

10. Statutory Framework Analysis

10.1 Introduction

This chapter discusses the RMA and other relevant legislation, relevant national statutory instruments, and the statutory planning documents of the ARC and Auckland *City* that are relevant to the resource consents required for stormwater and combined wastewater and stormwater discharges within Auckland Isthmus. After this introduction, this chapter is structured as follows:

Firstly, Section 10.2 discusses the broad statutory considerations under the RMA. Section 10.3 then outlines the regulatory status of the activities requiring resource consent. This section discusses consent requirements for the diversion and discharge of stormwater and combined wastewater and stormwater, and the occupation and use of structures in the coastal marine area.

Section 10.4 identifies relevant national instruments, bearing in mind the consent requirements identified in Section 10.3. It provides an overview of the New Zealand Coastal Policy Statement and Hauraki Gulf Marine Park Act 2000. Section 10.5 discusses the provisions of the ARC Regional Policy Statement and Proposed Auckland Regional Plan: Coastal that are relevant to the resource consents applied for. Section 10.6 then sets out the district planning framework. It briefly describes the objectives and policies and rules of the Auckland *City* District Plan, which are relevant to consideration of the consent applications.

10.2 Resource Management Act 1991

10.2.1 Overarching Considerations

The purpose of this section is to set out those matters under the RMA which underpin this resource consent application. These are as follows:

- a) **Promoting sustainable management** – The overarching purpose of the RMA is to promote the sustainable management of natural and physical resources. This involves an overall broad judgement, which allows for the comparison of conflicting considerations, their scale and degree, and their relative significance or proportion in relation to the final outcome. The stormwater and combined stormwater and wastewater networks and any associated effects must be considered as a whole when assessing whether granting consent for their continued operation achieves the purpose of the RMA. This AEE provides an integrated and comprehensive overview of the network and its effects. The network must be assessed in its entirety, and a comprehensive catchment-wide approach adopted, as changes in one area have the potential to have significant implications on other parts of the network.
- b) **Natural and physical resources** – The purpose of the RMA is to promote the sustainable management of both natural and physical resources. These include, by definition, land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced) and all structures. Promoting the sustainable management of land and water by ensuring that stormwater is managed in the best practicable way to avoid flooding and erosion of land is consistent with the purpose of the Act. Existing structures, such as the stormwater and combined wastewater/stormwater network, are physical resources which require sustainable management. This is contemplated by the applications sought.

- c) **Avoiding, remedying or mitigating effects** – The discharge of stormwater and wastewater is an inevitable consequence of urban development, and in some parts of the system, has occurred for over 100 years. Avoidance of many of the effects of the drainage system would only be possible if the network was completely removed. The unmanaged discharge of stormwater that would then occur would have considerably greater adverse effects than those that may occur with the network in place. As a consequence, it is more practicable and appropriate to consider the mitigation or remedying of adverse effects caused by the existing system.
- d) **Matters of national importance, other matters, and the Treaty of Waitangi** – Sections 6, 7 and 8 of the RMA set out the Act’s principles: “matters of national importance” (section 6), “other matters” (section 7) and the “Treaty of Waitangi” (section 8). The applications sought give due consideration to the matters outlined above. It is accepted that matters relating to the use and management of water have particular significance to tangata whenua and for this reason ongoing consultation is occurring with relevant iwi groups on ways which the system can be operated to ensure that Treaty partnership principles are adhered to.
- e) **Information and consultation needs** – The RMA provides the overall strategic framework for managing the resource consent process and for determining the information required to support the applications. In particular, the requirements of Part II of the RMA, together with the need to examine mitigation approaches, have driven the investigations, discussions and reporting about Auckland *City* and Metrowater’s resource consents. A large number of scientists and technical experts have investigated the issues associated with the stormwater and combined stormwater and wastewater network and their reports have been relied upon in producing this AEE.
- f) **Consideration of effects** – The RMA contains a broad definition of “effect” in section 3. This definition includes, amongst other things, both positive and adverse effects. Metrowater and Auckland *City* have elected to be prudent and have taken a comprehensive approach to the identification and assessment of all effects, both positive and adverse.

10.2.2 Duties and Restrictions

Part III of the RMA sets out duties and restrictions in relation to the use of land, the coastal marine area, river and lake beds, and water; and in relation to discharges to the air, land and water (including coastal water).

Section 9 of the RMA details restrictions on the use of land, and provides that no person may use land in a way that contravenes a rule in a district or regional plan unless the use is either expressly allowed by a resource consent or is an authorised existing use. The land use activities associated with the Auckland Isthmus stormwater and combined stormwater and wastewater network are authorised existing uses under section 10 of the RMA. No new land use activities are proposed as part of this resource consent process.

