

Proposed Plan Change 78 (PC78)

to the Auckland Unitary Plan (Operative in part)

SECTION 32 and sec77K / sec 77Q alternative process for existing qualifying matters

EVALUATION REPORT for qualifying matter 77I(a) and qualifying matter 77O(a)

77I(a) matter of national importance that decision makers are required to recognise and provide for under section 6

Significant Ecological Areas Overlay

Re Biodiversity

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Executive Summary – Significant Ecological Areas

Auckland's indigenous biodiversity is unique and is made up of a diverse range of ecosystems reflecting the physical environment of the region. These areas of rich the biological diversity contribute to the special character and identity of Auckland. However, development has resulted in the loss of many habitats and a reduction of this biodiversity.

The Auckland Unitary Plan (AUP) Regional Policy Statement B7.2 Indigenous biodiversity aims to protect and provide for the management of these ecological areas that contribute significantly to the region. It recognises that healthy and functioning ecosystems are essential to improved water quality and soil conservation as well as providing opportunities for our recreational, economic, and cultural use.

The RMA Section 6(c) *Matters of national importance* requires ecological areas be protected. To achieve this - areas of ecological significance have been spatially identified and include within the AUP with the sites mapped in the AUP D9: Significant Ecological Areas Overlay and listed in schedules 3 (terrestrial and freshwater) and 4 (coastal and marine) of the AUP. The Significant Ecological Areas–Terrestrial (SEA-T) Overlay identifies areas of significant indigenous vegetation or significant habitats of indigenous fauna located either on land or in freshwater environments. The sites are found across urban Auckland.

The SEA–T overlay has been recognised as a qualifying matter in accordance with Clauses 77I(a) and 77O(a) of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. It is important NPSUD/MDRS planning rules continue to maintain these ecological areas and their associated biodiversity in accordance with RMA Section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the RPS B7.2 Indigenous biodiversity.

To achieve this three possible qualifying matter options have been reviewed, with respect to SEA-T. To this end and pursuant Section 77Q (1)(b) specify the alternative density standards proposed for the area, Option 1 is recommended. This option would introduce of a Low-Density Residential zone (LDRZ) in existing Single House (SH) zoned areas where there is a 30% threshold site coverage by the SEA-T, and it would also allow for further development controls on properties zoned Mixed Housing Urban (MHU) and Terraced Housing and Apartment Building (THAB) going forward.

Option 1 – is recommended and will better manage development expectations for a SEA-T sites, provide clear direction for the assessment of effects and limit the cumulative effect of development. Overall impact on housing supply and capacity as a result of enabling less intensification in the identified SEA-T in residential zones and in Policy 3 areas is considered minor.

Introduction

This report is prepared as part of the evaluation required by Section 32 and Sections 77I and 77Q of the Resource Management Act 1991 (**'the Act'**) for proposed Plan Change 78 (**PP78**) to the Auckland Unitary Plan (Operative in Part) (**AUP**).

The background to and objectives of PC78 are discussed in the overview report, as is the purpose and required content of section 32 and 77I / 77Q evaluations.

This report discusses the implications of applying the Significant Ecological Areas – Overlay as a qualifying matter to the medium density residential standards (MDRS) of Schedule 3A of the RMA and the implementation of policy 3 of the NPS-UD

An existing qualifying matter is a qualifying matter referred to in section 77I or 77O (a) to (i) that is operative in the relevant district plan when the IPI is notified.

- Sec 77I relates to relevant residential zones.
- Sec 77O relates to urban non-residential zones.

The Council may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone or urban non-residential zone only to the extent necessary to accommodate 1 or more of the qualifying matters listed in 77I or 77O.

Integrated evaluation for existing qualifying matters

For the purposes of plan change **PC78**, an evaluation of Significant Ecological Areas-Terrestrial, (D9: Significant Ecological Areas Overlay) as an existing qualifying matter conducted. This has been undertaken in an integrated way that combines sec 32 and 77K / 77Q requirements. The report follows the evaluation approach described in the table below.

Preparation of this report has involved the following:

- review of the AUP to identify all relevant provisions that apply this qualifying matter
- assessment of the identified relevant provisions within the AUP relating to SEA-T Overlay against the Medium Density Residential Standards in accordance with Schedule 3A of the RMA
- review of the AUP to identify all relevant provisions that require a consequential amendment to integrate the application of this qualifying matter
- development of draft amendments to the operative district plan provisions of the AUP to implement this matter as a Qualifying Matter in accordance with s77
- section 32 options analysis for this qualifying matter and related amendments
- research related to the application and performance of SEA-T and the protection of biodiversity on residentially zoned land
- the consideration of 3 options
- the determination of a preferred option and possible site coverage rules
- In carrying out its function under 77G to give effect to policies 3 and 5 a territorial authority may create new residential zones or amended existing residential zones.
- Recognition of Manu whenua's roles as kaitiakitanga and in partnership with council.

The scale and significance of the issues is assessed to be large. This section 32/77K evaluation report will continue to be refined in response to any consultation feedback provided to the council, and in response to any new information received.

