

Consent Processing – 36

36.1 ESTABLISHING THE NEED TO MAKE AN APPLICATION FOR A COASTAL PERMIT

The rules in Part IV: Use and Development, determine whether an application for a coastal permit (resource consent) is required to enable a particular activity to be undertaken in the coastal marine area.

Any activity listed as a permitted activity may be undertaken without obtaining a coastal permit from the ARC, if it complies with all of the specified conditions. It is suggested that prior to commencing an activity you consult with the ARC to determine whether the activity you wish to undertake is permitted, or whether a coastal permit is required.

A coastal permit is required for any activity listed as a controlled activity, a restricted discretionary activity, a discretionary activity, a restricted coastal activity, or if it is not specifically provided for, in which case it will necessitate an application for a non-complying activity.

An application cannot be made for any activity listed as a prohibited activity.

Some discretionary and non-complying activities have been identified in this plan as restricted coastal activities. A coastal permit may be sought for these activities and may either be granted with conditions or declined. The ARC will process and consider the application, and then serve a recommendation on the application on the Minister of Conservation. The Minister makes the decision to grant or refuse an application for a restricted coastal activity.

36.2 MAKING AN APPLICATION

Before making a coastal permit application, the applicant should discuss the proposal with an officer from the Coastal Environment section of the ARC to ensure that all relevant issues and the required assessment of environmental effects are dealt with by, and included in, the application.

Application forms for any activity requiring a coastal permit can be requested from the ARC or downloaded from the ARC website (www.arc.govt.nz). When

applications are lodged with the ARC they must be accompanied by the appropriate deposit fee. A schedule of fees is available on request or can be viewed on the ARC website. If your application is publicly notified and a hearing is required, it is likely that the cost of processing your application will be more than the deposit fee.

It should be noted that in situations where proposed activities straddle the jurisdictional boundary of Mean High Water Springs an application for a resource consent may also need to be made to the relevant city or district council.

36.2.1 What to include in making an application for Controlled, Restricted Discretionary, Discretionary, Non-Complying or Restricted Coastal Activities

In applying for a Controlled, Restricted Discretionary, Discretionary, Non-Complying or Restricted Coastal Activity, section 88(4) of the RMA requires that an application include:

- a a description of the activity for which consent is sought, and its location; and
- b an assessment of the actual or potential effects that the activity may have on the environment, and the ways in which any adverse effects may be mitigated; and
- c any information required to be included in the application by a plan or regulations; and
- d a statement specifying all other resource consents that the applicant may require from any consent authority in respect of the activity to which the application relates, and whether or not the applicant has applied for such consents.

The assessment of effects submitted with an application needs to be sufficiently detailed to correspond to the scale and significance of the actual and potential effects that the activity may have on the environment. This assessment needs to be prepared in accordance with the Fourth Schedule of the RMA, which is attached as Appendix C.

However an assessment of effects accompanying an application for controlled or restricted discretionary activities need only address those matters which the ARC is exercising its control or discretion over. It is recommended that applicants discuss this aspect of their application with an appropriate ARC staff member.

A description of any methods proposed to avoid, remedy or mitigate any adverse effects of the proposal should be included in the application. Applicants should also refer to the Chapter 38: Provisions for Obtaining Environmental Benefits where there are unavoidable adverse effects on the environment from use and development, and Chapter 39: Monitoring. If monitoring, or financial contributions in the form of money, works, services or any combination of these is proposed to avoid, remedy or mitigate adverse effects on any natural or physical resources, they should also be detailed in the application.

If consent to occupy the coastal marine area, pursuant to section 12(2) of the RMA, is required (for excluding public access or use of part of the coastal marine area), this fact should be included in the application, and the effects on public access and use assessed. In accordance with Policy 4.1.6 of the New Zealand Coastal Policy Statement, the applicant must also provide information on any available alternatives to what the applicant seeks to do and the reasons for making the proposed choice.

Pursuant to Policy 4.1.6 of the New Zealand Coastal Policy Statement, applications for coastal permits in the coastal marine area that include reclamation or the removal of sand, shingle, shell, or other natural materials for commercial purposes shall provide information on any available alternatives to what the applicant seeks to do and the reasons for making the proposed choice.

36.3 PROCESSING AN APPLICATION

The processing of a coastal permit application pursuant to the RMA is illustrated in Figure 36.1.

Following receipt of an application by the ARC, a request for additional information may be made at any reasonable time before the hearing of an application

if it is considered that such information is necessary to understand the proposal, its environmental effects, and the ways of mitigating them (section 92 of the RMA).

However a request for further information will delay the processing of any application and applicants are therefore encouraged to discuss their proposal with ARC officers prior to submitting an application, so that the appropriate information can be supplied at the outset.

If the ARC is of the opinion that a significant adverse effect on the environment may result from a proposed activity (in addition to those activities outlined in section 36.2.1) it may require an explanation of;

- a any possible alternative locations or methods for undertaking the activity and the reasons for the proposed choice; and
- b the consultation undertaken with other affected parties.

In the case of activities on proposed reclamations, section 89(2) of the RMA provides for applications for resource consents for proposed activities to be made to territorial authorities where land is in the coastal marine area but will become part of the district once reclaimed. The process is likely to involve a joint hearing.

36.3.1 Notification of an application

When an application has been accepted the ARC will decide whether it is required to be notified. The RMA provides a discretion as to whether an application needs to be publicly notified.

If an activity is listed as a controlled or restricted discretionary activity in this Plan, then that activity need not be publicly notified or the consent of affected parties obtained. However there maybe special circumstances relating to an application which, in the opinion of the ARC justifies public notification or obtaining the written consent of affected parties. In some cases the Plan specifies that affected persons consent **will** be required.

Pursuant to section 94 (2) an application for a discretionary or non-complying activity can only be non-notified if the ARC is satisfied that the adverse effects of the activity will be minor and written approval has been obtained from every person who may be adversely affected by the granting of the resource consent, unless the ARC considers it is unreasonable to do so.

Applications for restricted coastal activities are required to be publicly notified pursuant to section 117(3) of the RMA. When a coastal permit application is publicly notified submissions are called for and any person may lodge a submission within 20 working days of notification, in support of, or in opposition to, the proposal.

