SECTION 42A REPORT

Officer's written right of reply 23 August 2024

Hearing 4 – Coastal Environment, Natural Features and Landscapes, Natural Character

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1 Introduction

1. This right of reply addresses the Coastal Environment, Natural Features and Landscapes and Natural Character topics that were considered in Hearing 4 on the Proposed Far North District Plan (**PDP**) held on 5-8 August 2024. It has been prepared by:

    a. Jerome Wyeth, author of the section 42A report for the Coastal Environment topic.

    b. Ben Lee, author of the section 42A reports for the Natural Features and Landscape and Natural Character topics.

2. In the interests of succinctness, we do not repeat the information contained in Section 2.1 of the section 42A reports and request that the Hearings Panel (**the Panel**) take this as read.

2 Purpose of Report

3. The purpose of this report is primarily to respond to the evidence of submitters that was pre-circulated and presented at Hearing 4 on the PDP in relation to the Coastal Environment, Natural Features and Landscapes and Natural Character topics and to reply to questions raised by the Panel during the hearing. Giving the overlapping nature of these three topics, we have jointly responded to some "common issues" in Issue 1 below following by a response to specific issues within each of the three topics.

3 Consideration of evidence recieved

4. The following submitters provided evidence, hearing statements and/or attended Hearing 4 raising issues relevant to the Coastal Environment, Natural Features and Landscapes and Natural Character topics:

    a. Bayswater Inn Ltd (S29).

    b. Bentzen Farm Limited (S167), Setar Thirty Six Limited (S069), The Shooting Box Limited (187), Matauri Trustee Limited (243), P S Yates Family Trust (333)**,** and Mataka Station Residents Association Incorporated (230)**,** collectively referred to as "**Bentzen Farm Limited and others**".

    c. Cavalli Properties (S177).

    d. Foodstuffs North Island Limited (S363).

    e. Far North Holdings Limited (S320).

    f. Federated Farmers (S421).

    g. Fish and Game (S436).

h. Haititaimarangai Marae Kaitiaki Trust (S394).

i. Horticulture New Zealand (S159).

j. IDF Developments Limited (S253).

k. John Andrew Riddell (S431) and Robert Adams (S150).

l. J Bayley (S490), M Wyborn (S497), P Thornton, Omarino Residents Association (FS411), M Jepson (S494), R Kloet (495), C Heatley (FS410), W Goodfellow (S493), collectively referred to as "**J Bayley and others**".

m. Living Waters Bay of Island (S303).

n. Luckland Farms Limited (S551).

o. Lynley Newport (S192).

p. Far North Holdings Limited (S320).

q. Pacific Eco-Logi (S1451).

r. Peter Malcom (S414).

s. Tapuaetahi Incorporation (S407).

t. The "**Teleco Companies**" (Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited, Connexa Limited and FortySouth) (S282).

u. Transpower New Zealand Limited (S454).

v. Top Energy (S483).

w. Vision Kerikeri (S521), Carbon Nuetral Trust (S529), and Kaipiro Conservation Trust (S442), collectively referred to as "**Vision Kerikeri and others**".

x. Waitangi Limited (S503).

y. Waiaua Bay Farms Limited (S463).

z. Waitoto Developments Limited (S263).

aa. Woolworths New Zealand Limited (S458).

bb. Zejia Hu (S424).

5. Several submitters generally support the recommendations in the section 42A reports for these three topics, and many submitters raise common issues. As such, we have only addressed evidence where we consider additional comment is required and have grouped the issues raised in submitter evidence where appropriate. We have grouped these matters into the following headings:

    a. Issue 1 – Common issues for the three topics (Jerome Wyeth and Ben Lee)

    b. Issue 2 – Coastal Environment Objectives (Jerome Wyeth)

    c. Issue 3 – Coastal Environment Policies (Jerome Wyeth)

    d. Issue 4 – Coastal Envronment Rules (Jerome Wyeth)

    e. Issue 5 – Coastal Envronment Standards (Jerome Wyeth)

    f. Issue 6 – Natural Features and Landscapes Overview, Objectives and Policies (Ben Lee)

    g. Issue 7 – Natural Features and Landscapes Rules and Standards (Ben Lee)

    h. Issue 8 – Natural Character Overview, Definition, Objectives and Policies (Ben Lee)

    i. Issue 9 – Natural Character Rules and Standards (Ben Lee)

    j. Issue 10 – Mapping (Jerome Wyeth and Ben Lee)

    k. Issue 9 – Miscellaneous (Jerome Wyeth and Ben Lee).

6. We have also addressed various questions raised by the Hearing Panel at the end of this reply – refer to the section "Additional Questions from the Hearing Panel".

7. We have used the following mark-ups in the provisions to distinguish between the recommendations made in the section 42A report and our revised recommendations in this reply evidence:

    a. Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and

    b. Revised recommendations from this Report are shown in red text (with red underline for new text and ~~strikethrough~~ for deleted text)

8. For all other submissions not addressed in this report, we maintain our position as set out in our original section 42A Report.

9. We have adopted the term "overlay chapters" where relevant in this report as shorthand to collectively refer to the Coastal Environment (**CE**), Natural Character (**NATC**) and Natural Features and Landscapes (**NFL**) chapters.

3.1 Issue 1: Common issues

Overview

Relevant Document	Relevant Section
Section 42A Report	Various within the three reports
Evidence and hearing statements provided by submitters	Top Energy, Transpower, John Andrew Riddell, Bentzen Farms and others, J Bayley and others, Far North Holdings Limited, Far North Holdings Limited, Waitangi Limited, HortNZ, KiwiRail, and Woolworths.

Matters raised in evidence

10. A number of submitters raised common issues that relate to both the Coastal Environment, Natural Features and Landscapes and (to a lesser extent Natural Character) topics. These common issues are outlined below and addressed together for consistency.

<u>Infrastructure objectives and policies</u>

11. Mr Badham on behalf of Top Energy raises concerns about the section 42A report recommendations in relation to additional objectives and policies specific to infrastructure in the Coastal Environment and Natural Features and Landscapes chapters. While Mr Badham accepts and agrees that infrastructure objectives and policies should be located in the Infrastructure Chapter in the PDP, he is concerned that it is difficult to understand how these Hearing 4 submission points will be considered until the Infrastructure Chapter is considered (Hearing 12). To address this concern, Mr Badham recommends that:

    a. The Top Energy submission points on infrastructure specific objectives and policies are deferred until Hearing 12.

    b. An advice note be added to the Coastal Environment and Natural Features and Landscapes chapters to direct plan users to the Infrastructure Chapter.

12. Mr Badham also notes inconsistencies in how infrastructure is referenced in the overlay chapters given that IB-P5 in the Ecosystems and Indigenous Biodiversity chapter specifically refers to infrastructure and regionally significant infrastructure. Mr Badham is concerned that this inconsistency between the overlay chapters could indicate to plan users that there lack of support for infrastructure in other overlay chapters. For that reason, Mr

Badham considers that all relevant chapters should consistently recognise the operational and functional needs of infrastructure.

13. Ms Dines on behalf of Transpower agrees with the general intent outlined in the section 42A Report for the Infrastructure Chapter to provide a "*one-stop shop*" policy framework for the National Grid (to be considered in Hearing 12). Ms Dines agrees that this policy framework can clarify the relationship between the infrastructure and overlay provisions throughout the PDP rather than cross-referencing the Infrastructure Chapter throughout the overlay chapters.

14. Ms Dines notes that the effectiveness of this approach will depend upon the specifics of the provisions in the Infrastructure Chapter provisions (including the policy specific to the National Grid). Consequential amendments to the overlay chapters may therefore be sought if their primary relief is not supported by reporting officers and the Hearing Panel

'Provide for' vs 'enable' in policies

15. Mr Riddell disagrees with the section 42A reports recommendations that policies CE-P6, NATC-P3 and NATC-P4 should use the word "*enable*" instead of "*provide for*". Mr Riddell's argument is that "*enable*" is an active term while "provide for" is passive. Mr Riddell further suggests that "*enable*" implies an element of prior approval or encouragement (e.g. via RPS policy).

16. Mr Riddell contrasts CE-P6, NATC-P3 and NATC-P4 (which he suggests should be "*provide for*" policies) with the example of Policy CE-P5 which he agrees should be a "*enable*" as it rightly seeks to enable (encourage) land use and subdivision where there is adequate infrastructure etc. Mr Riddell also suggests the change to NATC-P4 from "*provide for*" to "*enable*" is beyond the scope of a Clause 16(2) change because it has more than minor effect.

Activity status when compliance not achieved in ONC, HNC, ONL and ONF overlays and freshwater margins

17. Several submitters (including Bentzen Farms and others, J Bayley and others, and Top Energy) raised concerns in their evidence about the activity status when compliance is not achieved with permitted activities in the ONC, HNC, ONL and ONF overlays and freshwater margins. These submitters are generally concerned that a non-complying (or discretionary) activity status is too onerous, particularly for existing activities, and request that this is amended to be restricted discretionary activity.

Special Purpose Zone requests

18. Two submitters at Hearing 4 presented based on their primary relief which is for a Special Purpose Zone (SPZ) to apply to their area of interest. These submitters presented at Hearing 4 as the primary relief sought is intended

to address how these overlays would apply to the requested SPZ. The two submitters are:

a. Far North Holdings Limited who is requesting a SPZ for the Opua Marina which is subject to the coastal environment overlay.

b. Waitangi Limited who is requesting a SPZ for the Waitangi Estate which is subject to the coastal environment, HNC and ONL overlays.

19. The requested relief for a SPZ is to be considered through the future rezoning hearings. Accordingly, this reply evidence only addresses the secondary relief sought by these submitters where relevant.

Controlled activity rule for buildings on approved building platform

20. Peter Hall on behalf of Bentzen Farms and others supports the inclusion of the new controlled activity rule in the NFL and CE chapters for building on an approved building platform. Mr Hall notes that, without this rule, new residential buildings on building platforms approved by previous subdivision consents would be non-complying or discretionary in the relevant overlay. Mr Hall considers that this is consistent with Method 4.6.1(ii) in the RPS which directs that district plans should "*not unduly restrict existing authorised use of land"* when implementing Policy 4.6.1.

21. However, Mr Hall recommends the following amendments to the NFL and CE controlled activity rule:

a. **Minor residential units**: an amendment is requested to provide for both residential units and minor residential units. Mr Hall notes that "*residential units*" and "*minor residential units*" are defined in the PDP, but it is unclear whether the intent is to capture both. Mr Hall considers that this should be clarified to provide for situations where a minor residential unit is sought alongside the principal residential unity.

b. **More targeted matters of control:** Mr Hall considers that the section 42A report recommended matters of control are too broad, particularly as the effects of the subdivision would have already been assessed. Mr Hall recommends more targeted matters of control covering four matters as set out in paragraph 8.16 of his evidence.

c. **Implemented subdivisions**: Mr Hall supports the intent to exclude lapsed subdivisions but considers an additional reference to "implemented" will more clearly provide for situations where the titles have been issued (e.g. Mataka and Ōmarino) but there is no building.

d. **Non-notification**: Mr Hall recommends amendments to make it clear that such applications will be dealt with on a non-notified basis, unless special circumstances apply. While Mr Hall acknowledges that

controlled activities will be non-notified under the RMA (unless requested by applicant or special circumstances apply), he considers that it is clearer to plan users to express this intent in the rule.

e. Mr Goodwin's landscape evidence referred to "*identified building area*" as a potential alternative to the term "*building platform*". During Mr Hall's and Mr Goodwin's presentation to the Hearing there was a discussion about these terms and the potential to provide a definition to provide certainty on what is meant by a "*building platform*". The Hearing Panel indicated they would like the reporting officers to consider and provide a response to this.

Earthworks and indigenous vegetation clearance

22. Mr Hall on behalf of Bentzen Farms and others request that earthworks and/or indigenous vegetation clearance are permitted activities under rules CE-R3 and NFL-R3 for the following activities:

a. **Maintenance of domestic gardens**: Mr Hall considers that it is not uncommon to replace indigenous vegetation as part of domestic gardening and on large properties this could exceed the permitted activity thresholds. Mr Hall also considers that an exemption for these areas is appropriate given domestic gardens do not relate to the values of overlay areas and therefore allowing for clearance for this purpose is unlikely to affect these values.

b. **Formation of walking tracks less than 1.2m wide**: Mr Hall considers that this exemption is important to allow tracks to be established for bait and trapping purposes to protect and enhance indigenous biodiversity. Mr Hall also notes that this request is consistent with the exemption provided IB-R1.

c. **Removing regenerating manuka or kanuka for maintenance of pasture (with additional conditions)**[1]: Mr Hall notes that removal of this type of vegetation in this manner is a normal part of farming practice, is unlikely to have adverse effects on the values of HNC or ONC areas and is consistent with a similar permitted activity clause in IB-R1 which enables indigenous vegetation less than 10 years to be cleared.

Requirement for earthworks and vegetation clearance to be "*the minimum necessary*"

23. Mr Badham on behalf of Top Energy disagrees with the recommendation to include the term "*minimum necessary*" in rules IB-R1 PER-1 and NATC-R3-PER-1, and requests it be deleted on the basis that it is ambiguous and

[1] Mr Hall notes that this rule has been adapted from Rule 2, Section 29 – Biodiversity, Thames Coromandel District Plan (Operative in Part 2024) which applies generally and to the overlays.

potentially ultra vires as permitted activity rules need to be certain and enforceable.

Earthworks and indigenous vegetation clearance for biosecurity purposes

24. We recommended in our section 42A reports the following amendment to the earthworks and indigenous vegetation clearance permitted activity rules in the four overlay chapters:

> *Clearance for biosecurity reasons to control pests*

25. We also recommended a new definition for pests as follows:

> *means an organism specified as a pest in the current Northland Pest Management Plan.*

26. Mr Hodgson on behalf of HortNZ outlines that in relation to the exemptions for earthworks and indigenous vegetation clearance for biosecurity reasons, the relevant rules should be amended to enable earthworks or indigenous vegetation clearance required to respond to "*an incursion by an unwanted organism*". Mr Hodgson considers that the recommended definition of "*pests*" is too limiting in this respect as it does not cover unwanted organisms which can present a significant biosecurity risk.

Rules for upgrading network utilities

27. Mr Badham on behalf of Top Energy states that the section 42A reports for Hearing 4 have helpfully accepted that the overlay provisions should better recognise and enable network utilities given the economic and community benefits of such infrastructure. However, Mr Badham considers that there are several practical issues/limitations with the new rules recommended for infrastructure based on the advice within the MAL report which will inappropriately constrain the operational and functional needs of Top Energy and other infrastructure providers. The specific concerns are as follows:

    a. **10m height restriction**: Mr Badham considers that the 10m height threshold is arbitrary with no details or technical basis to determine why this is considered acceptable. Mr Badham also advises that a standard replacement pole is 12.5m based on recent specifications and operational requirements.

    b. **Poles and pi-poles**: Mr Badham notes that there are situations where a pi-pole replacement is required for structural and operational perspective (e.g. to allow a greater span distance between poles which can result in less poles and therefore less adverse effects). Mr Badham is therefore concerned that requiring consent to replace a pole with a pi-pole of the same height in a similar location will simply add unnecessary cost and delay without a clear effects-based justification for doing so.

c. **20% GFA limit**: Mr Badham considers that it is unclear how this standard can practicably be applied to existing network poles based on the PDP definitions of "*structure*" and "*Gross Floor Area*". As such, Mr Badham considers that power poles, transformers, equipment cabinets and other such infrastructure for network utilities should be specifically excluded from this rule.

d. **Inconsistencies of terms**: Mr Badham notes that there are inconsistencies in how network utilities are referred to in the rules, that the reasons for these inconsistences are unclear, and this could lead to interpretation issues. Mr Badham considers that the relevant rules and standards should consistently refer to "*above ground network utilities*" as underground network utilities will not have adverse landscape and visual effects.

e. **Definition of upgrade**: Mr Badham considers that there should be a definition of "*upgrade*" for infrastructure in the PDP as requested in the Top Energy submission as follows *"means an increase in the capacity, efficiency or security of existing infrastructure*." While definitions are not being considered until Hearing 18, Mr Badham considers that it is appropriate to consider this requested definition now in the context of the overlay rules in Hearing 4.

f. **Matters of discretion**: Mr Badham generally supports the recommended matters of discretion, but notes that the existing clause in CE-P10, NFL-P8 and NATC-P6 refers to "*the operational or functional need of any regionally significant infrastructure to be sited in the particular location."* Mr Badham considers should refer to infrastructure more generally (rather than be limited to regionally significant infrastructure) which is consistent with SD-IE-O1.

g. **Cross reference to R1**: Rules NFL-R3, CE-R3 and NATC-R3 permit earthworks and vegetation clearance associated with the upgrading of above ground networks utilities as permitted under the corresponding R1 rule. Mr Badham considers that the reference to the corresponding R1 rule should be either deleted or more specificity proposed as to which elements of R1 network utilities need to comply with. Mr Badham is of the opinion that many of the criteria listed under the rule are irrelevant to the consideration of upgrading network utilities.

