

## **Proposed Plan Change No. 9 - Part 1: Resource Management Act 1991 and Statutory References**

### **TO THE MANUKAU DISTRICT PLAN PURSUANT TO THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991**

#### **EXPLANATORY STATEMENT**

(The explanatory statement does not form part of the Plan Change)

The Manukau District Plan was initially notified in August 1995 and became operative in 2002 ("the District Plan"). Many District Plan provisions refer to and quote provisions of the Resource Management Act 1991 ("RMA") and other relevant legislation as they were in 1995 at the time of notification. Since then, there have been amendments made to the RMA and to other relevant legislation referred to in the District Plan. RMA amendments have brought about changes of varying importance that are not reflected in the current wording of the District Plan. This Plan Change corrects outdated references and wording.

To be complete this Plan Change should update and include all amendments to the RMA. However, in February 2009 the Resource Management (Simplifying and Streamlining) Amendment Bill ("the Amendment Bill 2009") was introduced into the House as stage one of a two stage National Government reform package. The Bill contains 167 clauses proposing amendments to the RMA and consequential amendments to a number of other related statutes. The Bill goes to the Local Government and Environment Committee and the Committee is to report back to the House of Parliament on 19<sup>th</sup> June. The Bill proposes many amendments which will have a bearing on the provisions in the District Plan. These matters include:

1. Removing frivolous, vexatious and anti-competitive objections;
2. Streamlining processes for projects of national significance;
3. Creating an Environmental Protection Authority;
4. Improving plan development and plan change processes;
5. Improving resource consent processes;
6. Streamlining decision making;
7. Improving workability and compliance; and
8. Improving national instruments.

Many of the clauses would further amend provisions to the District Plan that are already due for update. The Amendment Bill 2009, as proposed in February 2009, proposes to amend provisions of the RMA, which have already been amended by previous RMA Amendment Acts passed since the District Plan was proposed in 1995. For example, section 41 of the Resource Management Amendment Act 2003 inserted section 94D (When public notification and service requirements may be varied); clause 70 of the Amendment Bill 2009 proposes to repeal section 94D. This Plan Change does not amend any District Plan provisions that are likely to be further amended by or require consequential amendments as a result of the Amendment Bill 2009 passing into law. These matters are left for a future plan change process.

The RMA Amendment Acts relevant to this Plan Change are:

- The Resource Management Amendment Act 1993 ("the Amendment Act 1993");
- The Resource Management Amendment Act 1996 ("the Amendment Act 1996");
- The Resource Management Amendment Act 1997 ("the Amendment Act 1997");
- The Resource Management Amendment Act 2003 ("the Amendment Act 2003");
- The Resource Management (Foreshore and Seabed) Amendment Act 2004 ("the Foreshore and Seabed Amendment Act");
- The Resource Management (Energy and Climate Change) Amendment Act 2004 ("the ECC Amendment Act"); and
- The Resource Management Amendment Act 2005 ("the Amendment Act 2005").

Some of the above Amendment Acts repealed provisions in other legislation, for example the Amendment Act 2003 repealed section 321 of the Local Government Act 1974. This Plan Change also addresses changes to/arising from a number of other pieces of legislation, including:

- Local Government Act 1974;
- The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008;
- The Clean Air Act 1972;
- The Building Act 1991;
- The Telecommunications Act 1987;
- Manukau City Consolidated Bylaw 1992;
- The Crown Minerals Act 1991;
- The Local Government (Auckland) Amendment Act 2004;
- Disabled Persons Community Welfare Act 1975;
- Land Transport Management Act 1993;
- Transit New Zealand Act 1989;
- The Historic Places Act 1993;
- Auckland Regional Land Transport Strategy 1993

The changes proposed in this Plan Change are simply intended to update references to and quotes from the RMA and other relevant legislation, and to reflect the current wording of provisions in the legislation.

Provisions in the District Plan were assessed and tested in accordance with the relevant requirements of the First Schedule to the RMA. This Plan Change makes no substantive changes to the existing District Plan provisions, but updates references to and brings the District Plan in line with the RMA and other relevant legislation, as subsequently amended.

Among the changes proposed in this Plan Change are alterations to text in the District Plan to reflect amendments to section 75, by section 32 of the Amendment Act 2003 and section 46 of the Amendment Act 2005 in particular. Section 75 has been amended to change the requirement that district plans 'not be inconsistent with' any National Policy Statement, any New Zealand Coastal Policy Statement, and any Regional Policy Statement, to a requirement that a district plan 'must give effect to' those documents. The requirement that a district plan must 'not be inconsistent with' a regional plan or water conservation order has however been retained. The District Plan presently quotes an earlier version of section 75 and the District Plan therefore needs to be amended to reflect the present statutory requirements. References to a number of planning documents, such as the Auckland Regional Policy Statement ("ARPS"), as being 'proposed' are also amended. In the case of the ARPS, that policy statement became operative in 1999. This change is proposed simply to update references to the ARPS to reflect its operative status.

There are various other minor text changes proposed in this Plan Change to bring the District Plan in line with other changes to legislation. These are necessary to ensure that general references to, summaries of, and quotes from current legislation are correct.

The Plan Change is formatted as follows:

The sections are organised in numerical sequence moving through the existing District Plan chapters and sections of the District Plan from Chapter 1 to Chapter 18. The chapter headings are numbered in sections and are shown in bold to correspond to the same layout as the District Plan.

All text from the District Plan is shown in *italics*. Text to be deleted is shown as ~~strikethrough~~ and text to be added is shown as double underlined.

At the end of each proposed amendment is a further explanatory statement. These explanatory statements do not form part of the Plan Change and are included solely to assist the reader to understand the purpose of each proposed amendment. Please note that any description of historical statutory amendments contained within an explanatory statement is not intended to be exhaustive.

## SCHEDULE OF DISTRICT PLAN CHANGES

### 1. AMEND CHAPTER 1 - INTRODUCTION

#### 1.1.1 The Need for a District Plan

... These functions are set out in Section 31(1) of the RMA as:

- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of use, development, or protection of land and associated natural and physical resources of the district;*
- (b) *The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of*
  - (i) the avoidance or mitigation of natural hazards; and*
  - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
  - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;*
  - (iii) the maintenance of indigenous biological diversity;*
- (c) ~~*The control of subdivision of land;*~~ Repealed.
- (d) *The control of the emission of noise and the mitigation of the effects of noise;*
- (e) *The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes;*
- (f) *Any other functions specified in this Act.*

Section 31(2) of the RMA clarifies that the "methods used to carry out any functions under subsection (1) may include the control of subdivision".

#### **Explanation (not part of the Plan Change)**

Section 1.1.1 of the District Plan quotes the two subsections of section 31 and needs to be amended to reflect more recent amendments to section 31 of the RMA. The various subsections of the RMA that were substituted, inserted, and repealed include:

Section 12 of the Amendment Act 2005 inserted section 31(1)(b)(iia);

Section 10(1) of the Amendment Act 2003 repealed section 31(1)(c) and substituted section 31(1)(b).

Section 10(2) of the Amendment Act 2003 inserted section 31(2).

#### 1.1.3 Content of the Plan

Section 75 of the RMA requires that a District Plan ~~shall~~ must state:

- (a) the objectives for the district; and
- (b) the policies to implement the objectives; and
- (c) the rules (if any) to implement the policies.

In addition, the District Plan may state:

- (a) ~~The significant resource management issues of~~ for the district; and
- (b) ~~The objectives sought to be achieved by the plan the methods, other than rules, for implementing the policies~~ for the district; and
- ~~(c) The policies in regard to the issues and objectives, and an explanation of those policies; and~~
- ~~(d) The methods being or to be used to implement the policies, including any rules; and~~
- ~~(e)~~ (c) The principal reasons for adopting the objectives, policies and methods of implementation set out in the plan; and
- ~~(f) The information to be submitted with an application for a resource consent, including the circumstances in which the powers under Section 92 may be used; and~~
- ~~(g)~~ (d) The environment results anticipated expected from the implementation of these policies and methods; and
- (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
- ~~(h)~~ (f) The processes to be used to for dealing with issues which that cross territorial authority boundaries; and
- ~~(i) The procedures to be used to review the matters set out in paragraphs (a) to (h), and to monitor the effectiveness of the plan as a means of achieving its objectives and policies; and~~
- ~~(j) any other information that the territorial authority considers appropriate; and~~
- ~~(k) Such additional matters as may be appropriate for fulfilling the territorial authority's functions powers and duties under this Act.~~
- (g) the information to be included with an application for a resource consent; and
- (h) any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.

A District Plan must give effect to:

- (a) any national policy statement; and
- (b) any New Zealand coastal policy statement; and
- (c) any regional policy statement.

A District Plan must not be inconsistent with:

- (a) a water conservation order; or
- (b) a regional plan for any matter specified in section 30(1).

A District Plan may incorporate material by reference under Part 3 of Schedule 1 to the RMA.

**Explanation (not part of the Plan Change)**

It is necessary to amend this Section 1.1.3 of the District Plan to reflect amendments to the RMA. Specifically, this section of the District Plan quotes provisions of section 75 that have been repealed/substituted.

Section 32 of the Amendment Act 2003 substituted section 75 by reorganising, deleting and inserting new provisions.

Section 46 of the Amendment Act 2005 again substituted and reorganised section 75 and changed the requirement that district plans 'not be inconsistent with' any regional policy statement to a requirement that they 'must give effect to' a regional policy statement.

#### 1.1.4 Development of Objectives, Policies and Methods

*... The general effect of these principles is to impose a duty on persons exercising functions and powers under the Act to consider a wide range of **instruments** which might be used to deal with a particular objective, to consider the various **costs** and **benefits** associated with each of the instruments, and then to use the most **efficient** and **effective** amongst those instruments to achieve the objectives.*

##### **Explanation (not part of the Plan Change)**

Section 1.1.4 of the District Plan briefly explains the process for evaluating objectives, policies, rules and other methods and briefly summarises section 32 of the RMA. The summary of section 32 in 1.1.4 of the District Plan requires a minor amendment to include the word "effective", in order to ensure that the District Plan summarises this provision of the RMA accurately.

#### 1.2.1 District Plan Preparation

*The RMA states that during the preparation of the District Plan the Council ~~must~~shall consult with:*

- *the Minister for the Environment;*
- *other Ministers of the Crown who may be affected;*
- *local authorities who may be affected;*
- *the tangata whenua of the area who may be so affected through iwi authorities ~~and tribal runanga;~~and*
- *the board of any foreshore and seabed reserve in the area.*

##### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the District Plan to ensure that amendments to the RMA are correctly incorporated. Section 1.2.1 of the District Plan summarises the consultation that shall and may take place in the preparation of a District Plan. Section 73(1A) (as amended by section 39 of the Amendment Act 1993) says that a territorial authority may change its district plan in the manner set out in Schedule 1. The deletion of the word "must" and the insertion of the word "shall" is required to reflect the text of clause 3(1) of Schedule 1.

Section 129 of the Amendment Act 2005 deleted the words "and tribal runanga". Section 36(2) of the Foreshore and Seabed Amendment Act 2004 inserted subclause 3(1)(e) of Schedule 1.

