment criteria would refer to the existing matters and criteria for occupation in F2 Coastal – General Coastal Marine Zone.

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- Add a new note above activity table F2.19.8 to clarify that occupation consents do not include exclusive occupation unless that is specifically sought in an application and provided for in a resource consent.

Option 3 – Insert a new discretionary activity rule in F2 Coastal – General Marine Zone for exclusive occupation. This option includes making the following amendments to the AUP:

- Insert a new activity in F2.19.8 Activity table – Use and activities (rule (A114A)) as a discretionary activity for ‘exclusive occupation of the common marine and coastal area’; and
- Add a new note above F2.19.8 to clarify how the activity status applies if the activity that will have exclusive occupation has a different activity status.

Option 4 – Insert a new standard regarding exclusive occupation in F2 Coastal – General Marine Zone. This option includes making the following amendments to the AUP:

- Insert a new standard in F2.21.9 to specify that permitted activities must not require exclusive occupation of the common marine and coastal area.

6.6.3 Evaluation of the proposal against its objectives

Table 6.7 - Summary of analysis under section 32(2) of the RMA for Theme 6: Exclusive occupation.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 – No change to the existing provisions	Not effective as it is unclear whether all the permitted activities that include s12(2) occupation include exclusive occupation or not.	Additional costs for consent applicants in determining whether they need to apply for exclusive occupation or not. There is uncertainty regarding whether other people are allowed access to structures established under these provisions.	No plan change cost.
Option 2 - Insert a new exclusive occupation rule in F2 Coastal – General Marine Zone and in the other coastal zones. <i>(preferred option)</i>	More effective as it clarifies which rules apply for exclusive occupation in each zone. Efficient as it utilises the existing policies, matters of discretion and assessment criteria for occupation.	May have additional consent costs for some activities and structures for them to have exclusive occupation. Some administrative costs as several additional duplicate rules are required in different parts of	Social and environmental benefits from ensuring that exclusive occupation of the coastal marine area is not provided for unless it is through a consent process. More consistent with the ARP:C Marina

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Options	Efficiency and effectiveness	Costs	Benefits
	<p>More effective as it provides a discretionary activity in the General Coastal Marine Zone and a restricted discretionary activity status in the other coastal zones. This recognises the more type of development and activities expected in the other zones, where it is more appropriate that there be some structures with exclusive occupation.</p>	<p>chapter F.</p> <p>May result in confusion regarding precincts with similar provisions as they are not part of this plan change.</p>	<p>Chapter rule 23.5.7 than the existing AUP provisions.</p> <p>Allows applications to be made for exclusive occupation for relevant structures while other structures or areas allow for public access.</p>
<p>Option 3 – Insert a new discretionary activity rule in F2 Coastal – General Marine Zone for exclusive occupation.</p>	<p>Efficient as the rule applies to all coastal zones and precincts unless they specify otherwise.</p> <p>Provides consistency with the policy framework that exclusive occupation will be the exception. Generally, occupation is not exclusive, and the public are legally able to access privately owned structures.</p> <p>Less effective than option 2 as it does not recognise that in the other coastal zones there are generally security or safety reasons for allowing exclusive occupation by some structures.</p>	<p>Some additional consenting costs for applicants who require exclusive occupation.</p> <p>May be un-anticipated costs for structures and activities that would be restricted discretionary and would now be assessed as a discretionary activity.</p> <p>May not be sufficiently clear in the other coastal zones regarding which rules are relevant for exclusive occupation as the other zones refer to ‘occupation’ without specifying whether it includes exclusive occupation.</p>	<p>Social and environmental benefits from ensuring that exclusive occupation of the coastal marine area is not provided for unless it is through a consent process.</p>
<p>Option 4 – Insert a new standard regarding exclusive</p>	<p>Efficient as the rule applies to all coastal zones and precincts</p>	<p>May not be sufficiently clear in the other coastal zones</p>	<p>Social and environmental benefits from ensuring that</p>

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Options	Efficiency and effectiveness	Costs	Benefits
occupation in F2 Coastal – General Marine Zone.	<p>unless they specify otherwise.</p> <p>Provides consistency with the policy framework that exclusive occupation will be the exception.</p> <p>Less effective than option 2 as an activity that does not comply with the standard would be a restricted discretionary activity and so would be less consistent with the policy approach.</p>	regarding which rules are relevant for exclusive occupation as the other zones refer to 'occupation' without specifying whether it includes exclusive occupation.	exclusive occupation of the coastal marine area is not provided for unless it is through a consent process.

6.6.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Adding a new rule for exclusive occupation in F2 Coastal – General Coastal Marine Zone and in the other coastal zones is the most appropriate method to achieve the objective of the plan change because the amendment:

1. Is more effective as it clarifies which rules apply to exclusive occupation.
2. Is more effective as it recognises that in the other coastal zones there are generally security or safety reasons for allowing exclusive occupation by some structures.
3. While it may create additional consent costs for some activities and structures in order for them to have exclusive occupation, would be beneficial overall in terms of the social and environmental benefits of ensuring that, in general, occupation is not exclusive.

6.7 Theme 7: Occupation in areas with existing occupation consents

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.8(A87)

6.7.1 Status quo and problem statement

There is a rule in the General Coastal Marine Zone (F2.19.8(A87)) that requires a restricted discretionary activity consent for any activity in an area of an existing occupation consent. An occupation permit is not the same as land ownership or management rights. Other parties can be granted occupation permits for the same space, or they can build structures that are permitted activities in the same space. The F2.19.8(A87) restricted discretionary rule recognises that permitted activities can impact on existing consent holders and allows for those impacts to be considered through a consent process.

Overlapping occupation interests generally only occur in highly developed areas such as the City Centre waterfront and marinas. The Ports of Auckland hold an occupation consent which covers large parts of the City Centre waterfront precincts. Their operations have now been consolidated to the Central Wharves and Port of Auckland areas (precinct chapters I202 and I208). In the other waterfront precincts (I213 Westhaven, I214 Wynyard, I211 Viaduct Harbour) they have management agreements where other parties manage the occupation rights. In some areas, other parties have occupation permits that overlap the area of the Ports of Auckland permit. Similar situations occur in marinas where the marina operator has consent for occupation and other parties may use the permitted activity rules in the same area. This can be either through a separate occupation consent, or through agreement with the existing consent holder.

Technically, rule F2.19.8(A87) applies in all the other coastal zones and the coastal precincts as being a specific rule addressing a matter not addressed in the relevant zone and precinct chapters. Some people have argued that the F2 rule does not apply in such areas as their occupation is covered by their agreement with an existing consent holder. They have also argued that if the Marina Zone or a precinct activity table states that a permitted activity covers 'section 12(2) occupation' they do not need to look at chapter F2 and consider whether there are existing occupation consents in the same area.

These discussions have indicated that the AUP is currently unclear as to whether the F2.19.8(A87) restricted discretionary rule applies where there is a management agreement with a party who have an occupation consent. The rule states:

F2.19.8 General Coastal Marine Zone, Activity table - Use and activities

(A87) Occupation of the common marine and coastal area by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent – RD (in General Coastal Marine Zone and all overlay columns).

This rule is duplicated in the Central Wharves Precinct and Port Precinct as follows:

I202 Central Wharves Precinct

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(A22) Occupation of the CMCA by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent - RD

I208 Port Precinct rule:

(A38) Occupation of the CMCA by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent - RD

There is no equivalent rule in the other coastal zones and precincts.

The legacy regional coastal plan had an equivalent restricted discretionary rule (Rule 10.5.6):

Rule 10.5.6 Occupation by an activity, which would otherwise be permitted or controlled, where the area to be occupied is either wholly or partially already the subject of an existing occupation consent or is within an area occupied by another party for an activity permitted by this plan.