Repair or maintenance rules

28. The evidence summarised in this section relates to the "*Repair or maintenance*" rules in the NATC, NFL and CE chapters. Each of the section 42A reports recommended the rules be deleted.

29. Mr Hodgson on behalf of HortNZ is largely supportive of the section 42A recommendations to delete the rules. Ms Jacobs on behalf of Waitangi Limited also accepts the section 42A recommendations to delete this rule.

30. Conversely, Ms Butler on behalf of KiwiRail disagrees with the recommendations to delete the rules. KiwiRail accepts that as notified, the rules could have perverse outcomes by permitting repair or maintenance of some buildings / structures with no constraints. However, KiwiRail requests that the rules be redrafted to achieve the intended outcome (rather than be deleted) given there are no other rules in the overlay chapters which specifically allow for the repair and maintenance of existing network utilities.

31. Mr Badham on behalf of Top Energy also disagrees with the recommendation to delete the rules. Mr Badham considers that it is important that there is explicit provision for repair and maintenance, especially for network utilities, in these overlay chapters and therefore recommends that the rules should be retained as notified in the PDP.

Building height

32. Mr Hall on behalf of Bentzen Farms and others recommends exemptions to the maximum height limit for minor roof-top projections in NATC-S1, CE-S1 and NFL-S1. Mr Hall is of the opinion that the maximum height standards in these chapters should adopt the same height exclusions in other PDP chapters for solar and water heating, chimney structures, satellite dishes, architectural features (subject to certain controls). Mr Hall considers that these exemptions are necessary to avoid unnecessary consent requirements and will not have adverse effects on the values of the overlays.

33. Mr Hall also notes that he would support an increase in the maximum height limit from 5 to 5.5m. Mr Hall acknowledges that this increase is not supported by the landscape experts, but it would be consistent with some other district plans and will provide more flexibility for sloping roofs on sloping sites, which are common in the coastal environment.

Colour and materials

34. Ms Ritchie on behalf of Woolworths supports the section 42A recommended amendments for CE-S1 to only apply to new buildings. However, Ms. Ritchie does not support CE-S1(b) retaining the specific reference to BS5252 standard colour palate. Mr Ritche considers that it is unnecessarily specific to require the colour of a building to be on a predefined palate from one paint manufacturer. As such, Woolworths maintain the position in their original submission that the reference to BS5252 should be removed.

35. Ms Jacobs on behalf of Waitangi Limited generally accepts the recommended amendments to CE-S2 (and NFL-S2) but has a number of outstanding concerns. Specifically, Ms Jacobs considers that:

    a. The standards could be interpreted in a way that requires natural materials to achieve the 30% reflectivity, which is not practical. Ms Jacobs requests that CE-S3 is split into three clauses to address this concern and also outlines recommended amendments to clarify how and when reflectance value should be considered.

b. The reference to the BS5252 colour palette should be amended to refer to "*or equivalent*" to capture those products that might fall outside the prescribed BS5252 colour range.

Analysis

Relationship with Infrastructure Chapter

36. There is broad agreement that the Infrastructure Chapter should contain provisions specific to infrastructure. However, as noted in paragraph 68 of the Coastal Environment section 42A report this is not an "absolute" rule, and infrastructure provisions are included in other PDP chapters where this is considered necessary/appropriate for the particular topic. This include the rules for buildings and structures in the coastal environment, ONC, ONC, ONL and ONF overlay which apply to infrastructure (these provisions are discussed further below).

37. During the hearing, the Panel recognised the important relationship between the Infrastructure Chapter and other PDP chapters (including the Natural Environmental Values chapters) and has directed further engagement and potential caucusing between Council and infrastructure providers ahead of Hearing 12 (Energy, Infrastructure and Transport). This will consider the above issues, the specific provisions within the Infrastructure Chapter, and may result in consequential amendments being recommended to other PDP chapters. On this basis, we do not recommend any advice notes within the Coastal Environment and Natural Features and Landscapes chapters directing plan users to the Infrastructure Chapter at this point in time.

"Provide for" vs "enable" in relevant policies

38. Having considered the evidence, we agree with Mr Riddell's assessment of the use of the terms "*enable*" and "*provide for*" in relation to certain policies in the Coastal Environment and Natural Character chapters. Accordingly, we recommend "*enable*" is replaced with "*provide for*" in policies CE-P6, NATC-P3 and NTC-P4.

Controlled activity rule for buildings on approved building platform

39. Having considered Mr Hall's evidence, the following is our response to the issues raised:

    a. **Minor residential units**: We agree that the relevant recommended controlled activity rules should be amended to include both residential units and minor residential units. The intent was to capture any type of residential unit which the definition of

"*residential unit*"[2] arguably provides for. Our recommended wording in the relevant rules is as follows:

"The building is a residential unit or a minor residential unit on a defined building platform…"

b. **More targeted matters of control:** We agree that the matters of control can be more targeted and should not double-up with the matters that would have been considered as part of the subdivision consent. Melean Absolum Ltd (MAL) has considered Mr Hall's proposed matters of control (Appendix 4.1) and agrees that these are appropriate and should be included in the rule, except for Mr Hall's matter d) which MAL recommends is worded to bring in the reference to "*characteristics, qualities and values*" of each overlay as follows:

Whether any mitigation measures proposed appropriately manages potential adverse effects on the characteristics, qualities and values of the overlay.

We agree with general intent of MAL's recommendations to clause d). However, in our opinion, the wording of d) can be improved with a slight amendment as follows (using ONL and ONF as the example):

Measures to mitigate adverse effects on the characteristics, qualities and values that make ONL and ONF outstanding.

c. **Implemented subdivisions**: We agree with Mr Hall's proposed wording to clarify that it includes implemented consents. Our recommended wording is as follows:

"…and approved as part of an existing or implemented subdivision consent."

d. **Non-notification**: We continue to maintain the position that the requested text from Mr Hall should not be included to confirm that such applications will be dealt with on a non-notified basis, unless special circumstances apply. Mr Hall cited as reason to include the risk that the RMA could be changed. While we accept this is a risk, it is in our view a very small risk as it relates to the notification of consent applications and not enough to warrant including such wording in the PDP. If Mr Hall's logic were accepted, then there would be implications for other controlled activity rules and arguably equal reason to 'cut and paste' the RMA's notification direction for all

[2] Defined in the national planning standards and PDP as "*means a* building*(s) or part of a* building *that is used for a* residential activity *exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities."*

types of rules into the PDP – which we think would be excessive and confusing for plan users.

40. Regarding the question raised during the hearing as to whether "*building platform*" should have a definition, we support including a definition, but our view is it should be addressed at Hearing 18 (where definitions will be considered). We agree that there is some potential ambiguity with the term (for example whether it is just the building(s) envelope or also the curtilage around the building(s)). The term is used in various other chapters – including Natural Hazards, Subdivision, Horticulture and Kauri cliffs. Our view is that any such definition needs to be prepared with an appreciation of all the contexts in which it is used across the PDP.

<u>Activity status when compliance not achieved in ONC, HNC, ONL, and ONF overlays</u>

41. We continue to be of the view that the activity status when there is non-compliance with the permitted activity rules in these areas should reflect the likelihood of the activity exceeding the relevant adverse effects 'bottom line' (i.e. 'avoid adverse effects' and 'avoid significant effects' as set out in the relevant policies). Accordingly, we continue to support the activity statuses recommended in the section 42A reports, with one exception.

42. We are of the view that if the non-compliance is for an extension, alteration or upgrade of an existing building or structure (as opposed to a new building or structure), then a non-complying activity is likely to be too onerous. This is because:

    a. We accept that it is less likely the relevant adverse effects 'bottom line' would be exceeded (given the presence of the existing building or structure) compared to a new building or structure.

    b. A non-complying activity status implies that the activity is generally inappropriate, which does not apply to existing activities and structures in the same way (e.g. routine upgrades of existing infrastructure).

43. Accordingly, we recommend any such non-compliance is a restricted discretionary activity with the same matters of discretion already recommended within the rules. This applies to rules NFL-R1 and CE-R1.

<u>Earthworks and vegetation clearance</u>

44. Having considered Mr Hall's evidence behalf of Bentzen Farms and others and following discussions with Ms Absolum, we provide the following response to the requests for additional earthworks and/or indigenous vegetation clearance activities to be permitted under rule CE-R3 and NFL-R3:

a. **Maintenance of domestic gardens**: On reflection and in light of the evidence and examples presented at the hearing, we agree that earthworks and indigenous vegetation clearance as part of a domestic garden should be a permitted activity. We recommend the following wording (requested by Mr Hall) be added to the relevant earthworks and indigenous vegetation clearance permitted activity rules:

> *"x. Maintenance of planted indigenous vegetation within domestic gardens, including the removal and replacement of plants;"*

b. **Formation of walking tracks less than 1.2m wide**: The request by Mr Hall for this to be a permitted activity is a refinement of the original submissions by Bentzen Farms and others he represents which originally sought an exemption for "*ecosystem protection, rehabilitation or restoration works*". While we did not support the request for this initial exemption (which we considered was too board), in our opinion the formation of 1.2m wide walking tracks is unlikely to result in the adverse effects that would exceed the "avoid adverse effects" / "avoid significant adverse effects" bottom lines in the relevant policies. This is further mitigated by limiting the works to manual methods which is consistent with a corresponding clause 3) in IB-R1 in the Ecosystems and Indigenous Biodiversity chapter. We therefore recommend amending the relevant rules to include the wording requested by Mr Hall, which is the same as used in IB-R1:

> *"x. The formation of walking tracks less than 1.2m wide using manual methods which do not require the removal of any tree over 300mm in girth;"*

c. **Removing regenerating manuka or kanuka for maintenance of pasture (with additional conditions)**[3]: The wording requested by Mr Hall is as follows:

> *"for maintenance or reinstatement of pasture through the removal of regenerating manuka (Leptospermum scoparium var. scoparium) or kanuka (Kunzea robusta) tree ferns or scattered rushes in pasture on a farm established prior to 27 July 2022, and the vegetation to be cleared is less than 10 years old and less than 6m in height."*

MAL has considered this proposed additional clause (Appendix 4.1), and makes the following comments:

[3] Mr Hall notes that this rule has been adapted from Rule 2, Section 29 – Biodiversity, Thames Coromandel District Plan (Operative in Part 2024) which applies generally and to the overlays.

"I accept the argument that some indigenous species are resistant to grazing and can be problematic in pasture. Avoiding the need to apply for consent to reinstate the pasture by enabling the removal of the specified plant species is acceptable. However, the explanation refers to 'recent' colonisation while the proposed rule uses a 10 year and 6m threshold, which I do not consider to be 'recent'. In my opinion the new rule should be limited to 5 years and 3m in height and should only apply to areas of the CE without any other overlay, ie ONC, HNC or ONL."

We adopt MAL's recommendation and reasoning. However, it is not clear to us why Mr Hall proposes limiting the rule to farms established prior to 27 July 2022 (being the notification date of the PDP). Given that we agree in principle with the approach, in our view it should not be limited in this way. The following is our recommended wording to be included in NFL-R3 PER-1 (outside the coastal environment) and in CE-R3 PER-1 (outside HNC and ONC areas):

x. for maintenance or reinstatement of pasture through the removal of regenerating manuka (Leptospermum scoparium var. scoparium) or kanuka (Kunzea robusta) tree ferns or scattered rushes in pasture on a farm and the vegetation to be cleared is less than 5 years old and less than 3m in height.

Requirement for earthworks and vegetation clearance to be "*the minimum necessary*"

45. We understand the concerns from Mr Badham that the requirements to limit indigenous vegetation clearance for the purposes in NATC-R3 (and IB-R1[4]) involves a level of discretion, whereas the permitted activity rules should be clear and measurable. However, on balance, we consider that this requirement should be retained as it sends a clear message to landowners that any earthworks or indigenous clearance permitted under NATC-R3 needs to be limited to what is necessary and this is not a "free pass" to undertake clearance without restriction.

46. We also consider that it serves as a useful backstop to assist with compliance and enforcement when NATC-R1 is clearly being breached. In this respect, we consider that some of the concerns expressed by Mr Badham about high levels of litigation and enforcement issues are overstated. Our expectation is that Council will only monitoring and enforce "*the minimum necessary*" requirement when there are some clear compliance issues, rather than undertake detailed assessments for minor non-compliance of earthworks and vegetation clearance over and above "*the minimum necessary*". We

[4] The same issue and recommendation is provided in the right of reply for the Ecosystems and Indigenous Biodiversity in relation to IB-R1.

therefore recommend that the reference to "*the minimum necessary*" be retained and we also recommend that this is included in CE-R3 and NFL-R3 for the same reasons and consistency.

Earthworks and indigenous vegetation clearance for biosecurity purposes

47. As discussed in more detail in the right of reply for the Ecosystems and Indigenous Biodiversity chapter, we acknowledge the concerns from HortNZ and others that the recommended definition of "pests", may be too limiting. More specifically, we understand from these submitters that earthworks and indigenous vegetation clearance may also be required to address biosecurity risks from unwanted organisms[5] that are not identified in the Northland Pest Management Plan.

48. We understand from the evidence of Mr Hodgson (paragraphs 19 to 32) that the best method to deal with biosecurity risks from unwanted organisms will be determined by a suitably qualified person and will depend on the circumstances, and may involve clearance, burning or burial. We also understand from the evidence of Mr Hodgson that, in these situations, there may not be time to wait for a resource consent application for earthworks or vegetation clearance which could create compliance issues between obligations under the RMA and the Biosecurity Act 1993.

49. On this basis, we agree that the relevant clauses that provide for earthworks and indigenous vegetation clearance to control pests for biosecurity reasons should be expanded. Our recommended wording is as follows:

> *"clearance for the control of pests when necessary for biosecurity reasons and to control unwanted organisms as a response to directions of a person authorised under the Biosecurity Act 1993."*

50. We consider that this will address the relief sought by HortNZ and NZAAA. It also makes it clear that any indigenous clearance undertaken to control unwanted organisms must be a response to the directions of an authorised person under the Biosecurity Act 1993.

Rules for upgrading network utilities

51. Having considered Mr Badhams evidence for Top Enery, the following is our response to the issues raised:

[5] Unwanted organism is defined in the Biosecurity Act 1993 as "***unwanted organism*** *means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health; and* ***(a)*** *includes— **(i)** any new organism, if the Authority has declined approval to import that organism; and **(ii)** any organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996; but **(b)** does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless…."*.

a. **10m height restriction**: Melean Absolum Ltd (MAL) agrees with Mr Badham's request to increase the height to 12.5m to align with the 'standard size' for Top Energy power poles (Appendix 4.1) based on additional examples provided by Top Energy and an assessment of comparable structures within the Far North District. We adopt MAL's advice and recommend changes to the relevant rules accordingly.

b. **Poles and pi-poles**: MAL (Appendix 4.1) considered the request and makes the following statement:

"…the appropriate replacement of existing infrastructure within riparian margins and ONLs relies on the scale of the replacement structures. The introduction of visually more complex structures, such as pi-poles, has the potential to create additional adverse effects, even if there are to be fewer structures than before. In my opinion it is appropriate that adverse effects arising from this additional visual complexity be considered through a consenting process."

We adopt MAL's advice and agree the replacement of a standard pole with a pi-pole should not be a permitted activity and this requires a more specific assessment through a consenting process.

c. **20% GFA limit**: We agree that there are challenges with the application of the definition of "*Gross Floor Area*" to structures such power poles and lines. We also note that the PDP definition of "*Gross Floor Area*" only applies to buildings as follows:

"means the sum of the total area of all floors of a building or buildings (including any void area in each of those floors, such as service shafts, liftwells or stairwells), measured:

a. where there are exterior walls, from the exterior faces of those exterior walls;
b. where there are walls separating two buildings, from the centre lines of the walls separating the two buildings;
c. where a wall or walls are lacking (for example, a mezzanine floor) and the edge of the floor is discernible, from the edge of the floor."