Section 12 of the RMA sets out the framework for the coastal marine area. It restricts, amongst other things, reclamations, drainage, structures and disturbances of the foreshore and seabed unless authorised by a rule in a regional coastal plan or a resource consent.

Resource consent is required for the continued occupation, use, maintenance and upgrading of structures in the coastal marine area, as discussed in Section 10.3.2.

Section 13 of the RMA specifies the restrictions on the use of beds of lakes and rivers. In summary, this section provides that no person may use the bed of a lake or river unless the activity is expressly allowed by a rule in a regional plan or a resource consent. The stormwater and combined stormwater and wastewater network incorporates activities in the beds of rivers. Resource consent is sought for land use activities and works in and over the beds of rivers and streams, including the continued use, maintenance and upgrading of existing structures.

Section 14 identifies restrictions relating to water. In general terms, no person may take, use, dam or divert any water unless the activity is expressly allowed by a rule in a regional plan, is authorised by a resource consent, or is used for domestic or fire-fighting purposes. Resource consent is required to dam and divert stormwater, as discussed in Section 10.3.1.

Section 15 of the RMA provides that a person may discharge contaminants into water, onto land or into the air if the discharge is expressly allowed by a rule in a regional plan or by a resource consent. Resource consent is required for the discharge of stormwater and combined stormwater and wastewater, as set out in Section 10.3.1 below.

10.3 Resource Consent Requirements

10.3.1 Diversion and Discharge of Stormwater

The Transitional Regional Plan for the Auckland Region contains General Authorisation Numbers 9-15 to divert and discharge stormwater. These instruments also form part of the Transitional Regional Coastal Plan where they were in force in respect of the coastal marine area prior to the RMA.

These General Authorisations (deemed regional rules under sections 370 and 371 of the RMA) allow the discharge of stormwater from roads and rural areas provided, amongst other things, the discharge does not cause significant flooding or erosion. However, the General Authorisations do not permit urban stormwater discharges draining impermeable areas exceeding 1000 square metres. The discharges of stormwater from Auckland Isthmus therefore require resource consent.

With respect to wastewater, the Transitional Regional Plan does not contain any provisions relevant to the discharge of wastewater as part of the combined stormwater and wastewater network operated by Metrowater.

Chapter 20 of the Proposed Auckland Regional Plan: Coastal contains rules regulating the discharge of contaminants into the coastal marine area. There are no specific permitted activity rules regulating the discharge of stormwater or wastewater. However, Rule 20.5.3 is a general permitted activity rule intended to apply to discharges that are not covered by other rules, and that have no more than minor adverse effects.

The discharges of stormwater and combined stormwater and wastewater from Auckland City would not be able to comply with all of the conditions of permitted activity Rule 20.5.3. Therefore the discharges would not be permitted activities and require resource consents.

Rules 20.5.5, 20.5.6, 20.5.8, 20.5.9, 20.5.10 and 20.5.11 are also relevant to stormwater and wastewater discharges. Where discharges occur in areas listed as Coastal Protected Areas 1 (see Figure 10.1), the discharges are classified as non-complying activities in accordance with Rule 20.5.9 (except for those Coastal Protection Areas 1 listed in Rule 20.5.8). In all remaining areas (including the Coastal Protection Areas 1 listed in Rule 20.5.8), the discharges are classified as discretionary activities.

In addition, the direct discharge of human sewage to the coastal marine area is a restricted coastal activity (under Rule 20.5.10).

10.3.2 Structures in the Coastal Marine Area

Chapter 12 of the Proposed Auckland Regional Plan: Coastal contains rules regulating structures in the coastal marine area. Rule 12.5.1 permits the maintenance, repair or reconstruction of any existing lawful structure provided, amongst other things, in Coastal Protection Areas 1 there shall be no disturbance of the foreshore or seabed and in all other areas adverse effects arising from any such disturbance are remedied by natural processes within 7 days. Rule 12.5.1 is subject to appeal and cannot be relied upon.

The maintenance, repair or reconstruction of any existing lawful structure which does not comply with Rule 12.5.1 is a controlled activity under 12.5.6.

The erection or placement of any structure, not expressly regulated by other rules, is a discretionary activity under Rule 12.5.13, except structures in Coastal Protection Areas 1. In addition, any alteration or extension of an existing structure, not expressly regulated by other rules, is a discretionary activity under Rule 12.5.14, except structures in Coastal Protection Areas 1. In Coastal Protection Areas 1, these activities are a non-complying activity under Rule 12.5.17.