A more specific requirement was included in chapter 25 which applied to all the Port Management Areas. A note at the beginning of the rules section in 25.5 stated:

25.5 The written consent of Ports of Auckland Limited (or of any party to whom it has delegated such approval) is required for the occupation of the coastal marine area by any of the following activities where they are located within the area of the occupation consent granted to Ports of Auckland Limited pursuant to Section 384A of the RMA (shown on Plan Map Series 2).

6.7.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Clarify in F2 Coastal – General Coastal Marine Zone that in areas of existing occupation consents, a new occupation consent is not required if the new activity has the approval of the existing consent holder. This option includes making the following amendment to the AUP:

- Add a note in F2 saying that the F2.19.8(A87) restricted discretionary rule does not apply if an activity is in accordance with an agreement with an existing consent holder.

Option 3 – Clarify in all the relevant coastal zones that a consent is needed for a permitted activity in an area where there is an existing consent, unless the new activity has the approval of the existing consent holder. This option includes making the following amendment to the AUP:

- Add a rule in the relevant other coastal zone chapters (F3 Marina Zone, F5 Minor Port Zone, F6 Ferry Terminal Zone, F7 Defence Zone) to repeat rule F2.19.8(A87).

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- Add a note in all relevant coastal zones saying that the restricted discretionary rule does not apply if an activity is in accordance with an agreement with an existing consent holder.

6.7.3 Evaluation of the proposal against its objectives

Table 6.8 - Summary of analysis under section 32(2) of the RMA for Theme 7: Occupation in areas with existing occupation consents.

Options	Efficiency and effectiveness	Costs	Benefits
<p>Option 1 - No change to the existing provisions.</p>	<p>Not effective as people can construct structures in some areas as permitted activities and impact on the activities of existing occupation consent holders.</p> <p>Not effective as the Plan is not clear that the restricted discretionary rule in areas of existing consents does not apply if the proposal has the agreement of the existing consent holder.</p>	<p>Costs for existing consent holders as new activities could impact on the existing activity.</p>	<p>No plan change cost.</p>
<p>Option 2 – Clarify in F2 Coastal – General Coastal Marine Zone that in areas of existing occupation consents, a new occupation consent is not required if the new activity has the approval of the existing consent holder.</p>	<p>More effective than the current Plan as it reduces confusion regarding whether consent is needed.</p> <p>Efficient as it applies the same rule across all coastal zones.</p> <p>May not be fully effective as it is not clear in the other coastal zones whether rule F2.19.8(A87) applies or whether the more general statements regarding occupation prevail.</p>	<p>Council can have less awareness of who is occupying common marine and coastal area if it is managed by other parties.</p>	<p>Greater clarity that existing consent holders can allow other parties to make use of their area of occupation for permitted activities without requiring a resource consent.</p> <p>Effects on existing consent holders can be assessed through a consent process.</p>

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<p>Option 3 - Clarify in all the relevant coastal zones that a consent is needed for a permitted activity in an area where there is an existing consent, unless the new activity has the approval of the existing consent holder.</p> <p style="text-align: center;"><i>(preferred option)</i></p>	<p>More effective as it makes the relevant rule clear within each relevant zone.</p> <p>Less efficient than option 2 as the same rule is duplicated in several different zones.</p>	<p>May increase consent costs for some structures that are otherwise permitted activities.</p> <p>May result in confusion regarding precincts with similar provisions as they are not part of this plan change.</p>	<p>Effects on existing consent holders can be assessed through a consent process.</p> <p>Allows existing consent holders to enable other parties to operate in the same area without requiring a resource consent.</p>
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6.7.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the plan to clarify in all the relevant coastal zones that a consent is needed for a permitted activity in an area where there is an existing consent, unless the new activity has the approval of the existing consent holder, is the most appropriate method to achieve the objective of the plan change because the amendment:

1. Is more effective as it reduces confusion;
2. While potentially increasing consent costs for some structures that are otherwise permitted activities, will be beneficial overall insofar as effects on existing consent holders can be assessed through a consent process; and
3. Is efficient as it allows existing consent holders to enable other parties to operate in the same area without requiring a resource consent.

6.8 Theme 8: Activity tables overlaps and inconsistencies

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 General Coastal Marine Zone
Specific provision/s	<p>F2.19.1 to F2.9.10</p> <p>F2.19.4(A32)</p> <p>F2.19.8(A83) to (A85)</p> <p>F2.19.10(A121), (A127), (A135)</p> <p>F2.21.9.1</p>

6.8.1 Status quo and problem statement

Chapter F2 includes ten different activity tables which relate to different types of activities that take place in the coastal marine area. The activity tables have overlaps with some activities that could be in several activity rows. It is not always clear why the differences between similar rules are present and whether they are errors or intentional distinctions.

These overlaps and inconsistencies relate to several different topics as set out below:

1. Disturbance related to works on structures – overlap between activity tables F2.19.4 and F2.19.10

- It is not clear if the foreshore and seabed disturbance that is ancillary to constructing structures is covered by activity table 'F2.19.4 Disturbance' or 'F2.19.10 Structures'. In chapter 'E3 Lakes, rivers, streams and wetlands', the rule for a structure includes associated disturbance as part of the structure activity. On land, earthworks are in separate provisions (E11 and E12) to the provisions for development of structures and buildings (chapter H zones). Several other regional coastal plans list the associated disturbance within the structures rules¹¹. Some consent applications for structures refer to the disturbance permitted activity rule (A32) for 'coastal marine area disturbance that is not otherwise provided for and meets the standards' while other applications refer only to the relevant rule in the activity table for structures (F2.19.10). In some cases, assessing a proposal under one of the tables but not the other means a different activity status applies.
- Tunnels under the seabed (for example a cross harbour roading tunnel) would require extensive disturbance and construction of the tunnel lining. RMA section 12(1)(c) refers to 'tunnelling' as a form of disturbance. Arguably tunnels come under the 'structures' activity table in rule F2.19.10 (A126) "Coastal marine area structures located below the surface of the foreshore and seabed, constructed by methods other than trenching, (but not the occupation by those structures)". This rule provides a permitted activity in the General Coastal Marine Zone for the construction and use of a tunnel. Rule (A127) covers the occupation (as a restricted discretionary activity) but has unclear wording with 'in areas other than cables in the cable protection areas'. Tunnels completely below the seabed would generally have a low level of environmental effects on the waterspace above, but there could be effects of concern where the disturbance is close to the surface of the seabed.

¹¹ (1) Proposed Bay of Plenty Regional Coastal Environment Plan appeals version 2017, Rule SO 3 'For the avoidance of doubt, this rule covers: (i) The erection of placement, alteration, extension or removal of structures. ... (iv) Disturbance of the foreshore and seabed associated with the activity'.

(2) Proposed Regional Plan for Northland, 2018 (section 42A recommendations version), Rule C.1.1.21 'The RMA activities this rule covers: Erection or placement of a structure in, on, under or over any foreshore or seabed (s12(1)(b)) ... Disturbance of any foreshore or seabed, incidental to erecting or placing a structure (s12(1)(c)) ...'.

(3) Proposed Natural Resources Plan for the Wellington Region (2015) Rule R150 'the addition or alteration to a structure and the associated use of the addition in the coastal marine area, including any associated: ... (b) Disturbance of the foreshore and seabed ...'.

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3. Occupation and use of structures – overlap between tables F2.19.8 and F2.19.10

- It is not always clear whether occupation and use for structures is in table F2.19.8 or F2.19.10. In some cases, the use should be in table 10 as it is integral to the type of structure e.g. navigation aid, infrastructure, maimai. Other structures (e.g. wharves, buildings, boat sheds) could have different uses so they should also use the rules in table F2.19.8 regarding functional need/non-functional need and parking etc.