#### 1.3.3 The Principles of the Act

##### **6. Matters of national importance –**

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- ...
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;*
  - (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;*
  - (f) The protection of historic heritage from inappropriate subdivision, use, and development;
  - (g) The protection of recognised customary activities.

## 7. Other Matters –

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –*

- (a) *Kaitiakitanga:*
  - (aa) The ethic of stewardship:
- (b) *The efficient use and development of natural and physical resources:*
  - (ba) the efficiency of the end use of energy:
- (c) *The maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (e) ~~*Recognition and protection of the heritage values of sites, building, places, or areas:*~~
- (f) *Maintenance and enhancement of the quality of the environment:*
- (g) *Any finite characteristics of natural and physical resources:*
- (h) *The protection of the habitat of trout and salmon:*
- (i) The effects of climate change:
- (j) The benefits to be derived from the use and development of renewable energy.

### **Explanation (not part of the Plan Change)**

Section 1.3.3 of the District Plan identifies the principles of the RMA and summarises sections 6, 7 and 8. It is necessary to amend this section of the District Plan to ensure that sections 6 and 7 of the RMA, as amended, are correctly quoted in the District Plan. The amendments made to these sections include:

Section 4 of the Amendment Act 2003 amended section 6 by adding paragraph (f) and section 4 of the Foreshore and Seabed Amendment Act 2004 inserted paragraph (g).

The various amendments to section 7 include:

Section 3 of the Amendment Act 1997 inserted paragraph (aa) relating to "the ethic of stewardship".

Paragraph (ba) was inserted by section 5(1) of the ECC Amendment Act 2004 and (i) and (j) were inserted by section 5(2) of the same Amendment Act. Section 5 of the Amendment Act 2003 repealed paragraph (e).

### **1.4.1 Central Government**

*Under the RMA, 'central government' includes the Ministry for the Environment and the Department of Conservation. The role of the Ministry for the Environment is to monitor the effect and implementation of the RMA. There are some methods which the Ministry may*

*use to influence resource management, including the ability to issue **National Policy Statements** to guide local decisions, and to set ~~national environmental standards~~ **National Environmental Standards** through regulations for (among other matters) noise, contaminants, water, soil and air quality.*

#### **Explanation (not part of the Plan Change)**

Section 1.4.1 of the District Plan describes the role of central government in assisting with the implementation of the RMA and refers to national environmental standards. National environmental standards are regulations issued under sections 43 and 44 of the RMA and apply nationally. This means that each regional, city or district council must enforce the same standard. Under section 74(1) any regulations are a matter to be considered by a territorial authority.

It is desirable that section 1.4.1 be amended to highlight the reference to "national environmental standards", and to clarify that the list of matters which can be addressed by national environment standards stated in section 1.4.1 is not exhaustive. For instance, in September 2008 the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008 came into force.

### **1.4.3 Territorial ~~Local~~ Authorities**

***Territorial local authorities** (e.g. district and city councils) have primary responsibility for managing the effects of land use activities and the other matters specified in Section 31 of the RMA.*

*Each territorial authority is required to prepare and implement a **District Plan**. District Plans are designed to assist the territorial authorities to carry out their functions in order to achieve the purpose of the Act. District Plans ~~must~~ *"...not be inconsistent with..."* *"...must give effect to..."* (Section 75(2)(3) RMA) any national policy statements (including the New Zealand Coastal Policy Statement) or Regional Policy Statements and Plans.*

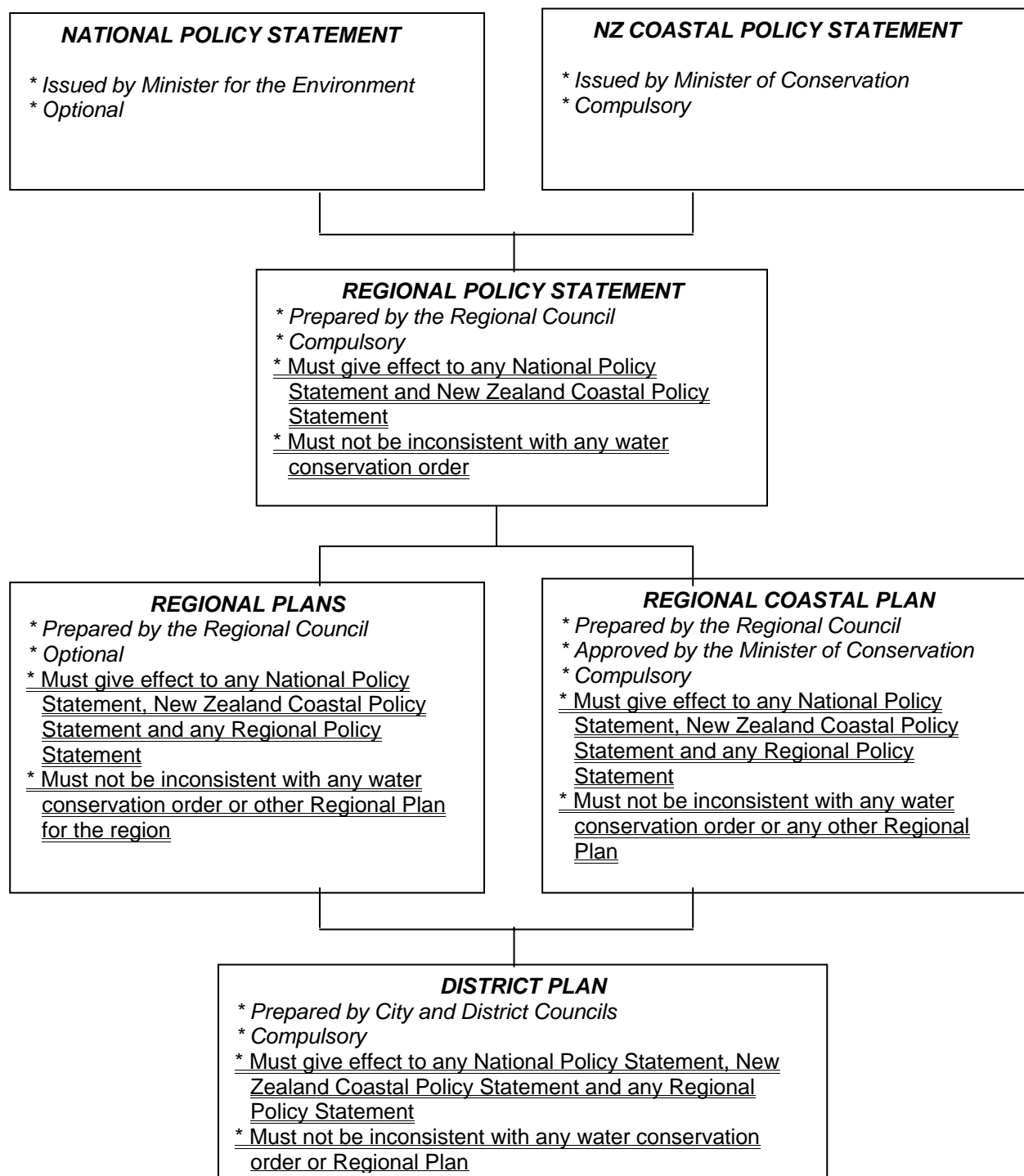
#### **Explanation (not part of the Plan Change)**

This section of the District Plan describes the functions of territorial authorities under the RMA, and refers to sections 31 and 75 of the RMA.

Section 1.4.3 refers to District and City Councils as "Territorial Local Authorities", however the RMA uses defined terms of either "Territorial Authority" or "Local Authority". To ensure consistency with defined terms in the RMA, the word "local" is to be deleted so that section 1.4.3 refers to "Territorial Authorities".

It is also necessary to amend section 1.4.3 of the District Plan to ensure consistency with section 75 of the RMA, as amended. Section 32 of the Amendment Act 2003 and section 46 of the Amendment Act 2005 substituted and reorganised section 75 and changed the requirement that district plans 'not be inconsistent with' any National Policy Statement, any New Zealand Coastal Policy Statement, and any Regional Policy Statement, to a requirement that a district plan 'must give effect to' those documents, but retained the requirement that a district plan must 'not be inconsistent with' a regional plan or water conservation order.

**Figure 1.2 – Relationship between Policy Statements and Plans**



*Each level must “not be inconsistent with” the level above.*

**Explanation (not part of the Plan Change)**

Figure 1.2 of the District Plan, "Relationship between Policy Statements and Plans", illustrates in a diagrammatic form the interrelationships between the plans and policy statements of central government, regional government and territorial authorities. This Figure needs to be amended to reflect a number of changes made to the RMA relevant to the interrelationship between these documents.

Changes to the Figure are proposed to reflect the present statutory requirements. For example:

Section 32 of the Amendment Act 2003 and section 46 of the Amendment Act 2005 substituted and reorganised section 75 and changed the requirement that district plans 'not be inconsistent with' any National Policy Statement, any New Zealand Coastal Policy Statement, and any Regional Policy Statement, to a requirement that a district plan 'must give effect to' those documents, but retained the requirement that a district plan must 'not be inconsistent with' a regional plan or water conservation order..

Section 25 of the Amendment Act 2003 repealed and replaced section 62 with a new section 62. Any regional policy statement 'must give effect to' a national policy statement or a New Zealand coastal policy statement and must 'not be inconsistent with' any water conservation order.

Section 2 of the RMA defines a "regional plan" as an operative plan and the definition includes a regional coastal plan approved by the Minister of Conservation under Schedule 1. Section 28 of the Amendment Act 2003 substituted a new section 67 (regarding the contents of a regional plan) to require a regional plan to 'give effect to' (rather than 'not be inconsistent with') any national policy statement or any New Zealand coastal policy statement. This was followed by section 41 of the Amendment Act 2005, which changed the requirement that regional plans 'not be inconsistent with' the regional policy statement to a requirement to 'give effect to' the regional policy statement.

#### 1.4.4 The Need for Integrated Management of Effects

*In order to achieve integrated management of natural and physical resources across agencies, the RMA requires that the District Plan ~~shall not be inconsistent with~~ must give effect to any National Policy Statement, any New Zealand Coastal Policy Statement, and any Regional Policy Statement, and shall not be inconsistent with a the Regional Policy Statement and Regional Plans and National Policy Statements. However, integration across agencies can also be assisted by...*

##### **Explanation (not part of the Plan Change)**

Section 1.4.4 of the District Plan needs to be amended to reflect the changes made to the section 75 of the RMA. Section 32 of the Amendment Act 2003 and section 46 of the Amendment Act 2005 substituted and reorganised section 75 and changed the requirement that district plans 'not be inconsistent with' any National Policy Statement, any New Zealand Coastal Policy Statement, and any Regional Policy Statement, to a requirement that a district plan 'must give effect to' those documents, but retained the requirement that a district plan must 'not be inconsistent with' a regional plan or water conservation order.

#### 1.6 Cross-Boundary Issues and Processes for their Resolution

*Section 75(h)(2)(f) of the RMA ~~requires~~ provides that a District Plan ~~shall~~ may state "the processes to be used to deal with issues which cross territorial boundaries". The City abuts Auckland City in the north and Papakura District and Franklin District in the south. ...*

##### **Explanation (not part of the Plan Change)**

Section 1.6 of the District Plan needs to be amended to reflect the changes made to section 75 of the RMA.