With respect to occupation of the coastal marine area, Rule 10.5.1 states that any proposal to occupy part of the coastal marine area (in terms of section 12(2) of the RMA) will be assessed under the same application category as that specified for that particular use and development.

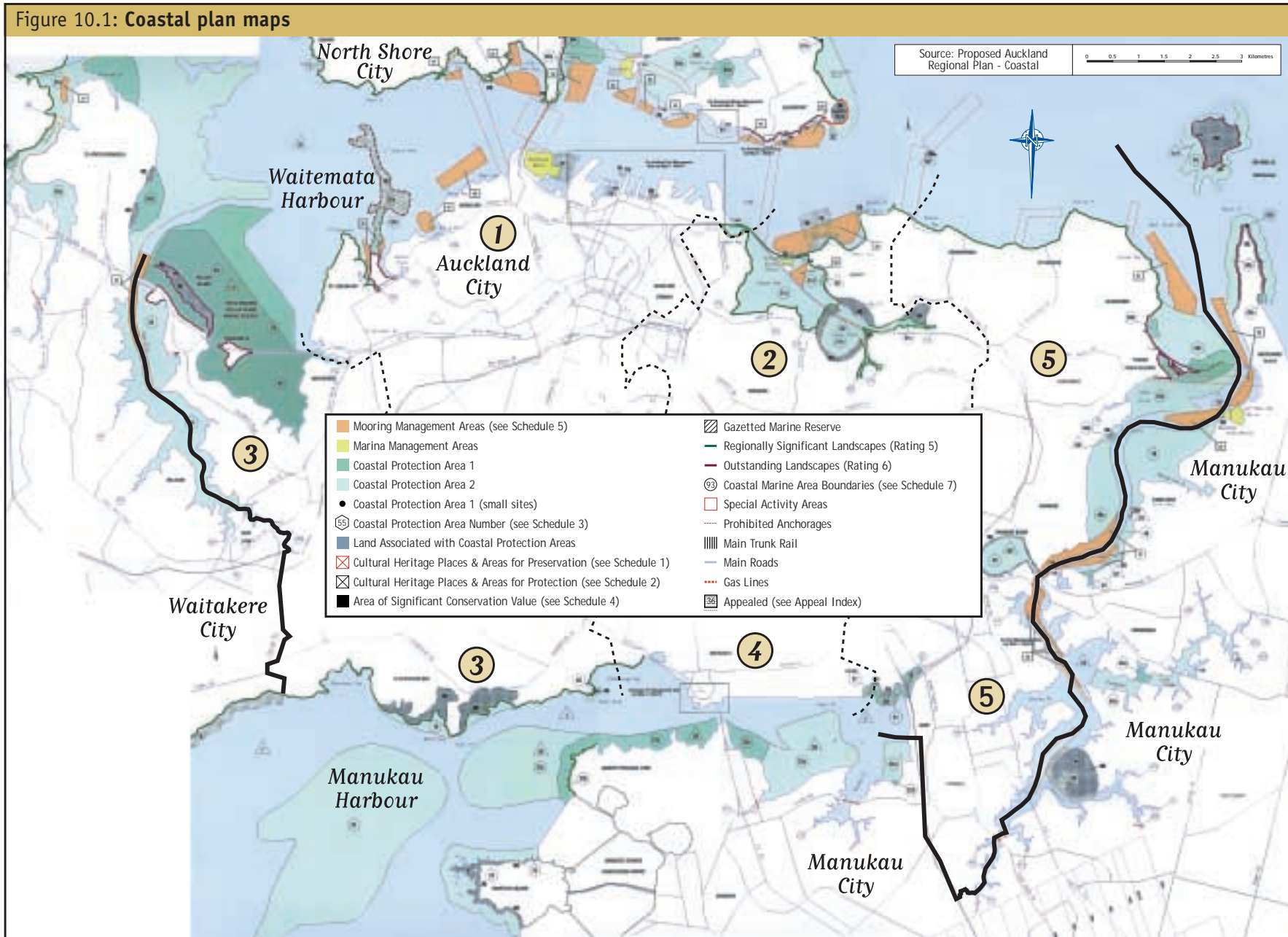
10.3.3 Summary

In summary, the discharges of stormwater and combined stormwater and wastewater are not expressly provided for by the Transitional Regional Plan. Where the discharges occur into the coastal marine area, they are classified in two ways in the Proposed Regional Plan: Coastal:

- ⊙ **Discretionary activities** – The vast majority of discharges are classified as discretionary activities.
- ⊙ **Non-complying activities** – The only discharges classified as non-complying activities are those discharges into the areas designated as Coastal Protection Areas 1, shown in Figure 10.1.