36.3.2 Hearing of coastal permit applications

Following the close of the submission period, if the applicant or any submitter requests to be heard, or if the ARC decides a hearing is necessary (section 100 of the RMA), a hearing will be convened. Prior to embarking on the formal hearing, pre-hearing meetings (section 99 of the RMA) may be held for the purpose of clarifying, mediating, or facilitating resolution of any issue within the coastal permit application. The ARC encourages such meetings as a forum to resolve issues before the hearing. If issues under contention are resolved during discussions the submitter(s) may withdraw the request to be heard and a hearing may no longer be necessary.

A hearing for a coastal permit application for a restricted coastal activity is processed in the same way as that for a discretionary or non-complying activity except that, as stated in section 117(5) of the RMA, a representative of the Minister of Conservation is appointed to sit on the ARC's Hearing Committee. Following the hearing that Committee makes a recommendation (section 117(6) of the RMA) on the application to the Minister of Conservation, who is the consent authority for restricted coastal activities.

The RMA allows for both joint and combined hearings to aid in the integrated management of the coastal environment and avoid unnecessary duplication of procedures. As set out in section 102 of the RMA, applications for coastal permits which involve use, development, or activities above and below Mean High

Water Springs e.g. marina developments, or across ARC administrative boundaries e.g. sand extraction, may be heard together by the ARC and the appropriate territorial authority or adjoining regional council. When consent authorities jointly hear applications for coastal permits the hearing committee may jointly decide those applications (s 102(3)), unless the application is for a restricted coastal activity or the consent authorities consider that it is not appropriate to make a joint decision. Section 103 of the RMA allows for combined hearings where two or more applications for coastal permits, in relation to the same proposal, have been made to the ARC and a hearing has been considered necessary.

36.4 DECISIONS

Section 104 of the RMA sets out the matters to be considered by the ARC in respect of a coastal permit application. The decision is made pursuant to section 105 of the RMA.

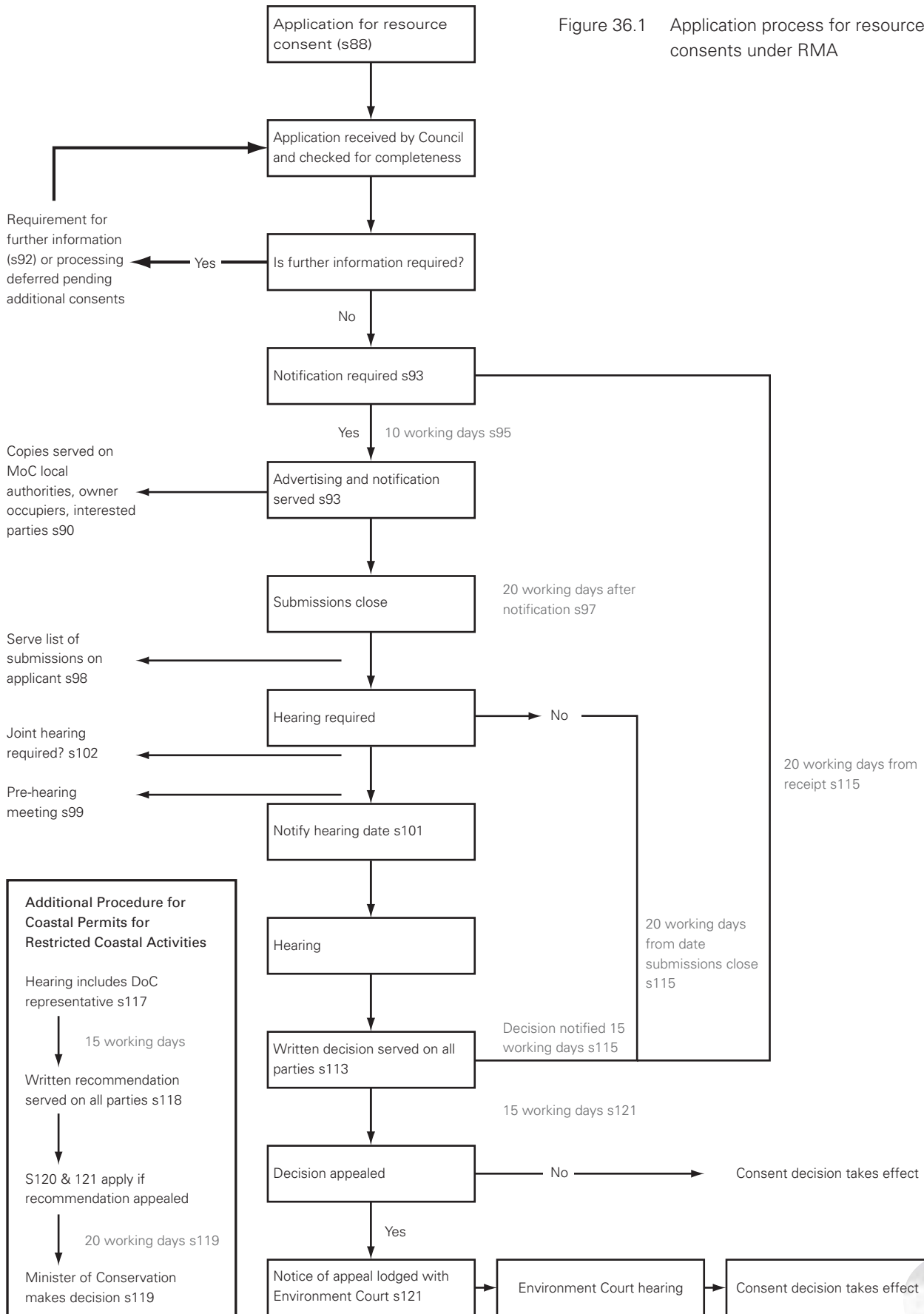
The ARC may grant or refuse a resource consent for a discretionary activity or a restricted discretionary activity, and may impose conditions under section 108 of the RMA. With respect to activities identified as restricted discretionary activities, the ARC has restricted the exercise of its discretion to matters listed in this Plan eg, scale, design appearance or effect on coastal processes.

The ARC cannot grant a resource consent for a non-complying activity unless it is satisfied that;

- a the adverse effects on the environment will be minor; or
- b granting the consent will not be contrary to the objectives and policies of the plan or proposed plan.