Section 46 of the Amendment Act 2005 substituted, reorganised and renumbered section 75. The Council's discretion to address cross boundary issues in the District Plan is now set out in section 75(2)(f). In addition, section 75(2) uses the word 'may'. For consistency with the RMA the word "shall" is to be deleted and replaced with 'may'.

## 2. AMEND CHAPTER 2 - The City's Resources

### 2.4.3.1 Air Quality Management

**(b) Industrial and Trade Emissions are an Important Source of Air Pollution**

*Collectively, industry is the second most important source of emissions to air. Industrial emissions are controlled through air discharge permits under the Resource Management Act. Under the Clean Air Act 1972, potentially air polluting industrial processes were classified as either Part A, B or C depending on their nature and size. This classification is still used as an interim measure, although schedules are currently being reassessed and will soon be replaced by permitted, controlled and discretionary use status for particular activities for air discharge permits. The control of discharges to air is a function of the Auckland Regional Council although the Auckland Regional Council has delegated some of their powers to territorial local authorities.*

**Explanation (not part of the Plan Change)**

Section 2.4.3.1 of the District Plan needs to be amended to reflect the changes made to the RMA and to ensure that the District Plan remains correct. This section makes reference to the Clean Air Act 1972 and certain transitional arrangements following the introduction of the RMA. The Clean Air Act was repealed with the coming into force of the RMA and air emissions are now controlled through an air discharge permitting regime for the most part by the Auckland Regional Council. As in 2009 all air discharges are managed under the RMA, it is therefore appropriate to delete the references to the Clean Air Act 1972.

The word 'local' is to be deleted from the phrase 'territorial local authority' for consistency with the RMA's use of the defined term 'territorial authority'.

### 2.5.3 Resource Management Issues: Soils

...

**(b) Uses Not Dependent on the Soil Resource are establishing in the Rural Area and may foreclose or compromise options for activities that are dependant on the Soil Resource**

*The Proposed Auckland Regional Policy Statement considers that subdivision and development of high quality soils in rural areas for activities which are not dependant on the soil resource or on high quality soils (such as rural-residential or lifestyle blocks, and other miscellaneous urban fringe uses) is inappropriate and that these activities should be directed onto poorer quality land. ...*

**Explanation (not part of the Plan Change)**

The Amendment Act 2005 repealed section 75 of the RMA and substituted new provisions, which now require district plans to 'give effect to' any Regional Policy Statement. The Auckland Regional Policy Statement became operative in August 1999, and it is therefore appropriate to delete references to the Regional Policy Statement as being 'proposed'.

### 3. AMEND CHAPTER 3A – TANGATA WHENUA

#### 3.A.1.1 Statutory Context

*The Council is obliged amongst other things to:*

- *recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga [Section 6(e);]*
- *have particular regard to Kaitiakitanga (Section 7(a));*
- *take into account the principles of the Treaty of Waitangi (Section 8);*
- *take into account (when preparing or changing the District Plan) any relevant planning document recognised by an iwi authority and lodged with the Council, to the extent that its content has a bearing on resource management issues of the district (Section 74(2A)(a)).*
- *~~have regard to any relevant planning document recognised by an iwi authority [Section 74(2)(b)(ii) 2A].~~*

#### **Explanation (not part of the Plan Change)**

This section of the District Plan needs to be amended to reflect the changes made to section 74 of the RMA to ensure that it remains correct. Section 31 of the Amendment Act 2003 repealed section 74(2)(b)(ii) and inserted a new section 74(2A). In addition to an amendment to reflect the wording of the new section 74(2A), it is desirable that the existing reference to Kaitiakitanga and section 7 of the RMA be made more precise by referring to "Section 7(a)".

### 3. AMEND CHAPTER 3A – TANGATA WHENUA (Maori Translation)

#### 3.A.1.1 Ngā Āhuetanga Whakamana

*E mau ana Te Kaunihera ki āna tautoko*

- *Te mōhio me te mau ki: tikanga — Te Whenua — Ngā Wai, Wāhi Tapu me ētahi atu taonga (Wāhanga 6(e)).*
- *Tautoko Kaitiakitanga (Wāhanga (7) (a)).*
- *Te Tiriti o Waitangi (Wāhanga (8)).*
- *ka whiriwhiria (i te whakatakotoranga hou o te Take a Rohe) nga kaupapa kua tuhia kua ata tautokohia e te iwi a rohe a, kua takoto ki te aroaro o Te Kaunihera ko tona paanga atu ano hoki ki ta Te Ture Taiao mo taua rohe (Tekihana 74(2A) (a)).*
- *~~Ki te tautoko i ngā āhuetanga a Iwi (Wāhanga 74 (2) (b) (ii)).~~*

#### **Ko te Whakamarama (kahore e pa ana ki te huri ke I te kaupapa)**

Ko tenei tekiana mo te Take a Rohe e hurihia ana kia pumau tonu ai ki te tekiana 74 o te RMA kia tika tonu ai. Ko te tekiana 31 o te Ture Apiti 2003 I hurihia tekiana 74 (2)(b) (ii) I tapiritia atu ki te tekiana hou 74(2A). Atu I tera kia hangai tonu nga kupu o te tekiana 74(2A), ko te kaingakau kia u tonu ki Te Kaitiakitanga me te tekiana 7 o te RMA kia hangai atu ki te "Tekiana 7 (a)".

## 4. AMEND CHAPTER 4 – The City’s Environment

### 4.1 INTRODUCTION

...

*The various strategies contained in the chapters of this District Plan provide for integrated management which:*

- *Is based on explicit environmental outcomes developed in accordance with the statutory framework of the Resource Management Act;*
- *accommodates growth and change while protecting the City’s resource base and maintaining and enhancing amenity values;*
- *is based on an analysis of the resource issues and community aspirations;*
- *recognises that decisions made now will be key determinants of the future direction of the City;*
- *is flexible and contains controls only where specific objectives are formulated to deal with resource management issues;*
- *~~Is consistent with the Proposed~~ gives effect to the Proposed Auckland Regional Policy Statement;*
- *takes cross-boundary issues, into account.*

#### **Explanation (not part of the Plan Change)**

Section 4.1 of the District Plan needs to be amended to reflect the changes made to section 75 the RMA and to ensure that the District Plan remains correct. The Amendment Act 2005 repealed section 75 of the RMA and substituted new provisions, which now require district plans to 'give effect to' any Regional Policy Statement. The Auckland Regional Policy Statement became operative in August 1999, and it is therefore appropriate to delete references to the Regional Policy Statement as being 'proposed'.

## 5. AMEND CHAPTER 5 – GENERAL PROCEDURES and RULES

### 5.1 INTRODUCTION

...

*In some sections of this chapter, the Act has been summarised as a guide, but these summaries do not purport to set out fully the provisions of the Act. In accordance with Section 75(A)(2)(g), this chapter also contains details regarding the information to be submitted with an application for a resource consent ~~including the circumstance in which the powers under Section 92 (ability to request further information) may be used.~~*

#### **Explanation (not part of the Plan Change)**

Section 5.1 of the District Plan refers to a superseded provision in section 75 of the RMA and needs to be amended to reflect the changes made to the RMA to ensure that the District Plan remains correct. Section 32 of the Amendment Act 2003 repealed section 75, adding new provisions and rearranging the numbering. Whereas previously section 75 referred to "[t]he information to be submitted with an application for a resource consent, including the circumstances in which the powers under section 92 may be used", section 75(2)(g) now provides that a district plan must state "the information to be included with an application for a resource consent", omitting the previous reference to section 92. Amendments to section 5.1 are proposed only to reflect these changes to section 75. While the reference to section 92 is to be deleted, it is noted that

Section 5.3.2 of the District Plan still addresses the circumstances in which the powers under section 92 may be used. No amendment is proposed to that Section of the District Plan.

### 5.3.3.3 Pre-Hearing Meetings and Hearings

*Under section 99 of the Act, the Council may call **pre-hearing meetings** involving the applicant for resource consent, person(s) who have made a submission on an application or such other persons as the Council may consider helpful if, in the Council's opinion, the holding of such a meeting would clarify or enable the resolution of any matter or issues.*

*The results of the meeting may be reported to Council and sent to all parties before the hearing and it shall be regarded as information for consideration of the application. In addition to pre-hearing meetings, section 99A of the Act provides for mediation between a person who has made an application for a resource consent and some or all of the persons who have made submissions on the application.*

...

#### **Explanation (not part of the Plan Change)**

Section 5.3.3.3 of the District Plan refers to pre-hearing meetings between the parties involved in an application.

Section 58 of the Amendment Act 2005 inserted section 99A to provide an option for consent authorities to refer to mediation a person who has made an application for a resource consent and some or all of the persons who have made submissions on the application (with the consent of all the parties being referred). This Section of the District Plan needs to be amended to reflect the availability of this pre-hearing option for attempting to resolve matters in dispute between parties and to assist the general public to understand the pre-hearing process.

### 5.3.3.5 Decisions – Non-Notified Applications and Notified Applications with No Submissions

*For those applications which do not require notification, Council shall make a decision regarding the application within 20 working days ~~of the receipt of the application or any further information requested~~ after the date the application was first lodged with Council.*

*Where an application was publicly notified but no submissions were received, Council shall make a decision within 20 working days ~~of~~ after the closing date for submissions.*

#### **Explanation (not part of the Plan Change)**

Section 5.3.3.5 of the District Plan needs to be amended to refer to the new provisions in section 115 of the RMA. Section 49 of the Amendment Act 2003 changed the wording in section 115(b) of the RMA from 20 working days 'after the receipt of an application or any further information requested' to 20 working days 'after the date the application was first lodged' with Council. This Section of the District Plan needs to be amended to reflect this change. Likewise, the substitution of the word 'after' for the word 'of' in the second paragraph is merely to ensure consistency with the words used in section 115 of the RMA.

### 5.3.3.6 Conditions of Consent

*Section 108 of the Act states that in granting consent to a resource consent application, except as expressly provided in that section of the Act and subject to any regulations, Council may impose conditions it considers are appropriate. Such conditions may require positive effects on the environment so as to offset any adverse effects associated with the activity. Conditions of consent may include, but are not limited to, the following:*

...

**Explanation (not part of the Plan Change)**

Section 5.3.3.6 of the District Plan needs to be amended to refer to the exceptions specified in section 108(1) of the RMA.

**6. AMEND CHAPTER 6 – Heritage****6.1.1 Statutory Content**

... In undertaking its duty under the Act to promote the sustainable management of natural and physical resources the Council must:

- recognise and provide for matters of national importance, Section 6:
  - (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
  - (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;
  - (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
  - (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
  - ~~(d)~~(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
  - (f) the protection of historic heritage from inappropriate subdivision, use and development:
  - (g) the protection of recognised customary activities.
- have particular regard under ~~to~~ Section 7 to the following matters:
  - (a) Kaitiakitanga:
    - (aa) The ethic of stewardship:
  - (b) The efficient use and development of natural and physical resources:
  - (c) The maintenance and enhancement of amenity values:
  - (d) Intrinsic values of ecosystems: ~~Recognition and protection of the heritage value of sites, buildings, places or areas;~~
  - (e) Repealed: ~~Any finite characteristics of natural and physical resources.~~
  - (f) Maintenance and enhancement of the quality of the environment:
  - (g) Any finite characteristics of natural and physical resources:
  - (h) The protection of the habitat of trout and salmon:
  - (i) The effects of climate change:
  - (j) The benefits to be derived from the use and development of renewable energy.