Figure 10.1: Coastal plan maps



In addition, direct discharges of human sewage into the coastal marine area are **restricted coastal activities**.

Where the discharges are into inland waterways, or onto land, they are not expressly regulated. Under the RMA, such innominate activities fall to be considered as **discretionary activities**.

With respect to activities associated with structures in the coastal marine area, these activities are variously classified as **permitted, controlled, discretionary, and non-complying activities**. However, again, the non-complying classification only applies to certain activities in Coastal Protection Areas 1.

10.4 National Instruments

10.4.1 New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement was issued by notice of Gazette in May 1994. The purpose of the New Zealand Coastal Policy Statement is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment. Under s104(1)(c) of the Act, a consent authority must have regard to the New Zealand Coastal Policy Statement when considering resource consent applications.

The New Zealand Coastal Policy Statement contains 14 general principles for the coastal environment. These are very broad and include recognition, amongst other things, that:

- ⊙ Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural well-being of people and communities, and that functionally, certain activities can only be located in the coastal marine area.
- ⊙ The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places.
- ⊙ People and communities expect that lands of the Crown in the coastal marine area will generally be available for free public use and enjoyment.
- ⊙ The protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities.
- ⊙ The tangata whenua are the kaitiaki of the coastal environment.
- ⊙ It is important to maintain biological and physical processes in the coastal environment in as natural a condition as possible, and to recognise their dynamic, complex and interdependent nature.
- ⊙ There is a need to adopt an approach to coastal management which is precautionary, where there is a lack of understanding about coastal processes and the effects of activities, but which is responsive to increased knowledge.
- ⊙ A function of sustainable management of the coastal environment is to identify the parameters within which persons and communities are free to exercise choices.

The New Zealand Policy Statement also sets out policies in relation to:

- ⊙ Protecting the characteristics of the coastal environment of special value to tangata whenua, including making provision to determine the means whereby such characteristics are to be protected.
- ⊙ Maintaining and enhancing amenity values.
- ⊙ Providing for appropriate subdivision, use and development of the coastal environment, including an approach of avoiding adverse effects where appropriate, but allowing effects to be mitigated or remedied where avoidance is not practicable.
- ⊙ Adopting a precautionary approach to activities with unknown but potentially significant adverse effects.
- ⊙ Recognising natural hazards.
- ⊙ Maintaining and enhancing public access to and along the coastal marine area.

The approach being taken by Auckland *City* and Metrowater to their respective operations is one of continuous environmental improvement, which is consistent with the principles and policies of the New Zealand Coastal Policy Statement. The integrated catchment studies and integrated catchment management plans being developed are the best means of ensuring that adverse effects on the coastal marine area are avoided, remedied or mitigated.

10.4.2 Hauraki Gulf Marine Park Act 2000

The Hauraki Gulf Marine Park Act came into effect on 27 February 2000. The purposes of the Act are to integrate the management of the Hauraki Gulf, its islands and catchments; to establish the Hauraki Gulf Marine Park and Hauraki Gulf Forum; to establish objectives for the management of the Gulf; and to recognise the relationship of tangata whenua with the Gulf.

The Hauraki Gulf Marine Park Act requires a consent authority to have regard to sections 7 and 8 when considering resource consent applications for the Hauraki Gulf, its islands and catchments.

Sections 7 and 8 of the Act are therefore relevant to the consent applications sought for discharging stormwater and combined stormwater and wastewater from the Auckland Isthmus. Section 7 establishes the life-supporting capacity of the Hauraki Gulf as a matter of national significance. Auckland *City* and Metrowater are committed to a programme of catchment investigations and improvement which will have positive effects on the marine environment. Such improvements will be ongoing.

Section 8 lists management objectives for the Gulf. These objectives span a range of matters. The objectives strike a balance between recognising the social and economic importance of the Gulf, its islands and catchments, and protecting its life-supporting capacity, and its natural, historic, physical and cultural values. The approach taken by Auckland *City* and Metrowater is consistent with these objectives.

10.5 Regional Planning Documents

10.5.1 Introduction

Section 104 of the RMA requires consent authorities to have regard to any relevant regional policy statement or regional plan when considering consent applications. Relevant rules of regional plans have previously been discussed in Section 10.3. With respect to objectives and policies, there are two key statutory planning documents produced by the ARC that are relevant to the Metrowater consent applications:

- ⊙ The Auckland Regional Policy Statement.
- ⊙ The Proposed Auckland Regional Plan: Coastal.

These are discussed in sections 10.5.2 and 10.5.3 below.