Under section 115 of the RMA, a written decision must be given to the applicant and any submitters within 15 working days following the conclusion of a hearing or, if no hearing is required, within 20 working days after receipt of the completed coastal permit application. For a restricted coastal activity the Minister of Conservation shall make a decision within 20 working days after receiving the recommendation from the Hearing Committee.

Figure 36.1 Application process for resource consents under RMA



36.5 APPEALS TO THE ENVIRONMENT COURT AND HIGH COURT

The applicant or any submitter who does not agree with a decision made by the ARC or the Minister of Conservation may appeal to the Environment Court in accordance with section 121 of the RMA, against the whole or any part of the decision (for example an application that has been declined, or the conditions imposed on a consent). The Environment Court then hears the appeal and generally the Court's decision is final, although section 299 of the RMA allows for a further appeal to the High Court on a point of law.

For restricted coastal activities an inquiry by the Environment Court into the Hearing Committee's recommendation may be made under section 118(b) of the RMA. The Court then makes a recommendation, following the inquiry, to the Minister of Conservation (s 121(3) of the RMA). The Minister makes the final decision, but this may be subject to review by the High Court.

36.6 DURATION AND REVIEW OF COASTAL PERMITS

The RMA provides the ARC with the discretion to determine the duration of a consent. Pursuant to section 123 of the RMA the maximum period for a coastal permit consent is 35 years, with the exception of a reclamation permit which is granted for an unlimited time period. If the ARC does not specify the term of the consent, its duration is 5 years in accordance with section 123(d) of the RMA.

The ARC will generally grant consents for 35 years. However, a lesser time period may be granted if there are particular circumstances relating to any consent that warrants or requires a consent period of less than 35 years.

If a coastal permit is not exercised within two years after it was granted (or within a shorter or longer period specified in the permit) then the permit lapses (section 125 of the RMA), unless the consent holder applies for an extension of time. If it is intended to undertake a staged development e.g. a marina, then the coastal permit application should reflect this intention and indicate the timing of the stages. Any coastal permits issued can then reflect in the terms and conditions the appropriate time period of the consent.

Section 128 of the RMA provides for the ARC to review coastal permit conditions to deal with any adverse effect on the environment arising from the exercise of the consent or for any other purpose specified in the consent. In order for the ARC to exercise this power, conditions of the coastal permit must include the provision for review.

Conditions of Consent – 37

37.1 INTRODUCTION

37.1.1 The purpose of this chapter is to explain the concept of conditions and how they work. Conditions are requirements imposed on a resource consent to assist in avoiding, remedying or mitigating adverse effects of the activity on the environment. Conditions are usually attached to resource consents for controlled, restricted discretionary, discretionary, non-complying or restricted coastal activities. Conditions are general as well as site or activity specific. It should be noted that nothing in this chapter can limit ARC's discretion under section 108 of the RMA.

37.1.2 The RMA provides for consent authorities to impose conditions as part of any consent granted. Section 108(1) sets out a range of matters in respect of which conditions may be imposed. These include:

- a requiring a financial contribution (refer to Chapter 38 for further details);
- b requiring a bond or a covenant in respect of the performance of any condition of a resource consent;
- c requiring administrative charges to be paid;
- d in respect of discharges, requiring that the best practicable option be adopted;
- e in respect of a reclamation, requiring that an esplanade reserve or strip be set aside or created.

37.1.3 Section 108(2) of the RMA states that any other condition that the consent authority considers appropriate may also be imposed.

37.1.4 In addition subsections (3) and (4) provide the opportunity to require further information to be gathered by a consent holder and supplied to the consent authority, on the exercise of a resource consent.

37.2 COVENANTS AND BONDS

37.2.1 Covenants, as part of a coastal permit, are unlikely to be used in the coastal marine area, as the majority of this area is already in public ownership. However, the use of bonds is considered appropriate for the purpose of ensuring any or all of the following:

- a satisfactory completion of works or structures associated with a proposal;
- b satisfactory operation of aspects of works or structures associated with a proposal;
- c satisfactory alteration or removal of works or structures following any works or activity being completed or ceasing;
- d satisfactory completion or compliance with any other conditions or terms of consent.

37.2.2 Where the ARC requires a bond as a condition of a coastal permit:

- a it shall be of a sufficient amount to ensure that in the event of the coastal permit holder being unwilling or unable to carry out any work or activity specified in the conditions, the ARC can carry out the work or undertake full remedial action;
- b the amount will be adjustable to take into account inflation over time;
- c the bond shall be guaranteed by a lending institution to the satisfaction of the ARC.

37.2.3 The remaining consent categories under section 108(1) of the RMA are self explanatory, and require no further discussion in this Plan.

Obtaining Environmental Benefits – 38

This chapter sets out provisions for obtaining environmental benefits where there are unavoidable adverse effects on the environment from use and development.

38.1 INTRODUCTION

38.1.1 Section 5(2)(c) of the RMA requires that the adverse effects of use and development be avoided, remedied, or mitigated. However, in some instances it may not be possible to avoid adverse effects, but it will be possible to remedy or mitigate them. In such cases the RMA provides for the obtaining of environmental benefits, via financial contributions.

38.1.2 The term “financial contribution” is defined in section 108(9) of the RMA. It means a contribution of:

- a money; or
- b land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of the Maori Land Act 1993 unless that Act provides otherwise; or
- c a combination of money and land.

38.1.3 In terms of section 108(10) the ARC can not include a condition in a resource consent requiring a financial contribution unless;

- a the condition is imposed in accordance with the purposes specified in the Plan, including the purpose of ensuring positive effects on the environment to offset any adverse effect; and
- b the level of contribution is determined in the manner described in this Plan.

38.1.4 Financial contributions are different to bonds, covenants, and payments of administrative charges, which may also be imposed as conditions on resource consents. It is also different to a rent or royalty which is charged by the Crown for space occupied in the coastal marine area, or for resource use (eg. the extraction of minerals).

38.1.5 When an application is made for a resource consent, the ARC or its agent, will consider whether a financial contribution should be sought. In some circumstances it would be unreasonable or unnecessary to impose a financial contribution. This may be due to the nature of the proposal, its location, scale, design, areal extent and positive effects or benefits arising from that proposal. As a first priority, financial contributions should only be used to remedy or mitigate actual adverse effects of an activity. Where this is not practicable, consideration shall be given to contributions that will obtain environmental benefits, or compensate the environment or the public, for the effects of the activity within the same general locality.

