

Proposed Plan Change 78 (PC78)

to the Auckland Unitary Plan (Operative in
part)

**SECTION 32 and s77K / s77Q alternative process for existing qualifying
matters**

**EVALUATION REPORT for qualifying matter s77I(a) and s77I(b) and
qualifying matter s77O(a) and s77O(b)**

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| <ul style="list-style-type: none">(a) a matter of national importance that decision makers are required to recognise and provide for under section 6(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010 |
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The provision of public access to the CMA, lakes and rivers

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Executive Summary

This report discusses the implications of providing for public access to the CMA, lakes and rivers through current provisions in the Auckland Unitary Plan (Operative in Part) (AUP) 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 (updated May 2022).

The provision of public access is a matter of national importance in accordance with s6 of the Resource Management Act 1991. Specifically:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

The provision of public access is also recognised by the New Zealand Coastal Policy Statement which requires development to be set back from the coastal environment to provide for it – amongst other things (Policy 6(i)).

The AUP provides public access through the taking of esplanade reserves at the time of subdivision and through the location of public open space along the coast and the banks of rivers and streams.

Esplanade reserves are subject to a Restricted Discretionary Activity resource consent and have a multifunctional purpose in also providing protection and maintenance of indigenous vegetation and the waterbody margins generally. Public access through these reserves can be restricted where it is considered unsafe for public to pass. Esplanade reserves are requirements of both residential and non-residential zones.

A key function of public open space in locations adjoining water bodies is to provide for public access, particularly for open space for informal recreation or sport and active recreation. It is acknowledged that these spaces also have a multifunctional purpose.

There are a number of precincts over areas providing public access to the coast, lakes and rivers. In the majority of cases these support and enable public access. These are expanded on in this report.

This qualifying matter does not rely on a spatial map, however it's presence can be easily detected in the GIS maps of the AUP.

The retention of the relevant provisions in Chapter E38 Subdivision – urban and the consequential objectives and policies of the relevant open space zones are sought to support this qualifying matter of providing public access to the CMA, lakes and rivers.

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 (PC78) 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 providing for public access to the CMA, lakes and rivers 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 77 I 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 PC78, evaluation of the provision of public access to the CMA, lakes and rivers as an existing qualifying matter 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 to this qualifying matter
- assessment of the identified relevant provisions within the AUP relating to the provision of public access against the MDRS in accordance with Schedule 3A of the the Act
- development of draft amendments to the operative district plan provisions of the AUP to implement this matter as a Qualifying Matter in accordance with s77I(a) and (b) and s77O(a) and (b)
- review of the AUP to identify all relevant provisions that require a consequential amendment to integrate the application of this qualifying matter
- review of the AUP Maps to assess the spatial application of this qualifying matter
- section 32 options analysis for this qualifying matter and related amendments

The scale and significance of the issues is assessed to be medium.

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.

Table 1 Integrated approach

| Standard sec 32 steps | Plus sec 77K / 77Q steps for existing qualifying matter |
|---|--|
| <p>Issue</p> <p>Define the problem- provide overview/summary providing an analysis of the qualifying matter</p> | <p>Sec 77K or 77Q (1) (a)</p> <p>Describe the qualifying matter.</p> <p>Identify by location (for example, by mapping) where an existing qualifying matter applies</p> |
| <p>Identify and discuss objectives / outcomes</p> | <p>Sec 77K or 77Q(1) (c)</p> <p>Identify relevant RPS objectives and policies. Describe why the Council considers that 1 or more existing qualifying matters apply to these areas and why the qualifying matter is necessary.</p> |
| <p>Identify and screen response options</p> | <p>Sec 77k or 77Q (1) (b)</p> <p>Consider a range of alternative density standards for those areas having considered the particular MDRS standards and/or Policy 3 intensification requirements</p> |
| <p>Collect information on the selected option(s)</p> | <p>Sec 77K or Q (1) (d)</p> <p>Describe in general terms for a typical site the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 having regard to the modified zone, with regard to the identified density options</p> |
| <p>Evaluate option(s) - environmental, social, economic, cultural benefits and costs</p> | <p>Sec 77K or Q (1) (b)</p> <p>Provide a general assessment of the benefits and costs of the options in the light of the new objectives introduced by the NPS-UD and MDRS relating to well-functioning urban environments</p> |
| <p>Overall judgement as to the better option (taking into account risks of acting or not acting)</p> | <p>Conclusion as to the implications of the qualifying matter for development capacity to be enabled by NPS-UD/MDRS in the areas where the qualifying matter applies</p> |