4. Distinction between ‘occupation’ and ‘use’ in table F2.19.8

- It is not clear why rule (A83) covers use without occupation and (A84) has “occupation of the common marine and coastal area and associated use which have a functional need” but (A85) combines them with “use and occupation by activities that do not have a functional need”. These activities have slightly different meanings; ‘occupation and associated use’ does not include uses without occupation. Rule (A85) could apply to either a use or an occupation. It is not clear what this means for privately owned coastal marine area (i.e. in the coastal marine area but not in the common marine and coastal area).
- It is not clear why rule (A84) does not include ‘use and occupation’ to correspond with (A85), and why (A85) specifically includes activities in or on existing structures but (A84) does not.

5. Re-consenting existing structures

- It is not clear if re-consenting existing structures is in table F2.19.8 (because it covers occupation and use under RMA section 12(2) and (3)) or table F2.19.10 (because it covers structures for RMA section 12(1), (2) and (3)).

6.8.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend the provisions so they are clearer and more consistent with other existing provisions in the AUP. This option includes making the following amendments to the AUP:

1. Disturbance related to works on structures – overlap between tables F2.19.4 and F2.19.10

- Add notes above the activity tables to clarify that table F2.19.10 includes disturbance that is incidental to construction of a structure, and that other disturbance is within table F2.19.4.
- Add similar notes under all the F2 activity table headings to clarify what part of the RMA each table relates to. At present, there is a general note at the beginning of the rules and then notes for tables F2.19.8 and F2.19.10.
- Add a note before the activity tables to clarify that if an activity is covered by more than one rule, then the rule that applies is the rule that is more specific for the relevant activity.
- Delete ancillary disturbance from the disturbance table rule F2.19.4(A32).

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- Amend the wording of rules (A127) and (A135) so they are clearer regarding structures in the cable protection areas.

3. Occupation and use of structures – overlap between tables F2.19.8 and F2.19.10

- Include a note that occupation has the same activity status as the use or construction unless otherwise specified. Use wording from Port Precinct.
- Exclude uses in the structures table from (A84) (occupation with functional need).
- Clarify the existing notes so this issue is clearer.

4. Distinction between ‘occupation’ and ‘use’ in table F2.19.8

- Make (A83) ‘use of the coastal marine area not otherwise provided for and that do not involve occupation’ rather than ‘public access, passive recreation, navigation and general use’.
- Make both rules (A84) and (A85) cover use and/or occupation.

5. Re-consenting existing structures

- Specify in a note that re-consenting structures is in table F2.19.10 with the same activity status as construction.

6.8.3 Evaluation of the proposal against its objectives

Table 6.9 - Summary of analysis under section 32(2) of the RMA for Theme 8: Activity table overlaps and inconsistencies.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not effective as the provisions are confusing.	Additional costs for consent applicants in determining which rules apply to their activities.	No plan change costs.
Option 2 – Amend the provisions outlined so they are clearer and more consistent with other existing provisions in the AUP <i>(preferred option)</i>	More effective as the rules will be clearer and easier to understand.	Less cost for applicants to work out what applies to their activity.	Greater certainty regarding the regulatory regime.

6.8.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

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Amending the provisions so they are clearer and more consistent is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as the rules will be clearer and easier to understand;
2. Reduce cost for applicants to work out what applies to their activity; and
3. Increase certainty regarding the regulatory regime.

6.9 Theme 9: Discharges from hull bio-fouling and vessel maintenance

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2.13 Discharges from bio-fouling and vessel maintenance
Specific provision/s	F2.13.1 Background F2.13.2 Objectives F2.13.3 Policies Activity table F2.19.7 Discharges to the coastal marine area: <ul style="list-style-type: none">o Rules A71-A82 F2.21 Standards <ul style="list-style-type: none">o F2.21.8.7 – Discharges of hull bio-fouling organisms from in-water cleaning of vesselso F2.21.8.8 – Passive discharges of hull bio-fouling from commercial and military vessels

6.9.1 Status quo and problem statement

The sections of the AUP listed in the table above relate to discharges of hull bio-fouling material ('bio-fouling') and are intended to address the potential spread of harmful aquatic organisms (**HAO**) into the Auckland region. This is part of the council's response to NZCPS policy 12. These provisions are complex and technical, and as currently drafted, may require either professional expertise or advice, and/or experience in dealing with HAO.

These provisions, which are designed to complement measures under the Biosecurity Act 1993, were extensively mediated through the AUP hearings, with the key mediated outcomes being the following permitted activity regimes:

- a regime for in-water hull cleaning that applies more or less stringent requirements based on the level of risk associated with the HAO (level of fouling, origin of fouling, nature of fouling i.e. taxa); and
- a best practice 'warrant of fitness' regime for passive discharges of bio-fouling from commercial and military vessels.

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Feedback from users of the bio-fouling provisions has been that the in-water cleaning rules are difficult to apply because the applicable permitted activity standards can be difficult to ascertain and therefore the provisions could benefit from greater clarity ('Issue 1). Given their application to a wide range of parties, including recreational boat users, concern has been expressed that the provisions are not appropriate for their target audience.

In particular, plan users have expressed the concern that there does not appear to be a clear distinction between those activities which are subject to the most stringent standards and those that are less onerously regulated.

Furthermore, a second issue has been raised by resource consents staff; in particular, that there is a regulatory 'gap' between in-water hull cleaning and other forms of cleaning that may take place outside of the water but in circumstances that may still lead to discharges of bio-fouling entering coastal waters ('Issue 2'). This could include vessel cleaning on inter-tidal mud areas, on slipways, or on facilities that lift vessels above the water.

Given that Chapter F Table F2.19.7 specifically states that it is intended to capture not only discharges within the coastal marine area, but also discharges to coastal waters under section 15 RMA, the existing provisions are ineffective at achieving the objective of the AUP.

The operative rules currently have a 'gap' with respect to bio-fouling discharges to the coastal marine area which are not "in-water". The removal of hull bio-fouling is explicitly excluded from the permitted activity rule for vessel cleaning (rule (A59)). All of the hull bio-fouling cleaning rules use the "in-water" terminology. Accordingly, while all other discharges of contaminants to the coastal marine area (resulting from vessel cleaning) are captured by (A59), discharges of bio-fouling to the coastal marine area (other than from in-water cleaning) are not subject to any regulation. This leads to the default discharges rules (A62) or (A70) applying, such that the general permitted standards of F2.21.8 apply (rather than the bio-fouling standards) and where they are not met, bio-fouling discharges to the coastal marine area are assessed as a discretionary activity (or non-complying in some overlays).

In that regard, this evaluation does not seek to reconsider the policy approach taken to discharges of bio-fouling, either passive or from in-water cleaning. There is no change proposed to the extent of obligation on vessel owners or operators. Rather, the purpose of the amendments is to better give effect to the existing plan objectives, the New Zealand Coastal Policy Statement and the purpose of the RMA.

An additional note to Table F2.19.7 Activity table - Discharges to the coastal marine area - is proposed to identify that additional obligations may arise under other legislation.

Finally, a minor amendment is proposed to the 'Background' section to clarify the correct title of the Australian and New Zealand Anti-fouling and In-water cleaning Guidelines 2013. This document is not a reference document to the provisions; rather the provisions are designed to implement the guidelines.

6.9.2 Outline of the proposal options

The options to address the issues identified above are:

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Issue 1 – Clarity of the rules and standards relating to hull bio-fouling and vessel maintenance:

1. No change to the existing provisions.
2. Non-regulatory methods.
3. A plan change to amend the identified technical issues.
4. Other regulatory methods.

Issue 2 – Provisions providing for discharges of bio-fouling to the coastal marine area other than from in-water cleaning:

1. No change to the existing provisions.
2. A plan change to amend the identified technical issues.
3. Other regulatory methods.