Integrated evaluation for existing qualifying matters (continued)

Table 1, Integrated approach

Standard sec 32 steps	Plus sec 77K / 77Q steps for existing qualifying matter
<p>Summary providing an analysis of the qualifying matter</p>	<p>Sec 77K</p> <p>The qualifying matter relates to the AUP, D9 Significant Ecological Areas Overlay, Schedule 3 Significant Ecological Areas - Terrestrial sites and the identified significant ecological sites identified on the AUP map. The purpose of these two documents and the spatial mapping is to protect Auckland’s fragile and unique indigenous biodiversity.</p> <p>S 77K - An Alternative process for existing qualifying matters provides for identifying by location (for example by mapping) where an existing qualifying matter apply, specifying the alternative density standard proposed for those areas identified under paragraph and identify in the report prepared under section 32 why the territorial authority considers they should be applied.</p> <p>The SEA-T overlay identifies spatial areas of ecological importance (The sites meet one or more of the following five criteria: representativeness, threat status and rarity, diversity, stepping-stones, migration pathways, buffers, uniqueness, and distinctiveness.)</p> <p>The intended that the NPSUD and MSDR changes relate in particular to urban residential zoning within the Auckland urban area and in this regard the Section 32 analysis relates to SEA – Terrestrial and freshwater areas (not SEA- marine areas). There are 3239 SEA-Terrestrial sites identified that comprise D9 Significant Ecological Area Terrestrial Overlay.¹</p> <p>These areas are dispersed across the region but many of the identified sites are within the urban/residential area and have a residential zoning such an SH or Mixed Housing Suburban (MHS). The SH or MHS zones have historically more robust development controls than the MDRS zones. There are over 7,000 urban properties which are covered by the SEA T overlay to some extent.</p> <p>Other rules that apply to the Qualifying matter Significant Ecological Areas – Terrestrial are contained in:</p> <ul style="list-style-type: none"> • E3 Lakes, rivers, streams and wetlands (overlay rules). • E15 Vegetation management and biodiversity • E12 Land disturbance - District and

¹ Auckland Council GIS July 2022

- E26 Infrastructure.

E15.6.5. allows for vegetation alteration or removal within a significant ecological area for a building platform and access way for a dwelling per site (1). The total area of vegetation alteration or removal must not be greater than 300m² – as a controlled activity. Existing cleared areas must be utilised in the first instance, where practicable.

The location of SEA-T

Figure 1, SEA (green crosses) with SH zoning at Ben James Drive, Mount Roskill

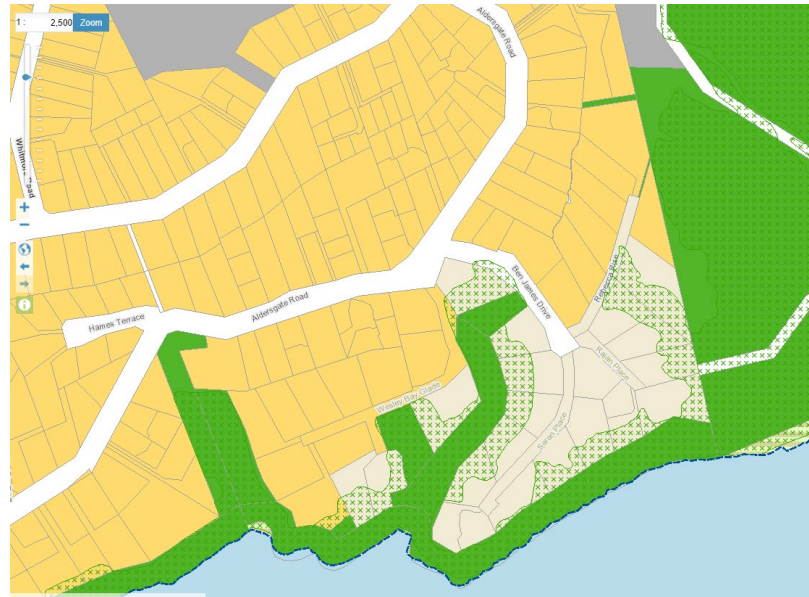
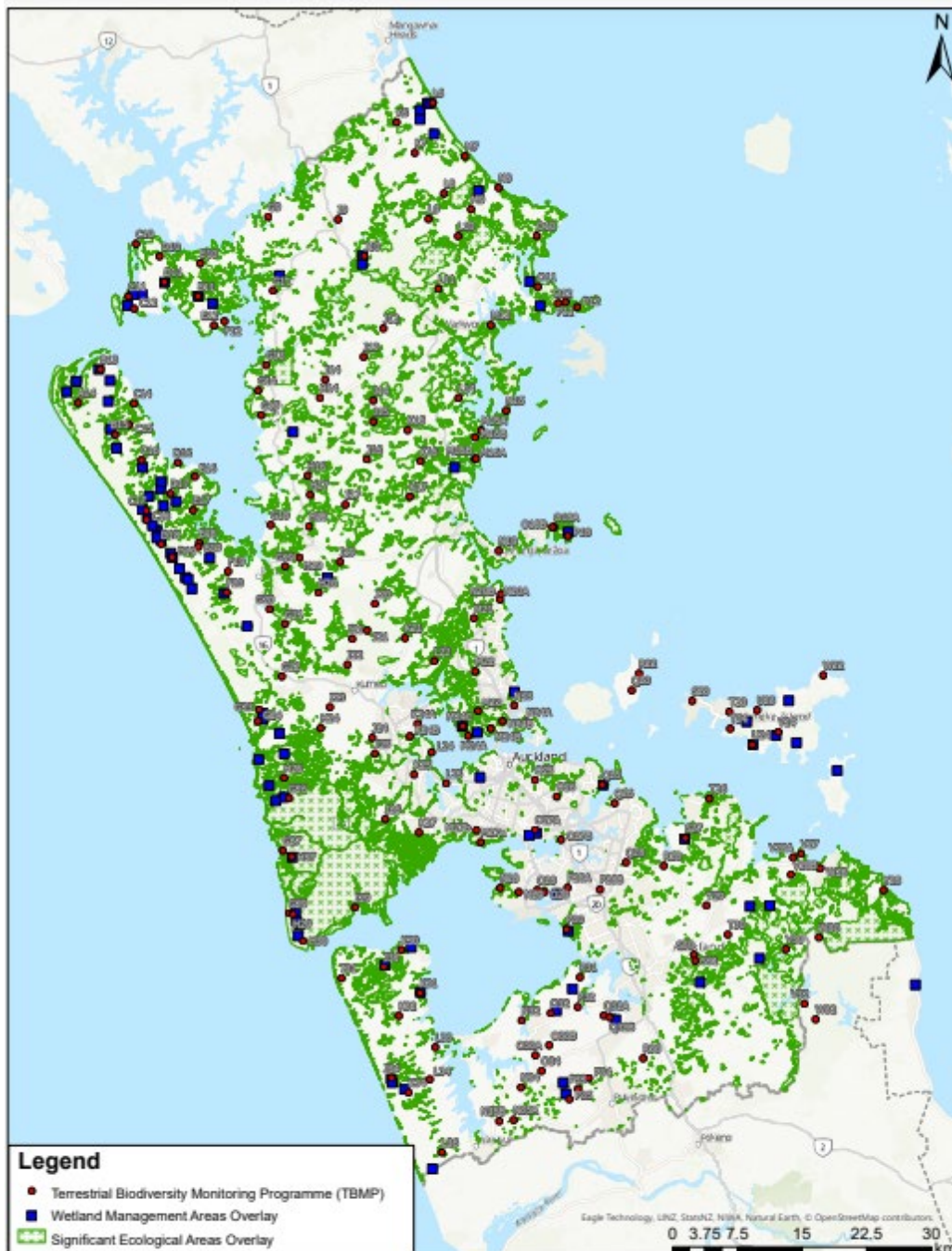