38.1.6 The effect of section 108 (2)(a) is to establish a mechanism where unavoidable adverse effects of subdivision, use and development on the coastal environment can be remedied or mitigated (that is offset) by a financial contribution. Financial contributions shall not be used as a method to ‘buy-off’ the adverse effects of any proposal. There are some values and features in the coastal marine area that should be protected and preserved from adverse effects and no amount of financial contribution could satisfactorily remedy or mitigate the adverse effects. In these circumstances it is likely that the proposed activity will either not be granted, or will be modified to ensure that any adverse effects are avoided, remedied, or mitigated.

38.1.7 In granting any resource consent the ARC may impose a condition requiring that a financial contribution be made for the purposes specified in the Plan. Any financial contribution taken must relate to the effects of an activity, and be in proportion to the significance of any adverse effects. An assessment as to whether a contribution is appropriate will be made on a case-by-case basis. Where the ARC receives money as a financial contribution, section 11 of the RMA requires that it be used in “reasonable accordance” with the purpose for which the money was received.

38.2 PURPOSES AND LEVEL OF ANY FINANCIAL CONTRIBUTION

The following section sets out:

- a the purpose for which contributions may be required ; and
- b the level of any contribution.

Depending upon the nature of the proposal, its location, scale, design, areal extent and any positive effects, it may be unreasonable or unnecessary to seek any financial contribution at all. If a financial contribution is imposed, then it will be fixed at an appropriate amount that is reasonable in all the circumstances, not exceeding the upper level specified in this Plan. The Assessment Guidelines set out in this chapter will be applied by the ARC.

38.2.1 Maintenance and enhancement of public access to, along and within the coastal marine area

Purpose:

To remedy or mitigate adverse effects where public access to, along, or within the coastal marine area will be restricted, prevented, or lost by a proposal for which consent has been granted by;

- a providing for appropriate and convenient access to, along, and within the coastal marine area through or around the area affected by the proposal; and/or
- b where (a) is not practicable or desirable, to create or contribute to new or enhanced access to, along and within another part of the coastal marine area within the general vicinity, or serving the same general community as affected by the proposal. This may include the provision of an esplanade reserve or strip in terms of section 229(b) and (c) of the RMA.

Level of Contribution:

The actual cost of providing public access sufficient to remedy or mitigate the adverse effects on public access,

and/or

the actual cost of providing or contributing to alternative public access to an equivalent standard and extent to that which will be restricted, prevented, or lost, and may include an esplanade reserve or strip up to 20 metres in width within the general vicinity of the proposal in terms of section 229 (b) and (c) of the RMA.

NB. Notwithstanding 38.2.1, esplanade reserves can also be taken by the ARC under the provisions of section 108 (2)(g) of the RMA in relation to reclamations. This is not a financial contribution in terms of the RMA.

38.2.2 Maintenance and Enhancement of Public and Recreational Use of the Coastal Marine Area

Purpose:

To remedy or mitigate adverse effects where a proposal, for which consent has been granted, will occupy or adversely affect any part of the coastal marine area in terms of its availability for use and enjoyment by the public by;

providing public open space or public facilities on or in the vicinity of the site, or serving the same general community, and may include providing or contributing to an esplanade reserve or strip, or other coastal reserves.

Level of Contribution:

The actual cost of providing public open space or public facilities of an equivalent standard or extent to

those which are lost or affected. This may include providing or contributing to an esplanade reserve or strip up to 20 metres in width in terms of sections 229 (b) and (c) of the RMA, or contributing to other coastal reserves.

38.3 ASSESSMENT GUIDELINES

38.3.1 The ARC will use the following assessment guidelines in determining whether or not to impose a financial contribution on any coastal permit. They will also be used to determine the type and value of any contribution.

- a the extent to which a contribution is required to achieve the objectives and policies of this Plan; and
- b the extent to which potential adverse effects have been avoided, remedied, or mitigated in the design, scale, and areal extent of the proposal itself; and
- c the extent to which adverse effects have not been avoided, remedied, or mitigated by other conditions of consent; and
- d the extent to which there are positive effects of the activity which may in themselves offset any or all of the adverse effects; and
- e the extent to which the proposed activity itself contributes to or exacerbates adverse effects; and

- f the extent to which adverse effects can be remedied, mitigated, or offset by a financial contribution; and
- g the extent to which adverse effects can be offset, by providing appropriate compensation for the adverse effects of the activity on the environment or the community.

38.4 PRINCIPAL REASONS FOR ADOPTING

38.4.1 All the provisions of Chapter 38

Section 5(2)(c) of the RMA requires that the adverse effects of subdivision, use and development be avoided, remedied, or mitigated. However in some instances it may not be possible to avoid the adverse effects, but it will be possible to remedy or mitigate them. In such cases the RMA provides for the obtaining of environmental benefits or 'environmental compensation' via 'financial contributions'. The provisions of this Plan seek to ensure this occurs, and that any financial contribution is sufficient to remedy or mitigate adverse effects.

38.5 ANTICIPATED ENVIRONMENTAL RESULTS

38.5.1 The environmental results anticipated are the same as those specified in Part III; Values and Part IV; Use and Development, of this Plan.

Monitoring – 39

39.1 INTRODUCTION

Section 35(2) of the RMA requires each regional council to monitor:

- a the state of the whole or any part of the environment of its region to the extent that is appropriate to enable the regional council to effectively carry out its functions under the RMA; and
- b the suitability and effectiveness of any policy statement or plan for its region; and
- c the exercise of any functions, powers, or duties delegated or transferred by it; and
- d the exercise of the resource consents that have effect in its region.

Monitoring involves ongoing checking, to determine if changes occur, and whether they are acceptable. In order to be able to monitor changes, it is necessary to determine a state against which changes can be compared, that is a “base line”. It is also necessary to be able to measure and determine changes, whether insignificant, positive, negative, cumulative, catastrophic, or unexpected.