Section 32(1)(a) - examining the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA

The objectives of PCB as a whole have been evaluated against section 32(1)(a) in section 1.4 of this report above.

With respect to the bio-fouling provisions, the provisions that are the subject of this plan change have already been assessed through the AUP hearings process as achieving the sustainable management purpose of the RMA (refer 2015 section 32AA assessment¹²). The objective of this plan change, and specifically the proposed amendments to the bio-fouling provisions in this case, is to retain the provisions to the extent that the provisions achieve the purpose of the RMA, but to enhance the workability of the provisions for users of the AUP by improving the legibility of the rules and standards and to clarify the intent of the bio-fouling provisions as a whole. In that regard, the proposed amendments to the bio-fouling objectives seek only to clarify that any hull cleaning that leads to discharges of bio-fouling material into coastal waters is regulated by the AUP.

Substantively, therefore, there is no proposed change to the extent to which the proposed amendments to the bio-fouling objectives achieve the sustainable management purpose of the RMA. However, these amendments achieve the overall objective of this plan change; namely, to ensure that the AUP, and particularly the bio-fouling provisions, is unambiguous and accessible for users.

Section 32(1)(b)(i) – Identifying other reasonably practicable options for achieving the objectives

Section 1.6 above provides an overview of the four options considered in relation to achieving the objectives of both the operative AUP provisions and PCB as a whole. The

¹² Evidence of Matthew Spiro on behalf of Auckland Council, 23 February 2015, Auckland Unitary Plan Independent Hearings Panel, Topic 033 and 034, Attachment D Section 32AA Assessments. Available at <https://hearings.aupihp.govt.nz/programmes/ListProgrammeEvents?id=1>

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discussion in that section is adopted for the purpose of this identification of reasonably practicable options to address the issues raised in relation to bio-fouling. This section addresses those options with specific reference to bio-fouling.

Option 1 - Status quo - 'do nothing' approach

No change to the existing provisions.

Option 2 – Non-regulatory methods

Non-regulatory methods to address the identified technical issues include practice and guidance notes. These notes could be circulated to Auckland Council resource consents and other staff and internal stakeholders.

Fact sheets may also be prepared to provide to vessel owners and operators to explain the application of the rules and standards, to identify invasive species and to provide contact details of the relevant agencies (e.g. Auckland Council compliance staff and Biosecurity NZ).

Option 3 – A plan change to improve the legibility and clarity of the in-water cleaning provisions

A plan change would enable amendments to the bio-fouling provisions to enhance the clarity and comprehensibility of those provisions.

Option 4 – Other regulatory methods

Other regulatory methods to address the identified technical issues include waiting to amend the provisions as part of the full plan review and applying a regulatory approach based on activity status (i.e. requiring consent as a restricted or full discretionary activity etc.) rather than permitted activity standards.

6.9.3 Evaluation of the proposal against its objectives

The tables below set out the assessment under both section 32(1)(b)(ii) and section 32(2) for Issues One and Two respectively.

In relation to section 32(2)(b), there is insufficient information regarding the extent of the costs and benefits to realistically quantify those matters. However, as discussed in the tables below, the potential economic costs are considered to be relatively low (with respect to compliance costs), whereas the environmental and economic benefits (in terms of New Zealand's international reputation as both 'clean and green' as well as Auckland's reputation as a 'safe' destination for incoming vessels) are potentially considerably higher. Put another way, the costs imposed on the additional vessels to ensure appropriate cleaning are considered to be outweighed by the environmental and economic benefits of increasing the effectiveness of measures to minimise the spread of HAO into Auckland's coastal waters.

In relation to section 32(2)(c) there is considered to be certain and sufficient information about the subject matter of the provisions and this section is not addressed further in the tables below.

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Table 6.10 - Summary of analysis under section 32(2) of the RMA for Issue One – clarity of the bio-fouling rules and standards.

Options	Efficiency and effectiveness	Costs	Benefits
<p>Option 1 - No change to the existing provisions.</p>	<p>The existing provisions establish an efficient and effective regulatory regime (Refer 2015 32AA report¹³) thus achieving the objectives of the AUP and in particular Objective F2.13.2.1.</p> <p>However, in terms of the objective of this plan change to enhance the AUP for users, the existing provisions could be more effective through increased clarity.</p>	<p>The existing provisions may be unclear to users which may in turn lead to either ineffective or overly onerous application of the plan provisions and therefore a failure to fully achieve the regulatory objectives of those provisions.</p> <p>This may create negative economic consequences for vessel owners and operators or negative environmental consequences in terms of managing the spread of HAO.</p>	<p>Neutral</p>
<p>Option 2 - Non-regulatory methods</p>	<p>Guidance notes and/or practice notes and / or fact sheets would assist in increasing the effectiveness of the existing plan provisions through assisting those users to correctly interpret the regulatory framework.</p> <p>As noted in Table 1.2 above, these non-regulatory methods are non-statutory and also open to further interpretation (and challenge) and are thus less effective than amending the plan.</p>	<p>Increased regulatory compliance and enforcement of the existing provisions could lead to greater costs for vessel operators. However, these costs are anticipated and have previously been assessed as appropriate through the Schedule 1 process.</p> <p>This method is also more timely and less costly than undertaking a statutory process.</p>	<p>Enabling plan users to more clearly understand the regulatory framework will assist in ensuring that the intent of the provisions is better achieved, thus promoting better environmental outcomes.</p>
<p>Option 3 - Amend the</p>	<p>The proposed</p>	<p>Increased regulatory</p>	<p>Enabling plan users to</p>

¹³ Ibid

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Options	Efficiency and effectiveness	Costs	Benefits
<p>rules and standards to clarify the application of the standards to the particular activities</p> <p>(Preferred approach)</p>	<p>amendments to the existing rules and standards would increase the effectiveness of those provisions by making them more clearly understood, leading to improved implementation.</p>	<p>compliance and enforcement of the existing rules and standards could lead to greater costs for vessel operators. However, these costs are anticipated and have previously been assessed as appropriate through the Schedule 1 process.</p> <p>Economic and employment opportunities may arise both in the private and public sector from the increased hull cleaning to ensure regulatory compliance.</p>	<p>more clearly understand the regulatory framework will assist in ensuring that the intent of the provisions is better achieved, thus promoting better environmental outcomes.</p> <p>An additional benefit of amending the provisions compared to issuing guidance and practice notes is that the information will be clearly available to all users.</p>
<p>Option 4: Other regulatory methods</p>	<p>An alternative to the proposed amendments would be to comprehensively review the permitted activity approach taken in the AUP i.e. to require resource consents for in-water cleaning.</p> <p>In terms of whether this would be more efficient and effective, this approach has previously been considered through PAUP process.</p> <p>As set out in the section 32AA assessment for the AUP hearings¹⁴,</p>	<p>As set out in the s32AA assessment¹⁵, the costs of requiring resource consents for in-water cleaning outweigh the benefits of such an approach.</p>	<p>As set out in the s32AA assessment¹⁶, the costs of requiring resource consents for in-water cleaning outweigh the benefits of such an approach.</p>

¹⁴ Ibid

¹⁵ Ibid

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Options	Efficiency and effectiveness	Costs	Benefits
	requiring resource consents for resource consents is not considered efficient or effective compared to the permitted activity regime.		