Figure 2, Aerial Ben James Drive, Mount Roskill



In this example the SEA-T Overlay encompasses a range (green hatch) of SH zoned properties. Adjacent to SH zoned is an Open Space - Conservation zone area, which is also covered by the SEA-T Overlay. Many SEA-T are located in urban zoned areas. Map 1, SEA-T, indicates the (urban) areas subject to the to the SEA-T Qualifying Matter.

Map 1 SEA-T, Terrestrial Biodiversity Monitoring Programme and Wetland Overlays.



Significant Ecological Areas, Wetland management Areas and Wetland monitoring sites

AUP RPS - Objectives and Policies for the Retention of Biodiversity

Table 2, Objectives, Policies and Retention of Biodiversity

RPS B7.2 Objectives and Policies		
<ul style="list-style-type: none"> The retention of biodiversity is considered a matter of national importance and key goal of the AUP. (RPS B7.2). Auckland' biodiversity is what makes it a unique (and desirable) urban area. To protect this biodiversity it is important that areas of ecological significance are identify and protected and this what the RPS objectives and policies seek to achieve and This is supported by the D9: Significant Ecological Areas Overlay, an important tool in managing Auckland's with its unique biodiverse inheritance. The SEA-T Overlay is a Qualifying Matter re 77I(a) and 77Q (a) 		
B7.2. Indigenous biodiversity, B7.2.1. Objectives	(1) Areas of significant indigenous biodiversity value in terrestrial, freshwater, and coastal marine areas are protected from the adverse effects of subdivision use and development.	<ul style="list-style-type: none"> Objective B7.2.1 closely follows the words of sections 6(c) RMA Managed through an environmental assessment aim to avoid adverse effects. Retain integrity of SEA-T where possible E15 4.1 (A29) Vegetation removal SEA for a building platform one dwelling per site. Controlled activity, although existing cleared areas should be utilised in the first instance, where practicable.
	(2) Indigenous biodiversity is maintained through protection, restoration and enhancement in areas where ecological values are degraded, or where development is occurring.	<ul style="list-style-type: none"> Managed through an environmental assessment. Avoid adverse effects Mitigation where appropriate
B7.2. Indigenous biodiversity B7.2.2. Policies	(1) Identify and evaluate areas of indigenous vegetation and the habitats of indigenous fauna in terrestrial and freshwater environments considering the following factors in terms of the descriptors contained in Schedule 3 Significant Ecological Areas – Terrestrial Schedule: <ol style="list-style-type: none"> representativeness. stepping stones, migration pathways and buffers. threat status and rarity. uniqueness or distinctiveness; and diversity. 	<ul style="list-style-type: none"> Managed through an environmental assessment. Avoid adverse effects (A29) Vegetation removal SEA-T for a building platform and access way for one dwelling per site. Often access ways parking are means that more than 300 sqm is cleared.² Activities in Table E15.4.2 that do not comply with one or more of the standards in E15.6 are Discretionary
	(2) Include an area of indigenous vegetation or a habitat of indigenous fauna in terrestrial or freshwater environments in the Schedule 3 of Significant Ecological Areas – Terrestrial Schedule if the area or habitat is significant.	<ul style="list-style-type: none"> Schedule 3 of Significant Ecological Areas – Terrestrial - An area shall be considered to have significant ecological value if it meets one or more the sub-factors 1 to 5. (Representativeness, Status

² Auckland Council email, Simon Mills, Team Manager, Ecological Advice, Environmental Services, June 2022.