- *take into account the principles of the Treaty of Waitangi (Section 8).*

~~The Act also states that in the preparation, implementation and administration of district plans, territorial authorities may provide for a number of matters. These matters include the management of any actual and potential effects of any use or development on "natural, physical or cultural heritage sites and values, including landscape, landforms, historic places and waahi tapu".  
Second Schedule, Part 2, Clause (2)(c).~~

#### **Explanation (not part of the Plan Change)**

It is necessary to amend section 6.1.1 of the District Plan to ensure that more recent amendments made to the RMA are incorporated into the District Plan.

#### **Section 6 – Matters of National Importance**

The inclusion of paragraph (d) in the text is to bring the District Plan in line with the list of matters in Section 6 of the RMA.

Section 4 of the Amendment Act 2003 inserted a new section 6(f) into the RMA. The protection of historic heritage from inappropriate subdivision, use and development is now a matter of national importance.

Section 4 of the Foreshore and Seabed Amendment Act 2004 inserted a new section 6(g). The protection of recognised customary activities is now likewise a matter of national importance.

#### **Section 7 – Other Matters**

Paragraph (aa) (the "ethic of stewardship") was inserted into section 7 by section 3 of the Amendment Act 1997. Section 5 of the Amendment Act 2003 repealed (e) "recognition and protection of the heritage value of the sites, buildings, places or areas" from Section 7 (historic heritage section 6(f) of the Act and Section 5 of the ECC Act 2004 inserted subsection (i).

#### **Deletion of Schedule 2**

Section 6.1.1 of the District Plan also refers to Schedule 2 to the RMA, which has now been repealed.

#### **Issue 6.2.2**

*... The Council has a statutory responsibility, by virtue of Sections 6(e), 7 and 8 of the Resource Management Act, to promote processes and mechanisms that will provide better protection of taonga.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend Issue 6.2.2 of the District Plan to ensure that more recent amendments to the RMA are correctly incorporated.

The second paragraph of this section discusses issues regarding the relationship of Maori with taonga (the heritage of tangata whenua) and specific reference is made to section 6(e) of the RMA. The list of matters of national importance in section 6 has been expanded to encompass the protection of historic heritage generally, from inappropriate subdivision, use, and development (by section 4 of the Amendment Act 2003). To reflect the broader range of matters in section 6 potentially relevant to the protection of taonga, it is proposed that the reference to "section 6(e)" of the RMA in Issue 6.2.2 be generalised and amended simply to refer to "section 6".

The insertion of these words does not alter the meaning of the existing wording but brings the District Plan in line with amendments to the RMA.

## Chapter 6: Appendix 6A Evaluation Criteria

### 1 Buildings and Objects

#### A Criteria

*The following criteria have been used in evaluating the features in Schedule 6A. The criteria are consistent with Section ~~7(e)~~ 6(f) of the Resource Management Act 1991 and are designed to withstand scrutiny within the context of that Act. The criteria provide a methodology for evaluation and consistency between features. ...*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the District Plan to ensure that more recent amendments to the RMA are incorporated into the District Plan.

Appendix 6A sets out the criteria used to evaluate heritage items and places for listing in the Schedules 6A, 6B and 6E to Chapter 6. The existing introduction to the criteria refers to section 7(e) of the RMA, which has been repealed by section 5 of the Amendment Act 2003. Section 7(e) of the RMA previously set out the requirement to have particular regard to "recognition and protection of the heritage values of sites, buildings, places, or areas". Section 4 of the Amendment Act 2003 has introduced as a "matter of national importance" in section 6(f) of the RMA a requirement to recognise and provide for "the protection of historic heritage from inappropriate subdivision, use, and development". The introduction to the criteria in Appendix 6A needs to be amended to refer to section 6(f) of the RMA.

## 7. AMEND CHAPTER 7 – Network Utility Services

### 7.1 Introduction

...

*Matters ~~listed in Clause 6, Part II of the Second Schedule to the Act including~~ such as the scale, design standards, sequence, timing and relative priority of public works and public utility networks are dealt with in the Land Modification, Development and Subdivision Chapter of the District Plan.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend Section 7.1 of the District Plan to ensure that amendments to the RMA are correctly incorporated in the District Plan. Reference is made in this paragraph to the Second Schedule to the RMA. This is no longer appropriate as the Second Schedule was repealed by section 93 of the Amendment Act 2003.

## 8. AMEND CHAPTER 8 – Transportation

### 8.2 Resource Management Issues

*Section 75 of the Resource Management Act ~~requires~~ allows for District Plans to ~~address~~ state the significant resource management issues of the district. The issues that result from the operation of the transport system have been identified in this section.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that Amendments to the Act are correctly incorporated in the District Plan. This part of the Plan refers to section 75 of the Act. The

deletion and insertion of words is to bring the section in line with the words used in the Act. The addition and deletion of these words does not alter the meaning of the existing wording but brings the Plan in line with the Act's terminology.

### 8.6.1.1 Roading Hierarchy

*The hierarchy of roads within the City has been classified according to its functions, utilising the five categories recommended in the Transit NZ publication "Highway Planning Under the Resource Management Act 1991" and incorporated with the Auckland Regional Land Transport Strategy 1993. These classifications are explained within Table 1 below.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that amendments to statutory documents are correctly incorporated into the District Plan.

Section 8.6.1.1 refers to a roading hierarchy based on five roading categories "incorporated within the Auckland Regional Land Transport Strategy 1993". The 1993 version of the Regional Land Transport Strategy has since been replaced by the Auckland Regional Land Transport Strategy 2005 which does not refer to these five roading categories. This section requires amendment to delete reference to the Auckland Regional Land Transport Strategy 1993.

### 8.6.1.2 Road Zones

*This Plan provides for two road zones, based on the types of activity associated with the various road hierarchy classifications. These zones cover all land in the City which are legal road within the meaning contained in the Local Government Act 1974, and required for transportation purposes at the time of notification of the Plan. The rules applying to activities within the road zones also apply to land vested as road during the life of the Plan through subdivision or acquisition for that purpose by Council. In some cases activities within roads are controlled through legislation other than the Resource Management Act, such as Council Bylaws, the Transit New Zealand Government Roading Powers Act 1989, the Land Transport Management Act 2003 and the Transport Act 1962.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that subsequent changes to transport related legislation are correctly referenced in the District Plan.

Section 8.6.1.2 refers to legislation other than the Resource Management Act which controls activities on roads. Much of that legislation (including the Transit New Zealand Act) has been amended by the Land Transport Management Act 1993, and its subsequent amendments which have been enacted since the plan was prepared. The Land Transport Management Amendment Act 2008 renamed the Transit New Zealand Act as the Government Roading Powers Act 1989. This section requires amendment to refer to the Land Transport Management Act 1993 and also to reflect that the Transit New Zealand Act is now called the Government Roading Powers Act 1989.

### 8.6.1.8 Manukau City Consolidated Bylaw ~~1992~~ 2008

*In addition to the District Plan, the Manukau City Consolidated Bylaw ~~1992~~ 2008 contains rules regarding matters within roads relating to parking and traffic controls, bus shelters, street traders, temporary signs and vehicle crossings.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that Amendments to the Bylaws are correctly incorporated in the District Plan.

The Manukau City Consolidated Bylaws 1992 were in force at the time the District Plan was notified. However, through the Special Consultative Process specified in the Local Government Act, Council has undertaken amendments to the Consolidated Bylaws and the current Bylaws came into force in 2008. The section of the plan needs to be amended to refer to the current bylaws.

### 8.6.2.1.3 Advocacy and Education

*The Council has a strong advocacy role in transportation issues determined at a local, national and regional level. For example, the Council's document "Passenger Transport for Manukau in the 1990s" (released in the 1993) is a strategy designed to identify some actions which can be taken to improve passenger transport and the environment in which it operates. This document was updated a decade later as "Taking People Places – Manukau City Council's Strategic Plan for Passenger Transport 2004-14" and advocates the following:*

#### Explanation (not part of the Plan Change)

It is necessary to amend this section of the plan to ensure that references to other documents and policies they contain are correct.

Section 8.6.2.1.3 refers to a Council document "Passenger Transport for Manukau in the 1990's" and to key policies which are promoted therein. That document was updated in 2004 with "Taking People Places – Manukau City Council's Strategic Plan for Passenger Transport 2004-14" which is based open the same key policies. In order to correctly reflect the policies both documents need to be referred to, and this section requires amendment accordingly.

### 8.6.2.2 Auckland Regional Council Methods

#### (a) Regional Policy Statement and Regional Land Transport Strategy

*The major direction of transport policy in Auckland is set by the Regional Policy Statement (RPS). This document is a statement of how the natural and physical resources of the Region are to be used, developed and protected.*

*The components of transport policy from the RPS are more fully developed through the Regional Land Transport Strategy (RLTS) which has been prepared under Section 23-2 of Schedule 7 of the Transit New Zealand Act 1989-Land Transport Management Act 2003. The RLTS identifies must:*

- *the future land transport needs of the Auckland Region;*
- *the most desirable means of responding to those needs in a way which is safe, cost effective, and takes into account environmental effects; and*
- *an appropriate role for each mode of transport.*

*The RLTS is to be amended to also establish criteria for the evaluation of projects, to ensure that those projects that would undermine the integrity of the transport network will not proceed. The criteria guidelines will include:*

- ~~cost and benefit analysis;~~
- ~~whether the proposal is consistent with urban development strategies and policies for reducing the adverse environmental effects of transport;~~
- ~~whether the objectives of the proposal would be best met through roading or passenger transport measures, or through travel demand management; and~~
- ~~any effects on matters of concern to tangata whenua.~~
- contribute to an affordable, integrated, safe, responsive and sustainable land transport system
- assist economic development
- assist safety and personal security
- improve access and mobility
- protect and promote public health
- ensure environmental sustainability

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that changes to transport related legislation are correctly referenced and that amendments to statutory documents are correctly incorporated into the District Plan.

Section 8.6.2.2(a) refers to the preparation of the Regional Land Transport Strategy under Section 23 of the Transit New Zealand Act 1989. That Section was repealed by an Amendment in 1995. The Auckland Regional Land Transport Strategy is prepared under Section 2 of Schedule 7 of the Land Transport Management Act 2003 which was inserted by an Amendment in 2008. The contents of the Regional Land Transport Strategy have also changed from what was previously specified.

This section requires amendment to refer to Section 2 of Schedule 7 of the Land Transport Management Act 2003, and to replace the matters which were previously specified to be dealt with in the Regional Land Transport Strategy with the matters which the legislation now requires.