Base lines may be set in a variety of ways. Examples of some of the more commonly used base lines, as applied to environmental monitoring, are:

- a the actual status at some point in time is determined and measured (eg. the number and location of existing structures) and departures from that point noted (eg. structures removed, or new structures erected);
- b an “ideal state” is determined (eg. suitability of water for contact recreation) and progress towards or away from that state measured;
- c some future state which is likely to arise if no action were taken or no development occurred is predicted, and changes measured against this hypothetical “no action” scenario.

The base line chosen depends on the aspect of the environment to be measured and an assessment of the likely causes of change. Analysis of the

information gathered will enable the ARC to assess the effectiveness of the objectives, policies, and methods of this Plan. This will be done mainly by checking against the anticipated environmental results stated in each chapter of this Plan. This checking process should determine not only if the anticipated environmental results are being achieved, but also whether this Plan’s objectives, policies and methods are appropriate.

Section 39.2 outlines the ways in which information will be gathered in order to assist the ARC to fulfil its monitoring duties with regard to the coastal marine area. The details of specific monitoring programmes will be determined outside of this Plan, with priorities and funding being set via the annual planning process.

Section 39.3 outlines how the results of information gathering, monitoring and assessment will be reported.

39.2 INFORMATION GATHERING

The ARC will gather information in the ways described below, in order to assist it to fulfil its monitoring obligations with regard to the coastal marine area of the Auckland Region. Some of the information collected by the ARC will be of importance in developing a national state of the coastal environment monitoring programme. The ARC will work with the Department of Conservation in developing its programme. As outlined above, monitoring will involve the further steps of analysing the information gathered in order to determine:

- a if there are significant trends or changes in the aspects being measured; and
- b whether the trends or changes indicate that the anticipated environmental results stated in this Plan are being achieved.

Monitoring of anticipated environmental results will, as far as practicable, be undertaken annually by review of coastal resource consents. Analysis of the information will include compliance of consents issued with the anticipated environmental results in the relevant chapters of the Plan. Reporting of the results to Council will also be undertaken annually. If the monitoring reveals that the anticipated environmental

results are not being achieved, a review of the relevant parts of the Plan will be undertaken and if necessary changes made in accordance with Chapter 40.

39.2.1 Base Line Determination and Long Term Monitoring

It is not possible to measure every single aspect of the coastal environment. Therefore particularly relevant or significant and observable aspects are usually chosen and their status determined. This is achieved using identified variables eg. the level of public access, health of marine organisms, turbidity of water and beach profiles.

Observation of such variables may give a present base line or, if observed repeatedly over a longer time period, contribute to long term monitoring.

Base line determination and long term monitoring are often complemented by research investigations into specific areas of interest or concern. Research may be conducted where consideration is being given to developing a long term monitoring programme. Conversely, knowledge of an aspect of the environment built up over time, through long term monitoring, may be used as a basis from which new investigations are initiated.

Monitoring and research programmes may be undertaken by the ARC itself, by the ARC commissioning other agencies to carry out the research, or by the ARC conducting research in conjunction with other agencies. The results of this research will be made available to the public either as technical publications, or as reports to Committees of the ARC.

39.2.2 Feedback

The ARC maintains ongoing liaison and communication with a number of organisation and groups. Many of these relationships are listed as methods aimed to achieve stated objectives and policies in this Plan. Such liaison usually occurs on an as needed basis, and is typically more frequent with territorial authorities and DOC, who have significant and direct involvement in the implementation of the RMA. The ARC will

attempt to liaise at least on an annual basis with territorial authorities and DOC in order to facilitate the discussion of issues of integration. With other groups, liaison and consultation is less frequent, generally occurring as issues arise which affect those groups.

The ARC will continue to consult, where practicable and appropriate, with a range of groups when relevant issues or questions concerning the sustainable management of the natural and physical resources of the coastal marine area arise: These groups include:

- a government agencies, including DOC, Ministry of Fisheries, Ministry for Environment, Maritime Safety Authority ;
- b territorial authorities in the Auckland Region;
- c other regional councils, and in particular the adjacent regional councils: Northland Regional Council and Environment Waikato;
- d Tangata Whenua of the Auckland Region;
- e sector groups (eg. Ports of Auckland Ltd, sand extraction industry, marine farmers);
- f community and interest groups (eg. Auckland Harbour Users Association, conservation groups, local action groups);
- g specialist groups such as the Universities, National Institute of Water & Atmospheric Research and environment consultants.

An appropriate level of consultation with the latter two groups, in particular, will assist in determining community aspirations in relation to the management of the coastal marine area, and how far these aspirations can be, and are being, met through the implementation of this Plan.

A further feedback mechanism is through public complaints concerning breaches of the RMA or this Plan. The RMA requires the ARC to keep a summary of all written complaints received by it during the preceding 5 years concerning alleged breaches of the Act or a plan, and information on how it dealt with each such complaint. Similar information will be kept for verbal complaints, where appropriate.

Information on all of the above will be reported on a monthly basis to the relevant ARC Committee.

39.2.3 Formal Reporting from Other Parties

Formal reporting relates to transferred powers, delegated functions, contracted work, and initiatives by other groups which have implications for the ARC's implementation of this Plan.

a Transferred Powers

Under section 33 of the RMA, the ARC may transfer certain of its powers to any local authority, Iwi Authority, government department, statutory authority, or a joint committee set up for the purposes of preparing a combined regional or district plan. However, following such a transfer the ARC continues to be responsible for the exercise of the transferred powers.

The ARC will require regular, but no less frequent than annual, reporting back on the exercise of any transferred powers, and any other information as required under the transfer agreement. This will include, in particular, any relevant results of monitoring.

b Delegated Functions

The ARC may delegate to any Committee of the ARC, or hearings commissioner or commissioners established in accordance with the Local Government Act 2002, and officers of the ARC, certain functions under the RMA.

c Contracted Work

The ARC may also contract other parties to carry out various of its functions with regard to the coastal marine area, eg research, monitoring or consent processing. This could include for example coastal marine area monitoring being undertaken by local residents where appropriate. As part of such contracts, the ARC require regular reporting back on the exercise of these functions, and the results of the research or monitoring.

The ARC will keep a record of powers transferred, functions delegated, and work contracted to other agencies with regard to ARC responsibilities in the coastal marine area.