		<p>and rarity, Diversity, Migration pathways, Distinctiveness.</p> <ul style="list-style-type: none"> • Managed through an environmental assessment. • Avoid adverse effects
Significant Ecological Areas Overlay		
D9.2. Objectives [rcp/rp/dp]	(1) Areas of significant indigenous biodiversity value in terrestrial, freshwater, and coastal marine areas are protected from the adverse effects of subdivision, use and development.	<ul style="list-style-type: none"> • Managed through an environmental assessment, avoid adverse effects retain integrity of SEA • E15.6.5. Vegetation alteration or removal within a SEA-T for a building platform and access way for a dwelling per site (1) The total area of vegetation alteration or removal must not be greater than 300m². Controlled activity status
	(2) Indigenous biodiversity values of significant ecological areas are enhanced.	<ul style="list-style-type: none"> • Managed through an environmental assessment. • Avoid adverse effects retain integrity of the SEA-T.
	<p>(3) The relationship of Mana Whenua and their customs and traditions with indigenous vegetation and fauna is recognised and provided for.</p> <p>E15.6.2. Vegetation alteration or removal for customary use (1) No greater than 20m² of vegetation is removed within a significant ecological area per site.</p>	<ul style="list-style-type: none"> • Recognition and provision for Mana whenua ancestral relationship, culture and traditions comprising a cultural landscape. • Mana Whenua kaitiaki and provides for the practical expression of kaitiakitanga • Managed through an environmental assessment. • Avoid adverse effects • E15.4.2 (A30) Vegetation alteration or removal within a SEA-T on Māori land or treaty settlement land (a) one marae per site; (b) up to 30 dwellings per site – controlled activity • E15.6.2. Vegetation alteration or removal for customary use (1) No greater than 20m² of vegetation is removed within a significant ecological area per site. - activity Permitted
Policies D.3		
D9.3. Policies [rcp/rp/dp] Managing effects on significant ecological areas – terrestrial and marine	<p>(1) Manage the effects of activities on the indigenous biodiversity values of areas identified as significant ecological areas by:</p> <p>(a) avoiding adverse effects on indigenous biodiversity in the coastal environment to the extent stated in Policies D9.3(9) and (10).</p> <p>(b) avoiding other adverse effects as far as practicable, and where avoidance is not practicable, minimising adverse effects on the identified values.</p> <p>(c) remedying adverse effects on the identified values where they cannot be avoided.</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment. • Avoid adverse effects • In general all clearance of a SEA is a discretionary activity. • E15.6.5. Vegetation alteration or removal within a significant ecological area for a building platform and access way for a dwelling per site – controlled activity • Retain integrity of the SEA-T.

	<p>(d) mitigating adverse effects on the identified values where they cannot be avoided or remediated; and</p> <p>(e) considering the appropriateness of offsetting any residual adverse effects that are significant and where they have not been able to be mitigated, through protection, restoration and enhancement measures, having regard to Appendix 8 Biodiversity offsetting.</p>	
	<p>(2) Adverse effects on indigenous biodiversity values in significant ecological areas that are required to be avoided, remedied, mitigated or offset may include, but are not limited to, any of the following:</p> <p>(a) fragmentation of, or a reduction in the size and extent of, indigenous ecosystems and the habitats of indigenous species.</p> <p>(b) fragmentation or disruption of connections between ecosystems or habitats.</p> <p>(c) changes which result in increased threats from pests on indigenous biodiversity and ecosystems.</p> <p>(d) loss of buffering of indigenous ecosystems.</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment. • Avoid adverse effects • retain integrity of the SEA-T.
	<p>(3) Enhance indigenous biodiversity values in significant ecological areas through any of the following:</p> <p>(a) restoration, protection and enhancement of threatened ecosystems and habitats for rare or threatened indigenous species.</p> <p>(b) control, and where possible, eradication of plant and animal pests;</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment. • Avoid adverse effects • Retain integrity of the SEA-T.
	<p>(4) Enable activities which enhance the ecological integrity and functioning of significant ecological areas including:</p> <p>(a) the management and control of pest species that threaten indigenous biodiversity;</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment. • retain integrity of the SEA-T.
	<p>(5) Enable the following vegetation management activities in significant ecological areas to provide for the reasonable use and management of land:</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment. • retain integrity of the SEA-T.
	<p>(7) Provide for the role of Mana Whenua as kaitiaki in managing biodiversity, particularly in Treaty Settlement areas, and for cultural practices and cultural harvesting in significant ecological areas where the mauri of the resource is sustained.</p>	<ul style="list-style-type: none"> • Managed through an environmental assessment, and • Treaty Settlement principles.

Issues

The SEA-T Overlay has been identified as a qualifying matter in accordance with Clauses 77I(a) and 77O(a) of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. The qualifying matters also relates to the Significant Ecological Areas – Terrestrial Overlay, Schedule 3 Significant Ecological Areas - Terrestrial and address RMA section 6, *Matters of National Importance (a) and (c)* and AUP RPS B7.2.

The imposition of the NPSUD/MDRS zoning rules will significantly increase development expectations. The NPSUD will create a series 'walkable catchments' around: the city centre, metropolitan centres, rapid transport stops, town centres and selected local centres. Where these centres have a residential urban zoning, the walkable catchments will allow for six storey and five stories developments. This will lead to a significant increases in residential expansion and intensification. The NPSUD walkable catchments do include a number of SEA areas with a range of effected zonings including SH, MHS, MHU and THAB.

The MDRS rules will cover most of the remainder of Auckland's urban residential area. This MDRS residential coverage will have a major impact on how the Qualifying Matter SEA-T overlay is applied, with a large increase in development potential and expectations. The result of these changes is the degradation of biodiversity and loss of significant ecological areas. (The MDRS zone allows for three dwellings per site, more liberal height to boundary controls and set-back controls and building coverage controls).

Council acknowledges the importance of protecting significant ecological areas and that this is a matter of national importance in section 6(c) of the Resource Management Act 1991 – which seeks the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. The AUP identifies (maps) significant ecological areas and provides a management regime protecting these areas by seeking to avoid the adverse effects of subdivision use and development. Under 77J council is required to access the broader cost imposing additional controls.

SEA-T have been used to protect Auckland's unique biodiversity and ecology and provide criteria against which areas in Auckland can be assessed and identified as ecologically significant. Such identification and less reliance on general vegetation provisions (as seen in legacy plans) actually provides greater certainty and usability to landowners, resource users, the Council and the community about the exact extent of and the reasons for protected areas.