Issues

- The provision of public access to and along the coastal marine area, lakes and rivers is a Qualifying Matter in accordance with the following sections of s77I and s77O of the Act:

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

(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010;

- Specifically s6(d) states that *Council is required to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.*¹
- In accordance with Policy 6 of the New Zealand Coastal Policy Statement (NZCPS 2010) activities in the coastal environment are required to be
 - (i) set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and*
- Policy 18 of the NZCPS recognises the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:
 - c. maintaining and enhancing walking access linkages between public open space areas in the coastal environment;*
 - d. considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and*
 - e. recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.*
- This is supported by s229 of the Act which recognises a purpose of esplanade reserves/ strips is to:
 - b) enable public access to or along any sea, river or lake*
- Section 230 of the Act requires the taking of esplanade reserves to a depth of 20m from the mark of mean high water springs (MHWS) of the sea and along the bank of a river or stream and the margin of any lake. Standard E38.7.3.2(1) of the AUP requires this as a Restricted Discretionary Activity consent.
- Chapter B2.7 Open Space and recreation also has regard to both the Act and NZCPS through its general standard of B2.7.1(2) *Public access to and along Auckland's coastline, coastal marine area, lakes, rivers, streams and wetlands is maintained and enhanced.*
- Chapter E3 – requires esplanade reserves/strips to ensure public access. As a general standard (E3.6.1.1(8)) requires that an *'activity must not prevent public access along the lake, river, stream or wetlands'*.
- Chapter H7 – Open space zones – a key role is to provide public access along coastal and other water bodies when located against these. Particularly for H7.5 – Open Space – Informal recreation and H7.6 – Open Space – Sport and active recreation. Open space zones are a qualifying matter in their own right (specifically the open spaces for public use) and are being assessed separately

¹ S6(d) the Act

- In accordance with Chapter B8. Coastal - *The coast is one of Auckland’s most highly used and valued open space areas. It is used for a range of recreational activities and will be subject to increasing pressure as Auckland grows. To meet these growing needs it will be necessary to work towards linking walking access around the coast and to provide facilities such as boardwalks and boat ramps in appropriate locations. In parts of the coast it may be appropriate to identify areas for a particular recreational activity, in order to make the most efficient use of coastal space and to avoid conflicts between activities².*
- This qualifying matter does not rely on an overlay or spatial map. It relies on the taking of esplanade reserves/strips at the time of subdivision for **all zones** and the location of public open space against the water bodies. **Figure 1** below illustrates the presence of ‘green’ open space and esplanade reserves areas in the vicinity of the shoreline and other waterbodies.