We also agree that that an increase in the floor area of any infrastructure structure exceeding 20% would be difficult to discern in the wider environment where the footprint is small (such as a pole).

Accordingly, we recommend the following amendment to our section 42A report recommended wording:

x. if it is a building, the upgraded building ~~it~~ is no greater than 20% of the GFA of the existing lawfully established building ~~or structure~~;

d. **Inconsistencies of terms**: We agree that the that the relevant rules and standards should consistently refer to "*above ground network utilities*" as underground network utilities will not have adverse landscape and visual effects.

e. **Definition of upgrade**: In our opinion, a definition of "*upgrade*" is not necessary in the context of the proposed rules because they put limits on the scale of the upgrade (height and size). The term "*upgrade*" is used throughout PDP and in a range of contexts. Accordingly, any recommended inclusion of such definition should consider all the contexts it is used (which is beyond the scope of Hearing 4). We therefore consider that this matter is best considered and addressed in Hearing 18.

f. **Matters of discretion**: We agree with Mr Badham that the relevant clause in CE-P10, NFL-P8 and NATC-P6 should be amended to better reflect objective SD-IE-O1 which recognises the benefits of all infrastructure (not just regionally significant). We recommend that the relevant clauses be amended as follows:

the operational or functional need of any ~~regionally significant~~ infrastructure to be sited in the particular location.

g. **Cross reference to R1:** We disagree with Mr Badham's request to amend rules CE-R3, NFL-R3 and NATC-R3 to remove the reference to the corresponding R1 in each chapter when permitting earthworks and vegetation clearance associated with the upgrading of above ground networks utilities. One of Mr Badham's suggestions is to delete the reference. However, that would then mean any earthworks and vegetation clearance associated with any upgrading of above ground network utilities (regardless of scale) is permitted without restriction. The intention is to permit earthworks and vegetation clearance where it is associated with the upgrading of network utilities of a scale that is permitted under the relevant R1 rules for buildings and structure. If the upgrading is of a scale that requires resource consent, then we consider that the associated earthworks and vegetation clearance should also require resource consent (if it does not otherwise comply with the relevant area thresholds specified in each rule).

Mr Badham suggested as an alternative that the reference to the relevant R1 should be more specific in terms of the condition it relates to (e.g. CE-R1 – PER-4). In our view, a generic reference is more appropriate because upgrading of above ground network utilities may be permitted under the other conditions in the relevant

R1. We also expect that infrastructure providers, such as Top Energy, will be able to easily determine the relevant condition that applies.

Repair or maintenance rules

52. We were not convinced by the evidence to change our recommendation to delete rules NATC-R2, CE-R2, and NFL-R2. KiwiRail and Top Energy's concern seems to stem from an understanding that without the permitted rule there would be a constraint on repair and maintenance. However, this is not the case – the absence of a rule means that there is no constraint on repair and maintenance under the three relevant chapters.

Building height

53. We have sought further landscape advice from MAL (Appendix 4.1) in terms of Mr Hall's request to increase the 5m maximum permitted building height within the overlays to 5.5m. The advice from MAL is as follows:

> *"I confirm that I have carefully considered this evidence and the submissions to which they relate and remain of the opinion that limiting permitted building heights to 5m is appropriate. This height readily enables the construction of a single storey dwelling.*
>
> *Several submitters referred to the steepness of coastal land, in particular, and the need to accommodate buildings that step down hill. Firstly, I note that not all land in the CE is steep, meaning the 5m limit can readily be complied with in some areas. Where land is steeper, the need for excavation, retaining walls etc are all best considered as part of resource consent, in my opinion."*

54. On this basis, we recommend that the 5m maximum building height standard is retained (noting that the Coastal Environment chapter contains some exemptions to this standard).

55. However, we agree with Mr Hall that it is appropriate to provide exemptions to the maximum height standard for certain rooftop structures consistent with other PDP chapters that are unlikely to be of a scale that would adversely affect the characteristics, qualities and values of the identified overlays. Our recommended exemptions to the maximum height standards (using the wording from other PDP chapters is as follows):

i. *Solar and water heating components not exceeding 0.5m in height on any elevation; or*
ii. *Chimney structures not exceeding 1.2m in width and 1m in height on any elevation; or*
iii. *Satellite dishes and aerials not exceeding 1m in height and/or diameter on any elevation; or*
iv. *Architectural features (e.g. finials, spires) not exceeding 1m in height on any elevation.*

Colour and materials

56. There are two issues to consider in relation to the colour and materials standards:

    a. The reference to the BS5252 standard colour palate; and

    b. The clarity of the standard and whether natural materials need to achieve a reflectance value of no greater than 30%.

57. Firstly, we note that our section 42A report recommendations is for the BS5252 standard colour palate to be amended to no longer use the Resene colour range and to be incorporated as an Appendix into the PDP. Therefore, this standard is not limited to a colour range from one paint manufacturer as suggested by Ms Ritchie on behalf of Woolworths.

58. BS5252 is the British Standard that establishes a framework within which 237 colours have been selected as the source for all building colour standards and the means of co ordinating them. Some paint manufacturers (e.g. Resene) have a BS5252 colour range where they use their own paint names for the different BS5252 colours. However, we agree with the request to refer to "*the BS5252 standard colour palate or equivalent*" as this still captures the intent which is to ensure the reflectivity of the paint selected is not too high.

59. We agree with Ms Jacobs that the wording of the standard could be improved so that this does not imply all natural materials must achieve a certain reflectivity standard (which may not be practicable for some structures). We therefore recommend the following amendments to NFL-S2 and CE-S2:

    The exterior surfaces of new buildings or structures shall:

    i. be constructed of natural materials; ~~and/~~or

    ii. be finished to achieve a reflectance value no greater than 30%; and

    iii.~~ii.~~ if the exterior surface is painted, have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette in Appendix X or equivalent.

Structures definition

60. It has come to our attention that there is an interpretation issue with the definition of a "*structure*", which is not uncommon from our experience. The issue was not specifically raised in submissions nor evidence on the overlay chapters but has become apparent through some of the relief sought in submissions.

61. "Structure" is defined in the PDP as having the same meaning as in section 2 of the RMA as follows:

> *means any building, equipment, device, or other facility, made by people and which is fixed to land; and includes any raft.*

62. The issue is that it is not clear whether certain types of development are a "*structure*", including driveways, footpaths, paving areas and carparking areas. This has been identified as an issue through some of the relief sought (e.g. setbacks to MHWS discussed below) and we also understand that Council has received queries from plan users on how to interpret the term "*structure*" in some of the PDP rules[6]. To assist in consistent interpretation of "*structure*" under the PDP, we understand Council has prepared a draft practice note. The advice from Council in this practice note is that driveways, footpaths, paving areas and carparking areas are **not** structures when interpreting relevant PDP rules. It is not clear if this interpretation of "*structure*" was anticipated in all relevant PDP chapters (it is not addressed in the section 32 reports for the overlay chapters).

63. Driveways, footpaths, paving areas and car parking areas are built elements that can clearly have an impact on ONC, HNC, ONF, ONL and the natural character of freshwater margins. We anticipate that in most instances the earthworks rules (and potentially vegetation clearance) will capture these types of activities as earthworks will generally be required to prepare the site. We are of the view that in most instances the earthworks rules (including the permitted thresholds and the matters of discretion where consent is required) will appropriately manage adverse effects of these activities on ONC, HNC, ONF, ONL and the natural character of freshwater margins.

64. As a result of different interpretation of "structures" and in response to relief sought in submissions, the Natural Character chapter section 42A report recommended inclusion of "*a footpath and or paving no greater than 2m wide*" in the list of permitted structures in NATC-R1 PER-2 is no longer necessary. This is the only such instance in the overlay chapters of the building and structure rules (as notified or as recommended in the s42A reports) including reference to driveways, footpaths, paving areas or car parking areas.

65. Our concluding view is that this interpretation issue does not appear to be a problem for the overlay chapters and managing effects on the coastal environment, ONC, HNC, ONF, ONL and the natural character of freshwater margins. However, it may be an issue for other chapters, and we consider that this interpretation issue should be addressed consistently across the PDP.

[6] We note, for example, that other PDP chapters include specific exemptions to setback rules for certain structures (e.g. GRZ-S3 includes exemptions to setback standards for fences and walls no more than 2m in height and uncovered decks no more than 0.5m above ground level).

Recommendation

66. We recommend changes to the relevant provisions of the overlay chapters as set out in:

    a. Appendix 1.1 Natural Features and Landscape provisions – reporting officer right of reply recommended changes.

    b. Appendix 2.1 Natural Character provisions – reporting officer right of reply recommended changes.

    c. Appendix 3.1 Coastal Environment provisions – reporting officer right of reply recommended changes.

67. We also recommend:

    a. Definitions for "*building platform*" and "*upgrade*" be considered at Hearing 18.

    b. That the interpretation of "*structure*" be carefully considered across the other PDP chapters.

Section 32AA Evaluation

68. In our opinion, the amendments set out above are the most appropriate way to achieve the relevant objectives in the Coastal Environment, Natural Features and Landscapes and Natural Character chapters (as recommended in our s42A reports). The amendments more efficiently and effectively achieve the relevant objectives by providing greater clarity and specification as to the matters to be considered when assessing land use and subdivision proposals, while still ensuring the outcomes sought by the objectives will be achieved.

69. The recommended amendments will also help reduce costs (improve efficiency) by permitting a broader range of activities (than recommended in the s42A report) and provide a more targeted approach to assessing resource consent applications (for example, the proposed amendments to further refine the matters of control for residential units on approved building platforms). We therefore consider that the recommended amendments are more appropriate, efficiency and effective to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.2 Issue 2: Coastal Environment Objectives

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 4 – paragraph 99 to 118
Evidence and hearing statements provided by submitters	Federated Farmers, HortNZ, John Riddell

Matters raised in evidence

70. A number of submitters support the section 42A recommendations to the Coastal Environment objectives, including:

    a. Ms Cook-Munro on behalf of Federated Farmers.

    b. Mr Hodgson on behalf of HortNZ who supports the recommended amendments to CE-O2 to address potential interpretation issues with CE-O2(b).

    c. John Riddell who accepts the recommended changes to CE-O1 and considers that the request in the original submission to add "*intrinsic and natural values*" is no longer necessary in relation to CE-O1.

71. However, Mr Riddell reiterates the relief sought in his primary submission to insert an additional objective the same as Objective 10.3.6 in the ODP into the Coastal Environment chapter. Mr Riddell does not consider that the recommended changes to CE-P10 in the section 42A report are sufficient to give effect to Policy 4 in the New Zealand Coastal Policy Statement 2010 (**NZCPS**). Mr Riddell therefore remains of the opinion that Objective 10.3.6 in the ODP should be inserted into the PDP.

Analysis

72. The only outstanding issue to respond to in relation to the Coastal Environment objectives is the request from Mr Riddell to insert an additional objective based on Objective 10.3.6 in the ODP. ODP Objective 10.3.6 is "*To minimise adverse effects from activities in the coastal environment that cross the coastal marine area boundary*". Policy 5 in the NZCPS relates to the integrated management of natural and physical resources in the coastal environment.

73. I am still of the view that it is not necessary to replicate ODP Objective 10.3.6 in the Coastal Environment objectives. However, to better give effect to Policy 4 of the NZCPS, I consider that an amendment to CE-O2 to also refer to land-use and subdivision being undertaken "…*in an integrated and coordinated manner*" is appropriate. This would provide objective level support for the more specific policy direction in CE-P10 to manage effects in

the coastal environment in an integrated manner that considers the effects of land use and development on the coastal marine area.

Recommendation

74. I recommend CE-O2 is amended through a new clause (replacement clause a)) to refer to land and subdivision in the coastal environment *"...is undertaken in an integrated and coordinated way*".

Section 32AA evaluation

75. I am recommending a minor amendment to CE-O3 to better align with Policy 4 of the NZCPS without materially changing the intent of the objective. I therefore consider that this amendment to CE-O3 is appropriate to give effect to the NZCPS and achieve the purpose of the RMA in accordance with section 32AA of the RMA.

3.3 Issue 3: Coastal Environment Policies

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 5 to 8, paragraphs 122 to 221
Evidence and hearing statements provided by submitters	Bentzen Farm Limited and others, Federated Farmers, HortNZ, John Riddell, Tapuaetahi Incorporation

Matters raised in evidence

76. Several submitters support the section 42A report recommended amendments to the Coastal Environment policies, including:

    a. Ms Cook-Munro on behalf of Federated Farmers supports the recommended amendments to CE-P1, CE-P2, CE-P6 and CE-P9. Reasons for this support from Federated Farmers include providing additional clarity, better giving effect to the NZCPS and RPS, and removing redundant CE-P9 as it is redundant.

    b. Mr Riddell supports the recommended amendments to CE-P5 to be an "*enable*" policy as it is consistent with Objective 6 and Policy 6(1)(b), (c) and (f) in the NZCPS, Policy 4.6.1 and 5.1.2 in the RPS, and the recommended amendments to CE-O3.

    c. Mr Hodgson on behalf of HortNZ supports the recommended amendments to CE-P6 in the section 42A report.

    d. Mr Sanson on behalf of Tapuaetahi Incorporation considers that the amendments to CE-P7 are appropriate.

77. However, there are some outstanding concerns and relief sought in submitter evidence and hearing statements as set out below.

CE-P4

78. Mr Riddell' disagrees with the recommendation to not amend clause (b) of CE-P4. Mr Riddell's reasoning is that any potential for sprawl or sporadic development within and around coastal urban areas is encompassed and negated by clause (a) action of "*consolidating*" and that Policy 6(c) of the NZCPS and Policy 5.1.2(a) of the RPS both distinguish between sprawling and sporadic development outside of existing coastal settlement and urban areas and elsewhere. Mr Riddell therefore the requests in his original submission to amend clause (b) to refer to *'in the rural coastal environment'* be accepted.

CE-P6

79. Mr Hall on behalf of Bentzen Farm Limited and others supports the recognition in CE-P6 that existing farming activities form part of the coastal environment and to allow these activities to continue without undue restriction. However, Mr Hall states that care needs to be exercised in relation to the distinction between "*existing*" and "*new*" farming activities due to new farming practices which may not have existing use rights. Mr Hall also notes that CE-R4 permits farming activities outside ONC and HNC areas which makes the "*where appropriate*" proviso redundant in his opinion. Accordingly, Mr Hall recommends that this proviso is deleted from CE-P6.

80. Mr Riddell does not support the recommendation in my section 42A report for CE-P6 to be an "*enable*" policy and requests it is amended to a more passive "*provide for*" policy. Mr Riddell considers that there is no such enabling policy directive in relevant national policy statements or in the RPS in relation to existing farming activities. As such, in Mr Riddell's opinion it is a more appropriate reflection of overarching resource management direction for CE-P6 to be amended to a "*provide for*" policy.

CE-P10

81. Mr Hall on behalf of Bentzen Farm Limited and others considers that CE-P10 should be qualified so that consideration is given to the "*natural character of the*" coastal environment rather than referring to the coastal environment more generally. Mr Hall considers that this better gives effect to Policy 13 of the NZCPS, Policy 4.6.1 of the RPS and CE-O1 within the coastal environment chapter and will enable a more targeted assessment of effects in line with these higher order directives.

82. Mr Hall also recommends that clause h) in CE-P10 is deleted which refers to "*any viable alternative locations for the activity or development".* Mr Hall considers that this clause creates uncertainty as to how it might be assessed and is inconsistent with the general thrust of the RMA when the effects of

the proposal are to be assessed on their merits rather than by reference to alternative proposals. Mr Hall also note that Schedule 4 of the RMA only requires consideration of alternatives when the activity is or is likely to have a significant adverse effect on the environment.

83. Mr Riddell raises a wide range of issues with CE-P10 and a perceived gap in the policies more generally. Broadly, Mr Riddell is of the view that there are provisions within the RPS and ODP that should be included in CE-P10 (or other policies as appropriate). This includes Policy 4.6.1(b)(ii), Policy 4.6.1(3) and Policy 5.1.2 (clauses (b), (c), (d)) from the RPS and Policy 10.4.7 and 10.4.12 in the ODP.