Rules related to the SEA-T vegetation are found in E15 Vegetation management and biodiversity. The proposed consequential changes to E15.6.5 Vegetation alteration or removal within a significant ecological area make these rules clearer.

There are 3239 identified sites in the Schedule 3 Significant Ecological Areas-Terrestrial, a good deal of these are located or located in part on residentially zoned land. There are approximately 2050ha of SEA-T within the current rural urban boundary (RUB), with approximately 600ha of these within the Waitakere Ranges Heritage Area. These identified sites can be considered as an intrinsic part of Auckland's unique environment and biodiversity.

Council's Research and Evaluation Unit, (RIMU) is currently undertaking the Terrestrial Biodiversity Monitoring Programme (TBMP). The TBMP encompasses a network of 189 permanent wetland plots as part the ongoing research and monitoring of the region's ecology and wetlands. Significantly, most of these wetland are not included in the Wetlands Management Area Overlay but are provided protection under the SEA-T overlay provisions.

In the study, 91 wetland plots are located in Terrestrial SEA's, 6 in Marine SEA's and 90 wetlands are located outside of SEA's. The 2021 RIMU study on the potential loss and/or degradation of urban wetlands reported the loss of 3.8% of existing wetlands over a six - seven-year period with the area of the RUB. This was considered a substantial wetland biodiversity. ³

NPSUD, Part 6: 3.3 establishes Qualifying Matters to facilitating the protection *Matters of National Importance*. Auckland Council has adopted SEA-T as the Qualifying Matters to protect the city's urban ecology biodiversity. The development of a site will be based on an environment assessment and when appropriate this includes the impact on an SEA-T.

The NPSUD/MDRS zone are likely to drive expectations for a site. In practice an 'overriding view' is that if a land parcel was not intended to be developed - why was zoned. In response to this underlying dynamic – it is also recommended that a set of planning and land use controls implemented to protect these unique areas.

This includes the introduction of the Low -Density Residential zoning for SH zoned properties with a 30% SEA-T overlay threshold to better management of site coverage and secondly for other residentially zoned sites impacted by a SEA-T Overlay - a Mixed Housing Urban zoning equivalent with additional site coverage controls. In some instances SH zone was also used for additional protection of sensitive SEA-T area. (See, Figure 1, SEA with Single House zoning at Ben James Drive, Mount Roskill).

The LDSR zone will also limit the cumulative effect of development on SEA-T -in that it is like to cap development expectations of the surrounding sites and encourage a more holistic approach. The LDRZ zone for identified SEA sites would require buildings to be located on a site and of a scale that ensure the protection of significant ecological areas. Together with the Qualifying Matter, the LDRZ would result lower coverage of the site but not necessarily reduce the housing yield. This zone has also been applied to Special Character Area, Outstanding Natural Features and Outstanding Natural Landscape Overlays. The proposed controls are outlined below:

Table 4: Option 1: Retain the following H3A controls re identified SEA-T Overlay

Identified site	SH zone	MRDS	H3A - LDRS
Building Coverage	35%	50%	<p>35%</p> <ul style="list-style-type: none"> To manage the extent of buildings on a site to achieve the planned protection of an SEA-T. To maintain a reasonable standard of connection for adjoining sites with SEA-T attributes. Maintain integrity of SEA-T (minimise site by site degradation).

³ Wetlands in Tāmaki Makaurau – Preliminary results, Dr G Griffiths, Senior Terrestrial Ecologist, G Lawrence, Spatial Researcher, RIMU 2021.

Impervious Surface	60%	Na	60% <ul style="list-style-type: none"> • To support the functioning of the SEA ecology. • Reinforce the building coverage and landscaped area standards. • Maintain integrity of SEA-T.
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Development is enabled on sites with significant ecological areas located within them where the development provides for the protection and management of the significant ecological values. The requirement is that all proposed buildings on sites subject to significant ecological areas to be of a scale that protects and maintains the significant ecological values of those areas. On sites covered by a MHU or THAB zoning it is proposed that

- (a) the maximum building coverage must not exceed 50 per cent of the net site area;
- (b) building coverage must not be located in any area within 3m of vegetation within a significant ecological area, including following the alteration or removal of up to 300m² of vegetation for a dwelling per site provided for under E15.3.2(A29) and E15.6.5; and
- (c) other than provided for in H6.6.11(2)(b), building coverage must not be located within a significant ecological area.

Council is aware of RMA, S85 and refers to the decision in *Hastings v Auckland City Council*,⁴ in which the Environment Court expressed the considerations under section 85 of the RMA as follows:

the test to be inferred from section 85 is not whether the proposed zoning is unreasonable to the owner (a question of the owner's private rights), but whether it serves the statutory purpose of promoting sustainable management of natural and physical resources (a question of public interest) ... the focus is on the public interest, not the private property rights.

It is considered that there is sufficient 'sustainable management' benefits of natural resources and public interest to justify the creation of these rules. This from both a regulatory and practical perspective. There are no amendments to district level objectives and policies proposed in response to the MDRS/Policy 3.

Under E15.6.5. Vegetation alteration or removal within a significant ecological area provides as a controlled activity for up to per site up to 300 metres² for a building platform and access way for a dwelling. It is proposed this is retained in essence but change to a "single" building platform only. When also including assess, driveway and parking considerations this can be much more of the identified SEA-T is removed as part of the consent.

Table 4 (see below) outlines the number and percentage of SH zone and MHS and MHU zone properties affected by SEA-T and the retention of development controls with the Auckland urban area. The overall impact on housing supply and capacity as a result of

⁴ A068/2001 at [98].

enabling less intensification in the identified SEA-T in the relevant residential zones and Policy 3 areas is minor.