Table 6.11 - Summary of analysis under section 32(2) of the RMA for Issue Two – Discharges of bio-fouling to the coastal marine area other than from in-water cleaning.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - Retain references to in-water cleaning.	<p>The operative provisions are ineffective at achieving the objectives of the bio-fouling section; in particular Objective 1 which seeks to minimise the spread of HAO.</p> <p>Restricting the application of the rules to cleaning only those hulls that are physically in the water does not address hull-cleaning either above the water (e.g. on a crane), cleaning on a tidal grid at low tide, or cleaning on boat ramps or hard stands adjacent to the coastal marine area where the bio-fouling material is either deliberately or accidentally allowed to enter the water.</p>	<p>Retaining the current rules for hull cleaning creates a risk that vessel owners or operators undertaking hull-cleaning may be subject to applying for a resource consent or being subject to enforcement action (via the default discretionary rule).</p> <p>Conversely, retaining the existing rules may lead to additional environmental costs through failing to capture HAO where those organisms enter coastal waters other than through in-water cleaning.</p>	Neutral
Option 2 - Delete the words 'in-water' from	Deleting the words 'in-water' would address	Clarifying that any hull-cleaning that permits	Clarifying that any hull cleaning that leads to

¹⁶ Ibid

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Options	Efficiency and effectiveness	Costs	Benefits
<p>the provisions that apply to hull cleaning and bio-fouling removal.</p> <p><i>(Preferred approach)</i></p>	<p>the regulatory gap between the permitted activity regime and activities not provided for that nonetheless may discharge bio-fouling material into the coastal marine area.</p> <p>This increases the effectiveness of the regime by providing greater certainty to plan users, potentially reducing the regulatory burden for activities that are not explicitly addressed in the Plan and increasing the effectiveness of the provisions in achieving the plan objective to minimise the spread of HAO.</p>	<p>bio-fouling material to enter coastal water unless the relevant standards are met may lead to greater costs insofar as vessel owners and operators, particularly of small recreational boats that are able to be removed from the water more easily than commercial or military vessels would potentially need to incur costs, particularly with respect to capturing bio-fouling material.</p> <p>However, regular cleaning will ensure compliance with the permitted activity regime without significantly increasing costs.</p>	<p>discharges of bio-fouling material is subject to the regulatory regime is likely to lead to positive environmental benefits by further minimising the potential spread of HAO.</p>
<p>Option 3 - Include additional provisions for discharges of bio-fouling other than from in-water cleaning</p>	<p>Less effective than deleting the words 'in-water' from the provisions as it leads to additional complexity and possibly apparent duplication (i.e. repetition of the sources of bio-fouling and categories of hull cleaning).</p>	<p>Additional provisions may lead to poorer environmental outcomes through making the bio-fouling provisions more difficult to interpret and therefore less correctly implemented.</p>	<p>Adding additional provisions would close the regulatory gap between in-water cleaning and other cleaning that discharges bio-fouling material into the coastal marine area.</p>
<p>Option 4 - Amend the definition of in-water cleaning to include any discharge that enables bio-fouling material to enter the</p>	<p>Less effective than deleting the words 'in-water' from the provisions as it leads to possible further interpretation issues.</p>	<p>Adding a definition that includes cleaning out of the water as 'in-water cleaning' does not follow ordinary rules for plain language</p>	<p>Adding a definition for in-water cleaning to capture additional discharges would close the regulatory gap between in-water cleaning and other</p>

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Options	Efficiency and effectiveness	Costs	Benefits
coastal marine area.		<p>interpretation.</p> <p>This definition would therefore be likely to be challenged and makes the plan more difficult for plan users both within and outside council.</p>	<p>cleaning that discharges bio-fouling material into the coastal marine area.</p>

6.9.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

In regards to Issue 1 (clarity of rules and standards that apply), making amendments to clarify the application of the rules and standards by way of a plan change (Option 2) is the most appropriate method to achieve the objective of the plan change because:

1. It will improve the effectiveness of the bio-fouling provisions in terms of achieving the outcomes sought by the Plan, and in particular, minimising the spread of HAO;
2. It will lead to economic and environmental benefits;
3. The costs of the changes (for boat owners and implementation costs for council) are negligible compared to the operative provisions and those costs were anticipated at the time the notified provisions were considered; and
4. The scale of the changes is small but potentially significant due to the potential environmental benefits of a more effective regulatory regime.

In regards to Issue 2 (discharge of bio-fouling to the coastal marine area other than from in-water cleaning) (Option 2), implementing the proposed amendments to clarify that all discharges of bio-fouling to the coastal marine area are subject to the bio-fouling provisions by of a plan change is the most appropriate method to achieve the objective of the plan change because:

1. It will improve the effectiveness of the bio-fouling provisions in terms of achieving the outcomes sought by the Plan, and in particular, minimising the spread of HAO;
2. It will lead to economic and environmental benefits;
3. The costs of the changes (for boat owners and implementation costs for council) are negligible compared to the costs associated with the operative provisions and those costs were anticipated at the time the notified provisions were considered; and
4. The scale of the changes is small but potentially significant due to the potential environmental benefits of a more effective regulatory regime.

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Section 32(1)(c) Scale and significance of the proposal

Section 32(1)(c) states that an evaluation report under the RMA must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

In this case, while the geographical scale of the proposal is region-wide, the significance of the environmental, economic, social, and cultural effects is relatively narrow. The environmental effects of the proposal (compared to that of the operative plan) are limited to ensuring that the plan is more effective than at the present; however, this may lead to significant environmental benefits through closing the gaps in the existing regime.

6.10 Theme 10: Coastal marine area boundary points at rivers

Chapter of the AUP	Chapter M Appendices GIS map viewer
Sub-section of the AUP	Appendix 7 Coastal marine area boundaries
Specific provision/s	

6.10.1 Status quo and problem statement

The RMA defines the inland boundary of the coastal marine area at rivers as one kilometre upstream of the river mouth, or the point upstream which is five times the width of the river mouth, whichever is lesser. In many places, it can be difficult to determine the exact location of the river mouth and the corresponding location of the coastal marine area boundary. The RMA definition of “mouth” allows for the Minister of Conservation, regional councils and territorial authorities to agree on and set the location of river mouths for the purpose of defining the landward boundary of the coastal marine area. The relevant points are to be agreed before a regional coastal plan is notified.

In the AUP, the agreed coastal marine area boundaries at rivers are set out in Appendix 7. The AUP definition of ‘coastal marine area’ refers to Appendix 7 for the river mouth boundaries:

Coastal marine area

Has the same meaning as in the Resource Management Act 1991 except where the line of mean high water springs crosses a river specified in Appendix 7 Coastal Marine Area boundaries, the landward boundary must be the point defined in the appendix.

The appendix specifies topo map grid references for each agreed river mouth and the upstream boundary point. In several cases these are at an agreed pragmatic location, such as the side of a bridge, rather than precisely following the RMA formula.

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Several of the grid reference points in Appendix 7 are inconsistent with the actual location of the structures noted in the appendix, or are inconsistent with the indicative coastline shown on the AUP GIS maps. In addition, the reference points are difficult to use as they are not shown on the AUP GIS viewer and need to be determined from a separate topo map.

The grid reference points are all the same as in the equivalent Schedule 7 in the legacy Auckland Regional Plan: Coastal. However, they should have been updated when the Unitary Plan was notified in 2013. When the Unitary Plan was being developed, all the river boundary points were reviewed and several were amended slightly, largely due to more accurate mapping ability with the GIS based maps in the AUP. The indicative coastline was aligned to the amended points but the appendix was not updated. The changes were developed through consultation with Department of Conservation staff in May 2013.

Appendix 7 is significant because it determines whether activities in a waterway are subject to the AUP regional coastal plan provisions or the regional plan provisions for works in a river. These points have legal effect in a consent process. They have a different legal status to the indicative coastline (which is noted in chapter F1 as 'indicative' of the line of mean high water springs and needs to be confirmed by site-specific survey).

6.10.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Update Appendix 7 to use the correct topo map grid references.