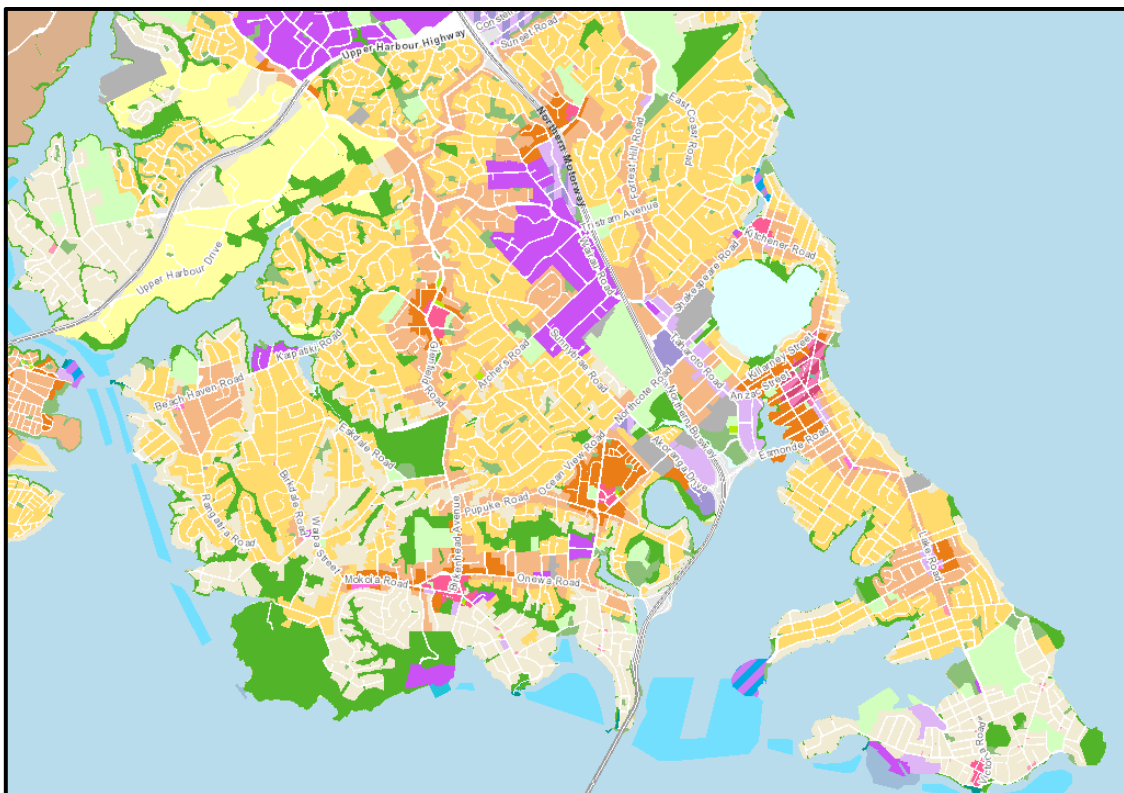


Figure 1 – Open space zones and esplanade reserves along the coastline and edges of waterbodies (needs legend)

- In accordance with E38.4.1.1 Activity table a subdivision that takes an esplanade reserve is subject to a Restricted Discretionary resource consent (RDA). Taking an esplanade strip or reducing either of these is subject to a Discretionary Activity resource consent. In considering the application for RDA the following apply:

E38.7.3.2. Subdivision establishing an esplanade reserve

- 1) *Any subdivision involving the creation of sites less than 4 hectares and the proposed site adjoins the line of mean high water springs or the bank of a river or stream 3 metres or more in width or any lake, must provide a minimum 20 metre wide esplanade reserve in accordance with section 230 of the Resource*

² Auckland Unitary Plan (Operative in Part) Chapter B8.2.6 Explanation.

Management Act 1991. This must be shown on the application plan and the subsequent land transfer plan.

2) *The width of any esplanade reserve must be measured in a landward direction at 90 degrees to the line of mean high water spring, or the bank of a river or stream or margin of any lake.*

3) *Standards E38.7.3.2(1) and (2) do not apply to the subdivision of Treaty Settlement Land where a marginal strip of at least 20 metres has been set aside under the Conservation Act 1987.*

- Exclusive occupation rights in the common marine and coastal area can be granted only where it can be demonstrated this is necessary for the efficient functioning of the use and development or is needed for public safety and will enable the most efficient use of space by activities in the common marine and coastal area and require that the loss of public access and recreational use is mitigated³.
- There are a number of precincts situated along the coast and other water bodies within the urban area of Auckland. Many of these acknowledge the provision of public access as objectives and policies. These are listed below in **Table 1**. Precincts are also a qualifying matter which is being assessed separately.

Table 1 – precincts alongside waterbodies in the urban area.

| Precinct | Location | Provision of public access |
|------------------------|------------------------------------|---|
| I205 Downtown precinct | Auckland central city - waterfront | I205.2 Objective (2) High quality public open space is provided and pedestrian connectivity from the core central business district to the waterfront and from Britomart to the west is enhanced. Policy (3) Provide for an interconnected network of high quality public open spaces and publicly accessible spaces which vary in form and function in highly accessible locations within the precinct that are activated by uses around their periphery |
| I208 Port precinct | Auckland central city - waterfront | I208.2 Objective (6) Public access to, and use and enjoyment of, the coastal marine area is maintained, and where practicable, enhanced, provided it does not adversely affect the efficient and safe operation of marine and port activities and development of the precinct. Policy (6) Restrict public access to the coastal marine area only where it is necessary to protect human health and/or safety, to facilitate the efficient and safe operation of activities including the requirements of customs and quarantine, or to maintain security |
| I211 Viaduct precinct | Auckland central city - waterfront | I211.2 Objective (1) An attractive public waterfront and world-class visitor destination that is recognised for its distinctive character, quality buildings, public open spaces, recreational |

³ Ibid. F2.14 - Use, development and occupation in the coastal marine area, Policy (2). Pg.27.