Table 5: The number of SH zone and MHU properties impacted by SEA-T development controls

Within urban Auckland							
	SH zone	%	MHS zone	%	MHU zone	%	Total Properties
SEA-T	4198	6.16%	2300	1.33%	596	0.70	7094

Single House Zoned properties	68104
Mixed Housing suburban properties	173187
Mixed Housing urban properties	85097
Total	326388

Within walkable catchments							
	SH zone	%	MHS zone	%	MHU zone	%	Total Properties
SEA-T	113	0.17%	92	0.05%	96	0.11%	301

Source GIS, Auckland Council, May 2022

Subdivision

The AUP intends that SEA-Ts are protected from vegetation removal as part of subdivision process, so that the SEA-T area is not available for development rather it is legally identified and covenanted through the subdivision process. However the area covered by the covenanted by the SEA-T is included in the yield calculation.⁵

The building platforms identified in the subdivision process would need to be outside of the SEA-T otherwise it becomes a Non- Complying activity.⁶ Once those lots with their building platforms outside the SEA-T have been created through the subdivision there is nothing stopping someone coming in to undertake works however a covenant would now be in place. If the application meets the requirements under E38.8.2.5 it is a restricted discretionary activity.

E38.8.2.5. Subdivision involving indigenous vegetation scheduled in the Significant Ecological Areas Overlay

(3) The indigenous vegetation area scheduled in the Significant Ecological Areas Overlay must be legally protected and maintained in accordance with the process outlined in Appendix 15 Subdivision information and process: and

⁵ Auckland Council email, Simon Mills, Team Manager, Ecological Advice, Environmental Services, June 2022.

⁶

(4) The subdivision resource consent must be made subject to a consent condition which requires that the subdivision scheme plan creating the sites is to be deposited after, and not before, the protective covenant has been registered against the title of the site containing the covenanted indigenous vegetation, or area of restoration planting to be protected, as applicable.

Where the Land Use Consent is granted subdivision subsequently occurs around the newly established 'permitted baseline' of consented clearance for the building platform.

Subdivision through the covenanting process of the SEA areas effectively provides for a high degree of protection for the SEA-T and an ecological safety-net.

However, for existing sites are more challenging:

- E15.6.5. which allows for the removal of up to 300m² of vegetation as a control activity, and
- E15.6.7. which allows for vegetation removal within a SEA overlay, on Māori land or Treaty Settlement land for one marae per site and up to 30 dwellings and activities associated with a marae or papakāinga (1) The total area of vegetation alteration or removal per site is not greater than: (a) 1500m² for a marae; and (b) 300m² per dwelling.

Site clearance in relation to SEA-T is managed through E15 Vegetation management and biodiversity.

Objectives and Policies (existing)

See RPS and D9 Significant Ecological Areas Objectives and Policies as listed above.

Development of Options

Table 3 SEA-T, Qualifying Matter Options Analysis

Significant Ecological Areas Overlay – a Qualifying Matters Options Evaluate option(s) – 1, 2 and 3	
Evaluate option(s) - environmental, social, economic, cultural benefits and costs Sec 77K or Q (1) (b)	<p>Option 1: Low Density Residential zone to be introduced in conjunction with Qualifying Matter into SH zones where there is a 30% SEA-T coverage of the site.</p> <p>Single House zoned with less than 30% SEA-T coverage and MHS and MHU and with a SEA overlay coverage to be zoned as MHU and THAB. These sites with an identified SEA to have additional building coverage and impervious surface controls.</p> <ul style="list-style-type: none"> • Retains significant area and coverage of SEA-T with focus on avoiding losing additional biodiversity. • Supports objects of the RMA section 6 and AUP RPS • Retains in practice Auckland's unique biodiversity, wetlands and 'green' urban character.

- Single House to Low Density Residential zone with 30% or more threshold will protect sensitive area and will encourage develop planners to approve projects that avoid the SEA-T.
- Increased coverage and impervious surface controls on THAB zoned areas protect sensitive area and will encourage develop planners to approve projects that avoid the SEA-T.
- There are 7,168 properties with some level of SEA-T coverage. Planning controls to minimise the impact of cumulative effect and the loss of SEA-T areas, as 30% threshold provides opportunity to manage avoid loss of SEA-T.
- The 30% the threshold ensures properties SH properties not majorly impacted by the SEA-T will not loss development rights and potential yield.
- Limited restrictions on developable properties Acknowledges NPSUD/MDRS rules with minor loss of housing yield and developable land
- Supports mana whenua in protection of the environment. Manu whenua Support the application of lower density zones to avoid degradation of these sites and features. **(Manu whenua workshop.)**
- The SEA-T overlay allow for the continued protect of wetland areas that are not included in Wetlands Management Area Overlay. (see
- The SEA-T overlay will still apply to all impacted properties with its onus of avoiding adverse effects in planning assessment.
- Retains balance of environmental assessment.

Costs

- Additional set of planning controls to be applied to development activity with more administrative and procedural regulation.
- Loss of developable land and reduced in housing yield
- The SEA-T 30% coverage rule and the introduction of the corresponding *Low Density Residential Zone* may be difficult apply and enforce
- Additional SEA-T cover controls on MHU zone may be difficult to apply
- One consequence may be an assortment of zonings along the edge of the mapped SEA-T overlay.