Option 3 – Update Appendix 7 and include a new map layer to show the updated coastal marine area boundary points at rivers.

6.10.3 Evaluation of the proposal against its objectives

Table 6.12 - Summary of analysis under section 32(2) of the RMA for Theme 10: Coastal marine area boundary points at rivers.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1: No change to the existing provisions	<p>Not effective as it is unclear whether Appendix 7 should be applied to consent applications when the indicative coastline is in a different location.</p> <p>Not efficient as the Plan has inconsistent information regarding</p>	Uncertainty for consent applicants regarding whether their proposal is in a river or the coastal marine area.	No plan change cost.

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Options	Efficiency and effectiveness	Costs	Benefits
	<p>the coastal marine area boundary at rivers.</p> <p>Not efficient as a plan user needs to find a topographical map or the legacy coastal plan to use the grid references.</p>		
<p>Option 2: Update Appendix 7 to use the correct the grid references</p>	<p>More effective as it provides consistency between the maps and the text of the plan.</p> <p>Not efficient as plan users need to find a topographical map or the legacy plan.</p>	<p>Inconvenient for plan users to find what the grid references mean. They need to find a topographical map or find the mapped points in the legacy plan.</p>	<p>More useable plan.</p>
<p>Option 3: Update Appendix 7 and have a new map layer to show the updated coastal marine area boundary points at rivers.</p> <p><i>(preferred option)</i></p>	<p>More effective as it has consistency between the maps and the text of the plan.</p> <p>More efficient as the coastal marine area boundary points are shown on the GIS maps.</p>	<p>The council needs to make a new GIS map layer.</p>	<p>Simple and clear for plan users to find the coastal marine area boundary points to determine if they are in a river or coastal marine area.</p> <p>Continuing the approach taken in the legacy coastal plan to define coastal marine area points at rivers.</p> <p>Updating the boundary points so that they apply at the intended locations on the more accurate mapping in the GIS.</p>

6.10.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

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Updating Appendix 7 and adding a new map layer to show the updated coastal marine area boundary points at rivers is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as there is consistency between the maps and the text of the plan;
2. Are more efficient as the coastal marine area boundary points at rivers are shown on the GIS maps;
3. While having some costs arising from the need for the Council's GIS team to make a new map layer, would be beneficial overall insofar as:
 - a. It will be simple and clear for plan users to find the coastal marine area boundary points to determine if they are in a river or coastal marine area; and
 - b. Continuing the approach taken in the legacy coastal plan to define coastal marine area points at rivers will provide continuity rather than change for plan users.

6.11 Theme 11: Fire and Emergency

Chapter of the AUP	Chapter F Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.7(A64) and F2.21.8.1

6.11.1 Status quo and problem statement

The operative in part version of the Auckland Unitary Plan includes several references to the “New Zealand Fire Service”. The New Zealand Fire Service ceased to exist on 1 July 2017 and was replaced by “Fire and Emergency New Zealand” which was established as an amalgamation of the New Zealand Fire Service Commission, the New Zealand Fire Service, the National Rural Fire Authority, and 38 other Rural Fire Authorities.

The AUP now needs to be updated to delete all references to “the New Zealand Fire Service” and replace this with reference to “Fire and Emergency New Zealand”. Two of the references are in Chapter F2 Coastal – General Coastal Marine Zone.

6.11.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend the provisions to replace ‘The New Zealand Fire Service’ and with ‘Fire and Emergency New Zealand’. This option includes making the following amendments to the AUP:

- Amend F2.19.7(A64) and F2.21.8.1 to replace ‘The New Zealand Fire Service’ and with ‘Fire and Emergency New Zealand’.

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6.11.3 Evaluating the proposal against its objectives

Table 6.13 Summary of analysis under section 32(2) of the Act for Theme 11: Fire and Emergency

Options	Efficiency and effectiveness	Costs	Benefits
Option 1: No change to the existing provisions	This option is inefficient because the provisions do not reference the correct organisation.	The incorrect reference to 'the New Zealand Fire Service' throughout the AUP(OP) is causing confusion and therefore should be amended.	The provisions continue to be applied/implemented as they currently are.
Option 2: Amend the provisions to replace 'The New Zealand Fire Service' and with 'Fire and Emergency New Zealand' <i>(preferred option)</i>	Greater efficiency and effectiveness achieved by replacing the references to an outdated organisation name with the correct name 'Fire and Emergency New Zealand'.	There are no additional costs compared with the status quo other than the cost of changing the Plan.	Greater social and economic benefits for organisations and the public as this option provides greater certainty and clarity with the updated correct reference to 'Fire and Emergency New Zealand'.

6.11.4 Summary

Implementing Option 2 to make the proposed amendments, replacing the incorrect references to 'the New Zealand Fire Service' with the correct references to 'Fire and Emergency New Zealand' is the most appropriate method to achieve the objectives of the plan change because the amendments:

1. Improve usability and legibility of the AUP; and
2. Ensures the correct organisation name is referred to consistently throughout the AUP.

6.12 Theme 12: Infrastructure affecting use of the Mooring Zone

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	Policy F2.16.3(24)

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6.12.1 Status quo and problem statement

Policy F2.16.3(24) states:

(24) Avoid structures that will limit the ability to moor vessels in the Coastal – Mooring Zone, other than those structures necessary for infrastructure that have a functional or operational need to be located in the coastal marine area and that cannot practicably be located outside the Coastal – Mooring Zone.

This policy is included in the General Coastal Marine Zone chapter and so it applies to all structures that limit the ability to moor vessels in the Coastal – Mooring Zone. However, the last part of the policy that relates to infrastructure, refers to infrastructure that cannot be located “outside the Coastal Mooring Zone” when infrastructure could impede access “to” a Mooring Zone, for example, a bridge or cable across an inlet could block access to a Mooring Zone further up that inlet.

In the notified version of the AUP, this policy was in the Mooring Zone section of the plan. The IHP moved it to the General Coastal Marine Zone chapter. The council’s closing statement track changes included this as policy 10 in topic 5.3 (Mooring Zone and Moorings). The IHP report does not mention why they shifted the policy, although they do talk about the appropriateness of having a chapter that is for both the mooring zone and moorings outside the zone (chapter F4). In addressing that issue, the policy may have been moved so that chapter F4 is more focused on moorings (in the mooring zone and outside it) rather than other activities that could affect moorings.

Another reason for moving the policy to the General Coastal Marine Zone chapter appears to be so that it could be used to avoid structures that stopped access to Mooring Zones as well as structures that affect mooring use within a mooring zone. The end of the policy should have been changed so that it applied to more than the Mooring Zone when it was moved. It would be clearer to use ‘another location’ so that the consideration is whether the infrastructure can practicably be in a different location rather than outside the Mooring Zone.

6.12.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend policy F2.16.3(24) so that it applies to infrastructure that could affect access to a Mooring Zone as well as infrastructure in a Mooring Zone. This option includes making the following amendment to the AUP:

- Amend policy F2.16.3(24) to refer to infrastructure that cannot practicably be located ‘in a different location’ instead of ‘outside the Coastal – Mooring Zone’.

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6.12.3 Evaluation of the proposal against its objectives

Table 6.14 - Summary of analysis under section 32(2) of the RMA for Theme 12: Infrastructure affecting use of the Mooring Zone.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	The current wording is not effective as it is not clear whether it applies to infrastructure that affects access to a Mooring Zone as well as infrastructure in a Mooring Zone.	Some costs in determining how the policy applies to relevant structures.	No plan change costs.
Option 2 – Amend policy F2.16.3(24) so that it applies to infrastructure that could affect access to a Mooring Zone as well as infrastructure in a Mooring Zone. <i>(preferred option)</i>	More effective as the policy will be clearer and easier to understand, and more applicable to infrastructure that could limit the ability to moor vessels in the Mooring Zone.	No additional costs other than the costs of changing the plan.	Greater certainty regarding the meaning of the policy.