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| | | opportunities, community and cultural facilities and events. Policy (2) Enable a diverse range of activities while: (b) maintaining and enhancing public access to the waters edge |
| I214 Wynyard Quarter | Auckland central city - waterfront | I214.2 Objective (1)(e) access to and along the coast and enjoyment of the coastal environment with a network of open space while recognising the need to manage access with competing commercial activities; and Policy (16) Establish a framework which supports the development of key interconnected public open space across the precinct, including: (b) a network of coastal edge promenades and pedestrian accessways enabling access to and along the coast comprising a minimum width of 20 metres, with the exception of Sub-precinct C; Policy (20) Provide mechanisms to manage and, in some cases temporarily restrict, public access to and along some parts of the water's edge to enable marine and fishing industry, maritime passenger operations and events to operate. |
| I324 – Okahu Bay precinct | Central Isthmus - Eastern suburbs coastline | I324.2 Objective (3) Provide for an interconnected network of high quality public open spaces and publicly accessible spaces which vary in form and function in highly accessible locations within the precinct that are activated by uses around their periphery Policy (1) Avoid vessels being moored at Ōkahu Bay. |
| I325 Okahu Marine precinct | Central Isthmus - Eastern suburbs coastline | I325.2 Objective (1) The Okahu Marine Precinct is managed in an integrated way that supports the precinct's multi-use functions and maintains the recreation, visual amenity, landscape and ecological values of Okahu Bay. Policy (4) Require assessment of buildings and structures not otherwise provided for in the precinct or the underlying zoning so that: (b) public access via identified recreational trails is not restricted; |
| I505 Chelsea precinct | North shore – Birkenhead coastline | I505.3 Policy (20) Require land to be set aside for public access to the harbour and for recreation. |
| I530 Orewa 2 precinct | Northern coastline - Orewa | I530.2 Objective (8) Public access along waterways, and between each sub-precinct, is maintained and enhanced. |
| I604.Hobsonville Marina precinct | Hobsonville coast | I604.2 Objective (2) Development within the precinct is sensitive to the unique marine location, and provides for public access and enjoyment of the coast. |
| I605 Hobsonville Point precinct | Hobsonville coast | I605.3 (12) Encourage the establishment of public open space within the Catalina Sub-precinct (Sub-precinct E) to recognise and protect the collective historic and cultural heritage, natural ecological and open space |

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| | | values of Bomb Point and the adjoining coastal marine areas, and to provide for public access to the coast and protected historic heritage features. (17) Protect the natural values of, and public access to, the coast. |
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- The provision of public access to the various water bodies is incompatible with MDRS/ Policy 3 as it restricts development and activities within the reserve/ esplanade reserves in these locations. There are also areas where public access is restricted – such as areas that are deemed unsafe because of the activity, commercially sensitive areas. effectively restricts development (structures and use). It is worth noting the dual function of reserves and open space in protecting valuable natural values of these areas (which can also qualify as matters of national importance) while also providing this access. It is also noted that Open Space zones are being assessed separately as a qualifying matter. Nonetheless, for the reasons of providing public access to the coastline and the banks of these waterbodies, Council does not recommend amendments to these zones.

Objectives and Policies (existing)

The provision of public access to the CMA, lakes and rivers is a matter of national importance in the Act and as a function of the coastal environment is maintained and enhanced in accordance with Objective 6 of the NZCPS. Having regard to these the following objectives and policies of the AUP are relevant:

| AUP chapter | Objective | Policy |
|--|--|---|
| B2.7 Open space and recreation facilities | B2.7.1(2) Public access to and along Auckland's coastline, coastal marine area, lakes, rivers, streams and wetlands is maintained and enhanced. | B2.7.2 (9) Enable public access to lakes, rivers, streams, wetlands and the coastal marine area by enabling public facilities and by seeking agreements with private landowners where appropriate (10) Limit public access to and along the coastal marine area, lakes, rivers, streams and wetlands by esplanade reserves, esplanade strips or other legal mechanisms where necessary for health, safety or security reasons or to protect significant natural or physical resources. |
| B8.4 Public access and open space | B8.4.2(1) Public access to and along the coastal marine area is maintained and enhanced, except where it is appropriate to restrict that access, in a manner that is sensitive to the use and values of an area. (2) Public access is restricted only where necessary to ensure health or safety, for security reasons, for the efficient and safe operation of | B8.4.3(1) Subdivision, use and development in the coastal environment must, where practicable, do all of the following: (a) maintain and where possible enhance public access to and along the coastal marine area, including through the provision of esplanade reserves and strips; (b) be designed and located to minimise impacts on public use of and access to and along the coastal marine area; |

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| | <p>activities, or to protect the value of areas that are sensitive to disturbance.</p> | <p>(c) be set back from the coastal marine area to protect public open space values and access; and</p> <p>(d) take into account the likely impact of coastal processes and climate change, and be set back sufficiently to not compromise the ability of future generations to have access to and along the coast.</p> <p>(2) Provide for a range of open space and recreational use of the coastal environment by doing all of the following:</p> <p>(b) enabling the provision of facilities in appropriate locations that enhance public access and amenity values;</p> <p>(3) Restrict public access to and along the coastal marine area, particularly walking access, only where it is necessary to do any of the following: a-f</p> |
| <p>E3 Lakes, rivers, streams and wetlands</p> | <p>E3.2 (4) Structures in, on, under or over the bed of a lake, river, stream or wetland are provided for where there are functional or operational needs for the structure to be in that location, or traverse that area.</p> | <p>Structures and diversion of surface water</p> <p>(7) Provide for the operation, use, maintenance, repair, erection, reconstruction, placement, alteration or extension, of any structure or part of any structure in, on, under, or over the bed of a lake, river, stream or wetland, and any associated diversion of water, where the structure complies with all of the following:</p> <p>(d) the structure is for any of the following:</p> <p>(ii) designed to maintain and/or enhance public access to, over and along any lake, river, stream or wetland and their margins;</p> <p>Disturbance and depositing of any substance</p> <p>(9) Provide for the excavation, drilling, tunnelling, thrusting or boring or other disturbance, and the depositing of any substance in, on or under the bed of a lake, river, stream or wetland, where it complies with all of the following:</p> <p>(b) the activity is required for any of the following:</p> <p>(ii) to maintain and/or enhance public access to, over and along any lake, river, stream or wetland and associated margins;</p> <p>Riparian margins</p> <p>(16) Protect land alongside streams for public access through the use of esplanade reserves and esplanade strips, marginal strips, drainage reserves, easements or covenants where appropriate and for water quality, ecological and landscape protection purposes</p> |

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| <p>E38 Subdivision – Urban</p> | <p>E.38.2(1) Land is subdivided to achieve the objectives of the residential zones, business zones, open space zones, special purpose zones, coastal zones, relevant overlays and Auckland-wide provisions</p> <p>(3) Land is vested to provide for esplanades reserves, roads, stormwater, infrastructure and other purposes.</p> | <p>(24) Require esplanade reserves or strips when subdividing land adjoining the coast and other qualifying water-bodies.</p> <p>(25) Avoid reducing the width of esplanade reserve or strip, or the waiving of the requirement to provide an esplanade reserve or strip, except where any of the following apply:</p> <p>(a) safe public access and recreational use is already possible and can be maintained for the future;</p> <p>(h) a reduced width in certain locations can be offset by an increase in width in other locations or areas which would result in a positive public benefit, in terms of access and recreation;</p> <p>(i) restrictions on public access are necessary to ensure a level of security for business activities in limited circumstances having regard to the policies in B8.4 relating to public access and open space in the coastal marine area; or</p> <p>(j) direct access to the sea or other water body is required for a business activity in limited circumstances</p> <p>(26) Require esplanade reserves rather than esplanade strips unless any of the following apply:</p> <p>(c) the opportunity to acquire an esplanade reserve is unlikely to arise but continuity of access is desirable;</p> |
| <p>F2 Coastal – General coastal marine</p> | <p>Drainage, reclamation and declamation</p> <p>F2.2.2(3) Public access, amenity and Mana Whenua values are not adversely affected by inappropriate reclamation, drainage or declamation.</p> | <p>F2.2.3(3) Provide for reclamation and works that are necessary to carry out any of the following:</p> <p>(d) maintain or enhance public access or linkages with public open space to, within or adjacent to the coastal marine area;</p> <p>(8) Maintain and where possible enhance public access to and along the coastal marine area to the extent practicable in providing for reclamation, declamation and drainage, having regard to all of the following:</p> <p>(b) whether a restriction on public access is necessary for public health, safety or operational reasons;</p> <p>(c) and the ability to remedy or mitigate any loss of public access</p> <p>(9) Require an esplanade reserve or strip to be included on reclaimed or drained areas of the coastal marine area, unless a restriction on public access is provided for under B8.4.2(3) in B8.4 Public access and open space.</p> |