Analysis

CE-P4

84. On reflection, I agree that clause b) in CE-P4 is more focused on the rural environment as stated by Mr Riddell and it would be beneficial to plan users to make this clear. I therefore recommend a minor amendment to clause b) in CE-P4 to refer to "*...in the rural environment*".

CE-P6

85. I acknowledge the need to be careful in distinguishing between "*new*" and "*existing*" farming activities which may change in their nature, intensity and scale and therefore existing use rights under section 10 of the RMA may not apply. However, I am still of the view that clause a) in CE-P6 appropriately captures the policy intent without creating interpretation issues and is consistent with the direction in the RPS relating to existing activities (Method 4.6.3(4)(ii)).

86. I do not agree with the request to remove the words "*where appropriate*" from clause b) in CE-P6. This would imply that farming activities will always be appropriate in the coastal environment which may not always be the case due to, for example, breaches of other rules in the PDP.

87. In terms of the request from Mr Riddell to amend the direction in CE-P6 to "*provide for*" farming activities rather than "*enable*", this is addressed under Issue 1 – Common issues above and I recommend that this request is accepted.

CE-P10

88. I do not agree with Mr Hall on behalf of Bentzen Farms and others that the chapeau of CE-P10 should be limited to the natural character of the coastal environment. While the preservation and protection of the natural character of the coastal environment is the key focus of the Coastal Environment chapter to give effect to section 6(a) of the RMA and Policy 13 of the NZCPS, it has a broader focus also gives effect to other NZCPS policies. This includes,

for example, Policy 1, Policy 6 and Policy 15(b)[7] of the NZCPS. The list of matters to consider as relevant under CE-P10 are also clearly broader than protecting the natural character of the coastal environment.

89. I agree with Mr Hall on behalf of Bentzen Farms and others that the reference in clause h) to "*any viable alternative locations for the activity or development*" is unnecessary and potentially onerous. I therefore recommend that this clause is deleted, noting that the standard provisions in Schedule 4 of the RMA to consider alternative locations and methods when the activity may have significant adverse effects will still apply.

90. In terms of the requests from Mr Riddell to amend CE-P10 to include a range of matters from the ODP, I am still of the view that these are unnecessary. In my view, CE-P10 provides a comprehensive list of matters to consider when relevant to effectively manage adverse effects on the coastal environment and the matters requested by Mr Riddell are already largely addressed by other clauses (albeit with different wording).

91. I have also recommended additional clauses are added to the CE-P10 in the section 42A report, including new clause n) as follows "*…the effects on the characteristics, qualities and values of the coastal environment, including natural character and natural landscape values and the quality and extent of indigenous biodiversity".* Accordingly, I consider that CE-P10 is sufficiently broad to capture all relevant effects and values when managing the effects of land use and subdivision on the coastal environment.

Recommendation

92. I recommend that:

    a. Clause b) CE-P4 is amended to refer to "*…in the rural environment* .

    b. CE-P6 is amended to refer to "*provide for*" rather than "*enable*".

    c. CE-P10 is amended to delete clause h) "~~*any viable alternative locations for the activity or development*~~".

Section 32AA Evaluation

93. The amendments I am recommending to CE-P4, CE-P6 and CE-P10 are minor amendments to clarify the policy intent and to remove unnecessary and potentially onerous considerations. I therefore consider that my recommended amendments to these policies are an appropriate, effective and efficient way to achieve the relevant objectives in accordance with section 32AA of the RMA.

[7] Avoiding significant adverse effects on "other natural features and landscapes" in the coastal environment given the Natural Features and Landscapes chapter only focused on ONF and ONL.

3.4 Issue 4 – Coastal Environment Rules

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 9, 10 and 14, paragraph 222 to 310, 369 to 410
Evidence and hearing statements by submitters	Far North Holdings Limited, Federated Farmers, Foodstuffs, HortNZ, Top Energy, Waiaua Bay Farms, Waitangi Limited, Woolworths

Matters raised in evidence

CE-R1

94. A number of submitters support the section 42A report recommended amendments to CE-R1, including:

    a. Ms Cook-Munro on behalf of Federated Farmers.

    b. Ms Ritchie on behalf of Woolworths who states that, while the recommendation to exempt the Mixed Use Zone within the Waitangi settlement from CE-R1 does not address their submission point specifically, it addresses the relief sought. Mr Ritchie therefore supports the recommended amendments to n CE-R1.

    c. Mr Hodgson on behalf of HortNZ supports the recommended amendments to CE-R1 as this addresses the concern of HortNZ to ensure PER-2 within CE-R1 is not overly restrictive.

    d. Ms Jacobs on behalf of Waitangi Limited supports the recommended amendment to PER-2 for buildings to not "*be used for a residential activity*" rather than requiring buildings to be "*ancillary to farming*". On this basis, Ms Jacobs generally supports the recommended amendments to CE-R1 (as secondary relief to the SPZ request).

    e. Mr Tuck on behalf of Waiaua Bay Farms supports the recommended amendments to CE-R1 for several reasons. Overall, Mr Tuck considers that the amendments to CE-R1 are more effective and efficient to enable appropriate activities and protect the values of the coastal environment.

    f. Mr Badham on behalf of Foodstuffs outlines their support for the recommendation to amend CE-R1 to not apply any additional controls on building coverage within urban zones in the six coastal settlements listed in PER-1. On this basis, Mr Badham considers that the recommended amendments to CE-R1 satisfies the relief sought by Foodstuffs.

g. Mr Sanson on behalf of Far North Holdings Limited agrees with the recommendation to amend CE-R1 to provide a more nuanced approach to buildings and structures for the six coastal settlements listed in PER-1. Mr Sanson considers this is a pragmatic and appropriate approach.

h. Mr Sanson on behalf of Waitoto Developments concurs with my approach in my section 42A report to the include Orongo Bay Special Purpose Zone in the exemptions in CE-R1 where the building coverage thresholds in the underlying zone apply.

95. Most of the outstanding issues with CE-R1 are addressed above under Issue 1 – Common Issues.

96. In addition, Mr Sanson on behalf of Tapuaetahi Incorporation raises concerns that CE-R1 does not give effect to the direction in CE-P7 to "*enable*" land use and development on Māori Purpose Zone and Treaty Settlement Overlay land. More specifically, Mr Sanson raises concerns that new buildings on Māori land are unlikely to be a permitted activity under PER-1 or PER-2 or a controlled activity under CON-1 within CE-R1. As such, Mr Sanson is concerned that new buildings on Māori land in the coastal environment are generally likely to require resource consent as a restricted discretionary activity (outside HNC and ONC areas) which is contrary to the "*enable*" policy direction in CE-P7.

97. To better implement the "*enabling*" direction in CE-P7, Mr Sanson considers that there should be a controlled activity pathway in CON-1 for "*buildings for a residential unit on Māori Purpose Zone or Treaty Settlement Land".* Mr Sanson also recommends amendments to the matters of control in CON-1 to be more targeted, including a reference to TW-P6 consistent with other PDP policies.

98. Mr Sanson on behalf of Far North Holdings Limited requests an amendment to CE-R1 to apply a maximum building footprint of 800m^2 within "*the Opua Marina Development Area, and the Mixed Use Zone at the Opua Marina, Marine Business Park, Commercial Estate, and Colenzo Triangle*". However, Mr Sanson also acknowledges that it is not necessarily for the Coastal Environment chapter to modify the building footprint controls in the underlying zone and the more substantive relief sought by Far North Holdings to the underlying zoning will be considered in the rezoning hearing (Hearing 18).

<u>CE-R3</u>

99. The following submitters support the recommended amendments to CE-R3:

a. Ms Cook-Munro on behalf of Federated Farmers.

b. Mr Tuck on behalf of Waiaua Bay Farms who considers that the recommended amendments to CE-R3 are appropriate and will enable

Waiaua Bay Farms to carry out its usual maintenance activities without need for a non-complying resource consent

100. Similar to his concern with CE-R1, Mr Sanson on behalf of Tapuaetahi Incorporation considers that the controls on earthworks and indigenous vegetation clearance in CE-R3 and CE-S3 appears to provide limited enablement for land use and development on Māori Purpose Zone and Treaty Settlement Overlay land and this is inconsistent with the "*enabling*" policy direction in CE-P7. To address this concern, Mr Sanson requests that CE-R3 is amended to provide a controlled activity pathway for earthworks and indigenous vegetation clearance when compliance is not achieved with PER-1 and PER-2 (outside ONC and HNC areas).

101. Mr Sanson on behalf of IDF Developments requests the same relief in relation to CE-S3 as Tapuaetahi Incorporation but for different reasons. Mr Sanson considers that CE-S3 does not align with the direction in CE-P6 to "*enable*" farming activities (noting my recommendation to change this to "*provide for*" above). As such, Mr Sanson requests that CE-R3 is amended to provide a controlled activity pathway for earthworks and vegetation clearance that does not comply with PER-1 and PER-2 (outside HNC and ONC areas).

102. Mr Riddell raises concern with the conflict between the Earthworks chapter thresholds and the Coastal Environment chapter thresholds for earthworks in the context of Kororāreka Russell being wholly located within the Coastal Environment, overriding the general earthworks limits. Mr Riddell requests this difference is revisited when submissions on the Earthworks Chapter are heard (Hearing 6).

103. Mr Sanson on behalf of Waitoto Developments disagrees with the section 42A report recommendation to not exempt the Orongo Bay Special Purpose Zone from CE-R3 and CE-S3. Mr Sanson considers that the Orongo Bay Special Purpose Zone already provides for the management of earthworks and indigenous vegetation clearance and therefore the Orongo Bay Special Purpose Zone should be excluded from CE-R3 and CE-S3.

<u>CE-R4</u>

104. Ms Cook-Munro on behalf of Federated Farmers states that, based on the reasons provided in the section 42A report, their expectation is that CE-R4 will not impose any undue restrictions on existing farming activities in ONC and HNC areas. As such, Ms Cook-Munro supports the recommendation to retain CE-R4 as notified.

105. Mr Hodgson on behalf of HortNZ also agrees with the rationale to retain CE-R4 for the reasons set out in the section 42A report. As such, Mr Hodgson considers that the amendments to CE-R4 originally sought by HortNZ are not necessary and he supports the section 42A report recommendations.

106. Mr Sanson on behalf of IDF Developments agrees with the intent of CE-R4 to permit existing farming activities, to permit new farming activities, and permit a change in scale and nature of existing farming activities (outside ONC and HNC areas) under CE-R4. However, Mr Sanson considers that this intent is not sufficiently clear in the drafting of CE-R4. Mr Sanson therefore recommend amendments to CE-R4 to include separate permitted activity conditions for:

    a. Legally established farming activities.

    b. New farming activities located outside HNC and ONC areas.

SUB-R20

107. Mr Tuck on behalf of Waiaua Bay Farms supports the recommended amendments to SUB-R20.

108. Mr Riddell generally supports the recommended amendments to SUB-R20. However, Mr Riddell considers that a more stringent activity status for subdivision in urban parts of the coastal environment is at odds with PDP approach to consolidate development in existing urban settlements. Mr Riddell is particularly concerned with the application of SUB-R20 to Kororāreka Russell Township Special Purpose Zone given this is an urban zone.

109. Mr Riddell also considers that there are other zones where SUB-R20 may produce an unintended outcome because development is anticipated within the zone. Accordingly, Mr Riddell requests that SUB-R20 is amended to not apply to the following zones: General Residential, Mixed Use, Light Industrial, Kororāreka Russell Township Zone, Māori Purpose Zone -Urban, and Hospital Zone.

Analysis

CE-R1

110. Firstly, I note that the "*enable*" policy direction in CE-P7 does not imply that all forms of development within the Māori Purpose Zone and Treaty Settlement Overlay in the coastal environment should be a permitted (or controlled) activity. Rather, it reflects the general intent of the PDP to enable appropriate development within the Māori Purpose Zone and Treaty Settlement Overlay to both provide for the well-being of tangata whenua and recognise the current and historical constraints on the use and development of this land.

111. However, I appreciate the concern from Mr Sanson on behalf of Tapuaetahi Incorporation that CE-R1 could be unnecessarily restrictive in relation to the use and development of Māori Purpose Zone and Treaty Settlement Overlay land as anticipated under CE-P7. This is because the majority of development on this land is unlikely to comply with PER-1 in CE-R1 (which

only refers to Māori Purpose Zone – Urban), PER-2 in CE-R1 (which does not allow for residential activities) or CON-1 (which only related to approved building platforms within and existing subdivision). This is likely to be an issue in practice as I understand that there is limited Māori Purpose Zone – Urban within the coastal environment overlay (39ha or 0.04% of the total zone) whereas there is much higher portion of Māori Purpose Zone – Urban within the coastal environment overlay (17,114ha or 21% of the total zone), where new residential development is restricted under PER-2 in CE-R1.

112. Accordingly, I support a more enabling pathway for residential buildings on Māori Purpose Zone and Treaty Settlement Overlay land where this cannot comply with PER-1 or PER-2 in principle. I also consider that a controlled activity pathway is appropriate provided this rule only applies outside ONC and HNC areas. I therefore recommend a new controlled activity rule (CON-2) in CE-R1 that:

    a. Provides for a building for a residential unit or minor residential unit on Māori Purpose Zone or Treaty Settlement Overlay land.

    b. Applies within the Coastal Environment overlay but outside ONC and HNC areas.

    c. Includes the matters of control that apply to CON-1 discussed under Issue 1 (common issues) above, with the addition of "*any historical, spiritual or cultural association with the land held by tangata whenua, with regard to the matters set out in Policy TW-P6*". This matter of control has been requested by Mr Sanson and I consider that it is appropriate to include within this rule to ensure the historical and cultural relationship of tangata whenua with the land can be considered consistent with other "consideration" policies in the PDP.

113. I do not recommend any amendments in response to the request from Far North Holdings Limited for a maximum building coverage threshold of 800m^2 in "*the Opua Marina Development Area, and the Mixed Use Zone at the Opua Marina, Marine Business Park, Commercial Estate, and Colenzo Triangle*". As acknowledged by Mr Sanson, the merits of this request to change the underlying zoning will be considered at the rezoning hearing informed by a range of assessments and evidence. As such, it is not within the scope of the Coastal Environment topic to make recommendations on the underlying zoning. Consequential amendments to the Coastal Environment chapter can be made as a result of changes to the underlying zoning in the Far North Holdings Limited areas referred to above if required.

<u>CE-R3</u>

114. I do not recommend that CE-R3 is amended to provide a controlled activity rule for earthworks and vegetation clearance that does not comply with PER-1 or PER-2. Non-compliance with the permitted activity conditions in CE-R3 could range from minor exceedance of the area thresholds through to significant volumes of earthworks with the potential for significant adverse

effects on the natural character of the coastal environment (and other coastal values). In such situations, it can be difficult to effectively manage adverse effects through conditions under a controlled activity rule (as any conditions imposed cannot negate the purpose of consent). I also note that I have recommended that non-compliance with PER-1 and PER-2 in CE-R3 (outside ONC areas) is restricted discretionary activity rather than a discretionary or non-complying activity as notified in the PDP. Therefore, in my view, CE-R3 is not inconsistent with the "*enable*" or "*provide for*" direction in CE-P6 or CE-P7.

115. In terms of the requested exemption to CE-R3 for the Orongo Bay Special Purpose Zone, my understanding of the Orongo Bay Special Purpose Zone is that the key rule is OBZ-R14 (Comprehensive development plan). This restricted discretionary rule requires that a Comprehensive Development Plan is prepared and submitted to Council prior to any subdivision, use or development within the Orongo Bay Special Purpose Zone. The information requirements in the Comprehensive Development Plan include "*details of all requirements for earthworks including the management of run-off during construction"* and "*any vegetation clearance*" and the matters of discretion allow for effects on natural character of the coastal environment to be considered (among a wide range of other matters).

116. On this basis, I am satisfied that the Comprehensive Development Plan rule in the Orongo Bay Special Purpose Zone that applies to all subdivision, use and development provides Council with sufficient controls to manage the effects of earthworks and indigenous vegetation clearance on the coastal environment. I therefore recommend that the request from Waitoto Developments to exclude Orongo Bay Special Purpose Zone from CE-R3 and CE-S3 is accepted.