#### **8.6.2.2 Auckland Regional Council Methods**

##### ~~(b) Regional Passenger Transport Plan~~

~~The Regional Passenger Transport Plan specifies the passenger transport services which are required by the Auckland Region. It is therefore the key means of achieving a passenger transport system that meets the City's needs and the City Council's recommendations contained within 'Passenger Transport for Manukau in the 1990s'.~~

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that those changes to statutory documents are correctly referenced in the District Plan. Section 8.6.2.2(b) describes the role of the Regional Passenger Transport Plan as one of the non regulatory methods of giving effect to Council's transport objectives and policies. Regional Passenger Transport Plans are required to be prepared by Regional Council's under the Transport Services Licensing Act 1989, but this has now been superseded by Section 9 of the Public Transport Management Act 2008 which requires the Auckland Regional Transport Authority to prepare a Regional Public Transport Plan. The existing Regional Passenger Transport Plan (prepared by the ARC) will expire either when ARTA

adopts a Regional Public Transport Plan or 3 years after the Public Transport Management Act came into force.

The section requires amendment to delete reference to the Regional Passenger Transport Plan prepared by the Auckland Regional Council and its contents. Reference to the functions and methods of the Auckland Regional Transport Authority will be introduced by means of another change to the District Plan which is documented separately in this report.

### **8.6.2.3 Auckland Regional Transport Authority Methods**

The Auckland Regional Transport Authority (ARTA) was established under the Local Government (Auckland) Amendment Act 2004 with the following responsibilities for the Auckland Region:

- planning, funding and developing the regional land transport system;
- operational planning and funding for all passenger transport modes;
- promotion of walking, cycling and transport demand management;
- co-ordination and prioritisation of all roading except state highways.

It is the principal agency with responsibility for giving effect to the Region's transport goals as set out in the Auckland Regional Land Transport Strategy. ARTA produces a number of statutory and non statutory plans and guidelines including:

- the Auckland Transport Plan;
- the Regional Land Transport Programme;
- the Sustainable Transport Plan;
- the Regional Public Transport Plan;
- Land Use and Transport Guidelines.

The Local Government (Auckland) Amendment Act requires ARTA to avoid adverse effects on the environment from its plans and activities to the extent reasonable in the circumstances.

#### **Explanation (not part of this Plan Change)**

It is necessary to amend this section of the plan to ensure that amendments to the names and functions of agencies which have been created by statute are correctly referenced in the District Plan.

Section 8.6.2.2. currently describes the roles and methods of the Auckland Regional Council but these have been significantly changed since the District Plan was prepared. Many of the roles formerly undertaken by the ARC were transferred to ARTA which was established by the Local Government (Auckland) Amendment Act 2004. ARTA is now the principal agency for implementing the Auckland Regional Land Transport Strategy and has a significant role in the land use – transportation sphere within which the Council's transport and urban planning aspirations and the District Plan are implemented.

A new Section 8.6.2.3 is required which outlines the role of ARTA.

### **8.6.2.34 Role of National Policy and Transport Service Providers**

#### **(a) Ministry for the Environment**

*The Ministry for the Environment was established by the Environment Act 1986. The Ministry is required to report to Cabinet Committee, on policies or projects with significant environmental implications (including new state highway proposals).*

**(b) Ministry of Transport**

*The Ministry of Transport administers transport legislation and as the Government's principal transport policy advisor develops high-level transport policy, and oversees collection and distribution of the Land Transport Fund (which finances transportation works and road safety). It is the Minister of Transport's agent for managing the interface with the transport Crown entities, including the New Zealand Transport Agency.*

~~**(c) Land Transport Safety Authority**~~

*The Land Transport Safety Authority (LTSA) was established by the Land Transport Act 1993 and is the Government's chief advisor on land transport safety. It suggests policy, develops standards and carries out reviews of land transport safety systems.*

~~*The LTSA also administers the National Road Safety Plan, which co-ordinates and gives a strategic direction to the road safety activities of organisations throughout the country.*~~

~~**(d) Transit New Zealand**~~

~~*Transit New Zealand was established under the Transit New Zealand Act with the principal objective to "promote policies and allocate resources to achieve a safe and efficient land transport system that maximises national economic and social benefits."*~~

**(c) New Zealand Transport Agency**

*The New Zealand Transport Agency (NZTA) was established under the Transport Management Amendment Act 2008 with the principal objective to undertake its functions in a way that contributes to "an affordable, integrated, safe, responsive and sustainable land transport system."*

*The NZTA brought together the functions of the former Land Transport New Zealand and Transit New Zealand entities. It provides an integrated approach to transport planning, funding, and delivery including:*

- *management of the state highway system*
- *management of land transport funding including administration of land transport revenue and regional fuel taxes, and the disbursement and monitoring of transport subsidies to local authorities and other agencies through the Land Transport Programme*
- *management of land transport safety policy, standards, investigations and reviews*
- *regulation of land transport activities*

*The NZTA and the Ministry of Transport must take into account the National Land Transport Strategy, and be guided by the Government Policy Statement which sets out the outcomes and short to medium term impacts which the government wishes*

to achieve. It does this through the allocation of transport subsidies and the National land Transport Programme.

~~Transit New Zealand NZTA~~ managed roads within Manukau City include the Southern Motorway, (State Highway 1), State Highways 20, ~~and State Highway 20A and 20B.~~ These routes are identified as national routes within Appendices A1 and A2 to the planning maps. They have ~~also been~~ designated by the former Transit New Zealand. This means that any works within them require the consent of ~~Transit New Zealand as the~~ designating authority as well as compliance with those District Plan provisions relating to activities not covered by the designation.

#### **Explanation (not part of this Plan Change)**

It is necessary to amend this section of the plan to ensure that amendments to the names and functions of statutory agencies are correctly referenced in the District Plan. Section 8.6.2.3 details the roles of the following agencies which have changed or been abolished and replaced by other agencies since the District Plan was prepared: The Land Transport Safety Authority has been abolished by amendments to the Land Transport Management Act 2003 and its functions are now undertaken by the New Zealand Transport Agency.

Transit New Zealand has been disestablished by amendments to the Land Transport Management Act 2003 and its functions are now undertaken by the New Zealand Transport Agency. The role of the Ministry of Transport has also changed over time with the creation of new transport Crown entities and the abolition of others.

This section requires amendment to: delete references to the Land Transport Safety Authority and to Transit New Zealand; modify the reference to the functions of the Ministry of Transport; and add reference to and explanation of the functions of the New Zealand Transport Agency.

## **8.8 PROCEDURES FOR MONITORING**

*In order to assess the suitability and effectiveness of the objectives, policies and methods in achieving the anticipated environmental results contained in this section, the Council will develop a monitoring programme (see Chapter 1, Section 1.7.3) which may include the following monitoring procedures:*

- *Monitoring trends in the safety of the City's transportation system through the ~~Land New Zealand Transport Safety Authority Agency~~ accident statistics.*
- *Monitoring the effects of motor vehicle exhausts on local air quality, and run-off from existing road surfaces on local water quality in liaison with the Auckland Regional Council.*
- *Monitoring of the Auckland Regional Council passenger transport patronage surveys, with similar surveys to be carried out within the City in liaison with the Auckland Regional Council.*
- *Analysis of census data relating to mobility and transport.*
- *Monitoring of traffic volumes and speeds within roads through the use of traffic count data.*
- *Monitoring traffic noise from existing roads.*

~~Section 42A of the Transit New Zealand~~ 2 of Schedule 7 of the Land Transport Management Act also requires the Auckland Regional Council to prepare an ~~annual~~ report on progress in its implementation of the Regional Land Transport Strategy every three years. This provides a monitoring system at the regional level, over which Manukau City Council ~~will have~~ has an

*influence as a party to the Regional Land Transport Committee, and through input into the formulation six yearly preparation of the Regional Land Transport Strategy.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that amendments to the names of statutory agencies and the nature of documents which are mandated by statute are correctly referenced in the District Plan.

Section 8.8 refers to the following agencies and documents which have changed in accordance with legislative change since the District Plan was prepared:

- The Land Transport Safety Authority has been disestablished by amendments to the Land Transport Management Act 2003 and its functions are now undertaken by the New Zealand Transport Agency.
- The arrangements for preparing and monitoring the Auckland Regional Land Strategy were previously specified in Section 42A (and others) of the Transit New Zealand Act but these have been repealed and the current arrangements are legislated in Section 2 of Schedule 7 of the Land Transport Management Act.

This section requires amendment to delete the references to the Land Transport Safety Authority, the Transit New Zealand Act, and annual monitoring reports, and replacement with reference to New Zealand Transport Agency, the Land Transport Management Act, and the three yearly monitoring reports respectively.

#### **8.12.1.3 Assessment Criteria**

*When assessing an application for restricted discretionary activity for road works, the Council will have regard to the following assessment criteria.*

*Whether:*

- (i) *Road works comply with ....*

*....*

- (x) *The matters relating to land modification and development outlined within Chapter 9 of the Plan.*

**Note:** *In assessing traffic engineering design issues, design solutions in accordance with the Council's engineering standards, Transit New Zealand Transport Agency or 'AUSTROADS' guidelines shall be generally acceptable, except where contrary to a specific provision of the plan or where they do not meet the foregoing assessment criteria.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that amendments to the names of statutory agencies are correctly referenced in the District Plan. Section 8.12.1.3 refers to Transit New Zealand guidelines. Amendments to the Land Transport Management Act 2003 provided for the disestablishment of Transit New Zealand whose functions are now undertaken by the New Zealand Transport Agency.

#### **Rule**

### 8.24.5 Design of Parking and Circulation Areas

All parking in the form of a parking lot or a parking building, whether developed by the Council or by any other person or jointly by Council and any other person shall conform with layout, access and any other requirements of this section.

(a) **Vehicle Dimensions**

Each parking space to be provided in terms of this Section shall be in accordance with the dimensions specified in Figure 8.5 and suitably laid out to accommodate a 90 percentile motor car as defined by the ~~Land~~ New Zealand Transport Safety Authority Agency. The dimensions and tracking curve of this vehicle are shown in Figure 8.7.

....

(d) **Garage Dimensions for 90 Percentile Motor Car**

The minimum internal dimensions for a garage to accommodate a 90 percentile motor car as defined by the ~~Ministry of~~ New Zealand Transport Agency shall be 5.5m (length) by 3m (width). The width of the doorway of the garage shall be in accordance with the minimum stall widths specified in Figure 8.5. The minimum dimensions for a carport shall be 5m (length) by 3m (width).

#### Explanation (not part of this Plan Change)

It is necessary to amend this section of the plan to ensure that amendments to the names and functions of agencies which have been created by statute are correctly referenced in the District Plan.

The Land Transport Safety Authority has been disestablished by amendments to the Land Transport Management Act 2003 and its functions are now undertaken by the New Zealand Transport Agency.

The functions and role of the Ministry of Transport have changed such that vehicle specifications are now a function of the New Zealand Transport Agency.

Rule 8.24.5, paragraphs (a) and (d) require amendment to delete references to the Land Transport Safety Authority and the Ministry of Transport and replace them with references to the New Zealand Transport Agency.