6.12.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the policy so that it more clearly applies to infrastructure that could affect access to a Mooring Zone, as well as infrastructure in a Mooring Zone, is the most appropriate method to achieve the objective of the plan change because the amendment:

1. Is more effective as the policy will be clearer and easier to understand;
2. Increases certainty regarding the meaning of the policy.

6.13 Theme 13: Aquaculture rules and definitions

Chapter of the AUP	Chapter F – Coastal Chapter J – Definitions
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.9(A116), (A117), (A118), (A119)

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	Definitions of ‘experimental aquaculture activities’ and ‘new aquaculture’.
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6.13.1 Status quo and problem statement

There are several minor wording inconsistencies between the activity table and definitions for aquaculture activities. These are:

- The definition of ‘new aquaculture’ does not link to any of the rules as rule F2.19.9(A115) uses ‘aquaculture activities (new)’.
- ‘Lawfully established aquaculture activities’ has a definition and the term is used in rules F2.19.9 (A117) and (A118) but not in (A116) “Aquaculture activities (re-consenting an established aquaculture activity)”. Rule F2.19.9(A116) does not link to the definition although to ‘re-consent’ an established aquaculture activity, it must have a consent already and so it should be ‘lawfully established’. The definition makes it clear that the activities must be both consented and operational when the PAUP was notified. Rule (A116) leaves some uncertainty for marine farms that are operational but with a different form or extent than was consented. It would be clearer to reword the rule so that it uses the defined term.
- The size and time limits for rule F2.19.9(A119) ‘experimental aquaculture activities’ are partly in the activity table and partly in the definition. It would be clearer to move the duration from the definition to the rule, and to only state size in the rule not the definition.

6.13.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend the aquaculture rules and definitions so they are consistent. This option includes making the following amendments to the AUP:

- Amend the rules so that they use the defined terms.
- Shift the 10 ha limit on experimental aquaculture from the definition to the rule and remove the size limit from the definition.

6.13.3 Evaluation of the proposal against its objectives

Table 6.15 - Summary of analysis under section 32(2) of the RMA for Theme 13: Aquaculture rules and definitions.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not effective as the differences between the rules and definitions are	Additional costs for consent applicants in determining how the differences affect their	No plan change costs.

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	confusing.	activities.	
Option 2 – Amend the aquaculture rules and definitions so they are consistent <i>(preferred option)</i>	More effective as the rules more clearly use the definitions and so will be easier to understand and implement.	Less cost for applicants to work out what applies to their activity.	Greater certainty regarding the regulatory regime.

6.13.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the aquaculture rules and definitions so they are consistent is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as the provisions will be clearer and easier to understand;
2. Reduce cost for applicants to work out what applies to their activity; and
3. Increase certainty regarding the regulatory regime.

6.14 Theme 14: Discharges to water default rules

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.7(A62) and (A70)

6.14.1 Status quo and problem statement

It is not clear why there are two default rules for discharges to water that are not otherwise provided for ((A62) and (A70)). It could be clearer that one corresponds to when the standards are met and the other is when the standards are not met. The differing use of ‘coastal water’ and ‘coastal marine area’ indicates a distinction that should not be present.

6.14.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend the discharges to water default rules so they are clearer. This option includes making the following amendments to the AUP:

- Amend F2.19.7(A62) and (A70) to use consistent wording
- Clarify that the permitted activity relates to where the standards are met.

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6.14.3 Evaluation of the proposal against its objectives

Table 6.16 - Summary of analysis under section 32(2) of the RMA for Theme 14: Discharges to water default rules.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not effective as the provisions are confusing.	Additional costs for consent applicants in determining which rules apply to their activities.	No plan change costs.
Option 2 – Amend the discharges to water default rules so they are clearer <i>(preferred option)</i>	More effective as the rules will be clearer and easier to understand.	Less cost for applicants to work out what applies to their activity.	Greater certainty regarding the regulatory regime.

6.14.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the discharges to water default rules so they are clearer is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as the rules will be clearer and easier to understand; and
2. Increase certainty regarding the regulatory regime.

6.15 Theme 15: Dredging, disturbance and depositing inconsistencies

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 General Coastal Marine Zone
Specific provision/s	F2.19.2(A7) F2.19.3(A17) to (A21) F2.19.4(A33) to (A36) F2.21.4.2.

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6.15.1 Status quo and problem statement

Foreshore works such as stream mouth clearance, beach nourishment and re-contouring can include elements of dredging, disturbance and depositing. There are several inconsistencies within and between the relevant tables that can create confusion and uncertainty. It would be clearer if the same wording and thresholds were used. The discrepancies between the tables include:

- Differences in the wording for corresponding disturbance and depositing rules, for example, referring to 'calendar year' or '12 month period'.
- Rules F2.19.3(A17) and (A19) both provide for dredging to maintain or clear an existing lawful drainage system. The activity status for both rules is the same across the overlays, however Rule (A17) limits the dredging volume to 500m³ while Rule (A19) enables dredging up to 1500m³. This appears to make rule (A17) redundant.
- Rule (A18) is specific to river mouth dredging, that by definition includes realigning a watercourse used for drainage. A watercourse used for drainage could also be an existing lawful drainage system, and where dredging is proposed to clear the exit it is unclear if rule (A18) or rule (A19) should be applied. The activity status for these rules is the same across all overlays except for the Significant Ecological Areas – Marine 2 (**SEA-M2**) overlay. Dredging up to 1500m³ to clear a watercourse for drainage in a SEA-M2 is a permitted activity under rule (A19), however dredging to realign a watercourse for drainage in a SEA-M2 is a restricted discretionary activity under rule (A18). If rule (A18) activity status of dredging in SEA-M2 was amended from restricted discretionary to permitted, this would be consistent with Rule (A19) and also policy F2.4.3 that recognises dredging can be appropriate to reduce erosion risk.
- Standard F2.21.4.2 is inconsistent with the permitted activity thresholds. Rule (A19) permits up to 1500m³ dredging to maintain existing lawful drainage systems, however condition 2 of F2.21.4.2 limits the dredged volume to 500m³.
- In standard F2.21.4.2, condition 7 is duplicated by condition 11.
- Rule F2.19.2(A7) for depositing of material has the same thresholds for volume and length as the dredging rules, however the rules do not have the same activity status. Dredging up to 1500m³ in a SEA-M2 overlay is a permitted activity under rule (A19) however the deposition of sediment in the coastal marine area in SEA-M2 is a discretionary activity. The permitted activity standard F2.21.3.1 lists depositing material excavated from stream mouth clearance as one of the criteria. Deposition of dredged sediment above mean high water springs for beneficial reuse is a permitted activity under E36.4.1 (A14), with the standards E36.6.1.2 recognising beneficial reuse of material dredged from stream mouth clearance. If the activity status of rule F2.19.2(A7) for deposition in SEA-M2 was amended from discretionary to permitted, and the activity status for depositing in an Outstanding Natural Landscape amended from discretionary to restricted discretionary, rule (A7) would be consistent with policy F2.3.3(1), with the permitted activity status of the dredging rule (A19), and also with the permitted activity status for deposition on land (E36.4.1(A14)).
- In the disturbance activity table F2.19.4 rule (A35) appears to be redundant as it repeats (A36) but applies it to disturbance required for the safe and efficient

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operation or construction of significant infrastructure. The only difference is that rule (A35) has a discretionary activity in the SEA-M overlay instead of a non-complying activity. The volumes and criteria in the disturbance table are the same as in the depositing table F2.19.2 except that there is no equivalent to rule (A35) for depositing. Rule (A35) was added to provide a discretionary activity for disturbance associated with constructing a future tunnel across the Waitemata Harbour. The expected route passes through several SEA-M2 areas.