In addition, the exercise of transferred powers, delegated functions, and contracted work will be reported to the relevant ARC Committee as appropriate.

d Initiatives by Other Groups

From time to time, other groups, in particular government departments and Iwi Authorities, may establish initiatives which are of interest to the ARC and the undertaking of its responsibilities in the coastal marine area. Examples include the establishment of a marine reserve, or a taiapure, or a change in fisheries regulations. The ARC will keep a record of such initiatives, and report on them to the relevant ARC Committee.

39.2.4 Compliance with the Resource Management Act 1991

Monitoring of compliance with the RMA may be carried out either through coastal permits granted by the ARC or the Minister of Conservation, or through actions taken by the ARC concerning breaches of the RMA outside consent administration.

a Coastal permits

Coastal permits may be issued directly by the ARC, by those to whom the ARC has delegated this function, by the Minister of Conservation (if the application is for a restricted coastal activity), or by a public authority to which the ARC has transferred consent granting powers.

The ARC will maintain a database of such coastal permits and report information on coastal permits granted to the relevant ARC Committee as appropriate.

The consent authority may require monitoring and reporting to be undertaken by coastal consent holders as a condition of permits. In these

circumstances, records will be kept of the results, and reported to the relevant ARC Committee, where appropriate.

The ARC also monitors compliance with the conditions of coastal permits issued. This includes audit monitoring of self monitoring permits. Records of this will be maintained and reported to the relevant ARC Committee, as appropriate.

b Actions taken by the ARC

The ARC, in response to feedback, or where monitoring results show a need for action, may from time to time act to rectify breaches of the RMA in the coastal marine area, or non-compliance with this Plan or a coastal permit. The actions may include:

- i visiting a site in response to a complaint;
- ii discussing with the perpetrator (if identifiable) and complainant, to seek resolution;
- iii taking remedial action, or requiring it to be taken;
- iv reviewing conditions of consents, pursuant to section 128 of the RMA;
- v requiring an application for a coastal permit to be lodged;
- vi issuing an abatement notice;
- vii applying for an enforcement order; and
- viii prosecution.

These actions will be recorded and reported monthly to the relevant ARC Committee, where appropriate.

39.3 REPORTING

Records of the information gathered as outlined in section 39.2 will be reported as set out below. The ARC will attempt to ensure that the reporting process is co-ordinated to allow a 'holistic' view of coastal issues.

- a relevant results of monitoring in the coastal marine area will be included in the State of the Environment Report prepared for the Auckland Region every three years, as set out in the Auckland Regional Policy Statement. This report will be accompanied by an assessment of the effectiveness of this Plan as a means of achieving its objectives and policies.
- b monthly reporting to the relevant ARC Committee on the exercise of delegated powers, transferred functions, and contracted work, as appropriate.
- c annual reporting to the relevant ARC Committee on the following:
 - Saline Water Quality
 - Bathing Beach Surveys
 - Ecological Monitoring Sites
 - Shellfish Contamination Levels
 - Actions taken by the ARC
 - Summary of public complaints on alleged breaches of the Act or this Plan in the coastal marine area, and how they were dealt with.
- d every three years a report to the relevant ARC Committee on sediment contaminant levels. This report will describe the results of, and trends in, sediment contaminant levels recorded in a five yearly sampling programme.
- e reporting to the relevant ARC Committee on specific topics that arise from time to time.

Records of the above reports are generally kept on ARC files and Committee agendas, and from time to time released as technical publications of the ARC. This information is available to the public.

Review Of and Changes To the Plan – 40

40.1 REVIEW OF THE PLAN

The ARC will undertake a full review of this Plan no later than 10 years after it becomes operative.

The ARC will consider initiating a review of this Plan earlier than 10 years, should monitoring reveal that a significant number of the anticipated environmental results identified in this Plan are not being achieved, as a direct result of inadequate or inappropriate provisions within the Plan.

40.2 CHANGES TO THE PLAN

This Plan is the first Regional Plan: Coastal ever to be prepared for the Auckland Region. As such, once the Plan becomes operative and is implemented, it may be found that changes are necessary in order to improve the efficiency of its implementation, to incorporate new information, or to rectify deficiencies. The approval of other statutory documents may also render aspects of this Plan *ultra vires*, necessitating changes.

In order to keep this Plan as relevant and responsive as possible, the ARC will initiate changes to the Plan, in accordance with Part I of the First Schedule to the RMA in any of the following circumstances:

- a New information, knowledge, or techniques relevant to the management of the natural and physical resources of the coastal marine area becomes available for use or implementation in the Auckland Region. Where the following occurs:
 - i such use or implementation would better promote the sustainable management of natural and physical resources; and
 - ii this Plan does not allow for such use or implementation; and
 - iii the ARC considers the environmental benefits gained by allowing for the use or implementation of the information, knowledge, or techniques warrant changing the Plan,
- a change to the Plan will be initiated in order to allow for the use or implementation of that information, knowledge, or technique in the Auckland Region.
- b The monitoring programme indicates that one or several of the anticipated environmental results identified in this Plan are not being achieved, as a direct result of inadequate or inappropriate provisions within the Plan. A change to the Plan will be initiated in order to rectify any deficiencies in this regard.
- c The introduction of new legislation, or amendment of existing statutes, that relate to management of the coastal marine area, renders provisions of this Plan *ultra vires* or inappropriate. A change to the Plan will be initiated in order to bring the Plan into line with legislative directions.
- d The introduction of, or amendment to, a national policy statement, including the New Zealand Coastal Policy Statement, that may render this Plan inconsistent. A change to the Plan will be initiated in order to rectify any inconsistencies.
- e The development of a regional plan, or the further development, change or review of the Auckland Regional Policy Statement that may render this Plan inconsistent. A change to the Plan will be initiated in order to rectify any inconsistencies.
- f If it becomes evident that the Plan requires amendment to allow for use and development of national or regional significance, such as redevelopment of the Viaduct Basin for the Americas Cup.
- g The ARC receives a request for changes to this Plan. If the ARC accepts the request in whole or in part, a change to the Plan will be initiated in order to incorporate the accepted part(s) of the request.