### 8.24.5(f) Provisions for Disabled Persons

Where it is proposed to establish the use of any land or erect any building and that use or building is listed in ~~Section 25 of the Disabled Persons Community Welfare Act 1975~~ Schedule 2 of the Building Act 2004; carparking spaces for the exclusive use of vehicles driven by persons with disabilities or any person accompanying a person or persons with disabilities, shall be provided as follows:

#### Explanation (not part of the Plan Change)

It is necessary to amend this section of the plan to ensure that Amendments are correctly incorporated in the District Plan This paragraph refers to Section 25 of the Disabled Persons Community Welfare Act 1975.

Section 92(1) of the Building Act 1991 substituted this section with section 118 and Schedule 2 of the Building Act 2004. The Plan needs to be amended to ensure that the references to the legislation remain correct

## 9. AMEND CHAPTER 9 – Land Modification, Development and Subdivision

### 9.1 Introduction

...

*The Auckland Regional Council has a number of functions that require, directly or indirectly, controls over aspects of land modification, development and subdivision. These include responsibility for controlling the discharges of contaminants into or on to land, air or water, discharges of water into water, and the use of land for the purpose of soil conservation. It also includes a responsibility for the avoidance or mitigation of natural hazards.*

~~*The integrated management of the effects of the use, development or protection of land and associated physical resources is part of the Manukau City Council's functions under Section 31 of the Resource Management Act. These include:*~~

- ~~*(a) ...[the] integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district;*~~
- ~~*(b) The control of any actual effects of the use, development or protection of land, including for the purpose of avoidance or mitigation of natural hazards...; [and]*~~
- ~~*(c) The control of the subdivision of land".*~~

~~*Part II of the Second Schedule of the Act specifies the matters that may be included within the District Plan, which include:*~~

~~*"The scale, sequence, timing and relative priority of public works, goods and services, including public utility networks and any provision for land used or to be used for a public work for which the territorial authority has financial responsibility."*~~

~~*The Second Schedule also enables Council to include in the District Plan:*~~

~~*"The circumstances when a financial contribution (within the meaning of Section 108(9)), whether in cash, land, works, or services, may be imposed, the maximum amount of the levy that may be imposed or the formula by which such amount may be calculated, and the general purpose for which the levy may be used."*~~

Territorial authorities, such as the Council, also have a number of functions for the purpose of giving effect to the Resource Management Act, which are set out in Section 31 of the Act:

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
  - (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
  - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of -
    - (i) the avoidance or mitigation of natural hazards; and

- (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
- (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;
- (iii) the maintenance of indigenous biological diversity;
- (c) Repealed.
- (d) The control of the emission of noise and the mitigation of the effects of noise;
- (e) The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes;
- (f) Any other function specified in this Act.
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

*The Financial Contribution provisions set out in the District Plan an orderly and efficient way of funding adequate infrastructure and services to allow urban development to progress in an orderly manner. Section 108 of the Act provides that a resource consent may be granted subject to any condition that the consent authority considers appropriate, including a condition requiring a financial contribution be made.*

*Other legislation concerned with aspects of the Land Modification, Development and Subdivision process includes **Section 348 of the Local Government Act 1974** which requires rights of way to be subject to Council approval, and **Section 321** dealing with matters relating to legal Access.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend Section 9.1 of the District Plan to reflect a number of more recent amendments to the RMA and to ensure references to legislation remain correct.

The Amendment Act 2003 and the Amendment Act 2005 inserted and substituted a number of new functions in section 31 including a new subsection (2): "The methods used to carry out any functions under subsection (1) may include the control of subdivision". The District Plan is amended by deleting some existing text and inserting new text to more clearly state the functions under section 31 of the RMA as amended.

Section 93 of the Amendment Act 2003 repealed the Second Schedule to the RMA, and therefore references to that Schedule in the District Plan need to be deleted.

The paragraphs in this section of the District Plan that refer to the financial contribution provisions of the Second Schedule of the Act need to be replaced. An amended paragraph is introduced to explain the broad purpose of financial contributions in terms of the Council's functions under section 31 of the RMA. Section 9.14 of the District Plan (which is not being amended by this Plan Change) addresses financial contributions in detail.

The references to the Local Government Act 1974 concerned with aspects of land modification require updating also. Section 321 of the Local Government Act 1974 was repealed by section 98(1) of the Amendment Act 2003 and the equivalent provision is now contained in section 106(1)(c) of the Resource Management Act.

**Rule 9.8.1.8**

*Before undertaking any land modification, development or subdivision, especially in coastal locations, there is a need to refer to Regional Planning Documents and/or the Auckland Regional Council, including the Objectives, Policies and Methods in the ~~Proposed~~ Auckland Regional Plan – Erosion and Sediment Control November 2001.*

**Explanation (not part of the Plan Change)**

Rule 9.8.1.8 refers to the 'Proposed Regional Plan – Erosion and Sediment Control'. This regional plan is now operative, having come into force in November 2001, and is now called the 'Auckland Regional Plan – Sediment Control'. It is proposed that this rule be amended to reflect the title of the operative plan.

**Rule 9.9.2.4 Minimum Site Area of Allotments****(a) Residential and all Business Zones**

*Where a subdivision creates a site or defined area around an existing building, no minimum area for that site or defined area is required provided that all relevant development and performance standards (including parking and manoeuvring standards and the requirements of Section 46 116A of the Building Act 1991-2004) are met in relation to the proposed boundaries around that building, unless otherwise authorised by a resource consent.*

...

**Rule 9.9.2.5 Cross-leases, Company Leases and Unit Titles**

...

*(e) A design report shall be submitted detailing the effects of the proposed subdivision on the existing buildings, pursuant to Section 46 116A of the Building Act 1991-2004.*

*(f) If alterations to buildings are necessary to fulfil the requirements of the Building Act 1991-2004 or conditions of subdivision consent, they shall be undertaken in terms of a building consent and completed prior to the issue of a certificate under Section 224 of the Act. Such alterations shall comply with the relevant development standards in the particular zone.*

**Explanation (not part of the Plan Change)**

It is necessary to amend rules 9.9.2.4(a) and 9.9.2.5(e) and (f) of the District Plan to reflect the repeal of the Building Act 1991 and its replacement with the new Building Act 2004.

Rules 9.9.2.4(a) and 9.9.2.5(e) refer to section 46 of the Building Act 1991, which has been repealed. Section 14(1) of the Building Amendment Act 2005 substituted the equivalent provision in section 116A of the Building Act 2004.

**Rule 9.9.2.9 Legal Access**

*Every lot shall be provided with legal access in terms of Section ~~321 of the Local Government Act 1994~~ 106(1)(c) of the Resource Management Act, and every lot, other than allotments created through road stopping or severance or to be amalgamated with other adjoining land, shall be provided with a safe and practical vehicular access to a formed legal road.*

**Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that Amendments to the Act are correctly incorporated in the District Plan

Rule 9.9.2.9 refers to section 321 of the Local Government Act 1974, which was concerned with aspects of legal access. Section 98(1) Resource Management Amendment Act 2003 repealed section 321 and the equivalent provision is now contained in section 106(1)(c) of the Resource Management Act. Rule 9.9.2.9 therefore requires amendment to refer to section 106(1)(c) rather than the repealed provision in the Local Government Act 1974.

**Rule 9.9.4.1 Grounds for Refusal of Consent to Land Modification, Development and**

*The Council ~~will~~ may refuse any application for subdivision consent where in its opinion the circumstances outlined in Section 106(1)(a), ~~and (b), and (c)~~ of the Act are likely to occur.*

...

**Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that Amendments to the Act are correctly incorporated in the District Plan

Rule 9.9.4.1 refers to section 106 of the RMA. Section 44 of the Amendment Act 2003 repealed section 106 and new provisions were substituted. Section 106 of the RMA provides the Council with a discretion: a consent authority "may" refuse to grant subdivision consent if one of the circumstances applies. The Rule therefore requires amendment to replace "the Council **will** refuse" with "the Council **may** refuse".

In addition, a new subsection 1(c) has been inserted in section 106 of the RMA, to provide that subdivision consent may be refused or conditions imposed if the Council considers "sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision". Rule 9.9.4.1 also requires amendment to refer to subsection 1(c).

**9.13.2 Specific Information Accompanying Subdivision Consent Applications**

...

*(d) ~~Such information as required under section 219 of the Act~~*

...

*(f) ...*

- *the location and areas of any land below mean high water springs of the sea, or of any part of the bed of a river or lake, which is required under section ~~235~~ 237A of the Act to be shown on the survey plan as land to be vested in the Crown;*

**Explanation (not part of the Plan Change)**

Rule 9.13.2(d) and (f) (fourth bullet point) require amendment to reflect more recent amendments to the RMA.

Rule 9.13.2(d) makes reference to section 219 (Information to accompany applications for subdivision consents) of the RMA. Section 70 of the Amendment Act 2003 repealed this section and this text is to be deleted. The same provision was substituted in section 75(g) which provides that a District Plan may state the information to be included with an application for resource consent and this is stated elsewhere in the District Plan.

Rule 9.13.2(f), fourth bullet point, makes reference to section 235 of the RMA. Section 124 of the Amendment Act 1993 substituted sections 229 to 237. Section 237A of the RMA now addresses the vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority.

#### 9.14.7 Bonds

*Security for compliance shall be in accordance with sections 108, 108A, 109 and 220 of the Resource Management Act, further secured by cash deposits of cash with the Council, bank guarantee or otherwise to the Council's satisfaction. ...*

#### Explanation (not part of the Plan Change)

Section 46 of the Amendment Act 2003 inserted a new section, section 108A, that specifically relates to bonds. To reflect this new provision in the RMA, Rule 9.14.7 of the District Plan is amended by adding a reference to "108A" to the list of other sections dealing with security for compliance.

### Chapter 9: Appendix 1 Engineering Performance Standards

#### Telecommunication Reticulation

*The objective of a telecommunication service is to allow people to communicate remotely....*

...

- *all works shall be constructed, maintained, operated and meet the requirements of the Telecommunications (Residual Provisions) Act 1987, the Telecommunications Act 2001 and any Regulations made pursuant to that Act.*

#### Explanation (not part of the Plan Change)

It is necessary to amend this section of the plan to ensure that Amendments to legislation are correctly incorporated in the District Plan.

These changes are in relation to Telecommunication Reticulation table in Appendix 1 in Chapter 9 of the District Plan, and specifically the final bullet point relating to Performance Criteria for "layout". The final bullet point in the Performance Criteria makes reference to the Telecommunications Act 1987. Parts of this Act have since been repealed (including the title) by the Telecommunications Act 2001.

The District Plan provisions relating to Telecommunication Reticulation in Appendix 1 need to be amended to make reference to the Telecommunications Act 2001 and to the residual provisions of the 1987 Act.

## 10.1 AMEND CHAPTER 10.1 – Hazardous Facilities and Substances

### 10.1.1 Introduction

...

*The Auckland Regional Policy Statement contains provisions for the co-ordinated management of hazardous substances throughout the region and for the regulation of*

*regionally significant activities. The provisions of this Plan have been formulated so as to be consistent with and complementary give effect to those in the Regional Policy Statement as required by Section 75(2)(3)(c) of the Act, and be consistent with any relevant regional plan.*

...