CE-R4

117. The intent of CE-R4 is supported by submitters who have presented evidence on this rule. The main outstanding issue is whether the drafting of the rule needs to be clearer as suggested in the evidence of Mr Sanson on behalf of IDP Developments. While I do not consider that the amendments requested by Mr Sanson are strictly necessary, I agree that these will help clarify the policy intent. I therefore recommend that CE-R4 is amended to have two permitted activity conditions for:

    a. Lawfully established farming activities (to ensure consistency with wording used in the PDP).

    b. New farming activities located outside ONC and HNC areas.

CE-R20

118. The outstanding issue to consider for SUB-R20 is whether the rule needs to be amended to exclude certain urban zones as requested by Mr Riddell. While I acknowledge the general intent of the PDP is to encourage growth

and development within existing urban areas, I do not support the request from Mr Riddell to amend SUB-R20 so that it does not apply to a range of zones (i.e. General Residential, Mixed Use, Light Industrial, Kororāreka - Russell Township Zone, Māori Purpose Zone-Urban, and Hospital Zone).

119. My understanding is that this would mean that any general subdivision to create new allotments within these zones would be a controlled activity that must be approved under SUB-R3. In my view, it is appropriate to retain some discretion to control (and potentially decline) subdivision when this proposed within the coastal environment overlay. This is because the purpose of subdivision is generally to enable a range of development and uses (which are often then permitted) that can adversely affect the values of the coastal environment. In my view, a discretionary activity status will provide Council with greater control to ensure that the subdivision proposal is consistent with provisions in the Coastal Environment chapter (including the policy direction to "avoid" certain adverse effects) without being overly onerous for resource consent applicants.

Recommendation

120. I recommend that:

    a. A new controlled activity rule is included in CE-R1 for buildings for residential units within Māori Purpose Zone and Treaty Settlement Land Overlay within the coastal environment overlay outside ONC and HNC areas.

    b. The Oronga Bay Special Purpose Zone be exempt from CE-R3 and CE-S3.

    c. CE-R4 is amended to better clarify intent.

121. These amendments are shown in Appendix 3.1.

Section 32AA Evaluation

122. The amendments I am recommending to CE-R1, CE-R3 (and CE-S3), and CE-R4 are primarily to better give effect to the relevant policy direction, to remove unnecessary duplication across the PDP, and improve rule clarity. On this basis, I consider that the recommended amendments are an appropriate, effective and efficient way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.5 Issue 5 – Coastal Environment Standards

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 11, 12 and 14, paragraphs 311 to 353, 369 to 410
Submitters providing evidence and presenting statements at hearing	Far North Holdings Limited, IDF Developments, Telco Companies, Waitoto Developments

Matters raised in evidence

CE-S1

123. A number of submitters support the recommended amendments to CE-S1. This includes:

    a. Mr Sanson on behalf of Far North Holdings who supports a more nuanced, pragmatic approach to controlling the height of buildings and structures within the zones and six coastal settlements listed in CE-R1.

    b. Mr Sanson on behalf of IDF Developments and Waitoto Developments who supports the recommended amendments to CE-S1

    c. Chris Horne on behalf of the Teleco Companies who supports the section 42A report recommendation to exclude telecommunications facilities from CE-S1.

124. Mr Riddell agrees with the section 42A report recommendations to amend CE-S1 so that it does not apply to the zones set out in clauses ii) and iii) of the standard. However, Mr Riddell is of the opinion that additional zones need to be excluded from CE-S1 as follows:

    a. The Mixed Use Zone within Kororāreka Russell.

    b. The General Residential Zone. Mr Riddell considers that it is necessary to undertake further analysis of each of the areas of the General Residential Zone within the coastal environment to determine whether a 5m or 8m maximum permitted activity height should apply. Mr Riddell sees no reason why this work should be deferred to a later plan change and considers FNDC should undertake the assessment now.

125. Mr Sanson on behalf of Far North Holdings Limited reiterates their request for the permitted height in the underlying zoning to be 16m within the

requested "*Opua Marine Development Area*". However, Mr Sanson acknowledges that this primary relief is to be considered through the rezoning hearing and it is not necessary for the Coastal Environment provisions to provide for this relief given that it relates to the underlying zoning.

CE-S2

126. Mr Sanson on behalf of Waitoto Developments reiterates their request for the Orongo Bay SPZ to be exempt from CE-S2. Mr Sanson considers this is appropriate as the Orongo Bay SPZ rules already cover this matter appropriately.

CE-S3

127. Several submitters support the section 42A report recommended amendment to CE-S3, including:

    a. Ms Jacobs on behalf of Waitangi Limited generally accepts the recommendations to CE-C3 in relation to earthworks and indigenous vegetation clearance (notwithstanding their primary relief for a new SPZ for the Waitangi Grounds).

    b. Mr Riddell supports the recommended amendments to CE-S3 noting that more stringent standards applying within the Coastal Environment overlay gives effect the direction in the NZCPS.

128. The evidence of Mr Horne on behalf of the Teleco Companies states that his understanding is that telecommunications poles, depending on height and ground conditions, may require a pad foundation up to 1.5m deep, or a pile foundation exceeding 1m in depth. On this basis, Mr Horne requests that pole foundations are exempt from CE-S3 as the foundation works are very localised and will not adversely affect coastal environment values.

CE-S4

129. Owen Burn on behalf of J Bayley and others considers that CE-S4 fails to acknowledge the proximity to residential development to MWHS, that many properties enjoy riparian rights around the shores of the Bay of Islands, and the need to access to the CMA via structures such as boat ramps and jetties. To address his concern, Mr Burn requests that a general coastal protection yard of 20 metres be provided for as a permitted activity standard (as is the case in the Auckland Unitary Plan). Mr Burn also requests that a controlled activity rule be added to provide for buildings and structures to be within this yard that have a functional need to be adjacent to MHWS.

130. Mr Riddell outlines a range of concerns with the MHWS setback rule and the recommendation to retain the MHWS setbacks as notified in the PDP. Mr Riddell's concern is that the first 20 metres inland from the line of MHWS could potentially become esplanade reserve or strip in the future. Therefore,

locating buildings or structures within this 20 metres setback can compromise any future esplanade reserve or strip. Mr Riddell also considers that that buildings or structures within this 20-metre setback from MHWS should be discouraged due to the higher indigenous biodiversity values and the public access and recreation benefits of riparian areas.

131. To address these concerns, Mr Riddell requests that CE-S4 is amended so that any building or structure 20 metres or less from MHWS requires resource consent as a discretionary activity. An alternative suggested by Mr Riddell that is less satisfactory in his opinion is to add another matter of discretion to the standard "*achieving the purposes of esplanade reserves or strips*".

132. Mr Sanson on behalf of Tapuaetahi Incorporation and IDF Developments concurs with my recommended addition to CE-S4 to allow for a legally formed and maintained road. However, Mr Sanson considers that the exemption should extend to additional circumstances which provide a buffer. Mr Sanson notes CE-S4 would currently apply the setbacks with sites with an adjoining esplanade strip, but it terms of effects this seems no different to sites that have a legally formed and maintained road on the seaward side. As such, Mr Sanson requests CE-S4 is amended to not apply to where there is "*unformed roads, crown grant, and other forms of marginal strips / general land strips or allotments*" between the property and MHWS.

133. Ms Jacobs on behalf of Waitangi Limited reiterates the request to exempt certain structures from the MHWS setback standards. The requested exemptions and rationale in the evidence of Ms Jacobs is summarised in the table below.

Exemption	Rationale
Restoration and enhancement purposes	Structures associated with restoration and enhancement purposes includes predator fencing and potentially traps if they are affixed to land. These small-scale structures are for the benefit of wildlife and are generally funded by local community groups. They have a functional need to be established in these areas to eradicate pests. A resource consent requirement would make these financial unviable. Ms Jacobs also states that she is not opposed to referring to these structures specifically if the reference to restoration and enhancement is considered to be too broad.
Natural hazard mitigation undertaken by, or on behalf of, the local authority	Natural hazard mitigation works involving structures often requires regional council resource consents (e.g. seawalls or retaining walls that are located partly within the CMA and partly on land). As a result, Ms Jacobs considers that all consideration of the appropriateness of the structure within the setback from MHWS (described above) will need be assessed

Exemption	Rationale
	by the NRC and CE-S4 will result in duplication in consenting requirements (and associated costs). Ms Jacobs also requests a further change to recognise that private persons also seek resource consents for these works by replacing the last words in the relief sought to read "*where consent has been obtained by the Northland Regional Council".*
A post and wire fence for the purpose of protection from farm stock	Fences are structures and are required for a range of beneficial purposes close to the CMA. Ms Jacobs notes that the Waitangi Estate does not include any esplanade reserves as the site extends right up to the CMA. Therefore, to ensure that animals are contained and do not wander, post and wire fences are utilised by farmers. Further, under the ODP, fences that are less than 2m in height are not considered a 'building' and therefore do not trigger the need for resource consent.
Lighting poles by, or on behalf of, the local authority and footpaths and or paving no greater than 2m in width	Generally, within coastal areas there are roads or footpaths or other Council infrastructure which is constructed along the coastal marine area. Ms Jacobs notes that this helps to beautify, provide accessibility, and provide for the safety of users, including at night. While most of these works are within the designation for the Council legal road, Mr Jacobs considers that these structures will require resource consent without this exemption.
Boundary fences or walls no more than 2m in height above ground level	Mr Jacobs notes that under the ODP fences that are less than 2m in height are not considered a building and therefore do not require resource consent. As fences will be defined as a 'structure' in the PDP, Mr Jacobs considers that the MHWS setback rules will apply. Many properties are 20m setback from MHWS but not 30m therefore will require resource consent.

Analysis

CE-S1

134. Firstly, I agree with Mr Riddell that the Mixed Use Zone within Kororāreka Russell should be exempt from CE-S1, which is the policy intent consistent with CE-R1 PER-1. I therefore recommend that this omission is addressed through an amendment to clause iii) in CE-S1 to refer to the Russell / Kororāreka settlement consistent with CE-R1 (PER-1).

135. I do not agree with Mr Riddell that the General Residential Zone should be added to the exempted zones in CE-S1. The reasons for this are set out in the landscape evidence in the MAL Report and in the section 42A report (paragraph 331 to 333) being that a 5m height limits generally restricts development to a single storey which, from a landscape perspective, is appropriate to protect coastal landscape values as a starting point. I also consider that it is not practicable or appropriate for Council to undertake a district-wide assessment of the General Residential Zone in the coastal environment to determine where 5m and 8m height limits should apply.

136. As with my recommendation to CE-R1 above, I consider it unnecessary to respond to the relief sought by Far North Holdings Limited as this relates to the underlying zone height limit rather than the Coastal Environment provisions. Consequential amendments to the Coastal Environment can be made if required as a result of zoning changes being requested by Far North Holdings Limited through the rezoning hearing.

CE-S2

137. I agree that the Orongo Bay Special Purpose Zone should be exempt from CE-R2 for the same reasons set out above under CE-R3 and CE-S3, i.e. that the Comprehensive Development Plan rule within this zone enables effects on natural character to be assessed and managed appropriately.

CE-S3

138. I understand that earthworks associated with the foundations of telecommunication poles are generally small-scale, localised works with limited potential to affect coastal environment values. However, the evidence from Mr Horne has provided limited justification on the need to fully exempt earthworks associated with telecommunication poles from the 1m cut and fill standard other than to say these "*may require a pad foundation up to 1.5m deep, or a pile foundation exceeding 1m in depth*".

139. On this basis, in my view, it is more appropriate to apply a 1.5m cut and fill standard for earthworks associated telecommunication poles rather than a blanket exemption. I recommend that CE-S3 is amended accordingly.

CE-R4

140. A range of amendments to CE-S4 have been sought both to refine how it applies to MHWS and to provide exemptions to the setback for certain circumstances/activities. My response and recommendations to those requests are provided in the table below.

Request	Comment and recommendation
20m general coastal protection yard and controlled activity rule	Mr Burn has not provided sufficient rationale or evidence to support this request. My understanding is that the general coastal protection yard in the Auckland Unitary Plan performs the same function as the MHWS setbacks in the PDP to restrict structures and activities within this yard. I also understand that these Coastal Protection Yard setbacks vary in distance from MHWS. As such, I do not consider that it is appropriate to apply a blanket 20m coastal protection yard within the Far North District based on the evidence of Mr Burn.
Discretionary resource consent within 20m of MHWS or additional matter of discretion	It is not necessary in my view to include a new discretionary activity rule for buildings and structures within 20m of MHWS. I consider CE-S4 allows for the impacts on future esplanade reserves or strips to be considered through the requirement for restricted discretionary consent for any building or structure within the MHWS setback with the matters of the discretion including "*the impacts on existing and planned roads, public walkways, reserves and esplanades*". However, I do recommend a minor amendment to this matter of discretion in response to Mr Riddell to also refer to "*or future potential*" reserves, esplanades etc. as these may not always be planned.
Setback to not apply when there unformed roads etc. between property and MHWS	Mr Sanson has recommended an expansion of the exemption for legally formed roads to also refer to "*unformed roads, crown grant, and other forms of marginal strips / general land strips or allotments".* In my view, this request is too broad, and it is unclear what would be captured as "*crown grant", "general land strip"* etc. I also note that the exemption in the ODP relates to "*legally formed and maintained road*". I therefore do not recommend any amendments to CE-S4 in response to this submission.
Restoration and enhancement purposes	I support the general intent of this exemption but consider that it needs to be more tightly defined as suggested by Ms Jacobs in her evidence. I also consider that there is an overlap with fencing associated with farm stock requested below and I consider that these can be combined to be consistent with other exemptions. I therefore recommend an exemption to CE-S4 for "*fencing for the purposes of controlling pests and excluding stock*" and "*structures associated with pest control*".
Natural hazard mitigation where consent has been obtained from NRC	The rationale for this request appears to be on the basis that regional council consent will be required for natural hazards mitigation works (seawalls, retaining walls) and the regional consenting process will consider all relevant effects above MHWS. The Northland Regional Plan includes rules for hard protection structures (seawalls, rock revetments,

Request	Comment and recommendation
	retaining walls etc that has the purpose of protecting an activity from a coastal hazard). Any new hard protection structure or extension to an existing is a discretionary activity[8], or non-complying[9] within a high value area (e.g. ONF or ONC) mapped in the Northland Regional Plan. In considering a proposal for a hard protection structure, NRC has scope to consider all effects, including effects on natural character landwards of MHWS. On this basis I agree that it would be unnecessary to also require such activities to also require resource consent under the PDP. Accordingly, I recommend that hard protection structures (as defined in the Regional Plan) are exempt from CE-S4 provided these structures are authorised by a resource consent under the Northland Regional Plan.
A post and wire fence for the purpose of protection from farm stock	This is addressed above where I agree with the intent of this requested exemption.
Lighting poles by, or on behalf of, the local authority and footpaths and or paving no greater than 2m in width	As discussed above under Issue 1, Council interpretation is that driveways, footpaths and paving does not meet the definition of structure therefore no exemption is required from CE-S4. However, I agree that an exemption for lighting poles by, or on behalf of local authorities is appropriate and this is consistent with NATC-R1. I therefore recommend CE-S4 is amended to include this exemption.
Boundary fences or walls no more than 2m in height above ground level	I am aware that other setback rules in the zone chapters of the PDP include exemptions for "*Fences or walls no more than 2m in height above ground level*". I consider that this is appropriate (and necessary) in zone chapters where the setback standards are primarily focused on the site boundaries. However, an up to 2m high fence immediately adjacent to MHWS could have a range of adverse effects, including on natural character, public access etc. Conversely, where such fences are setback from MHWS on the edge of a property, the adverse effect on these values is likely to be minor. I therefore recommend that this exemption is provided for in CE-S4 but only when the fence is setback 20m from MHWS as this will maintain the standard esplanade reverse distance.

[8] Rule C.1.1.24 and C.1.1.26, Proposed Regional Plan for Northland.
[9] Rule C.1.1.27, Proposed Regional Plan for Northland.

Recommendation

141. I recommend that:

    a. CE-S1 is amended to exempt the Mixed-Use Zone within Kororāreka Russell from the maximum building height standards (so the underlying zoning applies).

    b. CE-S2 is amended to exempt the Orongo Bay Special Purpose Zone.

    c. CE-S3(1)(c) is amended to provide a maximum 1.5m cut and fill for earthworks associated with telecommunication facilities.

    d. CE-S4 is amended to include additional exemptions for certain low-risk and common structures to the MHWS setback standards.