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| | | <p>(13) Enable the declamation of reclaimed land where it would achieve any of the following:</p> <p>(b) provide for better public access or greater open water space;</p> |
| F2 Coastal – General coastal marine | <p>F2.7.2 Vegetation: Mangrove management (3) Restore or maintain natural character and ecological values including significant wading bird areas, public access, navigation, riparian access and amenity values.</p> | <p>F2.7.3 (3) Provide for mangrove removal where mangroves have spread and the proposed removal is necessary to maintain, restore or enhance any of the following:</p> <p>(c) public access to or along the coastal marine area;</p> |
| F2 Coastal – General coastal marine | <p>F2.8 Vegetation – removal of exotic species and Pacific oyster shell</p> <p>B2.8.2(1) Exotic species are not introduced so that indigenous biodiversity, public access and amenity values are restored, enhanced or maintained.</p> | <p>F2.8.3(2) Provide for the removal of Pacific oyster reefs and shell where:</p> <p>(a) they are restricting access, navigation, recreational use and detracting from the amenity value of an area;</p> |
| F2 Coastal – General coastal marine | <p>F2.14 Use, development and occupation in the coastal marine area</p> <p>(1) The high public value of the coast and coastal marine area as open space area with free public access is maintained.</p> <p>(3) Limit exclusive occupation to where it can be demonstrated it is necessary for the efficient functioning of the use and development or is needed for public safety, and any loss of public access and use as a result is minimised and mitigation is provided where practicable.</p> <p>(5) Activities that do not have a functional or operational need to be undertaken in the common marine and coastal area are provided for within zones or precincts only where they can demonstrate:</p> <p>(c) they are consistent with the use and value of the area, including the adjacent land area, and do not compromise natural character, ecological, public access, Mana Whenua, historic heritage, or amenity values</p> | <p>F2.14.3 (1) Enable use and occupation of the common marine and coastal area to provide for use and development that:</p> <p>(a) has a functional or operational need to be below mean high water springs and may require public access to be restricted;</p> <p>(2) Provide for exclusive occupation rights in the common marine and coastal area only where it can be demonstrated this is necessary for the efficient functioning of the use and development or is needed for public safety, and will enable the most efficient use of space by activities in the common marine and coastal area and require that the loss of public access and recreational use is mitigated.</p> <p>(4) Avoid granting rights of exclusive occupation in areas with high public use and where it will have a significant adverse effect on public access and recreational use of the common marine and coastal area.</p> <p>(5) Provide for use and occupation of the common marine and coastal area by infrastructure, where it does not have a functional need to locate in the common marine and coastal area but has an operational need, and only where it cannot be practicably located on land and avoids, remedies, or mitigates other adverse effects on:</p> <p>(b) public access, recreational use and amenity values;</p> |