#### **Explanation (not part of the Plan Change)**

Section 46 of the Amendment Act 2005 substituted section 75 of the RMA and inserted a new subsection(3)(c) requiring a District Plan to 'give effect to' any regional policy statement (previously there was a requirement that district plans not be inconsistent with any regional policy statement). Section 10.1.1 of the District Plan needs to be amended to reflect this amendment.

### **Chapter 10.1: Appendix I: Glossary**

...

#### **Contaminant**

*is as defined in the Resource Management Act ~~1994~~ 1991, Part 1, Section 2, and includes:*

*any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat -*

...

#### **Explanation (not part of the Plan Change)**

It is necessary to amend this section of the plan to ensure that Amendments to the Act are correctly incorporated in the District Plan.

This definition in the Glossary incorrectly refers to the Resource Management Act "1994". An amendment is proposed to correct this.

The Glossary's definition of the term "Contaminant" is taken from section 2 of the Resource Management Act 1991. The definition of 'contaminant' in the RMA was amended in 2003 by inserting "odorous compounds" in the definition, and an amendment is proposed to reflect this amendment.

## **11. AMEND CHAPTER 11 – Coastal Environment and Surface of Rivers**

### **11.1.1.1 Statutory Context**

... These are:

- Section 6a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- Section 6d) the maintenance and enhancement of public access to and along the coastal marine area; ~~and~~

- *Section 6e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and*
- Section 6g) the protection of recognised customary activities.

*In relation to the coast, Section 7 (a) and (aa) are is also relevant as it requires that particular regard be had to Kaitiakitanga and the ethic of stewardship. The tangata whenua are kaitiaki of the coastal environment.*

...

*Section 58 of the Act lists the matters which a NZCPS may address. The District Plan ~~shall not be inconsistent with the~~ must give effect to any NCPS.*

*The ~~Draft~~ Auckland Regional Policy Statement, prepared by the Auckland Regional Council, also addresses coastal issues. A Regional Coastal Plan is required to be prepared by the Auckland Regional Council for the coastal marine area. The ~~Proposed~~ Auckland Regional Plan: Coastal became operative in part in 2004 ~~was notified on 25 February 1995~~.*

...

#### **Explanation (not part of the Plan Change)**

It is necessary to amend Section 11.1.1.1 of the District Plan to reflect more recent amendments to the RMA.

Section 4 of the Foreshore and Seabed Amendment Act 2004 inserted section 6(g). Section 3 of the Amendment Act 1997 inserted section 7(aa). Section 46 of the Amendment Act 2005 substituted section 75 of the RMA and inserted a new subsection 3(b) whereby a District Plan must 'give effect to' any New Zealand coastal policy statement.

The word 'draft' is to be deleted from the reference to the 'draft Auckland Regional Policy Statement' as the regional policy statement became operative in July 1999. The reference to the Regional Coastal Plan is to be updated to reflect its partially operative status: it is no longer a 'Proposed' regional plan.

#### **Policy**

##### **11.1.4.1**

...

#### **Explanation/Reasons**

...

*The ~~Proposed~~ Auckland Regional Plan: Coastal Plan identifies regionally significant coastal landscapes and the District Plan has to recognise these. ...*

#### **Explanation (not part of the Plan Change)**

The explanation and reasons following Policy 11.1.4.1 make reference to the 'Proposed Regional Coastal Plan'. That plan became operative in part in 2004. The word 'Proposed' is to be deleted to reflect that plan's partially operative status and its description updated to refer to the 'Auckland Regional Plan: Coastal'.

#### **Policy 11.1.4.3**

*Activities in the coastal environment should as far as practicable avoid adverse environmental effects on coastal habitats, particularly those adjacent to coastal protection areas identified in the ~~Proposed~~ Auckland Regional Plan: Coastal, and the values and functioning of natural habitats and ecosystems.*

...

#### **Explanation (not part of the Plan Change)**

Policy 11.1.4.3 makes reference to the 'Proposed Regional Plan: Coastal'. That plan became operative in part in 2004. The word 'Proposed' is to be deleted to reflect that plan's partially operative status and its description updated to refer to the 'Auckland Regional Plan: Coastal'.

## **14. AMEND CHAPTER 14 – Business Areas**

### **Issue 14.2.1**

...

*Manukau City's stormwater infrastructure in the business areas of the City has been designed and constructed to accommodate the intensive development which takes place in business areas and to maintain water quality. However, the Tamaki Estuary and the Manukau Harbour in the vicinity of Favona have degraded water quality that has been caused, to some extent, by industrial activities in the catchments of these areas. The Auckland Regional Council's ~~Proposed~~ Regional Policy Statement identifies the main causes of stormwater contamination from industrial activities as being unsatisfactory yard practices, accidental spills and lack of awareness of the consequences of pollution. The overall control of water discharges is the responsibility of the Auckland Regional Council....*

#### **Explanation (not part of the Plan Change)**

The word 'Proposed' is to be deleted from the reference above to the 'Proposed Regional Policy Statement' as the regional policy statement became operative in July 1999.

### **Issue 14.2.6**

*The Auckland Regional Policy Statement identifies as a significant resource management issue (~~Issue 2.3.4~~) the adverse effect of sensitive activities on regionally significant physical resources such as heavy industrial areas or sites....*

*... The Auckland Regional Policy Statement (~~in Policy 10.4.7~~) that adequate separation distances should be maintained between activities sensitive to air discharges and industrial and trade premises that have the potential to discharge noxious, dangerous, offensive or objectionable contaminants to air. ...*

#### **Explanation (not part of the Plan Change)**

This section refers to 'Issue 2.3.4' and 'Policy 10.4.7' of the Auckland Regional Policy Statement, which was a Proposed Regional Policy Statement at the time the District Plan was notified. There have been many amendments to the Regional Policy Statement since becoming Operative and one of those changes included the renumbering of issues and objectives. The references to issue 2.3.4 and policy 10.4.7 are no longer accurate and should be deleted.

The deletion of the references to issue 2.3.4 and policy 10.4.7 does not alter the meaning of the District Plan provisions.

## 15. AMEND CHAPTER 15 – Public Open Space

### 15.1.4 The Statutory Context

- (a) ***Pertaining to financial contributions for the purpose of acquisition and development of public open space***

...

~~The Second Schedule of the Act allows a plan to include the circumstances when a financial contribution may be imposed, the maximum amount of the levy that may be imposed and the general purposes for which they may be used. The financial contribution provisions are established under Sections 108 and 220 of the Act.~~

- (b) ***Pertaining to Esplanade Areas***

*The Resource Management Act enables the Council to secure esplanade reserves or esplanade strips along the coast and the banks of rivers and streams. Section 229 of the Act sets out the purposes of esplanade reserves and esplanade strips which are:*

...

- (v) *Mitigating natural hazards, ~~and~~or*

#### **Explanation (not part of the Plan Change)**

In paragraph three of Section 15.1.4(a), reference is made to the Second Schedule to the RMA. Section 93 of the Amendment Act 2003 repealed Schedule 2 to the RMA and the above reference to that Schedule is therefore to be deleted.

In the quotation from section 229 that follows Section 15.1.4(b), the word 'and' needs to be replaced by the word 'or' after both (a)(v) and (b) to reflect the corresponding wording in the RMA.

### 15.6.2.2 Council Bylaws

~~The Manukau City Consolidated Bylaws 1992 in Chapter 17 2008 address issues which relate to environmental matters such as litter, pollution by dogs, and conduct issues that constitute a danger or an offence to the public (eg. the consumption of liquor). Chapter 1 of the Bylaws sets out the penalties for offending against any chapter of the Bylaws, with a fine for an offence and for each day the offence continues. Enforcement of these Bylaws is carried out by Park Rangers and Environmental Technical Officers.~~

~~Chapter 7 6 of the Bylaws relates to the control of dogs in certain public open space areas. Dogs are prohibited in 15 specific beach areas during the period commencing Labour Weekend and ceasing Easter Tuesday. Dog Rangers enforce this any prohibition.~~

#### **Explanation (not part of the Plan Change)**

The Manukau City Consolidated Bylaws 1992 were in force at the time the District Plan was notified. However, through the consultative process Council has made amendments to the Consolidated Bylaws and the current Bylaws came into force in 2008. The references to the Bylaws in Section 15.6.2.2 are therefore no longer accurate, and this Section of the District Plan needs to be amended to bring it into line with current Bylaws.

### Rule 15.15.3.7 Creation of Esplanade Reserve or Strips on Road Stopping

...

#### **Explanation/Reasons**

*The Resource Management Act requires that Plans provide for the preservation of the natural character of the coastal environment including the margins of rivers, and maintaining and enhancing public access to and along the coastal marine area and the margins of rivers. The New Zealand Coastal Policy Statement (NZCPS) reinforces these requirements. A District Plan ~~cannot be inconsistent with~~ must give effect to the NZCPS.*

...

#### **Explanation (not part of the Plan Change)**

The explanation and reasons following Rule 15.15.3.7 states that a district plan 'cannot be inconsistent with' the NZCPS.

Section 75 of the Amendment Act 2003 substituted section 75 of the RMA and a District Plan must now 'give effect to' any NZCPS. The words 'cannot be inconsistent with' are to be replaced by 'must give effect to', to reflect this amendment.

## **16. AMEND CHAPTER 16 – Future Development Areas**

### **16.5 Future Development Strategy**

...

- *The chapter deals with the spatial expansion of the urban area and interprets locally the metropolitan urban limits contained in the Auckland ~~Proposed~~ Regional Policy Statement.*

...

#### **Explanation (not part of the Plan Change)**

The word 'Proposed' is to be deleted from the reference above to the 'Auckland Proposed Regional Policy Statement' as the regional policy statement became operative in July 1999.

### **16.15 – Structure Plans**

#### **16.15.1 Westney Road**

##### **16.15.1.3 Development Rules and Assessment Criteria for applications for subdivisional consent.**

#### **(e) Conservation of Natural Features, Vegetation and Heritage Features**

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the*

*provisions of the Historic Places Act 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

## **16.15.2 Massey Road**

### **16.15.2.2 Development Rules and Assessment Criteria for applications for subdivision consent.**

...

#### ***(b) Public Open Space Areas, Archaeological Sites and Conservation of Vegetation***

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

## **16.15.3 Te U Kaipo**

### **16.15.3.3 Development Rules and Assessment Criteria for applications for subdivision consent.**

...

#### ***(g) Conservation of Natural Features, Landform, Vegetation and Other Heritage Features***

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

## **16.15.4 Flat Bush West**

### **16.15.4.3 Development Rules and Assessment Criteria for applications for subdivision consent.**

...

#### ***(h) Archaeology***

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act ~~1980~~ 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

## **16.15.5 Hill Road**

### **16.15.5.3 Development Rules and Assessment Criteria for applications for subdivision consent.**

...

#### ***(h) Archaeology***

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1980 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

### **16.15.6 Oruarangi South**

#### **16.15.6.3 Development Rules and Assessment Criteria for applications for subdivision consent.**

##### **(d) Archaeology**

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

### **16.15.7 Waiouru Peninsula**

#### **16.15.7.3 Development Rules and Assessment Criteria for applications for subdivision consent.**

##### **(f) Archaeology**

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1980 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

### **16.15.8 Kelly's Cove – Beachlands**

#### **16.15.8.2 Development Rules and Assessment Criteria for applications for subdivision consent.**

##### **(d) Archaeology**

...