Administration – 41

41.1 ADMINISTRATIVE CHARGES

41.1.1 The ARC may, pursuant to section 36 of the RMA, fix charges of all or any of the following kind:

- a charges payable by applicants for the preparation or change of a policy statement or plan, for the carrying out by the local authority of its functions in relation to such applications;
- b charges payable by applicants for resource consents, for the carrying out by the local authority of its functions in relation to receiving, processing, and granting of resource consents (including certificates of compliance);
- c charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring, and supervision of resource consents (including certificates of compliance), and for the carrying out of its resource management functions under section 35;
- d charges payable by requiring authorities and heritage protection authorities, for the carrying out by the local authority of its functions in relation to designations and heritage orders;
- e charges for providing information in respect of plans and resource consents, payable by the person requesting the information;
- f charges for supply of documents, payable by the person requesting the document;
- g any kind of charge authorised for the purposes of this section by regulations.

A Schedule of Administrative Charges is held by the ARC.

41.2 TRANSFER OR DELEGATION OF FUNCTIONS, POWERS, DUTIES

41.2.1 Sections 33 and 34 of the RMA provide the opportunity for the ARC to transfer or delegate certain functions, powers, or duties to another local authority, Iwi authority, Government department, statutory authority or a joint committee. The ARC will consider such a transfer or delegation where this would lead to more efficient service or management of the coastal marine area.

41.2.2 Throughout the Regional Plan: Coastal certain policies and rules state that the ARC will undertake some action, or in assessing an application the ARC shall exercise control over or restrict the exercise of its discretion. In these circumstances the term 'the ARC' shall also include any other body which has had the power to grant coastal permits, transferred or delegated to it by the ARC.

41.3 BUILDING ACT 1991

41.3.1 Under the Building Act 1991, the ARC is responsible for issuing building consents for the construction or alteration of structures within the coastal marine area. There are two exceptions to this:

- a where there are specific exemptions provided in the Building Act; and
- b where structures are dealt with as a restricted coastal activity, in which case the Minister of Conservation becomes the issuing authority.

The ARC may transfer its functions, powers, and duties under the Building Act to territorial authorities.

41.4 BYLAWS

41.4.1 The two major statutory mechanisms for managing activities within the coastal marine area are regional rules and bylaws. Regional rules are made pursuant to the RMA. Bylaws are made pursuant to other legislation, including the Local Government Act 1974.

41.4.2 The ARC considers that day to day matters, such as people's behaviour on beaches, fires, dogs and vehicles on beaches, as well as navigation and safety, should be dealt with by bylaws. The ARC has agreed that it is appropriate for the territorial authorities in the Auckland Region to extend their district boundaries, under the Local Government Act, to Mean Low Water Springs. All territorial authorities in the Auckland Region have extended their district boundaries to Mean Low Water Springs (except Franklin District Council which has only extended its east coast boundary, and Auckland City Council which has not altered its boundaries). This extension enables the territorial authorities to determine and administer bylaws for the foreshore of their district.

41.5 RENTS & ROYALTIES

Coastal Permits for the extraction of sand, shingle, shell or other natural material require the payment of a royalty to the Crown. Section 112(1) (b) of the RMA requires;

“(1) In every coastal permit authorising the holder to -

- (b) Remove any sand, shingle, shell, or other natural material, within the meaning of section 12(4), from any such land -

there shall be implied a condition that the holder shall at all times throughout the period of the permit pay to the relevant regional council on behalf of the Crown, -”

- (d) Any sum of money required to be paid by any regulation made under section 360(1)(c).”

The Transitional Fees, Rents and Royalties Regulations of the RMA requires the payment of royalties relating to authorisations for the removal of sand, shingle, shell or other natural material requirements in the coastal marine area.

These regulations also confirm that holders of coastal permits issued prior to the RMA, for occupation of the coastal marine area are required to continue to pay any licence fee or charge specified in those existing permits. The regulations also specify rents in respect of coastal permits for occupation issued under the RMA.

Section 401A(1) of the Act provides that the ARC may request holders of resource consents for occupation of the coastal marine area, or for occupation of the coastal marine area as a result of being a permitted activity under the Regional Plan: Coastal, to pay to the ARC, if requested, any sum required to be paid under the Transitional Fees, Rents and Royalties Regulations. Any amount collected must be used solely for the purpose of the sustainable management of the coastal marine area.

The ARC has resolved not to require the payment of the rentals set out in the Second Schedule to the Transitional Fees, Rents and Royalties Regulations imposed with respect to occupation permits issued under RMA. The ARC continues to collect rentals specified in any occupation consents issued prior to the RMA.

Section 64A further provides that a regional council must introduce a variation to its coastal plan to either introduce a coastal occupation charging regime or to include a statement to the effect that such a charging regime should not be included. Any coastal occupation charging regime could apply to occupation of publicly owned coastal marine area under the authority of an occupation permit issued under the RMA. Section 64A(5) further specifies that any amount collected must be used solely for the purpose of promoting the sustainable management of the coastal marine area.

As required by section 64A, the ARC is presently considering whether or not to introduce any coastal occupation charge. The necessary variation will be subject to the consultation and public notification procedures set out under the First Schedule to the Act.

41.6 COASTAL TENDERING

41.6.1 Part VII of the RMA provides for a system of coastal tendering. This is a mechanism for choosing between competing applications for the occupation of the same area of coastal space, or for the removal of sand, shingle, shell, and other material, or for the reclamation or drainage of the foreshore or seabed.

41.6.2 Coastal tendering will be necessary only where competing demands are attracted to the same area of the coast. Following the notification of this Plan, and the Minister of Conservation becoming aware of competition for use of an area of the coast, the Governor General, on the advice of the Minister, may issue an Order in Council which would direct the ARC not to grant any coastal permits to occupy, extract sand, shell, shingle or other material, or reclaim or drain for the area it covers, unless an authorisation has first been obtained through the tendering process. The successful tender, following the receipt of an authorisation, must then go through the normal consents process under the RMA. The tender process is a mechanism for deciding which applicant can lodge an application for a coastal permit. The application is then dealt with by the ARC under the requirements of the Plan. Authorisations are transferable, upon written notice to the Minister of Conservation and the ARC.

Existing Uses – 42**42.1 CONTINUATION OF EXISTING LAWFUL ACTIVITIES**

42.1.1 Under section 20(1) of the RMA certain lawful existing uses are permitted to continue until the rules in any regional plan become operative. Any activity that contravenes a rule in this plan may continue to be carried on until the plan becomes operative, if:

- (a) The activity was lawfully established before the proposed plan was notified; and
- (b) The activity has not been discontinued for a continuous period of more than 6 months since the proposed plan was notified; and
- (c) The effects of the activity are the same or similar in character, intensity, and scale to those which existed before the proposed plan was notified.