Option 2: NPSUD/MDRS zone controls put in place without modification (Status Quo)

- Increase development expectations
- Changes balance of environmental assessment.
- Maximises developable land and housing yield under NPSUD and MHU model.
- Provides for simpler level of planning control

Costs

- Increase development expectations
- Compromises SEA-T provisions on individual sites and cumulative areas of SEA-T for development is placed on each SEA-T site.
- Compromises "Green" Auckland and management of wetland areas as more pressure and expectation
- Likely not to meet mana whenua expectations of protecting and avoid SEA-T development.
- See Manu whenua document.
- Does not best represent governments initiative on Qualifying Matters

Option 3: NPSUD/MDRS zone controls put in place, changes made to strengthen D9 Significant Ecological Areas Overlay (and likely consequential changes made to E3. Lakes, rivers, streams and wetlands, E11. Land disturbance, E15. Vegetation management and biodiversity)

- Focus on avoiding loss of biodiversity
- Meets objects of the Section 6 Matters of National Importance and RPS

	<ul style="list-style-type: none"> • It clarifies the existing policy direction, in light of the more permissive approach under the NPSUD/MDRS rules. • Aligns with mana whenua values and expectations • Limits the cumulative impact of the loss of SEA-T <p><i>Costs</i></p> <ul style="list-style-type: none"> • Reduces developable land under the NPSUD/MDRS zoning • Time limits on current restricts the opportunity to undertake a broad review of SEA-T Objectives, Policies and Rules with changes not given due consideration. • Any potential changes are likely to be out of scope of project • Changes the balance in the environmental assessment process • Like to delay any comprehensive review of SEA-T controls
Overall judgement as to the better option (considering risks of acting or not acting)	<p>Option 1 is considered to be the best option going forward proceed with at this time.</p> <ul style="list-style-type: none"> • It meets the objectives of the RMA (1991), section 6 (c) matters of National Importance and the Auckland Unitary Plan RPS, objectives and policies. • It provides for a 'balanced" environmental assessment of SEA-T while best managing the zoning/development expectation for intensification. • MDRS/MHU zoning remain the predominate zoning with only limited loss • Make use of Residential Density Residential zone on limited and rational grounds to protect SEA-T • It provides a for the management of the cumulative effect on SEA-T, • The 30% threshold provides a mechanism for retaining housing yield where there is only minimal impact by the SEA-T. • The 30% threshold also provides a potential option for a consented development to avoid the SEA-T area and avoid adverse effects. • This is within the context of Table E15.4.2 (A29) Vegetation alteration or removal within a SEA-T for a building platform and access way for one dwelling per site is a controlled activity.

The MDRS / Policy 3 will be applied in part in relation to the qualifying matters.

See Three Options Outline above

Consequences for development potential

The SEA-T overlay as a qualifying matter may affect the level of development enabled by Policy 3 and MDRS in relation to subdivision and development relating to the construction of buildings. The overlay manages in conjunction with Chapter E15F the protection of significant ecological areas with the aim of protect biodiversity. This has the potential to impact on the building yield of the site. and these impact on the ability to provide density on a site.

Development of a site enabled by the MDRS / Policy 3 would continue to be managed through an environmental assessment of the site. This assessment would made in relation to the development expectation of the site. The application of the Qualifying Matter could still result for example in the development of three dwelling. However, where previous there had been an SH, MHS or MHU zone property the Qualifying Matter would ensure the same coverage controls would apply. In effect this would influence the environmental assessment and reduce the amount of building foot print that would be available for development. A

similar approach would be taken in relation to walkable catchments. Under Section 77J Council is required to assess the impact that limiting development capacity and density will have and assess the cost and broader impacts of imposing those limits. This analysis is done as the analysis of options.

Evaluation of options

- Evaluation needs to be in the context of the objectives of the NPSUD/MDRS and Policy 3, namely:

Objective 1

a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

Objective 2

a relevant residential zone provides for a variety of housing types and sizes that respond to:

- housing needs and demand; and*
 - the neighbourhood's planned urban built character, including 3-storey buildings.*
- Note the qualifying matter does not need to be (re) justified. The evaluation is to focus on the extent to which the objectives of the MDRS / Policy 3 are met/not met by the qualifying matter and whether those 'costs' outweigh the benefits of applying the qualifying matter.

Table 6: Cost and Benefit Analysis of the three Options

Qualifying matters	Option 1 Introduce Low-Density zone for SH zone sites with 30% or more SEA-T coverage. All other SEA-T sites to be zoned MHU and THAB by with special coverage controls.	Option 2 (Status Quo) NPSUD/MDRS zoning	Option 3 Strength existing wording of the SEA Overlay
Costs of applying the QM – broader social, economic, environmental, cultural	<p>The 30% or more coverage rule for SH zone properties – will mean a loss of development right and housing yield (Low cost)</p> <p>SEA-T sites to be zoned MHU by with special coverage controls. Loss of housing yield. Small loss compared with total sites. (Low cost)</p>	<p>Greater development pressure placed urban SEA – T sites. (High Cost)</p> <p>Loss of ecology and biodiversity urban area (High Cost)</p> <p>Cumulative effect of development on SEA-</p>	<p>Requires significant review of SEA-T. Not timely at this juncture overlay provisions (High Cost)</p> <p>Possible unintended consequences in changing controls. (High Cost)</p>