142. These amendments are shown in Appendix 3.1.

Section 32AA Evaluation

143. The amendments I am recommending to CE-S1, CE-S2, CE-S3 CE-S4 are a combination of minor amendments to address an omitted zone, to remove unnecessary duplication across the PDP and with the Northland Regional Plan, to recognise the operational requirements of telecommunication facilities, and to remove unnecessary consent requirements for certain low-risk, common structures near MHWS. On this basis, I consider that the recommended amendments are an appropriate, effective and efficient way to achieve the relevant PDP objectives in accordance with section 32AA of the RMA.

3.6 Issue 6 – Natural Features and Landscapes Overview, Objectives and Policies

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 5 – 14, paragraphs 91 – 192.
Evidence and hearing statements provided by submitters	Federated Farmers, John Andrew Riddell, J Bayley and others, HortNZ, Bentzen Farm and others

Matters raised in evidence

Overview

144. Jo-Anne Cook-Munro on behalf of Federated Farmers supports my s42A recommendation to add an additional paragraph to the overview that

acknowledges the role that landowners play in the preservation of natural landscape and feature values.

NFL-O1

145. John Andrew Riddell accepts the recommended changes to NFL-O1 and notes that their original submission requesting the addition of the words 'intrinsic and natural values' becomes unnecessary in relation to this objective.

146. Jo-Anne Cook-Munro on behalf of Federated Farmers, supports my s42A recommendations to delete NFL-O1 and NFL-O2 as notified and replace with a new single objective.

Policies - general

147. Jo-Anne Cook-Munro on behalf of Federated Farmers notes that their original submission sought to amend NFL-P2, NFL-P3 and NFL-P7 to be consistent with their relief sought for the objectives. My s42A report recommended that these submissions be rejected. However, Federated Farmers accept my recommendation and the reasoning behind it.

NFL-P2 and NFL-P3

148. Owen Burn on behalf of J Bayley and others suggests that there appears to be no generally accepted definition of an 'outstanding natural landscape' that incorporates reference to characteristics, qualities and values contained in such a landscape as refined by the decisions of various courts. Mr Burn suggests this creates a difficulty of interpretation with respect to policies NFL- P2 and NFL-P3, which seeks that adverse effects on such qualities are avoided. Accordingly, he suggests that the word "*natural*" be inserted in these policies before the word "*characteristics*" to make it clear that it is this attribute that is the subject of the policies.

NFL-P4

149. Vance Hodgson on behalf of HortNZ supports my s42A recommended amendments to NFL-P4. Mr Hodgson agrees that the recommended change aligns with the RPS and agrees that the policy should not be limited to farming activities. Mr Hodgson also notes that my recommended change addresses the submission of HortNZ.

NFL-P7

150. Jo-Anne Cook-Munro on behalf of Federated Farmers supports my s42A recommendation to delete NFL-P7.

NFL-P8

151. John Andrew Riddell agrees with my recommendation to add a further matter to NFL-P8 that addresses visibility from public places. At paragraph 86 of his evidence Mr Riddell recommends an amendment to clause j. to be consistent with the wording in other provisions and considers that the scientific (geological) values of outstanding natural features should also be recognised in NFL-P8, as follows:

j. the characteristics, ~~and~~ qualities <u>and values</u> of the landscape or feature

l. the natural landform and processes, <u>including geological processes,</u> of the location

152. At paragraph 87 of Mr Riddell's evidence, he lists several matters that are contained in the ODP policy 12.1.4.10 but are not in the relevant PDP policies. Mr Riddell's suggests these matters should be added to NFL-P8.

153. At paragraphs 120 to 126 of Mr Riddell's evidence, he reiterates his concerns about cumulative effects being particularly difficult to deal with within the resource management regime, and acknowledges they are often overlooked without explicit reference. He supports the addition of "*cumulative effects*" as an assessment criterion under CE-P10 but requests that the same be added to clause (b) of NFL-P8.

154. Owen Burn on behalf of J Bayley and others suggests in his evidence that criterion (o) of NFL-P8 be refined by removing the word "*nearby*" and adding "*contained within an ONL or ONF" at the end of the sentence.*

155. Peter Hall on behalf of Bentzen Farm and others requests further amendments to NFL-P8. Mr Hall requests the following (summarised from his evidence):

Request	Reason
Qualifying Policy NFL-P8 such that consideration is given to "*the characteristics, qualities and values of the*" ONL and ONF.	Consistent with the preceding objective and policies.
Deleting "*h. any viable alternative locations for the activity or development*"	Clause is inconsistent with the general thrust of the RMA where the effects of a proposal on the environment are to be assessed on their merits rather than by reference to alternative proposals.
Amending d.: *any means of integrating the building, structure or activity <u>into the wider landscape</u>;*	On the basis that thing that integration is required with should be stated.

Request	Reason
Amending f.: *the need for and location of earthworks or indigenous vegetation clearance and proposed mitigation measures;*	On the basis that only the need for indigenous vegetation clearance should be a consideration here (rather than vegetation er se), and that mitigation measures are a relevant factor.
Amending j.: *the characteristics, ~~and~~ qualities and values of the landscape or feature*	To ensure consistency with the other objectives and policies in this Chapter, as recommended to be amended in the s42A report.
Amending o.: *the visual effect of the building, structure or activity ~~on~~ in relation to nearby ridgelines, headlands or peninsula;"*	Recognises that buildings, structures or activities more properly have a visual effect in "*relation to*" rather than "*on*" nearby ridgelines.
New matter p.: *whether the activity is on a previously approved building platform*	Consistent with the s42A Report recommendations for Policy CE-P10, to recognise that, as in the Coastal Environment, there are previously approved building platforms in ONL areas and that these should factor into the consideration of the effects of land use.

Analysis

NFL-P2 and NFL-P3

156. I disagree with Mr Burn's suggestion of adding the word "*natural*" in policies NFL-P2 and NFL-P3 before the word "*characteristics*". If it were to be added the wording would be as follows:

> "*…on the natural characteristics, qualities and values that make ONL and ONF…"*

157. While some *characteristics, qualities and values* of an ONL or ONF relate to 'naturalness', others do not. For example, 'vividness' is included in the criteria of Appendix 1 of the PDP for ONL, and is described as:

> *"…a distinctiveness or power which results in the feature or landscape being widely recognised across the community and beyond the local area, and remains clearly in the memory. Remarkable or striking landscapes can be symbolic of an area due to their recognisable and memorable qualities."*

158. The 'vividness' of a landscape is not a function of its naturalness.

NFL-P8

159. I agree with Mr Riddell's suggested changes (for the reasons outlined in his evidence) as follows:

> *j. the characteristics, ~~and~~ qualities and values of the landscape or feature*
>
> *l. the natural landform and processes, including geological processes, of the location*

160. I do not agree with Mr Riddell's suggested additional matters (from ODP policy 12.1.4.10) to be added to NFL-P8. I had considered the addition of these matters in my s42A report (albeit Mr Riddell sought in his submission they be part of a separate standalone policy), and I concluded that it was difficult to assess the proposed additional matters because Mr Riddell did not provide a reason for why they should be included (other than they are not included). He did not provide any further reasoning in his evidence.

161. Also, some of the matters appear to already be captured. For example, Mr Riddell suggests adding:

> *important views as seen from public vantage points on a public road, public reserve, the foreshore and the coastal marine area*

162. However, the following matters are already recommended to be included, which captures the public visibility concept:

> *n. the visibility of impacts viewed from public places; and*
>
> *o. the visual effect of the building, structure or activity on in relation to nearby ridgelines, headlands or peninsula*.

163. I agree with Mr Riddell's suggestion to add "*cumulative effects*" to clause b) of NFL-P8 for consistency with the equivalent CE and NATC policy. Clause b) would therefore read:

> *b. the temporary or permanent nature of any adverse effects, including cumulative effects*

164. I agree with Owen Burn's suggestion to amend o) of NFL-P8 by removing the word "*nearby*" and adding "*within ONL or ONF*" at the end of the sentence. (Mr Burn suggested "*contained within an ONL or ONF*", however in my view the words "*contained*" and "*an*" are redundant). It would therefore read:

> *the visual effect of the building, structure or activity on nearby ridgelines, headlands or peninsula within ONL or ONF*

(Note – I recommend a further change to this clause in response to Mr Hall's evidence as set out in the following paragraph)

165. The following is my analysis of the Peter Hall's requested amendments to NFL-P8. Unless otherwise stated, my agreement is based on the reasons as outlined in Mr Hall's evidence:

Request	**Response**
Qualifying Policy NFL-P8 such that consideration is given to "*the characteristics, qualities and values of the*" ONL and ONF.	Agreed, except amend to read: *"…the effects of land use and subdivision on the characteristics, qualities and values that make ONL and ONF outstanding"*
Deleting *"h. any viable alternative locations for the activity or development".*	Agreed.
Amending d.: *any means of integrating the building, structure or activity into the wider landscape;*	Agreed.
Amending f.: *the need for and location of earthworks or indigenous vegetation clearance and proposed mitigation measures*;	Agreed.
Amending j.: *the characteristics, ~~and~~ qualities and values of the landscape or feature*	Agreed
Amending o.: *the visual effect of the building, structure or activity ~~on~~ in relation to nearby ridgelines, headlands or peninsula;"*	Agreed (Note also the additional recommended change as outlined in my response to Mr Burn's evidence in the previous paragraph)
New matter p.: *whether the activity is on a previously approved building platform*	Agreed, except amend to read: *whether the activity is on an approved building platform*

Recommendation

166. For the reasons above, I recommend the changes to NFL-P8 as set out in Appendix 1.1.

Section 32AA Evaluation

167. In my opinion, the recommended amendments will improve the clarity and specificity of NFL-P8 and will better achieve objective NFL-O1. The changes are not anticipated to have a material impact on the costs of land use and subdivision proposals.

3.7 Issue 7– Natural Features and Landscapes Rules and Standards

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 15 – 23, paragraphs 193 -393
Evidence and hearing statements provided by submitters	Teleco Companies, Federated Farmers, Waitangi Limited, J Bayley and others, HortNZ

Matters raised in evidence

Rules – general

168. Mr Palmer on behalf of Zejia Hu presented to the panel reaffirming their view that proposed rules NFL-R1 and NFL-R3 will have the effect of making land incapable of reasonable use for dwelling and associated earthworks that fall to be non-complying activities. They recommend the rules for such activities should be controlled activities at most.

NFL-R1

169. Mr Horne on behalf of the Teleco Companies supports the recommendation in my s42A Report to insert a new PER-3 to NFL-R1. The Teleco Companies also agree that should a taller pole than what is provided for in the proposed PER-3 be required for functional and operation reasons, resource consent is required as a restricted discretionary activity.

170. Ms Cook-Munro on behalf of Federated Farmers supports my s42A recommendations to amend the maximum areas for new buildings in ONLs and ONFs. Ms Cook-Munro supports the recommendation as it has taken into account the points raised in Federated Farmers submission.

171. Mr Hodgson on behalf of HortNZ supports my s42A recommendations to increase the permitted activity thresholds for non-residential activity in ONL's in and outside of the Coastal Environment.

172. Mr Burn on behalf of J Bayley and others suggests a further amendment to my amendments to NFL-R1 in my s42A report - that matter of control (a) and matter of discretion (a) be amended to refers to effects on the "*natural characteristics…"*

173. Mr Burn also suggest further amendments to the proposed controlled activity rule in NFL-R1. More specifically, Mr Burn considers that the CON-1 criterion for residential buildings requires amendment to make it clear that a building may occur within a building platform either:

    a. where it is approved through a previous consent process (regardless of whether it was supported by a landscape assessment), OR

    b. if the building platform is not approved, it is supported by a landscape assessment.

174. To achieve this, Mr Burn requests that NFL-R1 CON-1 be amended to delete the word "*and"* so that it reads *"or approved"*.

175. Ms Jacobs on behalf of Waitangi Limited accepts my s42A recommended amendments to NFL-R1.

NFL-R2

176. Ms Cook-Munro on behalf of Federated Farmers and Ms Jacobs on behalf of Waitangi Limited support my s42A recommendation to delete NFL-R2.

NFL-R3

177. Ms Cook-Munro on behalf of Federated Farmers supports my s42A recommendation to amend NFL-R3 (in conjunction with the recommendation to delete NFL-R2) as it avoids the potentially perverse outcomes discussed in my s42A report.

178. In the planning evidence of Mr Burn on behalf of J Bayley and others, he requests an additional matter 13 to be listed under PER-1, as follows:

    "13. Where it is undertaken within a consented building platform."

179. Mr Burn's rationale for this addition is that the ONL overlay as notified includes locations where building platforms have been identified and approved by way of subdivision consents (e.g. within Omarino and at Omakiwi Bay).

NFL-R6

180. Ms Munro on behalf of Federated Farmers provides detailed reasoning in their evidence underlying Federated Farmers' original submission on NFL-R6. In my s42A report I recommended that NFL-R6 be deleted to remove

any unnecessary restriction on farming activities. Federated Farmers support this recommendation.

181. Ms Hodgson on behalf of HortNZ concurs with my reasoning in my s42A report that NFL-R6 does not affect existing farming activity, which can continue under existing use rights. Mr Hodgson also expresses support for my recommendation to delete NFL-R6 and concurs with my reasoning.

182. Ms Jacobs on behalf of Waitangi Limited accepts my recommendation to delete NFL-R6.

NFL-S1 and S3

183. In order to achieve greater precision in the language of NFL-S1, Mr Burn suggests that the word "*and*" at the end of NFL-S1 1. be replaced with "*or*".

184. Mr Burn suggests amendments to NFL-S3 to allow for development anticipated by the identification of a building platform through subdivision or another consenting process:

> Clause 1: *"Any earthworks outside a consented building platform must not exceed..."*
>
> Clause 2: *"Any indigenous vegetation clearance outside an approved building platform must not exceed…"*

Analysis

Rules – general

185. In regard to Mr Palmer's concerns (on behalf of Zejia Hu), in my opinion, NFL-R1 and NFL-R3 (including changes recommended in the s42A report and subsequent changes recommended in this report) are an appropriate response to managing the effects of development and subdivision to meet the relevant PDP objectives and policies, and the direction of the RPS and NZCPS.

NFL-R1

186. I disagree with Mr Burn's request to amend CON-1. The intent of the rule is to avoid landscape issues being assessed again at the building stage which have already been addressed during a prior resource consent process (typically subdivision). Mr Burn suggests that only one of the following requirements needs to be met to get the benefit of the controlled activity rule:

> a) the building platform is subject to an expert landscape assessment
>
> b) the building platform has been approved through a resource consent process.

187. In my opinion both requirements should be met to get the benefit of the controlled activity rule. This will provide assurance that landscape issues have been appropriately considered and managed in determining the building platform.

188. I disagree with Mr Burn's request to amend the wording of the matter of control for CON-1 and the matter of discretion for the restricted discretionary activity to refer to effects on the "*natural characteristics.*" Refer to my analysis for the same request from Mr Burn to NFL-P2 and NFL-P3 above.

NFL-R3

189. I do not recommend adding the following matter under PER-1, as follows:

"13. Where it is undertaken within a consented building platform."

190. The effect of this would be to make earthworks and vegetation clearance on an approved building platform a permitted activity.

191. Mr Burn's argument is it would provide for existing building platforms that were in ONL when the PDP was notified.

192. My concern is that it could be used as a way of circumventing consideration of the effects of earthworks and vegetation clearance. Earthworks and vegetation clearance for the purpose of creating building platforms have the potential to result in undue adverse effects on ONL and ONF. Often at the subdivision stage, there is no detail (and therefore consideration) on the nature of any earthworks and vegetation clearance within a building platform because it will depend on the aspiration of the person developing the site (which is often not the same person applying for the subdivision consent). In my view, if the earthworks and vegetation clearance on a building platform cannot meet the default permitted thresholds, then it should be subject to a resource consent process.

193. The reporting officer for the Indigenous Biodiversity chapter has recommended permitting the harvesting of timber approved under the Forest Act 1949 as a permitted activity in the Coastal Environment outside of HNC and ONC. This is in response to evidence from Mr Quinlan on behalf of Tane's Tree Trust. For the same reasons, I recommend also permitting the activity in ONL and ONF. The following is the proposed clause to be added to NFL-R3 PER-1:

The harvesting of indigenous timber approved under the Forests Act 1949 via either a registered sustainable forest management plan, a registered sustainable forest management permit or a personal use approval for the harvesting and milling of indigenous timber from the Ministry of Primary Industries.