*The use, subdivision, development of and any work on the land on or in the vicinity of archaeological sites will be subject to relevant restrictions in accordance with the provisions of the Historic Places Act 1993, ~~Section 291 of the Local Government Act 1974~~ and other relevant statutory requirements.*

#### **Explanation (not part of the Plan Change)**

It is necessary to amend these Sections of the District Plan to ensure that an amendment to the Local Government Act 1974 is reflected in the Structure Plan provisions.

Sections 16.15.1.3(e), 16.15.2.2(b) and 16.15.3.3(g), 16.15.4.3(h), 16.15.5.3(h), 16.15.6.3(d), 16.15.7.3(f) and 16.15.8.2(d) all make reference to section 291 of the Local Government Act 1974 .

Section 291 of the Local Government Act addressed the preservation of trees and buildings of historic interest and wildlife habitat. Section 362 of the Resource Management Act 1991 repealed section 291. References in these District Plan provisions to section 291 of the Local Government

Act are therefore to be deleted, as this matter is now included in the Resource Management and it is noted that the Historic Places Act is already referred to in the relevant provisions.

Finally, in several instances, the provisions refer to the Historic Places Act 1980, which was repealed by the Historic Places Act 1993. Amendments are proposed to correct these references.

## 17. AMEND CHAPTER 17 – Special Areas and Activities

### Issue 17.2.2.1

... Section 6(e) of the Act requires Council to recognise and provide for the relationship of Maori and their culture and traditions with their taonga. Papakainga are taonga. Section 6(f) of the Act also requires the Council to recognise and provide for the protection of historic heritage (including historic sites, archaeological sites and sites of significance to Maori, including waahi tapu) from inappropriate subdivision, use, and development. Section 8 of the Resource Management Act obliges Council to take into account the principles of the Te Tiriti o Waitangi. These principles include the principle of tribal rangatiratanga. Section 7(a) of the Act requires Council, in undertaking its duties under the Act to have particular regard to kaitiakitanga. Kaitiakitanga is an instrumental part of rangatiratanga. ~~Section 7(e) of the Act also requires Council to have particular regard to the protection of places with heritage value~~ Tangata whenua's ability to protect taonga including papakainga which are part of their heritage is enhanced by enabling rangatiratanga and kaitiakitanga over their taonga.

...

#### Explanation (not part of the Plan Change)

Issue 17.2.2.1 of the District Plan refers to section 7(e) of the RMA ('protection of places with heritage value').

Section 5 of the Amendment Act 2003 repealed 7(e) and section 4 of the Amendment Act 2003 inserted historic heritage as a matter of national importance into section 6(f).

The reference to section 7(e) in Issue 17.2.2.1 should therefore be deleted, and a reference to the new matter of national importance in section 6(f) inserted.

## 17.3 Mangere Puhinui Rural Area

### 17.3.1 Introduction

...

*This rural area is identified in the ~~Proposed~~ Auckland Regional Policy Statement as being outside of the Metropolitan Limits. A policy of the ~~Proposed~~ Auckland Regional Policy Statement is that urban development is permitted only within the metropolitan urban area as defined by the metropolitan urban limits. This policy seeks to achieve, amongst other things, the objectives of avoiding adverse effects on the environment and the effective and efficient use of natural and physical resources. Chapter 4 — City's Environment establishes the principles and strategies of urban containment and consolidation of the city within the urban limits, and restraints on urban development in the rural areas of the City, consistent with the ~~Proposed~~ Auckland Regional Policy Statement.*

...

### Issue 17.3.2.3 Activities in the area may adversely affect the landscape amenity values.

...

*The narrow band of rural lands on Kirkbride and Oruarangi Roads lies outside the Metropolitan limits defined in the ~~Proposed~~ Auckland Regional Policy Statement. However the rationale for this land being retained as rural has in the past been on the basis of a perceived need for a buffer between the Mangere Wastewater Purification Works and the built-up urban area.....*

**Issue 17.3.2.5 Natural heritage features may be damaged or destroyed when development of land occurs.**

...

*The intertidal reefs which extend in to the sea on the western side of Puketutu Island are of value for coastal bird species, and is noted in the ~~Proposed~~ Auckland Regional Plan: Coastal Schedule 3 as a regionally important feature.*

**Issue 17.3.2.6 Activities may have an adverse effect on the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.**

...

*Tangata whenua are the kaitiaki of the Manukau Harbour and adjoining lands. Following the recommendation of the Waitangi Tribunal on the Manukau Claim that the Pukaki Creek and tributaries be reserved for the exclusive use of the hapu of Pukaki marae, the Crown gazetted the creek as Maori reservation. The Auckland Regional Council's ~~Proposed~~ Regional Plan: Coastal recognises the cultural significance of this coastal area to tangata whenua, and the tangata whenua kaitiaki of the creek through a tangata whenua management area and relevant policies.*

...

**Issue 17.3.2.7 The natural coastal environment of the Manukau Harbour may be adversely affected by activities taking place in proximity to the coastline.**

...

*Much of the coastal marine area immediately adjoining the Mangere–Puhinui land area is identified in the ARC's ~~Proposed~~ Regional Plan: Coastal as Coastal Protection Area 1 and Coastal Protection Area 2. These are areas which have regional, national or international significance due to their ecological, landform or geological values.*

*The Pukaki–Waokauri Creek is identified in the ARC's ~~Proposed~~ Regional Plan: Coastal as a Tangata Whenua Management Area, in addition to the provisions of the Coastal Protection Area 2 applying in recognition of the high ecological values of the Creek.*

...

**Explanation (not part of the Plan Change)**

Sections 17.3.1, 17.3.2.3, 17.3.2.5, 17.3.2.6, and 17.3.2.7 all refer either to the 'Proposed' Auckland Regional Plan: Coastal or to 'Proposed' Regional Policy Statement. The Regional Plan: Coastal is now operative (in part) while the Regional Policy Statement is also now operative. Amendments are proposed to reflect the present status of those planning documents.

**17.6 Airport Activities**

### 17.6.2.1 Introduction

...

*There is a need for the adverse effects of the Airport to be avoided, remedied or mitigated. One adverse effect discussed in the following issues section is airport noise. A function of a territorial authority as set out in Section 75 31(1)(d) of the Act provides that a District Plan may make provision of matters set out in Part II of the Second Schedule, including 'any emission of noise from land and structures in the district and the mitigation of the effects of noise' is to control the emission of noise and the mitigation of the effects of noise. ...*

...

#### **Explanation (not part of the Plan Change)**

The above paragraph from Section 17.6.2.1 of the District Plan refers to a now superseded version of section 75 of the RMA. Section 75 previously provided that a district plan could make provision in relation to the matters set out in Part II of the Second Schedule to the RMA, including noise emissions and the mitigation of the effects of noise. Section 75 has been amended and no longer refers to the Second Schedule to the RMA, while the Second Schedule itself has been repealed. It is proposed that these references therefore be deleted from Section 17.6.2.1.

In their place, it is considered appropriate that a reference to section 31(1)(d) of the RMA be inserted. It is now a function of territorial authorities under section 31(1)(d) of the RMA to control the emission of noise and the mitigation of the effects of noise.

### 17.6.2.3 Auckland International Airport adjoins the Manukau Harbour and there is the potential for adverse effects from development on the ecological, geological, cultural, spiritual, recreation and landscape values of the coastal environment.

...

The Auckland Regional Council's ~~Proposed~~ Regional Plan: Coastal' identifies the conservation values of the Manukau Harbour maritime area in the vicinity of the Airport. The coast to the south, although modified by past reclamation, has high conservation values. The Pukaki Creek area of the Manukau Harbour is a tangata whenua management area in recognition of the significance of that area to tangata whenua and its spiritual and cultural significance. This area also has important ecological values.

#### **Explanation (not part of the Plan Change)**

Section 17.6.2.3 makes reference to the 'Proposed Regional Plan: Coastal'. The word 'Proposed' is to be deleted from this reference as the Regional Plan: Coastal became operative in part in 2004.

### 17.8.1 Introduction

*Minerals are defined in the ~~Resource Management Act 1991~~ Crown Minerals Act 1991 as:*

*...naturally occurring inorganic substances beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones...*

#### **Explanation (not part of the Plan Change)**

Section 17.8.1 states that the term 'minerals' is defined in section 2 of the RMA, however section 2 of the RMA has been amended several times and now states that the expression 'minerals' has

the same meaning as stated in section 2(1) of the Crown Minerals Act 1991. This Proposed Plan Change will delete the reference to the RMA and substitute a reference to the Crown Minerals Act instead. This amendment will not affect the meaning of the text.

## 17.10 Flat Bush

### 17.10.5 Flat Bush Development Strategy

*The Flat Bush area provides an important opportunity for Manukau City Council to address intensification policies contained in the ~~Proposed~~ District Plan, the Auckland Regional Policy Statement and agreements reached under the Auckland Regional Growth Strategy. Key principles of the Regional Policy Statement and the Regional Growth Strategy are to promote...*

#### **Explanation (not part of the Plan Change)**

Section 17.10.5 of the District Plan refers to the 'Proposed District Plan'. The current Manukau District Plan became Operative in 2002 and therefore it is appropriate that the word 'Proposed' be deleted to indicate that the current plan is operative. The deletion of this word will not affect the meaning of the text.

### 17.10.6.2.1 Advocacy and Information

*The Council will seek funding from authorities such as ~~Infrastructure Auckland, and Transfund~~ the NZ Transport Agency as appropriate to secure public money to help achieve regional and national objectives of sustainable management.*

#### **Explanation (not part of the Plan Change)**

Section 17.10.6.2.1 of the District Plan refers to 'Infrastructure Auckland' and to 'Transfund'.

The provisions for Infrastructure Auckland were contained in Part 44C of the Local Government Act 1974. This Part of the Local Government Act was repealed by the Local Government (Auckland) Amendment Act 2004. It is therefore appropriate that the reference to 'Infrastructure Auckland' be deleted.

Transfund was amalgamated several years ago with the Land Transport Safety Authority to become Land Transport New Zealand, which in turn later amalgamated with Transit New Zealand to form the New Zealand Transport Agency, which has responsibility for allocating subsidies. It is therefore likewise appropriate that the reference to 'Transfund' be deleted and reference made to the New Zealand Transport Agency.

The deletion of these references from Section 17.10.6.2.1 will not affect the meaning of the text of the District Plan.

### 17.10.12.13 Asbestos Containing Materials

- (a) *This Rule 17.10.12.13 provides rules relating to the identification, assessment, and remediation of asbestos containing materials on certain areas of land within the Flat Bush area.*
- (b) *These rules apply notwithstanding anything to the contrary in any other provision of the ~~Proposed~~ District Plan.*

#### **Explanation (not part of the Plan Change)**

Rule 17.10.12.13 of the District Plan refers to the 'Proposed District Plan'. The current Manukau District Plan became Operative in 2002 and therefore it is appropriate that the word 'Proposed' be deleted to indicate that the current plan is operative. The deletion of this word will not affect the meaning of the text.