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| <p>F2 Coastal – General coastal marine</p> | <p>F2.15.2 Aquaculture (2) New aquaculture or the expansion or realignment of established aquaculture activities, occurs in appropriate locations and at appropriate scales that avoid, or where appropriate minimise, conflicts with ecological, social and cultural values and other uses.</p> | <p>F2.15.3(2) Require, in addition to Policy F2.15.3(1), that new aquaculture activities be designed and located to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on the characteristics and qualities that contribute to the values of: (d) public access, particularly to highly used areas.</p> |
| <p>F2 Coastal – General coastal marine</p> | <p>F2.16.2 Structures (2) Structures provide for public access and multiple uses where practicable, other than those restricted by location or functional requirements.</p> | <p>F2.16.3 (7) Require structures in the Coastal – General Coastal Marine Zone to be located to minimise: (c) adverse effects on public access to and along the coastal marine area; (12) Enable structures in appropriate locations where the structure is to provide, or enhance: (a) public access, use or amenity values, including artworks in the coastal marine area; and (16) Require the design and location of hard protection structures to: (b) avoid restricting public access to or along the coastal marine area; and (23) Enable the removal of unlawful, abandoned, unsafe and redundant structures where the structure has been assessed as: (c) restricting public access and use of the area;</p> |
| <p>H7.5 Open Space – Informal recreation</p> | <p>H7.5.2(4) Small-scale, informal land-based water-related recreational facilities are provided for while maintaining and enhancing public access to and along the coast</p> | <p>H7.5.3 (9) Avoid use and development in locations adjoining the coast or water bodies where they will have more than minor adverse effects on any of the following: (a) public access;</p> |
| <p>H7.6 Open Space – Sports and active recreation</p> | <p>H7.6.2(3) Larger scale, or clusters of land-based marine-related recreation facilities, are recognised and provided for while maintaining and enhancing public access to and along the coast.</p> | <p>H7.6.3(7) Require activities and development in locations adjoining the coast or a water body to meet all of the following: (a) maintain public access, unless access is to be excluded for safety and security reasons;</p> |

The Open Space zones impose riparian yards against the edge of permanent and intermittent streams and a coastal protection yard against the coastline. These generally restrict buildings/structures to maintain water quality and to provide protection from natural hazards. To ensure that the role of providing public access is supported the purpose statement in H7.11.3 – Yards is recommended to be amended as noted here:

“...to ensure buildings are adequately setback from streams and the coastal edge to maintain water quality, provide public access and provide protection from natural hazards”.

The depth of these yards varies depending on the zone (i.e – Conservation, Informal Rec). As stated earlier these areas available for public use in these zones are being assessed separately as a qualifying matter and therefore are not addressed further here. However, it is preferred that the above elements of the open space zones be retained.

It is considered that the provision of public access to the CMA, lakes and rivers through the AUP only constrains the anticipated intensification of MDRS/NPS-UD to the extent of requiring land be set aside for this purpose at the subdivision stage. This is subject to a Restricted Discretionary resource consent. As stated earlier, this land serves a multifunctional purpose, being acquired for other reasons such as the maintenance and enhancement of the ecological values of the coastal area or reducing the impact of the effects of climate change. The preference is to retain the various objectives and policies that provide for public access.

Development of Options

As discussed in the overview report the ‘default base’ for consideration of options no longer includes a status quo of the AUP as the IPI is required to incorporate the mandatory requirements of the NPS-UD Policy 3 (updated May 2022) and the MDRS of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. Therefore, against this base the following options were considered for the qualifying matter:

1. **Adoption of the qualifying matter in full** – [Preferred option] this option includes retaining objectives, policies and provisions of Chapters E38, E3, F2, and the open space zones to ensure that public access to the various water bodies continues to be provided for through the AUP. These provisions are identified as mechanisms of the qualifying matter.
2. **Removal of the qualifying matter** – this option seeks the removal of the provision of public access to the CMA, lakes and rivers – the reverse of above. While the esplanade reserves and strips may be sought and provided for other reasons their specific connection to public access is removed.

Additional options have not been considered as the taking of esplanade reserves and the width of these are requirements of the Act. Chapter E38 seeks an esplanade reserve of 20m in accordance with the RMA. As discussed in this report esplanade reserves serve more than one purpose so will be provided in any case. The costs and benefits of providing these are explored below.

Consequences for development potential

The provision of public access to the CMA, lakes and rivers relies on the taking of an esplanade reserve or strip at the time of subdivision and the location of public open space zones along the coastline and banks of lakes and rivers. As discussed earlier these mechanisms of the qualifying matter have multifunctional purposes in assisting the enhancement and maintenance of the natural values of the water bodies and their margins and in providing public open space for the recreational needs of the communities.