NFL-S1 and S3

194. I agree with Mr Burn that the word *"and"* at the end of NFL-S1 1. should be changed to "*or*", so that it reads:

> *The maximum height of any new building or structure above ground level is 5m, ~~and~~ or*
>
> *Any extension to a building or structure must not exceed the height of the existing building above ground level*

195. If an existing building or structure is over 5m, then an extension which is also over 5m (but still no higher than the existing building) is not likely to have undue adverse effects given the presence of the existing building or structure. This is also consistent with the Natural character equivalent standards which are an "or".

196. I do not agree with Mr Burn's request to exempt consented building platforms from the NFL – S3 earthworks and vegetation clearance standards, for the reasons as set out in response to a similar request by Mr Burn for changes to NFL-R3.

Recommendation

197. For the reasons above, I recommend changes to NFL-R3 and NFL-S1 as set out in Appendix 1.1.

Section 32AA Evaluation

198. In my opinion, the harvesting of timber approved under the Forest Act 1949 in an ONL or ONF as a permitted activity will not have an undue adverse effect on ONL and ONF and will reduce regulatory costs for such operations. The change in my view is consistent with objective NFL-O1 (as recommended in my s42A report).

199. The proposed amendment to the height standard in NFL-S1 will reduce regulatory burden while continuing to be consistent with objective NFL-O1 (as recommended in my s42A report).

3.8 Issue 8 – Natural Character Overview, Definition, Objectives and Policies

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 3 – 4, paragraphs 88 - 111 Key Issue 6 – 12, paragraphs 117 - 203

Relevant Document	Relevant Section
Evidence and hearing statements provided by submitters	Federated Farmers, Waitangi Limited, J Bayley and others, HortNZ, Bentzen Farms and others, John Andrew Riddell

Matters raised in evidence

Overview

200. Ms Cook-Munro on behalf of Federated Farmers supports my s42A recommendation to amend the Overview to include a sentence that recognises some activities have a functional need to be located within an area containing natural character.

Definition

201. Mr Hall on behalf of Bentzen Farms and others support the recommended amendments to the definition of *"Wetland, lake and river margins."* However, Mr Hall considers there would be benefit in adding the words *"or constructed for farm water supply"* to avoid unintentionally capturing farm dams in the definition. Mr Hall considers that farm dams are clearly artificial in nature and therefore typically of low natural character. Mr Hall accepts that lakes can have natural character irrespective of whether they are constructed or not, however he considers that this is much less likely to be the case for farm dams. Mr Hall notes that he has deliberately suggested the use of the word "*constructed"* to avoid capturing farm dams that have 'naturalised' to some degree.

202. Mr Hall also notes that he would support an increase in the 1ha size threshold for lakes to be above 1ha. Mr Hall considers that there is no strong s32 justification for the threshold and considers it is arbitrary. However, Mr Hall did not provide an alternative threshold, other than referring to the ODP threshold of 5ha, and acknowledged he did not have any supporting evidence.

General

203. Ms Jacobs on behalf of Waitangi Limited accepts my decision and reasoning to not change the name of the Natural Character Chapter.

NATC-O1

204. John Andrew Riddell accepts the recommended changes to NATC-O1 and notes that their original submission requesting the addition of the words "*intrinsic and natural values"* becomes unnecessary in relation to this objective.

205. Ms Cook-Munro on behalf of Federated Farmers, supports my s42A recommendations to consolidate NATC-O1 and NATC-O2 into a single objective.

NATC-P2

206. Ms Cook-Munro on behalf of Federated Farmers acknowledges that while their specific submission points on NATC-P2 and APP-1 have been rejected, Federated Farmers supports the proposed amendments as outlined in my s42A report. Ms Cook-Munro considers that the proposed amendments to APP-1 provide clarification as to what is being identified or assessed through the introduction of specific assessment criteria for the natural character of wetlands, lakes and river margins. Ms. Cook-Munro considers this goes some way towards alleviating the concerns that Federated Farmers has about the policy and associated appendix.

NATC-P3

207. Mr Hodgson's planning evidence on behalf of HortNZ, supports my s42A recommendation to retain NATC-P3 with an amendment to the chapeau to refer to the "*minimum necessary*"" vegetation removal and/or earthworks. Mr Hodgson supports the change and notes that in the context of a response to a biosecurity incursion, he does not expect the amendment would constrain the scope of a reasonable and necessary response.

NATC-P6

208. Mr Riddell outlines in his evidence from paragraphs 78 to 81 that he has reviewed the policy guidance applicable to riparian areas across the Indigenous Biodiversity, Natural Character and Coastal Environment Chapters and considers there is a gap in terms of recognising and protecting the particular biodiversity values of the riparian margins of lakes and rivers. He notes that Policy 13(2) of the NZCPS, which sets out components of natural character, includes 'ecological matters.' To address this gap, Mr Riddell recommends a further matter be added to NATC-P6 that addresses *"effects on biodiversity values of the riparian areas, including linkages with other habitats and ecosystems."*

209. At paragraphs 120 to 126 of Mr Riddell's evidence, he reiterates his concerns about cumulative effects being particularly difficult to deal with within the resource management regime, and acknowledges they are often overlooked without explicit reference. He supports the addition of "*cumulative effects*" as an assessment criterion under CE-P10 but requests that the same be added to clause (b) of NATC-P6 to address this concern.

Analysis

Definition

210. I agree with Mr Hall that constructed farm water supplies should be excluded from the definition of "*Wetland, lake and river margins*". While some types of constructed water supplies will have natural character values (such as Lake Manuwai), it is expected that the natural character values of most constructed farm water supplies is low and therefore additional restrictions

are not necessary. I recommend the following wording (which is a slight variation of Mr Hall's wording):

> *a constructed farm water supply pond or dam*

211. I do not agree with Mr Hall's request to increase the 1 ha threshold for lakes. Mr Hall does not provide any evidence for this request (other than suggesting the ODP 5 ha threshold be adopted). I continue to support a 1 ha threshold for the reasons out in the S42A report.

212. I also recommend Clause 16 RMA minor wording changes to improve the wording of the "*Wetland, lake and river margins*" definition, but do not change the intent or effect.

General

213. I do not agree with Ms David that there should be additional clarification that the Natural Character chapter provisions do not apply to activities in wetlands. The rules are clear that they apply to activities on "*…wetland, lake and river margins…"* and the definition further clarifies the area where the rules apply.

NATC-P6

214. I accept Mr Riddell's argument that there is a gap in NATC-P6 in terms of recognising and protecting biodiversity values of freshwater margins. Vegetated riparian margins provide biodiversity functions, both within the margin itself but also to support instream biodiversity (e.g. shade, habitat and food source). It is also consistent with the new criteria I recommended in my s42A report for the natural character of freshwater margins to be included in Appendix 1 of the PDP, which includes ecological aspects. I agree with Mr Riddell's proposed wording, but I propose the addition of "indigenous" for clarification:

> *x. effects on indigenous biodiversity values of riparian areas, including linkages with other habitats and ecosystems.*

215. In my s42A report I recommended not adding "*cumulative effects*" to clause (b) of NATC-P6 on the basis that the RMA definition of "effects" includes cumulative effects. However, given that the S42A author for the Coastal Environment author recommended it's inclusion in CE-P10 which is an equivalent policy for the coastal environment, I accept the addition to NATC-P6 for consistency. NATC-P6 clause b) would therefore read:

> *b. the temporary or permanent nature of any adverse effects, including cumulative effects;*

216. I also recommend several other changes to NATC-P6 to adopt the improved wording changes as recommended for the CE and NFL equivalent policies.

There was no specific evidence on this, but in my view these changes are minor and assist with providing clarity. These recommended changes are:

> *Consider the following matters where relevant when assessing the effects of land use and subdivision on the characteristics, qualities and values of natural character:*
>
> > *d. any means of integrating the building, structure or activity into the wider landscape*
> >
> > *m. any positive contribution the development has on the characteristics, qualities and values of natural character.*
> >
> > *the need for and location of earthworks or indigenous vegetation clearance and proposed mitigation measures;*

217. These changes are in my view within the scope of a Clause 16, RMA change as they are of minor effect.

Recommendation

218. For the reasons above, I recommend changes to:

    a. The "*Wetland, lake and river margins*", as set out in Appendix 2.2.

    b. NATC-P6, as set out in Appendix 2.1.

Section 32AA Evaluation

219. In my opinion, the exclusion of constructed farm water supplies from the "*Wetland, lake and river margins*" will reduce regulatory burden while continuing to be consistent with the NATC chapter objectives (as recommended in my s42A report).

220. The recommended amendments to NATC-P6 will improve clarity and specificity, and will better achieve the NATC objectives. The changes are not anticipated to have a material impact on the costs of land use and subdivision proposals.

3.9 Issue 9 – Natural Character Rules and Standards

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 14 – 19, paragraphs 212 - 312

Relevant Document	Relevant Section
Evidence and hearing statements provided by submitters	Teleco Companies, Waitangi Limited, HortNZ, John Andrew Riddell, Fish and Game

Matters raised in evidence

NATC-R1

221. Mr Riddell considers that buildings or structures should be discouraged within 20 metres of wetlands, lakes or rivers due to the higher indigenous biodiversity values and the public access and recreation benefits of riparian areas. To address this, Mr Riddell seeks that NATC-R1 PER-3 is amended so that no more than 50m^2 of building or structure is located within 20m of the wetland, lake or river and to amend the matters of discretion to include *'the purposes of esplanade reserves or strips'*. Where this is not complied with, Mr Riddell seeks that the activity status is amended to discretionary.

222. Mr Horne on behalf of the Teleco Companies generally supports the s42A recommendation to amend NATC-R1 to provide for poles in road in the NATC overlay up to 10m in height, as well as river crossings including fords, bridges, stock crossings and culverts. However, Mr Horne considers that for clarity, the list of permitted activities should also be expanded to include ducts and lines attached to existing river crossing structures.

223. Mr Hodgson on behalf of HortNZ, notes that in light of my s42A recommendation to delete NATC-R2, the recommended amendments to the activity status of NATC-R1 in my s42A report would appropriately provide for the repair and maintenance of irrigation and infrastructure and artificial crop protection structure which HortNZ sought to be included in the list of activities under NATC-R3 in their primary submission. Mr Hodgson, therefore, supports the recommended amendments to NATC-R2 in my s42A report.

224. Ms Davis on behalf of Fish and Game continues to be concerned that the NATC-R1 does not permit alterations to maimai.

NATC-R3

225. Ms Jacobs on behalf of Waitangi Limited accepts my recommended amendments to NATC-R3, particularly the activities that I have recommended be added to the list. Ms Jacobs also accepts my decision to correct the reference to point number 5.

NATC-S2

226. Ms Jacobs on behalf of Waitangi Limited accepts my recommendation to delete the note under NATC-S2 and my other recommended amendments to the standard.

Analysis

NATC-R1

227. In my opinion the wording of the chapeau of NATC-R1 PER-2 can be improved. I recommend the following changes (which is also consistent with the wording used in CE-R1 PER-4):

> *The building or structure, or extension or alteration to an existing building or structure on wetland, lake and river margins where it is ~~required for~~:*

228. These changes are in my view within the scope of a Clause 16, RMA change as they are of minor effect.

229. I do not agree with Mr Riddell's suggestion that buildings or structures within 20m of wetlands, lakes or rivers due should be limited to 50m^2 (as a permitted activity) for the combination of the following reasons:

    a. The original submission requested any building and structures within 20m of a river to be a non-complying activity. In my opinion extending it to wetlands and lakes is beyond the scope of the submission.

    b. The request for a 50m^2 permitted threshold is considerably different Mr Riddell's original submission. While (arguably) within scope, it would have been difficult for further submitters to contemplate the potential for Mr Riddell's amended request.

    c. I accept I did not address the submission point (S431.138) in my S42A report (due to a submission coding error). However, if I had, I would have recommended it be rejected and I would not have anticipated a permitted activity threshold of 50m^2 as a potential 'compromise'.

    d. Mr Riddell provided no rationale for why 50m^2 (as opposed to some other area threshold e.g. 100m^2).

    e. While I accept 300m^2 is a large area, I am concerned that proposing a (much) lesser area at this stage of the process would unfairly impact a wide range of people with no ability to provide their views.

    f. It is likely that in most instances the list of permitted buildings and structures would be (well) under the 300m^2 threshold.

230. Having considered Ms Davis' evidence regarding maimai, I support the inclusion of maimai to be added to the list of permitted buildings and structures in NATC – R1 PER-2. Maimai are small structures inherently designed to blend in with the surrounding environment (and therefore

minimising effects on natural character). The following is my recommended additional wording:

12. a maimai not exceeding 10m²

231. A definition for maimai is not required in my opinion as any interpretation risk is mitigated by the (very) small area threshold for maimai.

Recommendation

232. For the reasons above, I recommend changes to NATC-R1 as set out in Appendix 2.1.

Section 32AA Evaluation

233. The proposed changes are minor and are consistent with the NATC objectives.

3.10 Issue 10 - Mapping

Overview

Relevant Document	Relevant Section
Section 42A Reports	NFL s42A report - Key Issue 25: ONL and ONF overlays, paragraphs 402 – 417. Coastal Environment section 42A report - Key Issue 21: ONC, HNC and coastal environment mapping, paragraphs 497 – 503 and 507 – 508 - 532
Evidence and hearing statements provided by submitters	Alec Jack, Bentzen Farm Limited and others, Federated Farmers, J Bayley and others, John Andrew Riddell, Living Waters Bay of Islands, Lucklaw Limited, Mr and Mrs Whooley

Matters raised in evidence

234. Alec Jack presented information at the hearing in support of his assertion that Jacks Lake is man-made and should be excluded from ONF-91, and that the boundary of ONF-91 around Lake Owhareiti should be amended.

235. Mr Burn on behalf of J Bayley and others reiterates the submitters' requests in relation to ONL mapping over their properties and provides reasoning as to why all or parts of each submitters' property do not meet the ONL criteria in his evidence. Mr Burn considers that there is merit in excising all or part of the submitters' sites identified in the maps appended to his evidence, from the ONL mapping.

236. Mr and Mrs Whooley presented on the first day of the hearing, with respect to their 113ha property at 2195 Waikare Road stating that it should not be subject to any natural environment overlays. As a result of their

presentation, it was suggested that Melean Absolum visit the property and review the three overlays the owners would like to see removed. Melean Absolum Limited subsequently visited the property on 13 August 2024.

237. The evidence of Peter Hall's (planning) and Mr Goodwin (landscape) on behalf of Bentzen Farm Limited and others supports the mapping changes as recommended by MAL and in the corresponding section 42A reports. There was a subsequent discussion at the hearing about the scope of Mr Goodwin's evidence in relation to ONL which MAL responds to in the memo (Appendix 4.1). No further changes are recommended as a result.

238. Mr Riddell's planning evidence on behalf of Robert Adams (paragraphs 172 to 177) considers that there is a clear association of the existing development of houses on rear lots at Long Beach in the Rural Lifestyle Zone with the immediately adjoining development of land zoned Kororāreka Russell Township. On this basis, Mr Riddell considers that it is appropriate for the height limits in CE-S1 to not apply to these Rural Lifestyle Zone lots at Long Beach. Mr Riddell requests the same relief for CE-S2.

239. Mr Richmond on behalf of Living Waters Bay of Islands Limited presented at the hearing to identify some inaccuracies in the numbering in Schedule 7 and Schedule 8 and in some of the PDP mapping of zones near the PDP (identifying Rural Production Zoning near Opua as one clear anomaly).

240. Lucklaw Farms Limited also presented a range of evidence at hearing with one submission point focused on inaccuracies in the mapping of ONC, HNC and MHWS between the RPS and PDP at Puwheke Beach.

Analysis

Matters considered by Ben Lee

241. The information on ONF-91 provided by Alec Jack was considered by Bruce Hayward, who undertook the original ONF mapping work. Mr Hayward's report is included in Appendix 1.2. Mr Hayward recommends Jacks Lake be excluded from ONF-91 and minor changes to the boundary of ONF-91 around Lake Owhareiti. Mr Hayward's report includes maps showing the recommended amendments. I adopt Mr Hayward's recommendations.