42.1.2 Under section 20(2), once this Plan becomes operative, an activity which was previously permitted or could be undertaken lawfully, but now requires a resource consent, may be carried on if:

- (a) The activity was lawfully established before the rule became operative; and
- (b) The effects of the activity are the same or similar in character, intensity, and scale to those which existed before the rule became operative; and
- (c) The person carrying on the activity has applied for a resource consent from the appropriate consent authority within 6 months of the rule becoming operative and the application has not been decided or any appeals have not been determined.

42.2 EXISTING PERMISSIONS TO BECOME COASTAL PERMITS

42.2.1 Part XV of the RMA sets out transitional provisions which relate to various existing rights in the coastal marine area. Section 384 outlines those permits or licences granted under other legislation which become deemed coastal permits under the Resource Management Act 1991. Further advice on these matters may be sought from ARC staff.

Cross-boundary Issues – 43

43.1 INTRODUCTION

Under the RMA, the Mean High Water Springs boundary separates the primary management responsibilities for the land and water in the coastal environment between regional councils and territorial authorities. Seaward of Mean High Water Springs, the coastal marine area of the Auckland Region is controlled and managed by the ARC, in conjunction with the Minister of Conservation. Landward of Mean High Water Springs territorial authorities are the main agency responsible for control and management of natural and physical resources.

There are seven territorial authorities within the Auckland Region, all of which adjoin the coastal marine area. Significant 'cross-boundary' issues arise due to the responsibilities of the ARC and the territorial authorities, and the jurisdictional division of Mean High Water Springs.

In addition the ARC is bounded to the north by Northland Regional Council and to the south by Environment Waikato. All regional councils have the same RMA responsibilities with respect to the coastal marine area. The effects of activities undertaken within a region can 'migrate' into other regions. Examples of this may include the effects from the extraction of sand, shingle, shell and other natural material and the discharge of contaminants. Accordingly the sustainable management of the environment needs to consider both the intra and inter-regional perspective.

The coastal marine area has not been defined in terms of the dynamic physical and biological processes that function in the natural environment. Natural physical processes including wave and wind action and sediment movement, which operate within the coastal environment are not constrained by, or subject to, the administrative boundaries of the coastal marine area.

The effects of an activity undertaken within the coastal marine area, eg erection of structures, discharge of contaminants; or the removal of sand, shingle or shell are also unconstrained by jurisdictional boundaries and have the potential to cause adverse effects on natural

character and features, landscape, ecosystems, and public access outside the coastal marine area. Conversely, activities undertaken outside the coastal marine area but within the coastal environment eg, subdivision and development, can have a significant effect on the coastal marine area by increasing sediment run-off or increasing hazard risk.

The Areas of Significant Conservation Value, identified by the Department of Conservation, and Coastal Protection Areas identified in this Plan, are restricted to sites within the coastal marine area. Frequently however, the physical and biological processes and values associated with the sites extend landward of Mean High Water Springs, eg vegetation sequences and sediment movement to and from dune areas.

43.2 INTEGRATED MANAGEMENT

The RMA includes various provisions to address cross-boundary issues and encourage integrated management of the coastal environment. The New Zealand Coastal Policy Statement (produced by the Department of Conservation) has policies which cover the entire coastal environment. The Auckland Regional Policy Statement also states policies for the coastal environment. District or regional plans are required to be not inconsistent with these documents. There is provision within the RMA for integration of administrative functions through joint and combined hearings with territorial authorities or adjacent regional councils when coastal consent applications or the possible effects cross administrative boundaries.

This Regional Plan: Coastal has been prepared pursuant to Section 64(2) of the RMA as a plan applying to the coastal environment. It incorporates the Regional Coastal Plan which only applies to the coastal marine area of the Auckland Region. In the future the ARC may prepare other regional plans parts of which may be incorporated into the Regional Plan: Coastal. Examples include the Regional Air Quality Plan and rules regarding natural hazards, both of which will apply to the coastal marine area as well as on land. This would form an integrated document for the coastal environment.

Various other agencies, including the Maritime Safety Authority, Department of Conservation, and Ministry of Fisheries also have statutory responsibilities under other legislation for the management of natural and physical resources in the coastal environment (refer to Section 1.8 of Chapter 1 Introduction). Liaison between all agencies involved in management of the coastal environment is an important component of integrated management. An example of where this has occurred is the establishment of the Hauraki Gulf Forum, to help integrate the management of the Gulf.

In the Auckland Region all of the Auckland territorial authorities have extended their boundaries from Mean High Water Springs to Mean Low Water Springs, except Franklin District Council which has only extended its east coast boundaries, and Auckland City Council which has not extended its boundaries. This is to allow day to day control of the foreshore with their own by-laws. These are created and administered under legislation which includes the Local Government Act 1974 and the Dog Control Act 1996. This boundary shift does not affect functions of the ARC or territorial authorities under the RMA.

43.3 PROCESS STATEMENTS

To promote integrated management of the natural and physical resources across those administrative and jurisdictional boundaries, which occur within the coastal environment. This includes the line of Mean High Water Springs and regional and district boundaries. To achieve this the following processes will be used:

43.3.1 When considering coastal consent applications, regard shall be had to the effects of the activity on any values, or physical and biological processes, of the coastal environment and to the provisions of any relevant district plan, regional plan, or council adopted non-statutory planning document. A copy of any coastal permit application which may have more than minor adverse effects across a regional boundary, shall be referred to that regional council.

43.3.2 The ARC will liaise with adjacent regional councils and territorial authorities to promote integrated coastal management and ensure as far as practicable that a consistency in approach is maintained between coastal resource management issues in adjacent coastal marine areas and across the coastal marine area boundary of Mean High Water Springs.

43.3.3 Liaison shall occur with other statutory bodies on legislative issues that affect the management of the coastal environment.

43.3.4 In recognition of the dynamic nature of the coastal environment, which contains physical and biological processes and values that cross the coastal marine area boundary of Mean High Water Springs, district plans should contain appropriate provisions to ensure the adverse effects on the coastal marine area of any activity undertaken on land are avoided, remedied, or mitigated.