Through these mechanisms the effect of the qualifying matter on the development enabled by the MDRS and Policy 3 is not directly realised. Taken at subdivision stage the area of the esplanade reserve is effectively absolved of any development potential and the provision of open space is a fundamental requirement of urbanisation to meet the recreational needs of the communities. Their location against water bodies serves a dual purpose of providing for

the recreational and health and well-being needs of the communities. In fact this qualifying matter is considered to meet Objective 1 of the NPS-UD and MDRS in that the resultant reserves/ open space areas provide for the well-being of the communities both locally and regionally.

Evaluation of options

The table below provides a simple analysis of the costs and benefits associated with the options discussed above.

Evaluation of the options is guided by the relevant objectives of the NPS-UD/MDRS, 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:

- i. housing needs and demand; and*
- ii. the neighbourhood's planned urban built character, including 3-storey buildings.*

| Qualifying matter | Option 1 retain QM | Option 2 – remove QM |
|---|--|--|
| Costs of applying the QM – broader social, economic, environmental, cultural | Low econ costs – esplanade reserves required at subdivision stage and costs can be carried by the development potential of the remaining land area. Open space is a multifunctional QM – no development potential. No social, environmental or cultural costs as access is enabled. | High social, cultural costs as access to coast and waterbodies is not provided through esplanade reserves. Limited to consequential access through public open space. No economic costs as area of land is still provided for other functions. |
| Costs of applying QM – housing supply / capacity | As above – development capacity 'hidden' by subdivision up front | No economic costs as area of land is still provided for other functions. |
| Benefits of the QM – broader social, economic, environmental, cultural | High social, cultural benefits as access maintained and enhanced. No economic benefits as area of land is still provided for other functions | No economic benefits as area of land is still provided for other functions. No social/cultural benefits as no guaranteed access through esplanade reserves. |

In summary, the provision of public access to the CMA, rivers and lakes meets Objective 1 above in that these areas provide for the social and cultural well-being of the people and communities now and into the future. The additional function of ensuring protection of the vegetation and biodiversity of the coastline and the margins of the rivers and lakes also means that these areas provide for the environmental well-being of the people and communities.

Risks of Acting or Not Acting

Section 32(2)(c) of the Act requires this evaluation to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. The information regarding providing public access to the CMA, lakes and rivers as a qualifying matter, is already provided in the AUP. It is considered that this information is certain and sufficient having been through a statutory process to be included in the AUP.

Overall conclusion

The provision of public access to the CMA, lakes and rivers is a matter of national importance. The AUP provides for this through the taking of esplanade reserves and the location of public open space alongside the various waterbodies around the region. For the most part these mechanisms are entrenched in the urban area and serve additional functions. Neither have a noticeable cost to the development potential of the relevant residential zones. Therefore, while the provision of public access to the CMA, lakes and rivers is considered a qualifying matter in accordance with Policy 4 of the NPS-UD and the MDRS its effect on the anticipated intensification is hidden through its other consequential functions.

Information Used

The information relied on for this report is acknowledged here:

| Document | How did it inform the development of the plan change |
|--|---|
| Resource Management Act 1991 | Public access is a section 6 matter of national importance – to be maintained and enhanced |
| New Zealand Coastal Policy Statement 2010 | Policy 6 - Public access to be enabled along the coast. |
| Auckland Unitary Plan (Operative in Part) | Chapter E38 Subdivision – Urban -relevant provisions for esplanade reserves and strips; H7 Open space zones – objectives and policies providing incorporation of public access. |

Consultation

Schedule 1 of the Act sets out the relevant consultation requirements for PC78.

Mana whenua have been engaged at various stages in the preparation to provide feedback on the process and to the development of PC78.

Council provided an opportunity to the Auckland community to comment on its 'preliminary response' proposals during the period April 19 to May 9, 2022. The consultation documentation included Information Sheet #6: Qualifying matters (Part 1) which provided a definition of a qualifying matter and an explanation of their ability to constrain the anticipated intensification in relation to NPS-UD and the Act.

The government-specified qualifying matters and their corresponding list of AUP provisions were also provided as part of this consultation including the provision of public access to the CMA, lakes and rivers under s77(a) and (b) and s77O(a) and (b).

Throughout this process subject matter experts have also been consulted regarding the history of the heritage area and the development of the response to the anticipated intensification of the NPS-UD and MDRS.