242. MAL (Appendix 4.1) has considered the evidence of Mr Burn in relation to ONL mapping. Having considered Mr Burn's evidence, MAL recommends no change to the ONLs except for the Goodfellow property where the recommendation is to remove Lot 4 DP 59324, Lot 5 DP 59324 and Lot 4 DP 70986 from the ONL. I adopt MAL's recommendation.

243. The MAL report (Appendix 4.1) includes as assessment of the overlays on the Whooley property following the site visit. The MAL report recommends:

    a. No change to the ONL.

b. Moving the edge of the ONC area to avoid two consented building platforms (as shown in Appendix 6 of Mr and Mrs Whooley's evidence).

c. Extending the HNC overlay to include the drive between the house and the barn and the orchard area to the east.

244. I adopt MAL's recommendations on changes to ONC and HNC on the Whooley property.

245. Maps of MAL's recommended overlay changes are not included in the memo (Appendix 4.1), however the report indicates these will be provided later in 2024.

Matters considered by Jerome Wyeth

246. Firstly, in terms of the request to exempt certain properties in Long Bay from CE-S1, I note that the intent of CE-R1 and CE-S1 is to make a distinction between urban zones and built-up settlements and other zones in the coastal environment that are more rural in nature/have a higher degree of natural character. These provisions are not intended to apply at a property specific level.

247. Nonetheless, I have sought advice from MAL on this request which is attached as Appendix 4.1. This advice states:

> *The Rural Lifestyle zoned properties to which Mr Adams is referring sit up the slope behind the row of dwellings that run along the waterfront, with sea views across the tops of the houses in front. These front row properties are zoned Russell / Kororāreka Special Purpose zone. The RLZ properties also occupy more steeply sloping land than those at the front. Because of this elevation and contour, development on these rear sites has a greater potential to create adverse landscape, visual and natural character effects than the front row. I therefore do not support changes to the building controls applying to the RLZ properties.*
>
> *I note that to enable this to occur either the properties would need to have a split zone across them, or the actual properties would need to be identified individually in the plan provisions. Given the complexity already inherent in the provisions, I do not support either of these approaches.*

248. Based on this advice and my reasons outlined above, I do not recommend any changes in response to the evidence and requests from John Riddell and Robert Adams.

249. As outlined in paragraph 523 of the Coastal Environment section 42A report, I acknowledge the inaccuracies in the "unique ID" in Schedule 7 and 8 which Living Waters Bay of Islands has helpfully identified. I recommend that these

are reviewed and amended accordingly which can be done as an amendment under Clause 16, Schedule 1 of the RMA in my view

250. As outlined in paragraph 526 to 528 of the Coastal Environment section 42A report, I do not consider that it is necessary for Council to undertake detailed "ground truthing" of all ONC and HNC areas as requested by Lucklaw Farms Limited and the RPS does not anticipate or require this as suggested by the submitter. Nonetheless, I agree there are some inaccuracies in the PDP mapping of ONC, HNC and ONF, including how it extends into the coastal environment overlay boundary/MHWS, at Puwheke Beach and parts of the coastal environment. I anticipate that the accuracy of this mapping will be reviewed as the PDP maps are finalised as part of decisions on the PDP.

Recommendation

251. For the reasons outlined above, we recommend following changes to the following mapped overlays:

    a. Changes to ONF-91 as set out in Appendix 1.2 B Hayward report – ONF 91.

    b. Removing that part of ONL-45 on Lot 4 DP 59324, Lot 5 DP 59324 and Lot 4 DP 70986 (property owned by Goodfellow).

    c. The following changes to the mapped overlays on the Whooley property:

        i. No change to the ONL.

        ii. Moving the edge of the ONC area to avoid two consented building platforms (as shown in Appendix 6 of Mr and Mrs Whooley's evidence).

        iii. Extending the HNC overlay to include the drive between the house and the barn and the orchard area to the east.

252. Note, MAL will provide maps of the recommended changes to ONL, ONC and HNC to the Hearing Panel later in 2024.

253. We also recommend that:

    a. Schedule 7 and 8 are reviewed and updated to ensure that the "unique ID" is accurate, and

    b. the PDP overlay maps near MHWS are reviewed for accuracy as part of the process to finalise the PDP mapping following decisions on submissions.

Section 32AA Evaluation

254. The recommended mapping changes are appropriate to achieve the objectives in accordance with section 32AA of the RMA. This change will not impact on ONL, ONF, ONC and HNC values and the appropriate management of effects on these values. It will provide a benefit to the impacted property owners by removing unnecessary regulation and therefore avoiding unnecessary compliance costs.

3.11 Issue 11 - Miscellaneous

Overview

Relevant Document	Relevant Section
Section 42A Report	Various
Evidence and hearing statements provided by submitters	Cavalli Properties, Haititaimarangai Marae Kaitiaki Trust, Lucklaw Farms Limited,

Matters raised in evidence

Vehicle controls on beaches

255. The Lucklaw Farms Limited submission requested a comprehensive rule in the PDP that sets out standards for vehicle access on beaches and restricts use of the foreshore and seabed by vehicles except for specific purposes. The Coastal Environment section 42A report recommended not introducing any such rules on the bases that by-laws are the preferred mechanism by Council for managing vehicles on beaches above MWHS (being the jurisdiction of the PDP).

256. Lucklaw Farms Limited provided evidence from a range of experts highlighting the range ecological values of Puheke Beach in support of LFL's request for the PDP to restrict vehicles on Puwheke Beach. Lucklaw Farms Limited also provided planning evidence which argues that the bylaw process does not provide for consideration of a broad range of matters (e.g. ecological and cultural) which the PDP can control.

Zoning of Matauri Bay subdivision

257. Mr Putt on behalf of Cavalli Properties notes that their primary relief is for the Matauri Bay subdivision to be zoned General Residential which is to be heard as part of the rezoning topic. The secondary relief sought in their submission is a request to remove the coastal environment overlay from Mautauri Bay except in so far in that it is required to cover an ONC, ONF or ONF – none of which Mr Putt considers are to be apparent in the Matauri Bay subdivision.

258. Accordingly, Mr Putt states in his evidence *"submission #177, in respect of the coastal management aspect which is subject of Hearing No. 4, is a holding device until such time as the appropriate PDP zone is placed over the subject land"*.

Haititaimarangai Marae Kaitiaki Trust – cultural effects

259. Karena Hita and Stephen James (Tipene) Paul on behalf of the Haititaimarangai Marae Kaitiaki Trust (HMKT) presented evidence at the hearing on a range of maters, with a particular focus on cultural effects assessments and the section 42A recommendations in relation to their submissions. HMKT reiterate their request for the inclusion of policy which directs that significant adverse effects on cultural values are avoided and other effects on cultural values are remedied or mitigated.

Analysis

Vehicle controls on beaches

260. Introducing district-wide vehicle restriction provisions into the PDP at this stage of the process is not recommended. It is a major change which would affect the use of beaches by communities throughout the Far North District and have significant public interest. Also, there is not currently the information available to determine the potential extent and detail of any such district-wide vehicle restrictions. In our view, a change of this nature should be via a plan variation or plan change so that affected members of the community have a proper and fair opportunity to comment on these changes.

261. In respect to Puwheke Beach, LFL's ecological evidence shows that: a) that there are significant ecological values; and b) the values are at risk from vehicles. This is reinforced by the fact that the Proposed Regional Plan for Northland has restricted vehicles on Puwheke Beach below MWHS. In other words, there appears to be a resource management issue associated with vehicles on Puwheke Beach that requires managing. The question is whether the PDP is the most appropriate method to address this issue.

262. Responding to this evidence requires further consideration of a range of issues, including determining the most appropriate method, the extent of the issue at Puwheke Beach above MHWS, and the potential effectiveness and impacts of the requested relief. Accordingly, it is not practicable to provide the Hearing Panel with a recommended approach to managing vehicles on Puwheke beach within this right of reply. We therefore intent to provide advice to the Panel on this matter later in 2024.

Zoning of Matauri Bay subdivision

263. No recommendation is required in response to the evidence of Mr Putt as until the primary relief of Cavalli Properties is considered through the rezoning hearing. However, regardless of the outcome of that hearing, I do

not consider that it is appropriate to remove the coastal environment overlay and only rely on ONC, HNC, ONF and ONF overlays. As discussed in the Coastal Environment section 42A report, the coastal environment overlay in the PDP gives effect to the mapping of the coastal environment in the RPS which gives effect to Policy 1 in the NZCPS.

Haititaimarangai Marae Kaitiaki Trust – requested policies to address cultural effects

264. We acknowledge the close relationship of Haititaimarangai Marae Kaitiaki Trust with the coastal environment and waterbodies and their requests for more specific policy direction to avoid adverse effects on cultural values. However, we remain of the view set out in the section 42A reports[10] that the relief sought is already addressed in other chapters.

265. In particular, there are specific provisions relating to cultural values in the 'Tangata Whenua' and 'Sites and Areas of Significance to Māori' chapters. We understand that the intent of the PDP is to consolidate the direction relating to tangata whenua values in these chapters to help avoid unnecessary duplication of these provisions across every chapter of the PDP and ensure consistency in how cultural values are considered and provided for. We also note that the overlay chapters all include the following matter in the consideration policies "*any historical, spiritual or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6*". For these reasons, we do not recommend that an additional policy on avoiding cultural effects is added to the overlay chapters as sought by Haititaimarangai Marae Kaitiaki Trust.

Recommendation

266. We do not recommend any amendments in response to the miscellaneous matters outlined above.

Section 32AA Evaluation

267. We are not recommending any amendments in response to the miscellaneous matters outlined above therefore no further evaluation is required under section 32AA of the RMA.

3.12 Additional Questions from the Hearing Panel

268. This section responds to questions raised by the Hearing Panel at the end of Hearing 4 that are not otherwise addressed in the preceding sections of this report.

[10] For example, paragraph 134 to 135 in the Coastal Environment Section 42A Report.

269. Ben Lee has responded to all the questions in this section.

Mapping of natural character of freshwater margins

270. The Hearing Panel asked whether other district plans mapped the natural character (e.g. outstanding and high) of freshwater margins.

271. Unlike natural character in the coastal environment, there is no requirement or advocacy in higher level planning documents for mapping high value natural character of freshwater margins.

272. The only example I am familiar with is the "*Natural Stream Management Areas Overlay*" in the Auckland Unitary Plan (AUP), which identifies river and stream reaches and associated riparian vegetation with high natural character and high ecological values. They generally have predominantly indigenous riparian vegetation cover along a stream length of at least 600m and 80m wide. The associated AUP provisions seek to avoid activities and structures that have adverse effects on the river or stream and its associated indigenous riparian vegetation, and only allow infrastructure if there is no practicable alternative.

273. I recommend not undertaking any mapping of high value natural character of freshwater margins in the PDP at this stage of the process, because:

    a. The recommended provisions will in my view appropriately manage the known issues regarding the management of the natural character of freshwater margins in the far north district.

    b. There has not been any analysis (that I am aware of) determining a need for such mapping.

    c. The mapping would take considerable time.

    d. There is no requirement for such mapping.

    e. The mapping and associated provisions could have potentially significant impacts on landowners, and therefore it would be unfair to introduce such provisions at this stage of the process as they would have limited opportunity to challenge.

Farm dams – earthworks

274. The Hearing Panel queried the impact of the recommended earthwork rules on the construction of farm dams.

275. There is very unlikely to be any demand for farm dams in ONC and HNC areas as they do not include areas of pasture. Other areas of the CE (that are not ONC or HNC) and ONL do contain areas of pasture.

276. Farm dams are typically constructed by creating an embankment using earth from the upslope side (which also helps to create additional dam capacity).

277. The following are the recommended permitted thresholds for earthworks in ONL and the CE relevant to farm dam construction:

    a. ONL outside CE – 100m^2 per year, 1.5m cut height or fill depth

    b. ONL within CE – 50m^2 per year, 1m cut height or fill depth

    c. CE (not ONC, HNC or ONL) – 100m^2 per year, 1m cut height or fill depth

278. Farm dams are typically used as a drinking water source for stock, but can also be used any other on-farm water related activities such as irrigation, dairy shed washdown and for firefighting purposes.

279. Farm dams can come in many sizes. I did not to find any information on the typical size, but I would anticipate that most (by number) would likely be less 1000m^2 as suggested by a brief 'fly around' in Google maps of rural areas in the far north district.

280. Farm dams are also regulated in the Proposed Regional Plan. The purpose of the Proposed Regional Plan rules is to manage the effects of damming and diverting water, and the effects on water quality. The relevant rules are as follows:

    a. In most cases up to 5000m^2 of earthworks is permitted (C.8.3.1).

    b. The damming and diversion of water for off-stream dams (dams not within a stream or river) up to 20,000m^3 is permitted (Rule C.3.1.1).

281. Water takes from farm dams are permitted with no standards (Rule C.5.1.4).

282. I would anticipate most typical new farm dams can be constructed within the Proposed Regional Plan permitted thresholds.

283. Farm dams over 4m high or over 20,000m^3 capacity require building consent from the regional council.

284. The inevitable follow up question is whether the PDP should provide an exemption for farm dams in ONLs and the CE (outside of ONC and HNC) (i.e. allowing greater threshold of earthworks as a permitted activity). Firstly, none of the submitters (including Federated Farmers) raised concern about the earthworks provisions in the overlay chapters in respect to farm dams, which suggests it is not a substantive concern and raises a question of scope to make any such change. Secondly, there has not been sufficient time nor the information available to consider this question while preparing this reply. Further advice can be provided should the Hearing Panel want to further explore this issue.

Buildings in the CE (outside ONC and HNC) and ONL (outside the CE) – whether a 110m^2 threshold is appropriate

285. The Hearing Panel queried whether the 100m^2 permitted threshold for buildings in the CE (outside ONC and HNC) and ONL (outside the CE) could be increased to 110m^2 to match the threshold under which building consent is not required for farm buildings under the Building Act 2004.

286. Schedule 1 of that B Act includes building work for which building consent is not required. S4A of the Schedule is *'Single-storey pole sheds and hay barns in rural zones*'. S4A.(b).(ii) states "*does not exceed 110 square metres in floor area"*

287. MAL considered this question (Appendix 4.1) and made the following assessment:

> *"In considering whether it is appropriate to increase the proposed provisions from 100m^2 to 110m^2, I note that the proposed provisions would apply to all non-residential buildings that are either in an ONL outside the CE, or in the CE outside either ONC or HNC areas, as well as outside a handful of coastal settlement urban zones. It is plausible that buildings for all sorts of purposes, other than dwellings, could be sought in these areas, and are unlikely to be limited to pole sheds and hay barns. As the rule will apply to a number of different types of buildings and potentially in a number of different zones, I recommend no change to the s42A provisions."*

288. I adopt MAL's recommendations and therefore recommend that the 100m^2 permitted threshold is retained.

Consideration of natural landscapes that are not outstanding

289. The Hearing Panel queried whether the NFL chapter should include provisions to manage effects on natural landscapes that are not outstanding.

290. In my view, there is no need to include such provisions, for the following reasons:

    a. There is no higher policy direction requiring it.

    b. I am not aware of it being identified as a resource management issue e.g. in the RPS, the PDP Section 32 reports, or raised by submitters.

    c. The National Planning Standards anticipate that there may be natural landscapes other than outstanding that require managing. However, the Standards do not require district plans to include such provisions - only that if they are included, then they are to be in the NFL chapter.

Removing plantation forestry from ONL

291. The Hearing Panel queried MAL's recommendations (included in our s42A reports) to remove plantation forest from the ONL, on the basis that MAL's recommendations included 'cookie cutting' out small areas of plantation forestry from within ONL which appeared inconsistent with the ONL mapping approach.

292. MAL provides a comprehensive response to this question (Appendix 4.1).

293. MAL's s42A recommendation was to remove 13 separate areas of plantation forest from 7 ONL. MAL now recommends that 9 areas are removed from 4 ONL.

294. Maps of these areas and the recommended changes to the relevant ONL are identified in the MAL report attached to our s42A reports.

Appendices

Appendix 1.1 - Officers Recommended Amendments to Natural Features and Landscapes Chapter

Appendix 1.2 - B Hayward report – ONF 91

Appendix 2.1 - Officers Recommended Amendments to Natural Character Chapter

Appendix 2.2 - Wetland, lake and river margins definition – reporting officer right of reply recommended changes

Appendix 3.1 - Officers Recommended Amendments to Coastal Environment Chapter

Appendix 4.1 - Memo – Post hearing response from Melean Absolum Ltd