6.15.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Amend the dredging, disturbance and depositing provisions so they are clearer and more consistent with related provisions. This option includes making the following amendments to the AUP:

- Amend the F2.19.4 disturbance rules to use ‘12 month period’ instead of ‘calendar year’ so that it is consistent with the depositing rules in F2.19.2.
- Modify F2.19.2(A7) so that the activity status is consistent with F2.19.3(A19) for ONL, SEA-M2 and HNC overlays
- Delete F2.19.3(A17) and (A18) and include ‘river mouth dredging’ in (A19)
- Include maintaining and clearing drainage systems more explicitly in F2.9.3(A19), (A20) and (A21)
- Amend standard F2.21.4.2 to remove the volume threshold as that is set within the activity table.
- Amend standard F2.21.4.2 to remove condition (11) as it duplicates condition (7).

6.15.3 Evaluation of the proposal against its objectives

Table 6.17 - Summary of analysis under section 32(2) of the RMA for Theme 15: Dredging, disturbance and depositing inconsistencies.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not effective as the provisions are inconsistent and create confusion.	Additional costs for consent applicants in determining which rules apply to their activities.	No plan change costs.
Option 2 – Amend the dredging, disturbance and depositing provisions so they are clearer and more consistent with related provisions	More effective as the rules will be clearer and easier to understand.	Less cost for applicants to work out what applies to their activity.	Greater certainty regarding the regulatory regime.

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<i>(preferred option)</i>			
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6.15.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the dredging, disturbance and depositing provisions so they are clearer and more consistent with related provisions is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as the rules will be clearer and easier to understand; and
2. Increase certainty regarding the regulatory regime.

6.16 Theme 16: Boat ramps

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.19.10(A140)

6.16.1 Status quo and problem statement

There has been debate regarding whether boat ramps in the General Coastal Marine Zone are ‘marine and port accessory structures’ even though they are specifically listed as an inclusion in the definition. Some plan users have argued that boat ramps cannot be included in that definition if the boat ramp is a small-scale boat ramp adjacent to private land as its use is not related to a ‘marine and port activity’. This approach interprets ‘marine and port activity’ to be navigation and berthing of commercial vessels, rather than small pleasure vessels, and is based on the fact that the definition of ‘marine and port activity’ does not include ‘vessel launching’. When the coastal provisions were developed, it was assumed that boat ramps were covered by the rule relating to ‘marine and port accessory structures and services’. The relevant definitions are:

Marine and port activities

Activities associated with:

- *the navigation, anchoring, mooring, berthing, manoeuvring, refuelling, storage, servicing, maintenance and repair of vessels;*
- *embarking and disembarking of passengers;*
- *loading, unloading and storage of cargo and containers;*
- *operation, maintenance, repair, cleaning, and refuelling of associated plant and equipment;*

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- *educational activities associated with these activities; and*
- *the use of buildings and structures associated with these activities, including accessory offices, seafood processing and parking.*

Marine and port accessory structures and services (emphasis added)

Structures and services accessory to marine and port activities and marine and port facilities.

Includes:

- *fenders;*
- *piles;*
- *pontoons;*
- *gangways;*
- *handrails;*
- *hardstands;*
- *wash-down facilities;*
- ***ramps and other boat launching facilities;***
- *canopies;*
- *lighting poles and fittings;*
- *refuse facilities;*
- *dinghy racks;*
- *dinghy locker and storage facilities;*
- *power and telecommunication cables;*
- *water and sewer reticulation;*
- *floating oil booms and barriers;*
- *fuelling and sewage pumpout facilities; and*
- *navigational aids.*

6.16.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

Option 2 – Add ‘boat ramps’ as a new activity in F2.19.10 with the same activity status as ‘marine and port accessory structures and services’.

6.16.3 Evaluation of the proposal against its objectives

Table 6.18 - Summary of analysis under section 32(2) of the RMA for Theme 16: Boat ramps.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not efficient as considerable debate has been generated about the activity status of boat ramps that are	Additional costs for consent applicants in determining which rules apply to their	No plan change costs.

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	not in marinas or port areas.	proposed boat ramp.	
Option 2 – Add ‘boat ramps’ as a new activity in F2.19.10 with the same activity status as ‘marine and port accessory structures and services’ <i>(preferred option)</i>	More effective and efficient as the rules will be clearer and easier to understand.	Less cost for applicants to work out what applies to their proposed boat ramp.	Greater certainty regarding the regulatory regime.

6.16.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the provisions to include ‘boat ramps’ as a new activity in F2.19.10 with the same activity status as ‘marine and port accessory structures and services’ is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective and efficient as the rules will be clearer and easier to understand; and
2. Increase certainty regarding the regulatory regime for boat ramps.

6.17 Theme 17: Significant infrastructure

Chapter of the AUP	Chapter F – Coastal
Sub-section of the AUP	F2 Coastal – General Coastal Marine Zone
Specific provision/s	F2.10.3(3) F2.19.4(A35) F2.23.1(3)(e)

6.17.1 Status quo and problem statement

The term “significant infrastructure” is used in three places in Chapter F2. This term was defined in the notified Unitary Plan but was deleted elsewhere in the AUP through the IHP process. Without the definition, it is now unclear what is meant in the F2 provisions.

6.17.2 Outline of the proposal options

Option 1 – No change to the existing provisions.

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Option 2 – Amend the references to ‘significant infrastructure’ to remove ‘significant’ to be consistent with the rest of the AUP. This option includes making the following amendments to the AUP:

6.17.3 Evaluation of the proposal against its objectives

Table 6.19 - Summary of analysis under section 32(2) of the RMA for Theme 17: Significant infrastructure.

Options	Efficiency and effectiveness	Costs	Benefits
Option 1 - No change to existing provisions.	Not effective as the provisions are confusing.	Additional costs for consent applicants in determining whether the provisions apply to their activities.	No plan change costs.
Option 2 – Amend the references to ‘significant infrastructure’ to remove ‘significant’ to be consistent with the rest of the AUP <i>(preferred option)</i>	More effective as the provisions will be clearer and easier to understand.	Less cost for applicants to work out what applies to their activity.	Greater certainty regarding the regulatory regime.

6.17.4 Summary

Section 32(1)(b)(iii) requires a summary of the reasons for deciding whether the provisions are the most appropriate way to achieve the objectives. That summary is set out below.

Amending the references to ‘significant infrastructure’ to remove ‘significant’ to be consistent with the rest of the AUP is the most appropriate method to achieve the objective of the plan change because the amendments:

1. Are more effective as the provisions will be clearer and easier to understand; and
2. Increase certainty regarding the regulatory regime.

7. Conclusion

PCB seeks to amend Chapter F Coastal, Chapter J Definitions, Appendix 7 and the GIS viewer of the Auckland Unitary Plan in respect of the provisions identified in section 6. The proposed amendments are to address identified technical issues only and will retain the current policy direction of the AUP. The main conclusions of the evaluation under Part 2 and section 32 of the RMA are summarised below:

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1. PCB is consistent with the purpose of sustainable management in section 5 and with the principles in sections 6, 7 and 8 of the RMA.
2. PCB assists the council in carrying out its functions set out in section 30 of the RMA.
3. Pursuant to section 67(3)(c) of the RMA, PCB gives effect to the objectives and policies of the RPS.
4. The evaluation undertaken in accordance with section 32 concluded:
 - i. the use of the existing objectives of the AUP (and minor amendments to two existing objectives) would be the most appropriate way to achieve the purpose of the RMA.
 - ii. the amendment of the AUP in respect of the provisions identified in section 6 is the most appropriate means of achieving the objectives identified in section 1.4 of this report.