	Potential loss of property right – re community interest. (High Cost)	T sites not well managed. (High Cost) Loss of cumulative “Green Auckland” “No spot” zoning (Low cost)	Reduces housing yields for particular sites. (Low cost) Assessment of environmental effects more difficult with additional rules (Low cost)
Costs of applying QM – housing supply / capacity	Provides development restrictions on identified sites. (Low cost) Reduces housing yield of NPSUD/MDRS zoning and undermines integrity of rules. (Low cost) The 30% coverage rule may prove difficult to determine and enforce. (Low cost) It may result in spot zoning. (Low cost) Challenge to integrity of MDPS rules (Low Cost)	Potential to compromise unique SEA-T sites. (High Cost) Minimum cost of applying QM (Low cost) Site development determined by assessment of environmental effects and zoning development rights (Low cost)	Provides for additional development restrictions on identified sites (Low cost) General tightening development rules proposed (Low cost) Tighter policy controls NPSUD/MDRS zoning and possible new rules with corresponding reduction of housing yield. (Low cost)
Benefits of the QM – broader social, economic, environmental, and cultural	Retains better protection for SEA-T (Mechanisms for achieving QM and RMA <i>S6Matters of National Importance</i>) (High benefit) Balance approach in environmental impact assessment. (High benefit) Restricts zoning from driving development SEA-T situations (High benefit) Reduces loss of SEA-T (High benefit) Better manages the cumulative effect of development. (High benefit) Clarification of vegetation clearing rules (High benefit) Protects wetland areas.	Allows for greater development expectations, including development of SEA-T identified sites. (Low benefit) Consistent with more intensify housing policy (Low benefit) Support the integrity of the NPSUD and MDRS rules. (Low benefit)	Retains better protection for SEA-T (High benefit) Focus on avoiding damage to SEA-T sites. (High benefit) Manages cumulative effect of development (High benefit)

	(High benefit)		
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Cost - Benefit Analysis Supports Option 1:

- Cost/Benefit Analysis suggest Option 1 has the highest benefit and lowest cost in meeting the objectives of the legislation and in particular RMA 1991 S6 *Matters of National Importance*.
- Supports Integrated management of SEA-T The upshot of these provisions is that they can provide a better level of protection to the unique qualities to SEA-T and avoid the impact of cumulative development on these special Auckland areas.
- This options better manages the costs and broader impacts by imposing density limits
- Better able to manage development expectations.
- Meets obligation to Manu Whenua – re partnership and kaitiakitanga
- Requires the introduction of LDR zone with, coverage controls where an existing SH zone has 30% or more SEA-T coverage and the introduction of a coverage control for all MHU zoned properties.
- Limited loss of housing yield

Overall conclusion

Recommendation to support the Adoption of Option 1,

Introduce LDR zone (with coverage controls and for SH zone sites with 30% or more SEA_T coverage.). Introduce coverage controls MHU zone (MDRS equivalent). These proposed changes will allow for a better balance in any environmental assessment vis-a vis property development rights and the protection of *Matters of National Importance section 6(c)*.

The LDR zone MHU zone controls will also better manage the cumulative effect of development on these ecological and biodiverse areas and better meet the purpose and objectives of the RMA and the AUP – RPS. The risk of not acting will be the cumulative loss of significant ecological areas identified in the AUP and not meeting the objectives of Matters of National Importance Section 6(c). Limiting development capacity and density better manages the cost and broader impacts of the proposed changes. Overall impact on housing supply and capacity as a result of enabling less intensification in the identified SEA-T in residential zones and in Policy 3 areas is considered minor.

Development is enabled on sites subject to significant ecological areas where it provides for the protection and management of the significant ecological values. The MDRS is applied across all relevant residential zones in the district plan except in circumstances where a qualifying matter is applicable. This will require buildings on sites subject to SEA-T to be of a scale that protects and maintains the significant ecological values of those areas.

How will the NPSUD/MDRS be modified

NPSUD/MDRS will be modified only to the extent necessary to accommodate the qualifying matters by transitioning to a Low-Density Residential zone with specific land use controls and development areas where the SEA coverage is 30% or more. MHS, MHU and THAB urban zoned properties with SEA coverage will also have additional impervious surface and building coverage controls in the new MHU and THAB zones. The MDRS rules are applied across all relevant residential zones in the district plan except in circumstances where a qualifying matter is applicable. This will require buildings on sites subject to significant ecological areas to be of a scale that protects and maintains the significant ecological values of those areas.

Information Used

1. Outline and refer to the list of reports, documents, evidence, plan versions et al that you used to help with the development of the plan change and assessment of the (these could be listed below in a table form)

Name of document, report, plan	How did it inform the development of the plan change
Wetlands in Tāmaki Makaurau – Preliminary results Dr G Griffiths, Senior Terrestrial Ecologist, G Lawrence, Spatial Researcher Research and Evaluation Unit, RIMU October 2021	Outlines the loss of wetlands and biodiversity within Auckland Council Rural Urban boundary.
Auckland Council's Terrestrial Biodiversity Monitoring Programme (TBMP).	Outlines the loss of wetlands and biodiversity within Auckland Council Rural Urban boundary.
<i>Hastings V Auckland City Council</i> Environment Court 2001, A068/2001 at [98].	
Legal Submissions on behalf of Auckland Council in relation to Topic 023 Significant ecological area and vegetation management, 6 August 2015.	
The root causes of wetland loss in New Zealand: an analysis of public policies and processes. Denyer, K., Peters, M. (2020). National Wetland Trust.	

Consultation

1. This report covers the RMA 1991, Section 6, Matters of National Importance

Schedule 1 of the Act sets out the relevant consultation requirements. Mana whenua have been engaged in the preparation of the IPI plan change at various stages in the process as required by Schedule 1 of the Act.

The Council provided an opportunity to the Auckland community to comment on its 'preliminary response' proposals during the period April 19 to May 9, 2022. While not specifically consulted on, submitters were overwhelmingly in favour of the continued protection Significant Ecological Areas listed on AUP Schedule 3 and their application as a qualifying matter. There is a clear consensus across otherwise conflicting submissions that the retention and protection of these places is of value to Tāmaki Makaurau Auckland.

2. Internal consultation with subject matter expert:

- Jenny Fuller, Team Leader, Planning, Plans and Places, CPO
- Simon Mills, Team Manager, Ecological Advice, Environmental Services

3. This report cover RMA 1991, Section 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:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision and development.

Attachment 1: Spreadsheet Analysis of Significant Ecological Areas

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