10.5.2 Auckland Regional Policy Statement

The Auckland Regional Policy Statement (“RPS”) became operative on 31 August 1999. The purpose of the RPS is to provide an overview of the resource management issues of the region, and policies and methods to achieve integrated management. The Auckland RPS is at the heart of resource management in the region and sets the strategic direction for the area. Key considerations of the RPS with respect to the discharge of stormwater and combined stormwater and wastewater within the Auckland Isthmus include the following.

- a) **Tangata whenua** – Objectives and policies implementing sections 6(e), 7(a) and 8 of the RMA, and seeking direct and effective involvement of tangata whenua in the sustainable management of their ancestral taonga.
- b) **Heritage** – An approach of preserving or protecting a diverse and representative range of heritage resources, protecting and restoring ecosystems and other heritage resources under threat, and maintaining the overall quality and diversity of landscapes.
- c) **Coastal environment** – An extensive framework of objectives and policies for the coastal environment. These enable the use of the coastal environment for, amongst other things, appropriate network utilities. The RPS specifically provides for activities that have a functional need to be located in the coastal marine area, such as the discharge of stormwater, provided adverse effects are adequately avoided, remedied or mitigated. The RPS also establishes a large number of policies in relation to matters such as natural character, areas of special value, public access, and recreation in the coastal environment. These policies establish overall directions, which are elaborated upon in the Proposed Auckland Regional Plan: Coastal.
- d) **Water quality** – An overall objective of maintaining water quality in water bodies and coastal waters which have good water quality, and enhancing water quality which is degraded for the following purposes:
 - ⊙ Estuaries and harbours: protection of aquatic ecosystems, recreation, fishing and shellfish gathering, cultural and aesthetic purposes.

- ⊙ Open coastal waters: their natural state.
- ⊙ Groundwater: water supply.
- ⊙ Lakes, rivers and streams: protection of aquatic ecosystems, recreation, food gathering, water supply, cultural and aesthetic purposes.
- ⊙ Wetlands: protection of aquatic ecosystems.

Specific policies are included for stormwater and sediment discharges. These encourage territorial authorities to adopt a catchment wide management approach, and to use the “best practicable option” for stormwater quality control. This is precisely the philosophy underpinning these consent applications.

10.5.3 Proposed Auckland Regional Plan: Coastal

The Proposed Auckland Regional Plan: Coastal was publicly notified in 1995. It is currently the subject of various references lodged with the Environment Court.

Chapter 20 of the Proposed Plan addresses discharges of contaminants into the coastal marine area. It contains one overarching objective, which reads:

To maintain water and sediment quality in the coastal marine area and to enhance water and sediment quality in the parts of the coastal marine area where water and sediment quality is degraded.

Associated policies address a range of matters, including:

- a) Avoiding any more than minor damage to the values of any Coastal Protection Area 1, Tangata Whenua Management Area, or Cultural Heritage site, as identified in the planning maps and schedules.
- b) A cross-reference to Chapters 3 to 9 of the Plan for any relevant considerations in terms of natural character, landscape, natural features and ecosystems, matters of significance to tangata whenua, public access, cultural heritage, and subdivision, use and development.
- c) Adopting the best practicable option for the discharge of contaminants into the coastal marine area, having considered matters such as alternative discharge locations, minimisation of the discharge, the assimilation capacity of the receiving environment, and a range of adverse effects.
- d) Avoiding as far as practicable, or remedying or mitigating the contamination of areas that require maintenance dredging.

Chapters 3 to 9 of the Proposed Auckland Regional Plan contain detailed policy frameworks for values associated with the coastal marine area.

Integrated catchment studies, associated environmental investigations and the environmental improvements proposed by Auckland City and Metrowater are consistent with these policies.

10.6 Auckland City District Plan

Although no territorial authority resource consents are being sought, the Auckland City District Plan: Isthmus Section and Central Area Section can be relevant under section 104 of the RMA for consideration of the consent applications lodged with the ARC. The District Plan: Isthmus Section was made operative in late 1999 (except for some outstanding appeals and plan modifications).

No resource consents are being sought from Auckland *City*. However, the consents being sought are consistent with the District Plan as it specifically provides for the management of stormwater. In addition to the primary watercourses and stormwater sewers, it makes specific provision for depressions and areas of land that form secondary flow paths. Auckland *City* policy is to identify areas where secondary flow occurs and apply certain controls for the protection of the flow path itself, and any existing or proposed activities within those areas. These controls usually involve the setting of minimum datum levels for activities, and restrictions on earthworks, solid foundations or fences, or any other type of development which may restrict or divert the passage of secondary flow.